

Dr. Siddalinga Devaru and anr. Vs. Selection Committee, Kidwai Memorial Institute of Oncology

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Acts : Karnataka Societies Registration Act; [Constitution of India](#) - Articles 14 and 16

Appeal No. : WP Nos. 35541 and 35542/1996 C/w WP No. 35589/1996

Appellant : Dr. Siddalinga Devaru and anr.

Respondent : Selection Committee, Kidwai Memorial Institute of Oncology

Advocate for Def. : S. Vijayashankar, Adv. General and ;B.B. Mandappa, Addl. G.A. for R 1-4, ;A.S. Bopanna, Adv. for R-5, ;Kesvy and Co. for R-7 and ;Geeta Devi, Adv. for R-8

Advocate for Pet/Ap. : M.P. Eshwarappa, Senior Counsel, ;K.G. Nayak Adv. and ;K. Subba Rao, Adv. for V.S. Naik, Adv.

Judgement :

P. Vishwanatha Shetty, J.

1. The controversy raised in these petitions relates to the validity of the Recruitment Rules providing fixation of maximum age limit for being appointed as Director of one of the premier medical care institutions in the State i.e., Kidwai Memorial Institute of Oncology, Bangalore, and the procedure adopted by the concerned authorities in proceeding to select the candidates to the said post.

2. Since the facts pleaded in these petitions are fairly similar and the contentions urged are identical, these petitions were heard together at the stage of preliminary hearing itself in view of the urgency pleaded and disposed of by this common order.

3. Before considering the submissions made by the Learned Counsel appearing for the parties, it is useful to set out in brief the facts which are relevant for disposal of these petitions.

Kidwai Memorial Institute of Oncology, Bangalore (hereinafter referred to as 'the Institute') is an autonomous body registered under the provisions of the Karnataka Societies Registration Act (hereinafter referred to as 'the Act') and is wholly financed by the State of Karnataka. It is also not in dispute that it is an instrument of the State within the meaning of Article 12 of the [Constitution of India](#). The Institute has been established and being developed for the purpose of giving specialised treatment to the patients who suffer from deadly disease of cancer. The Institute generally caters to the need of large section of cancer patients and more particularly poor patients hailing from the State and outside.

Consequent upon the retirement of the former Director of the Institute on 30.8.1996, steps were taken to fill up the post of Director by advertising the vacancy in daily newspaper published in 'Indian Express' on 20.10.1996. In the said advertisement, the gist of the Cadre and Recruitment Rules regarding the qualification etc; has been set out. One of the qualifications prescribed in the notification provides that the maximum age limit of the candidate as on the last date fixed for the receipt of the applications should not be more than 50 years, but the same may be relaxable in special circumstances. The relevant portion of the said qualification prescribed in the advertisement issued in the paper reads as follows:

'Age Limit:

Maximum 50 years as on the last date fixed for the receipt of application, but relaxable in special circumstances.'

Among others, the petitioners in these petitions and the supplemental respondents in these petitions submitted their applications. It is undisputed that all the petitioners in these petitions were beyond 50 years of age on the date of the receipt of the applications by the authorities and the supplemental respondents i.e., Dr. P.S. Prabhakaran, respondent-3; and Dr. Vallikad Elizebeth, respondent-4, and one Dr. M.H. Sharief, whose cases were considered by the Selection Committee, were within 50 years of age. It is the grievance of the petitioners in these petitions that though the Recruitment Rules and also the notification issued calling for applications for being considered to the post of Director of the Institute provide for relaxation of age limit fixed, their claim was not considered by the Selection Committee, and on the other hand the State Government took a decision not to consider the case of such of those applicants who were beyond the age of 50 years on the date of receipt of the applications and therefore the Selection Committee did not have an occasion to consider the cases of the petitioners as to whether having regard to their proficiency, experience in the profession, qualification held by them and other relevant circumstances, the requirement of age qualification prescribed should be relaxed in terms of the Recruitment Rules by the Selection Committee, or not. It is their further case that though the Selection Committee was required to be constituted under Bye-law No. 12(a) of the Kidwai Memorial Institute of Oncology General Bye-laws, 1980 (hereinafter referred to as 'the Bye-laws'), by the Governing Council of the Institute, the Selection Committee was not constituted by the Governing Council and on the contrary it was constituted by the State Government and therefore the entire procedure adopted in the matter of constitution of Selection Committee and consideration of the claim of candidates to the post of Director is vitiated resulting in denial of an opportunity of their case being considered for appointment to the post of Director as guaranteed under Articles 14 and 16 of the [Constitution of India](#). The petitioners also have pleaded that the entire selection process is vitiated on account of malafides on the part of the authorities incharge of the selection process.

4. During the pendency of the petitions an application was filed challenging the validity of the Cadre and Recruitment Rules of the Institute which prescribes the maximum age limit of 50 years for being appointed as Director of the Institute. The said application was allowed and the petitioners were permitted to amend their petitions.

5. Though the petitioners had not made the candidates whose case was considered for appointment as respondents to these petitions, however, two of the candidates, namely, Dr. P.S. Prabhakaran and Dr. Vallikad Elizebeth, came on record as respondents Nos. 3 and 4 in W.P.Nos. 35541-42/96 and as respondents 7 and 8 in W.P.35598/96 on the applications filed by them in these petitions. The respondents seriously resisted the claim made by the petitioners both regarding constitutional validity of the Recruitment Rule which prescribes the age qualification and also the procedure followed in the matter of selection of the candidates for the post of Director. They also seriously refuted the allegations of malafides as baseless.

6. I have elaborately heard Sri M.P. Eswarappa, the learned Senior Counsel appearing along with Sri K.G. Nayak for the petitioners in W.Ps 35541 and 35542 of 1996 and Sri K. Subba Rao, Learned Counsel appearing along with Sri V.S. Naik, for the petitioner in W.P. 35589/96 and Sri S. Vijayashankar, learned Advocate General appearing along with Sri B.B. Madappa, learned Govt. Advocate, for the State Government and Sri Shantaraj and Sri Babu Mathew, Learned Counsel for respondents 3 and 4 respectively in W.Ps 35541-42/96 and Sri A.S. Bopanna, Learned counsel appearing for the Institute.

