

Common Cause Vs. Union of India

Common Cause Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/695566

Court : Delhi

Decided On : Feb-29-1996

Reported in : 62(1996)DLT55; 1996(37)DRJ418

Judge : Anil Dev Singh, J.

Acts : [All India Institute of Medical Sciences Act, 1956](#) - Sections 4

Appeal No. : Civil Writ Petition No. 2453 of 1995 and Civil Miscellaneous Petition Nos. 22 and 876 of 1996

Appellant : Common Cause

Respondent : Union of India

Advocate for Pet/Ap. : Vipin Sanghi,; Arpana Kaul,; M.C. Sekharan,;

Judgement :

Anil Dev Singh, J.

(1) This writ petition has been placed before me in view of the difference of opinion between Mahinder Narain, J. and Cyriac Joseph, J. in regard to the question of validity of nomination of the third respondent as a Member and President of the All India Institute of Medical Sciences (for short 'AIIMS'), the second respondent. In the instant petition, the petitioners seek a direction in the nature of Quo Warranto declaring that Shri B. Shankranand, the third respondent is not entitled to hold or

continue to hold office as the President-Member of the second respondent and as Chairman of its governing body. The writ petitioners further seek writ in the nature of Mandamus for restraining the third respondent from functioning as the President and the Member of the second respondent and as the Chairman of its governing body. There is also another prayer in the nature of a consequential relief for quashing the proceedings, deliberations and minutes of the meetings of the Institute Body and the Governing Body of the second respondent held on June 5, 1995 or of any subsequent date which were convened and presided over by the third respondent.

(2) The petitioners are registered societies under the Societies Registration Act and claim to be interested in promoting justice and law and purifying the system and its institutions. It is asserted that they have been actively campaigning for eradication of arbitrariness in State action and have been taking up issues to Courts which affect public at large. The petitioners in the instant petition, inter- alia, assail the continuance of the third respondent as the President and the Member of the second respondent.

(3) How the third respondent came to hold the office of the President and the Member of the second respondent and the circumstances leading to the controversy may now be stated. In this regard two Notifications dated March 9, 1994 need to be taken note of. One was issued by the Central Government in pursuance of Clause (e) of Section 4 of the [All India Institute of Medical Sciences Act, 1956](#) (for short 'the Act'). This Notification reads as under:-

'New Delhi, Dated the 9th March, 1994.

Notification

S.O.- In pursuance of clause (e) of the section 4 of the [All India Institute of Medical Sciences Act, 1956](#) (25 of 1956), the Central Government hereby nominates Prof. P.N. Srivastava, sir Emeritus Scientist, Nuclear Science Centre, Jnu Campus, P.O. Box 10502, New Delhi, a non-medical scientist representing the Indian Science Congress Association and the following persons to be members of the All India Institute of Medical Sciences, New Delhi, namely:

1. Shri B. Shankaranand,

Minister of Health

and Family Welfare.

2. Shri M.S. Dayal, Secretary,

Department of Health.

3. Prof. J.S. Bajaj, Member, Planning

Commission, Delhi.

4. Prof. P. Chandra, Former Dean,

Aiims, Delhi.

V.16011/2/93-ME(PG)(ii)

SD/-

JOINT Secretary to the Govt. of India.'

(4) By the other Notification of the same date, the Central Government in pursuance of Section 7 of the Act, nominated Shri B. Shankaranand, Minister of Health and Family Welfare and a Member of Aiims to be the President of the Institute. Thus it is clear that when the aforesaid Notifications were issued the third respondent was the Minister of Health and Family Welfare.

(5) On December 22, 1994 the third respondent demitted the office of Minister of Health and Family Welfare. Thereafter the Secretary, Department of Health, Ministry of Health and Family Welfare by his letter dated December 28, 1994 to the third respondent pointed out that the Central Government had nominated the Union Health Minister, Govt. of India as a Member and as the President of the Institute Body of Aiims and it was in that capacity that the third respondent was nominated. It was further pointed out that as a consequence of the third respondent having demitted the office of the Union Health and Family Welfare

Minister, he ceased to be the Member and the President of the Institute Body of Aiiims from the date of demission of his office. It appears that after the receipt of the aforesaid letter, the third respondent for quite some time did not dispute the position taken in the aforesaid letter of the Secretary, Department of Health, Ministry of Health and Family Welfare. It was only on February 13,1995 that the third respondent addressed a letter to the Director of Aiiims in which it was inter-alia stated that he had been nominated as a member of the Aiiims under Section 4(e) and not as an Ex-officio Member under clauses (a), (b) and (c) of Section 4 of the Act. It was pointed out therein that by having demitted the office of the Minister of Health and Family Welfare, he did not cease to be a Member and the President of the Institute. The latter, in order to dispel any misgivings, also emphasised that he had not resigned the office of the Member and the President of the Institute. This stand of the third respondent was not only contrary to the position taken by the Secretary (Health), Govt. of India, Ministry of Health and Family Welfare in his letter dated December 28, 1994 but also to the line of reasoning contained in his subsequent letter dated February 10, 1995 addressed to Prof. P. Chandra. In the latter communication, the Secretary (Health) reiterated that the Central Government had specifically nominated the Union Minister of Health and Family Welfare as the member and the President of the AIIMS. In this letter it was further stated as follows:-

'IN view of the very clear and specific decision of the Central Government to nominate the Minister of Health and Family Welfare as Member and President of the Institute Body, I mentioned this to Shri B. Shankarandji when I met him on 23.12.1994 Along with one of my colleagues that he had ceased to be the Member and President of the Institute Bodies of Aiiims and Pgi and Chairman of Ircs etc. He confirmed it. In fact, he confirmed that he ceased to be the Chairman/President in all the bodies where he had so been nominated when he was Minister of Health and Family Welfare.'