7. The learned Counsel appearing for the petitioners in all these petitions made five submissions. Firstly, they submitted that the Recruitment Rule which prescribes the maximum age limit of 50 years for being appointed as Director of the Institute is highly arbitrary, unreasonable, discriminatory in nature and is violative of the right guaranteed to the petitioners under Articles 14 and 16 of the [Constitution of India](#). Elaborating this submission, they submitted that there is absolutely no basis or justification to make classification between the persons who are academically qualified to be considered to the post of Director solely on the

basis of age factor. According to them, the doctors would gain more experience, knowledge, proficiency, capability to treat the patients and administrative skill only when they put in more number of years of service and when they grow old. They further submitted that even assuming that the classification made on the basis of age is reasonable, the same has absolutely no nexus with the object sought to be achieved as the object of selection is to pick up more merited and suitable doctor to the post of Director of the Institute.

8. Sri K. Subba Rao, Learned Counsel appearing for the petitioner in W.P.35589/96 has brought to my notice the proceedings of the Governing Council of the Institute held on 28.12.1982 wherein some of the members of the Council had recommended for removal of the age bar prescribed for being appointed as Director of the Institute. He further submitted that the maximum age of 50 years was prescribed when the retirement age of the Director was 55 years and at present the age of retirement being 60 years, there is absolutely no justification to limit the zone of consideration at 50 years.

9. In support of the submissions, learned Counsel for the petitioners relied upon the decision of the Supreme Court in the case of *INDRAVADAN H. SHAH v. STATE OF GUJARAT* : (1986)ILLJ166SC , in the case of *UNION OF INDIA v. SUDHIR KUMAR JAISWAL* : (1995)ILLJ 1773 SC , and in the case of *D.R. NIM v. UNION OF INDIA* : (1968)ILLJ264SC , Sri Eswarappa also drew my attention to the *Administrative Law* by H.W.R. Wade and referred to me the passage in the said book, at page 400, which reads as follows:

'This is the essence of what is now commonly called 'Waynesburg unreasonableness', after the now famous case in which Lord Greene MR expounded it as follows:

It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to

the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in *Short v. Poole Corporation* (1926) Ch.66, gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.

This has become the most frequently cited passage (though most commonly cited only by its nickname) in administrative law. It explains how 'unreasonableness', in its classic formulation, covers a multitude of sins. These various errors commonly result from paying too much attention to the mere words of the Act and too little to its general scheme and purpose, and from the fallacy that unrestricted language naturally confers unfettered discretion.'

8. Secondly, it was submitted that the scheme providing for the procedure for appointment to the post of Director contemplates a Selection Committee being constituted by the Governing Council of the Institute and thereafter the Government, on the basis of the recommendation made by the Selection Committee, has to apply its mind and make a final choice of the candidate for being appointed as Director of the Institute among the candidates recommended by the Selection Committee. Therefore, according to the Learned Counsel for the petitioners, it is only the Selection Committee, after considering the academic and professional achievements and administrative capabilities, is required to consider whether in respect of a candidate the qualification prescribed in respect of the maximum age limit requires to be relaxed or not and on the basis of such recommendation made by the Selection Committee the State Government has to apply its mind and take a decision in the matter. They submitted, in the instant case, the Government at the very threshold of the selection took a decision not to consider the case of any candidate who was beyond 50 years of age and the said procedure followed is totally illegal and therefore the entire selection process is

liable to be quashed by this Court.

9. Thirdly, it was submitted since the Selection Committee was not constituted by the Governing Council as required under bye-law 12(a) of the bye-laws and the Selection Committee was constituted by the Government, the recommendation made by such a Selection Committee and also on that basis the selection made by the Govt. are vitiated. Fourthly, it was submitted that the State Government has decided not to consider the case of the persons who are beyond 50 years totally on account of extraneous and irrelevant consideration. Elaborating this submission, Sri Eswarappa strenuously contended that the entire action of the State Government is totally malafide and the letter dated 27.1.1997, a copy of which has been produced as Annexure-H, written by the Joint Secretary to the Chief Minister, indicating that one Dr. P.S. Prabhakar is a Director of the Institute, clearly supports the case of the petitioners in W.Ps 35541-42/96 that the petitioners were kept out from consideration on account of malafide consideration and with a view to favour Dr. Prabhakaran, respondent No. 3, in these petitions. He further pointed out that it is not necessary for them to specifically name any particular person who had acted on extraneous consideration in the pleadings. In support of this submissions, he relied upon the decision of the Supreme Court in the case of STATE OF PUNJAB v. RAMJI LAL AND ORS., : [1971]2SCR550 .

10. Finally, Sri Eswarappa submitted that so far as petitioner in W.P.35542/1996 i.e., Dr. R. Chandrasekhar is concerned, his case was not considered on the ground that he did not possess the requisite qualification of having worked for a period of five years in a Cancer Centre and the said decision taken by the Government is totally erroneous in law. Elaborating this, Sri Eswarappa submitted that Dr. R. Chandrashekar is the Head of the Department of Radiology at victoria Hospital, which is a cancer center and therefore the decision taken that he does not possess the requisite academic qualification is unsustainable.

11. The learned Advocate General and Sri Shantaraj strenuously countering the submission of the Learned Counsel for the petitioners, submitted that there is absolutely no merit in the submission of the Learned Counsel for the petitioners that the age bar prescribed is either arbitrary or unreasonable and liable to be

struck down as being violative of the right guaranteed to the petitioners under Articles 14 and 16 of the [Constitution of India](#). They pointed out that the authorities who are conferred with the power of making recruitment have every right to prescribe the qualification, both academic and other qualification, for appointment of the post of Director and in exercise of that power, if it is prescribed in the Recruitment Rules that the candidates should not have completed 50 years of age, the said qualification cannot be dubbed as either arbitrary or unreasonable; the authorities concerned keeping in mind the suitability of the candidate to head the Institute, having prescribed the qualification, the same cannot be interfered with by this Court in its writ jurisdiction; and the prescription of qualification is a matter of policy on which the authorities concerned have taken a decision having regard to the interest of the administration and public interest and the said policy decision which ultimately culminated in the form of a prescription of age qualification in the Recruitment Rules cannot be struck down by this Court as it would amount to this Court substituting its views to the one taken by the concerned authorities. They further submitted that the classification prescribed on the basis of age is reasonable and the entire matter has to be viewed from the backdrop of the fact that the minimum number of years of service has been prescribed to every candidate for being qualified to be considered for appointment as Director and in that situation, it is not permissible for the petitioner to challenge the validity of the rule which prescribes the maximum age limit; and opportunity is given to every one who is within the age limit and therefore there is absolutely no merit in the submission that the age limit prescribed is either arbitrary or unreasonable. They also pointed out that the burden is on the petitioners to show that the rule is unconstitutional by necessary materials and they have to discharge the said burden by showing as to how the rule is either arbitrary or unreasonable and they have failed to discharge the said burden in the present case.

They further submitted that in cases where qualifications are prescribed by the academicians, it is not for this Court to go into the correctness or the justness of the qualification prescribed and these matters must be left to the discretion of the experts in the field. In support of the above submissions, the learned Advocate General referred to me the decisions of the Supreme Court in the case of *STATE OF BIHAR AND ORS. v. RAMJEE PRASAD AND ORS.* : [1990]2SCR468 in the

case of Union of India and Anr. v. Sudhir Kumar Jaiswal, in the case of S.R. Nim v. Union of India, in the case of Dr. (Mrs) SUSHMA SHARMA v. STATE OF RAJASTHAN : [1985]3SCR243 in the case of V.K. SOOD v. SECRETARY CIVIL AVIATION AND ORS. : (1993)IILLJ544SC , in the case of BANK OF BARODA v. REDNAM NAGACHAYA DEVI : AIR 1989 SC2105 , in the case of CHARANJIT LAL CHOWDHURY v. THE UNION OF INDIA AIR 1951 SC 51 in the case of the STATE OF MYSORE v. P. NARASINGA RAO : (1968)IILLJ120SC , in the case of the UNIVERSITY OF MYSORE v. CD GOVINDA RAO : [1964]4SCR575 , in the case of THE STATE OF JAMMU AND KASHMIR v. TRILOKI NATH KHOSA : (1974)ILLJ121SC , in the case of HARMAN SINGH v. REGIONAL TRANSPORT AUTHORITY, CALCUTTA REGION : [1954]1SCR371 in the case of A. NORONHA v. STATE OF MYSORE 1966(1) My.LJ. p. 265, in KARNATAKA BREWERIES AND DISTILLERIES PVT. LTD. v. STATE OF KARNATAKA : ILR 1993 KAR2117 and AIR 1971 SC 2349 and the Administrative Law by H.W.R. Wade, at page 399, wherein it is observed that the doctrine that the powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. It is useful to refer to the passage relied upon by the learned Advocate General which reads as hereunder:

The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. When a Divisional Court yielded to that temptation by invalidating a Secretary of State's decision to postpone publication of a report by company inspectors, the House of Lords held that the judgments 'illustrate the danger of the judges wrongly though unconsciously substituting their own views for the views of the decision-maker who alone is charged and authorised by Parliament to exercise a discretion'. The Court must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or

capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. 'With the question whether a particular policy is wise or foolish the Court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority. As Lord Hailsham LC has said, two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.'

12. It is also the submission of the Learned Advocate General and Sri Shantharaj that the Government being the appointing authority, the Government was fully justified in taking a decision that whether the qualification prescribed should be relaxed or not. They pointed out it is only for special reasons to be recorded in writing the qualification prescribed could be relaxed and therefore it is not permissible for this Court to compel the appointing authority to relax the qualification; and it is for the appointing authority, having regard to the various relevant factors to take a decision whether the qualification has to be relaxed or not, and in the instant case the Government having taken a decision not to relax the qualification, the petitioners cannot be permitted to challenge the said discretion exercised by the Government. They further submitted that the Government being the appointing authority was entitled to take a decision at the initial stage itself and it was not for the Selection Committee to consider whether in the given case age limit prescribed should be relaxed or not.

13. With regard to the contention of the Learned Counsel for the petitioners that the Selection Committee has not been properly constituted, it is submitted, since the power has been conferred on the Government to make appointment which was earlier with the Governing Council, the power given to the Governing Council to constitute the expert committee under Bye-law No. 12(a) of the Bye-laws is deemed to have been taken away by the Government and therefore the constitution of the Selection Committee by the Government is not vitiated. The learned Advocate General nextly submitted that there is absolutely no substance in the contention relating to malafides advanced on behalf of the petitioners. He submitted that the allegations regarding mala fides are vague and ambiguous, and the petitioners having not laid any foundation with regard to the allegation of mala

fides and having specifically failed to point out which is the authority who was actuated by extraneous or mala fide consideration, cannot be permitted to challenge the selection process on account of malafide. He pointed out that there is absolutely no truth or basis in the allegation of malafide made. It is his contention that the irregularity, if any, in the constitution of the Selection Committee or however if such action will not ipso facto lead to the conclusion that there was malafides on the part of the Government in constituting the Selection Committee or taking a decision in the matter of appointment of a candidate to the post of Director. He further pointed out that when the allegations of malafides are made the burden is heavy on the petitioners to prove and establish the same and the petitioners have miserably failed to prove and establish the same in the present case. In support of this plea, he relied upon the decision of the Supreme Court in the case of K.P. ROYAPPA v. STATE OF TAMIL NADU : (1974)ILLJ172SC . So far as the contention of Sri Eswarappa that the petitioner in W.P.35542/96 possesses the requisite qualification of having worked in the Cancer Centre is concerned, the learned Advocate General pointed out that the application produced by the petitioner did not indicate that the petitioner had worked in any Cancer Centre; the application only refers to his experience and under these circumstances, the Government was justified in taking the view that the said petitioner did not possess the requisite academic qualification in addition to the fact that he was beyond the prescribed age limit.

14. Sri Babu Mathew submitted that it is necessary to clearly lay down the procedural requirements to be followed by the concerned authorities in the matter of constitution of the Selection Committee and selection of the candidates to the post of Director. He referred to me 'Kidwai Memorial Institute of Oncology Rules and Regulations,' 1979 (hereinafter referred to as 'the Rules') and bye-law 12(1)(a) of the Bye-laws.

15. In reply to the submission made by the learned Advocate general that the petitioner in W.P.35542/96 does not possess the requisite academic qualification, Sri Eswarappa pointed out that the applications filed by the other applicants also lack material particulars with regard to the academic qualification possessed by them and under those circumstances the State Government was not justified in

taking the stand that the application filed by the petitioner in W.P.35542/96 did not indicate that he had worked in the cancer Centre. He further submitted that the victoria Hospital is one of the premier hospitals in the State and it is well recognised, that there is a cancer centre in the said hospital, and in that background the matter should have been left to the Selection Committee to consider whether the said petitioner possessed the requisite academic qualification or not.

16. In the light of the rival contentions advanced by the Learned Counsel appearing for the parties, the following questions would emerge for my consideration:

- 1) Whether the Recruitment Rule which prescribes the maximum age limit of 50 is void and unconstitutional as being violative of the rights guaranteed to the petitioners under Article 14 and 16 of the [Constitution of India](#)?
- 2) Which is the authority or authorities, who is or are required to relax the qualification prescribed?
- 3) Whether the constitution of the Selection Committee by the Government is valid?
- 4) Whether the selection process is vitiated on account of mala fides on the part of the State Government?
- 5) Whether the petitioner in Writ Petition No. 35542/96 does not possess the requisites academic qualification having not worked for a period of five years in a Cancer Centre?

17. It may be useful to refer to some of the Rules and the Bye-laws' which have a direct bearing to answer the above questions before considering the submissions made by the Learned Counsel appearing for the parties.

18. Rule 4 of the Rules provides for authorities of the Institute. Governing Council is one such authority of the Institute. Rule 5 of the Rules states that the composition of the Governing Council shall be as prescribed in para 4 of the

Memorandum of Association. Rule 10 of the Rules provides for powers and functions of the Governing Council. Rule 15 of the Rules provides for appointment of Director, which reads as hereunder:

'15. APPOINTMENT OF DIRECTOR-

1. The first Director shall be appointed by the Government and such appointment shall be for a period of 5 years;

2. The appointment of the succeeding Directors either on superannuation or removal, cessation of the term of appointment or the resignation or death of the previous Director, including the first Director shall be made by the Government of Karnataka and such appointment shall be for a period and terms and conditions to be determined by the Government.

3. The Director shall be in over-all administrative control and management of the Institute.'

19. Bye-law 12(1) of the Bye-laws provides for constitution of the Selection Committee to make recommendations to the Appointing Authorities for recruitment to the various posts in the Institute. Clause 12(1)(a) of the Bye-laws provides for constitution of the Selection Committee so far as the post of Director is concerned. Clause (3) of Bye-law 12 makes it imperative on the part of the Selection Committee to examine the credentials of all persons who are being considered for appointment to the post. Bye-laws 12(1), 12(1)(a) and 12(3) of the Bye-laws read as hereunder:

'12(1) Constitution of Selection Committees for appointments:

There shall be the following Selection Committee to make recommendations to the appointing Authorities for recruitment to the various posts in the Institute.

(a) For the post of Director:

i) The Chairman of the Governing Council .. Chairman
ii) The Prochairman of the Governing Council .. Prochairman
iii) The Vice-Chairman of the Governing Council .. Member
iv) The Director of Medical Education .. Member
v) The Four outside

Experts to be nominated by the Governing Council .. Memberv) Director, KMIO where Director himself is not Member a candidate .. secretary. (b) to (e) & (2) xxx xxx xxx(3) The Selection Committee shall meet at Bangalore. It shall examine the credentials of all persons who are being considered for appointment to the post.'

20. Now let me examine the questions formulated for consideration:

21. Re: Question No. 1:- The law is now well settled that it is permissible for the State to make any reasonable classification. However, it is also well settled that when a challenge is made to the classification, the Courts are required to consider whether the classification made is reasonable classification or is made on some intelligible differentia and the said classification has a nexus with the object sought to be achieved. If the classification made is reasonable and has a nexus or a bearing with the object sought to be achieved, the classification made cannot be declared as unconstitutional as being violative of rights guaranteed either under Article 14 or 16 of the [Constitution of India](#). In the instant case, while the petitioners have no grievance with regard to academic or other educational qualifications prescribed, it is their grievance that the maximum age prescribed for being qualified to the post of Director at 50 years, when the age of superannuation for the post of Director is 60 years, is highly unreasonable, arbitrary and discriminatory in nature and violative of the rights guaranteed to the petitioners under Article 14 & 16 of the [Constitution of India](#). I find considerable force in the submission made by the Learned Counsel appearing for the petitioners. Admittedly, the age of retirement of Director of the Institute is fixed at 60 years. The academic qualification prescribed is as follows:

'Educational Qualification & Experience:

(a) A Degree in Medicine of any University established by Law in India;

(b) Postgraduate qualifications prescribed in Annexure-1 supplied along with Applications:

(c) Teaching experience of not less than 5 years after acquiring postgraduate qualification of which not less than 3 years shall be in a post not lower in rank than

that of an Asst. Professor or any other equivalent post;

(d) Experience at least of 20 years in Medical profession of which not less than 5 years shall be in a Cancer Oncology Institute/ Centre;

(e) Since the post is that of a Director of a Reputed Regional Institute, candidates having adequate experience both in teaching and administrative areas at the level of Professor or above will be given preference.'

22. A reading of the qualification prescribed clearly shows that it is only an experienced doctor with a postgraduate qualification and teaching experience of not less than five years after acquiring postgraduate qualification of which not less than 3 years should be in a post not lower in rank than that of an Asst. Professor or any other equivalent post and who has an experience of at least 20 years in Medical profession of which not less than five years in a Cancer/ Oncology Institute Centre qualified to be considered for being appointed as Director of the Institute. Since the post of the Director is the highest position in the Institute and he has to head the Institute and is required to be in overall administrative control and management of the Institute, it is understandable that if a qualification prescribed provides for a minimum tenure to the post of a Director. Admittedly, the age of superannuation of the Director is fixed at 60 years. The materials on record show, as rightly pointed out by the Learned Counsel appearing for the petitioners, that the maximum age limit of 50 years was fixed when the age of superannuation was fixed at 55 years. It cannot be disputed that so far as medical profession is concerned, the experience, knowledge, professional skill and administrative capabilities increases as the one puts in more number of years of service and along with that when he or she grows in age. Unlike in the case of military or appointment to a post in the Department of Police, where as the age advances the physical efficiency may come down and where the physical fitness has a direct bearing to the nature of work, in the medical profession, as indicated earlier, as the age advances the percentage of efficiency goes up. It is also not the case of the State or the Institute that age limit of 50 years has been prescribed taking into account that as the age advances professional efficiency of a doctor is likely to come down and under those situation it is not desirable to appoint a person who is

beyond the age of 50 years on the date of receipt of the applications. The only contention advanced on behalf of the State is that the appointing authority has absolute discretion to prescribe any qualification, including the qualification relating to age and the same is not liable to be interfered with by this Court as the decision taken by the State on that aspect of the matter is purely a matter of policy and the burden is on the petitioners to show that the qualification prescribed is highly unreasonable and arbitrary and violative of the rights guaranteed to them under Article 14 & 16 of the [Constitution of India](#).

23. The object of the selection to the post of Director to the Institute, as rightly pointed out by the Learned Counsel appearing for the petitioner, is to make a best choice or to select the most merited and suitable candidate among the candidates available. Prima facie the classification made on the basis of maximum age prescribed at 50 years for being considered for appointment as Director, when the age of superannuation fixed is at 60 years, it appears me highly unreasonable, arbitrary and violative of the rights guaranteed to the petitioner under Articles 14 and 16 of the [Constitution of India](#). Under these circumstances, though the initial burden is on the petitioners to show that any rule which is challenged is either arbitrary or unreasonable, when the said rule prima facie appears unreasonable or arbitrary, the burden is shifted on the State to justify validity of the rule or the classification made. In the instant case, the State has failed to place any material to show that the maximum age limit fixed at 50 years has any nexus or rational with the object sought to be achieved, namely, to pick up the best choice for being appointed as Director of the Institute. It is also not the case of the State that the Director appointed should have a minimum period of ten years. In the very nature of things, the said contention is also not available to the State as sub-clause(2) of Rule 15 of the Rules provides that the appointment of Director shall be for a period and terms and conditions to be determined by the Government. While the term of the first Director is fixed for five years, there is no minimum period or a term for the succeeding Director is fixed under the Rules. It is left to be determined by the Government at its sweet will and wish. Therefore, even the arguments that the Director should have a minimum tenure is also not available in the instant case as there is no minimum tenure fixed for the post of Director and the same is left to the sweet discretion, may be some times arbitrary, of the Government. Further, it is

also relevant to point out that ultimately the power of the appointment is conferred on the Government. The Selection Committee constituted is required to consider suitability of each of the candidates having regard to their achievements in the filed and other relevant facts and made recommendations to the Government for appointment. Under these circumstances, it is open to the Selection Committee, for any valid reasons and in the interest of Institute prefer a younger doctor to the older one, if the older one on account of his old age in a given circumstance is not suitable as the younger one and make recommendation to the Government. Similarly, it is open to the Government to make a choice of a doctor who is younger and more dynamic and more suitable to the post. When selection to the post of Director of a premier institution, like the Institute, which treated deadly disease like cancer, is to be made it is reasonable to expect that the choice left open to the appointing authority must be very wide. The appointment to the post of Director of the Institute, apart from the grievances made by the petitioners that their rights have been infringed, must be considered from the point of view of public interest and in the interest of large number of poor patients who are suffering on account of deadly disease of cancer. The entire matter must be looked into in the large interest of the public, and in that backdrop, it must be seen as to whether the qualification regarding the age prescribed has any nexus or rationale with the object sought to be achieved. If the entire matter is viewed in the background, what is stated above by me, in my view that the rule which prescribes the maximum age limit is highly arbitrary, unreasonable and violative of the rights guaranteed to the petitioners under Articles 14 and 16 of the [Constitution of India](#). It is necessary to point out that though the petitioners have no right to be appointed, they have a right to be considered for the appointment. It is not permissible for the State or the appointing authority to prescribe a qualification which is totally unrelated to the post which the appointment is made and on that basis to prevent their case being considered. It is also necessary to further point out that the rule itself indicates that in special circumstances the power of relaxation of the age qualification prescribed is reserved to the authority. This is a clear indication that there may be candidates who are more than 50 years and who are more suited than the other candidates. In this connection it is also relevant to refer to the proceedings of the Governing Council held on 28.12.1992,

a copy of which has been produced as Annexure-K in Writ Petition No. 35589/96. The relevant portion of the consensus arrived at by the Selection Committee referred to in proceedings Annexure-K reads as hereunder.

'The Chairman informed the Governing Council that consensus arrived at the Selection Committee meeting as follows:'According to the consensus arrived at among the members of the Selection Committee none of the candidate was found suitable for the post of Director, as on the date of the interview. The members of the committee were of the view that the essential qualifications prescribed in the rules of recruitment for the post of Director may be reviewed in order to have a wider base for selection for the post.'

The proceedings in Annexure-K further discloses that considering the view expressed by the Selection Committee, some of the members of the Governing Council, namely, Dr. H.L. Thimme Gowda, Dr. D.B. Bisht, Dr. D.B. Jussawalla and Dr. V.K. Iya were of the view that the qualification regarding age imposed has to be removed or has to be enhanced at least up to 58 years etc. It is useful to extract the relevant portion of the view expressed by them, which reads as hereunder:

'Dr. H.L. Thimme Gowda felt that the maximum age limit of 50 years should be removed.

Dr. D.B. Bisht observed that there should be scope for relaxation of the age for the fact that Kidwai Memorial Institute of Oncology is a specialised institute and considering the age of the applicant even beyond 55 years and up to 58 or 60 years would be justified.

Dr. D.B. Jussawalla and Dr. V.K. Iya supported the view of Dr. D.B. Bisht.'

Further, the proceedings of the Government indicates that the Health Secretary has indicated on the basis of the existing rules that such of those candidates who are aged 55 years could be considered for appointment as a Director. However, the said recommendation made by the Health Secretary was not accepted by the Government. Therefore, the view expressed by experts who participated in the

proceedings in Governing Council meeting held on 28.12.1992, (Annexure-K) also supports the view I have taken that there is absolutely no basis or justification to limit the maximum age at 50 years. In the decision cited by the Learned Counsel for the petitioners in the case of *Indravadan H. Shah v. State of Gujarat*, at paragraphs 9 & 10 of the said judgment, the Supreme Court has observed thus:

'9. This reasoning given by the High Court is totally unsustainable for the simple reason that if a person holding the post of Civil Judge (Senior Division) who has completed 48 years of age is considered to be not fully equipped with the physical and mental calibre for being appointed to the higher post of Assistant Judge, then on the same analogy how a member of the Bar will be considered at the age of 48 years to be most suitable for being appointed in the higher and responsible post of District Judge and such appointees will infuse fresh blood at that important service. On the other hand it is well established that with the coming of age and experience, a Judicial Officer becomes more suited and well equipped to perform and discharge the higher duties and responsibilities attached to the higher posts of Assistant Judge and that of District Judge.

10. The posts of Assistant Judge as well as of District Judge are included in Senior Branch of Gujarat Judicial Service. It is incomprehensible how those two cadres of Assistant Judges and District Judges can be treated as two different classes altogether thereby justifying the introduction of age restriction in regard to selection and appointment by promotion to the post of Assistant Judge while doing away with any such sort of age limit or restriction in respect of appointment to the post of a District Judge by promotion from amongst the members of the Junior Branch who have served as Assistant Judges. Articles 14 and 16 of the Constitution ensure that there should not be any discrimination in the matter of appointment in service, nor there will be any arbitrariness or unreasonableness in the rules of recruitment providing for appointment to the service either by promotion or by direct recruitment. There is no nexus to the object sought to be achieved by introducing the age restriction as regards the promotion by appointment to the post of Assistant Judge from amongst the members of the Gujarat Judicial Service (Junior Branch), as provided in Rules 6(4)(i) and 6(4)(iii) (a) of the said rules. But in respect of appointment to the higher post of a District Judge by promotion from

amongst the members of the Junior Branch who have served as Assistant Judges, no such restriction of age has been provided in Rule 6(2)(i)(a) and (b) of the said rules. There is obviously no rationale nor any reasonableness for introduction of this age bar in regard to appointment by promotion to the post of an Assistant Judge. The rule, is, therefore, arbitrary and it violates the salutary principles of equality and want of arbitrariness in the matter of public employment as guaranteed by Articles 14 and 16 of the Constitution. It is pertinent to refer in this connection to the observations of this Court in the case of *E.P. Royappa v. State of Tamil Nadu* : (1974)ILLJ172SC which are in the following terms:-

'Though enacted as distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution. Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Article 14 and 16 is equality and inhibition against discrimination:.....

Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic point view, equality is antithetic to arbitrariness.. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law.....'

(Emphasis supplied)

24. The decision of the Division Bench of this Court, in the case of *A. Noronha* (supra), relied upon by the learned Advocate General is not opposite to the facts of the present case. That was a case where the appointment was to be made to the post of Deputy Superintendent of Police, where the maximum age was fixed at 52 years. As pointed out by me earlier, for the purpose of selection to the Police force

or military, age has a direct bearing because much of the work the military and police force turn out depends upon their physical fitness. In that situation, if the maximum age is prescribed as a qualification, the same cannot be termed as unreasonable or arbitrary or violation of the rights guaranteed under Articles 14 and 16 of the Constitution.

25. The Supreme Court in the case of *State of Mysore v. P. Narasinga Rao*, has laid down that when a rule or statutory provisions is assailed on the ground that it contravenes Article 14, its validity can be sustained if the classification made is reasonable and the same has nexus with the object sought to be achieved. It is useful to extract the said observation made by the Supreme Court in the said case, at paragraph 4 of the judgment, which reads hereunder:

'When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is formed must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question.

In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated, Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured; Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection. It is true that the selective test adopted by the Government for making two different classes will be violative of Articles 14 and 16 if there is no relevant connection between the test prescribed and the interest of public service. In other words, there must be a reasonable relation of the prescribed test to the suitability

of the candidate for the post or employment to public service as such. The provisions of Article 14 and 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such.'

(Emphasis supplied)

26. Therefore, though the said decision lays down, as pointed out by the learned Advocate General that in addition to technical qualification, it is permissible for the state to prescribe general qualifications, the said decision also lays down that the general qualifications prescribed must be reasonable and must have nexus with the object sought to be achieved, in the light of the discussions made above, I am unable to accept the submission of the learned Advocate General that it is not permissible for this Court to nullify the prescription of the age limit prescribed as a qualification for the post of Director of the Institute on the ground that it is an academic matter. The prescription of the age limit cannot be treated as a qualification pertaining to academic matter. It can be treated only as a general qualification prescribed. Though this Court would generally not interfere against the academic qualification prescribed like the number of years of experience or whether the candidate should have a post-graduate qualification or not etc; however, if a qualification prescribed is totally extraneous or unrelated for considering a candidate for being appointed to the post of Director of the Institute and such qualification prescribed has the affect of preventing those who are otherwise eligible to be considered for being appointed as Director of the Institute, it is the duty of this Court to go into the validity of such qualification prescribed and strike it down if it suffers from vice of arbitrariness or unreasonableness, as otherwise it would affect the rights guaranteed to the eligible candidates and it will also go against the public interest and the interest of the Institute as it will have the affect of preventing the best suited doctor or a professional person being appointed as Director of the Institute. In view of what is stated by me above, I am of the view that none of the decisions relied upon by the learned Advocate General, referred to above, has of any assistance to him in support of his

contentions, and I find it unnecessary to refer to those decision in detail.

27. Re: Question No. 2:- It is not in dispute that the decision was taken by the Government not to consider the case of the applicants who are above 50 years of age, as per the qualification prescribed, before the matter was considered by the Selection Committee. The Recruitment Rule which prescribes 50 years as the maximum age limit, provides that the maximum age limit prescribed is relaxable in special circumstances for the reasons to be recorded in writing. The question is at what stage and which authority has to apply its mind and relax the maximum age limit prescribed.

28. Rule 15 of the Rules, referred to above, makes it clear that the power of appointment of Director is conferred on the Government of Karnataka. Bye-law 12(a) of the Bye-laws provides for constitution of the Selection Committee for the post of Director. Clause (v) of bye-law 12(a) provides that four outside experts to 'the Selection Committee should be nominated by the Governing Council. It is not in dispute that the four outside experts were not appointed by the Governing Council, but they were appointed by the State Government. It is also not in dispute that the Selection Committee did not scrutinise the applications and did not take any decision as to whether any special circumstances exist having regard to the achievements, experience, qualification and other relevant factors that the age qualification prescribed requires to be relaxed in the case of any one of the applicants, including the petitioners. It is also not in dispute that out of 16 applications, including the applications of the petitioners, only three applicants were found within the age limit prescribed and only those three applications were considered by the Selection Committee and recommendation was made by the Selection Committee, i.e., respondents 3 and 4 and one other person. The special circumstances referred to in the Recruitment Rules providing for relaxation of age qualification must be considered having regard to the object of selection to the post of the head of the Institute as the one with reference to the professional achievements, experience, qualification, administrative capabilities and other relevant factors which have a direct bearing with regard to the consideration of the merits of a candidate for being appointed as Director of the Institute.

29. Bye-law 12 of the Bye-laws provides that the Selection Committee should make recommendation to the Appointing Authority for recruitment to the post of Director. The constitution of the Selection Committee is such that in addition to the Chairman, the Pro-chairman of the Governing Council, Vice-Chairman of the Governing Council, Director of Medical Education and four outside experts nominated by the Governing Council are members of the Selection Committee. Therefore, the members of the Selection Committee are required to make a comparative assessment of the candidates with the assistance of four outside experts and take a decision and make recommendation to the Appointing Authority. Further, Clause 3 of Bye-law 12 also provides that the Selection Committee should examine the credentials of all the persons who are being considered for appointment to the post. Under these circumstances, I am of the view, having regard to the object and purpose behind the power of relaxation conferred, it is reasonable to hold that the said power of relaxation at the initial stage is required to be exercised by the Selection Committee in terms of the rule and on the basis of the recommendation made by the Selection Committee by the State Government, which is the appointing authority. Though the Government is the ultimate appointing authority, it will highly unreasonable and arbitrary for the Government not to forward the applications of persons who are beyond the age limit prescribed to the Selection Committee, as the Government at that stage will not have the assistance or benefit of the recommendation made by the Selection Committee which consists of the experts. Therefore, I do not find any merit in the submission advanced by the learned Advocate General and Sri Shantharaj that the Government being the appointing authority was justified in taking a decision to consider only such of those applicants who are within the prescribed age limit. A Division Bench decision of this Court in the case of KESHAYYA CHNNAYYA HIREMATH v. THE UNIVERSITY OF AGRICULTURAL SCIENCES 1971(2) My.L.J.P.330 fully supports the view I have taken. In the said decision, at paragraphs 17, 18 and 19, it is laid down as follows:

'17, As the power of relaxation is to be exercised with reference to qualifications for appointment, and the prescription of qualifications is one of the ways of controlling the power of appointment, there is no doubt that the power of relaxation in respect of qualifications is a power ancillary to the power of appointment itself.

Hence, we have no hesitation in holding that the power of relaxation can ultimately be exercised competently only by the appointing authority, the Board of Regents.'

'18. But as the Selection Committee has the power to recommend persons for consideration for appointment by the Board of Regents, it appears to us logical to hold that the Selection Committee also has the power to make a recommendation for relaxation in specified cases.'

'19. It has, however, been argued that it is beyond the competence of the Selection Committee to do so, because under Clause (2) of Statute No. 15 what the Selection Committee is expected to do is to prepare and recommend a list of 'qualified persons' who, according to the arguments, can only mean persons who possess qualifications as originally prescribed and not persons in respect of whom relaxation regarding qualifications is expected to be made or required to be made. It appears to us that this is cutting things too fine. The answer to the contention is quite simple, if the prescription of qualification is accompanied by a power of relaxation the clear result of the competent exercise of the power of relaxation is to convert the person in respect of whom that power has been exercised into a person qualified for appointment. Hence, when the Committee recommends relaxation in relation to one of the persons, the recommendation accepted by the Board of Regents, the person at once becomes qualified for appointment.'

Therefore, the non-consideration of the applications of the petitioners on the basis of the decision taken by the Government that only such of those applicants who are within the age limit are required to be considered and as a result of it non forwarding of the applications of the petitioners and others who are similarly situated, like the petitioners, to the Selection Committee was illegal. Therefore, the entire selection process initiated and finalised without considering the applications of the petitioners in these petitions requires to be quashed.

30. Request ion No. 3 :- Bye-law 12(1)(a) provides for the constitution of the Selection Committee which consists of several persons or authorities referred to in the said bye-law. Clause (a)(v) of Bye-law 12(1) provides for the constitution of the Selection Committee with four outside experts nominated by the Governing Council. Admittedly, experts to the Selection Committee has been nominated by

the Government as against the mandate of Clause (v) of Bye-law 12(1)(a) of the Bye-laws. When the power is conferred on the Governing Council to nominate four outside experts to the Selection Committee, the said power must be exercised by the very authority and it is not permissible for any other authority how high so ever it may be to nominate four outside experts to the Selection Committee. When the power is conferred on the high body like the Governing Council, the said power has to be exercised by the Governing Council. Since the Government has nominated the four outside experts to the Selection Committee. I have no hesitation to take the view that the constitution of the Selection Committee, as rightly pointed out by the learned Counsel for the petitioners, is vitiated. I am unable to accept the submission of the learned Advocate General and Sri Shantharaj that subsequent to conferment of power of appointment on the Government by means of amendment made to the Rules, the power conferred on the Governing Council under bye-law 12(1)(a)(v) of the Bye-laws to nominate outside experts deemed to have been deleted and that power is deemed to have been conferred on the Appointing Authority. No doubt, though originally the power of appointment was also on the Governing Council and subsequent amendment made to the Rule, the said power is conferred on the State Government, there is no modification or alteration made either modifying the constitution of the Selection Committee or taking away the power of the Governing Council to nominate four outside experts to the Selection Committee. Further, it is relevant to point out that the Director of NIMHANS who is one of the outside experts has been nominated as Chairman of the Selection Committee. Bye-law 12(1)(a)(i) provides that Chairman of the Governing Council should be the Chairman of the Selection Committee and Pro-chairman of the Governing Council should be the Pro-chairman of the Selection Committee. Under these circumstances, it was also not permissible to appoint an outside expert as the Chairman of the Selection Committee by the State Government. But in the absence of Chairman and Pro-chairman participating in the proceedings of the Selection Committee, it may be open to the members of the Selection Committee to nominate one amongst them as the Chairman of the Selection Committee and complete the process of selection. But that does not mean that the Government can substitute an outside expert as the Chairman of the Selection Committee when the bye-law specifically

provides that the Chairman of the Governing Council should be the Chairman of the Selection Committee. Therefore, I am of the view that the constitution of the Selection Committee by the Government is not valid in law.

31. Re: Question No. 4: As pointed out by the learned Advocate General the allegations of malafides made are vague, ambiguous and lacks material particulars. It is not specifically pleaded as to who was actuated by malafide consideration in preventing the cases of the petitioners being considered for appointment by relaxing the qualification prescribed. It is not possible to infer much from the circumstances that the constitution of the Committee has not been properly done as required under the bye-laws that the action of the State is actuated either by malafides or other extraneous consideration. I am also unable to accept the submission of Sri Eswarappa that malafide should be inferred from the serious lapse committed by the Government in not allowing the Governing Council to nominate the experts to the Selection Committee and also not permitting the Selection Committee to relax the qualification prescribed. I am of the view that the decision of the Supreme Court in the case of the STATE OF PUNJAB v. RAMJI LAL (supra), relied upon by Sri Eswarappa is of no assistance to the present case, though the said decision points out that it is not necessary to plead malafide against any particular individual and it can be inferred from the records. The letter Annexure-H dated 27.1.1997 written by the Joint Secretary to the Chief Minister also will not advance the case of the petitioners in any manner with regard to their contention that the selection process is vitiated on account of malafides. The Joint Secretary to the Chief Minister has nothing to do with the selection process and the said letter also has been given after completion of the selection process. I am also unable to accept the submission of Sri Eswarappa that from the letter Annexure-H I should draw an inference that the Chief Minister had pre-determined with regard to the candidature of Dr. Prabhakar as being appointed as Director of the Institute. There is absolutely no foundation laid in the petition with regard to the said submission advanced at the hearing of these petitions. As pointed out by me earlier, the allegations regarding malafides made in the petitions are vague and ambiguous. Merely because the irregularities, pointed out by me above, had crept in the process of selection, from that it is not possible to take a view that the entire selection was actuated by extraneous and

malafide consideration. The decision of the Supreme Court in case of K.P. ROYAPPA v. STATE OF TAMIL NADU relied upon by the learned Advocate General clearly supports his submission that there is absolutely no basis for the contention of the petitioners' that the selection process is vitiated on account of malafides. The Supreme Court in the said case, at paragraph 92, has observed thus :

'92. Secondly, we must not also overlook that the burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context, it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up --these considerations are wholly irrelevant in judicial approach --but because otherwise, functioning effectively would become difficult in a democracy. It is from this stand-point that we must assess the merits of the allegations of mala fides made by the petitioner against the second respondent.'

The principle laid down by the Supreme Court, extracted above, fully applies to the facts of the present case. Therefore, I am of the opinion that there is no substance

in the contention advanced by the learned Counsel Sri Eswarappa that the selection process is vitiated on account of malafides.

32. Request ion No. 5: While considering question No. 2, I have taken the view that the Selection Committee is required to consider the applications for the purpose of making recommendation to the Appointing Authority and also for the purpose of considering whether any special circumstances exist for relaxing the qualification regarding the age prescribed. If the application filed is either defective or on the face of it, it does not admit of any doubt that the applicant does not satisfy the qualifications prescribed, it may be permissible for the persons incharge of the scrutiny of the applications to reject the applications at that stage itself. However, when a doubt arises as to whether the academic qualification possessed by the applicants satisfies the requirement of the qualification prescribed or not, and when the Selection Committee consisting of experts is constituted to make recommendations, it is fair and reasonable that all such applications must be forwarded to the Selection Committee so that the Selection Committee will have an opportunity to look into the qualification of each of the candidates and satisfy itself as to whether any of the applicant satisfies the requirement of the qualification prescribed or not. For example, when a doubt arises whether a particular centre is a Cancer Centre or not, like the instant case, whether the victoria Hospital is treated as a Cancer Centre or not, it is quite appropriate that the Selection Committee which consists of experts takes a decision in the matter instead of leaving the matter to the bureaucrats who do not possess requisite expertise to decide the question. However, in view of my conclusion reached above that the rule in question is liable to be declared as unconstitutional, it is unnecessary for me to consider in detail whether the petitioner in WP. 35542/96 possesses the requisite qualification and whether other candidates whose cases have been considered also do not possess the requisite qualification, as contended by the learned Counsel for the petitioners. It is suffice to observe for the present that the Selection Committee constituted must examine all the applications unless on the face of it and without any scope for any doubt that the applications submitted do not satisfy the requirement of qualification prescribed.

33. In the light of the conclusions reached above, I make the following order :

i) The Cadre and Recruitment Rules of Kidwai Memorial Institute of Oncology, Bangalore, which prescribes maximum age limit of 50 years to the post of Director of the Kidwai Memorial Institute of Oncology, is unconstitutional, void and unenforceable in law;

ii) The entire selection process initiated with the commencement of the advertisement issued in the 'Indian Express' dated 20.10.1996 for the purpose of selection to the post of Director of Kidwai Memorial Institute, is declared as illegal and respondents 1, 2 and 5 in W.P.Nos. 35541-42/96 and respondents 1 to 5 in W.P.35589/96 are directed not to proceed with the appointment to the post of Director of the said Institute pursuant to the selection made thereof;

iii) Respondents 5 and 2 in W.P.Nos. 35541-42 of 1996 and respondents 4 and 5 in W.P.35589/96, i.e., the State and the Kidwai Memorial Institute of Oncology respectively, are directed to take immediate fresh steps in the matter of selection and appointment to the post of Director of the Kidwai Memorial Institute without reference to maximum age qualification prescribed in the Recruitment Rules and complete the process of appointment as expeditiously as possible, but not later than four months from today, in accordance with law and in the light of the observations made above.

34. Rule is issued and made absolute.

35. These petitions are disposed of in terms stated above. However, no order is made as to costs.