(6) It appears that after the letter of the Secretary (Health) to the Government of India, Ministry of Health and Family Welfare dated December 28, 1994, expressing views of the Government of India about the third respondent having ceased to be a Member and President of the Institute, some representations were received from

certain quarters. On receipt of these representations, the matter was referred to the Department of Legal Affairs which opined that the third respondent continued to be a Member and the President of the Institute even though he ceased to be the Minister. It is represented on behalf of the respondent that the Prime Minister has concurred with this view. As a result of the opinion of the Department of Legal Affairs, the letter dated December 28, 1994 was withdrawn on April 24, 1995. Since the third respondent is continuing as the Member and the President of the Institute Body, the petitioners have filed the present writ petition for the above said reliefs. As already noted, the matter came before Mahinder Narain, J. and Cyriac Joseph, J. While Mahinder Narain, J. held that under Section 4(e) of the Act, four Medical Scientists and one Non- Medical Scientist representing Indian Science Congress Association can be nominated by the Central Government to the Institute. Cyriac Joseph, J. was of the view that under Section 4(e) of the Act Central Government can nominate one Non-Medical Scientist representing the Indian Science Congress Association and any other four persons as Members of the Institute. According to Joseph, J. the choice of those four cannot be restricted to Medical Scientists & representatives of the Indian Science Congress Association. Mahinder Narain, J. allowing the writ petition directed issue of writ of Quo Warranto and quashed the appointment of the third respondent as a Constituent Member of the AIIMS. On the other hand, Joseph, J. -while dismissing the writ petition observed that the petitioners are not entitled to any relief prayed for in the writ petition. The question therefore, before me and as also posed by the Division Bench by its further order dated January 24, 1996, is regarding the validity of nomination of the third respondent as the Constituent Member of the AIIMS. Basically the matter involves the interpretation of Section 4(e) of the Act but it will be necessary to notice the Statement of Objects and Reasons of the Act and sections 13 and 14 thereof in order to have an over all view of the objectives of the legislation. It will also be necessary to notice clauses (a) to (d), (f) and (g) of Section 4 of the Act, so as to appreciate the setting in which clause (e) thereof appears. Relevant part of the Statement of Objects and Reasons of the Act reads as follows;

'FOR improving professional competence among medical practitioners, it is necessary to place a high standard of medical education, both post-graduate and

under-graduate, before all medical colleges and other allied institutions in the country. Similarly, for the promotion of medical research it is necessary that the country should attain self-sufficiency in a post-graduate medical education. These objectives are hardly capable of realisation unless facilities of a very high order for both under-graduate and post-graduate medical education and research are provided by a central authority in one place. The bill seeks to achieve these ends by the establishment in New Delhi of an institution under the name of the All-India Institute of Medical Sciences. The Institute will develop patterns of teaching in under-graduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions, will provide facilities of a high order for training of personnel in all important branches of health activities and also for medical research in its various aspects. The Institute will have the power to grant medical degrees, diplomas and other academic distinctions which would be recognised medical degrees for the purpose of the Indian Medical Council Act, 1933'. Gaz. of India., 21.9.1955, Pt.II-Sec.2, Extra page 444.

(7) At this stage it will be convenient to extract sections 13 and 14 of the Act which lay down the objectives and functions of the Institute:

'13.Objects of the Institute. The objects of the Institute shall be

(A)to develop patterns of teaching in under-graduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions in India;

(B)to bring together in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and

(C)to attain self-sufficiency in post-graduate medical education.

14.Functions of the Institute. With a view to promotion of the objects specified in section 13, the Institute may'

(A)provide for under-graduate and post-graduate teaching in the science of modern medicine and other allied sciences, including physical and biological,

sciences;

(B)provide facilities for research in the various branches of such sciences;

(C)provide for the teaching of humanities in the under-graduate course;

(D)conduct experiments in new methods of medical education, both under-graduate and post-graduate, in order to arrive at satisfactory standards of such education;

(E)prescribe courses and curricula for both under-graduate and post-graduate studies;

(F)notwithstanding anything contained in any other law for the time being in force, establish and maintain

(I)one or more medical colleges with different departments, including a department of preventive and social medicine, sufficiently staffed and equipped to undertake not only under- graduate medical education but also post-graduate medical education in different subjects;

(II)one or more well-equipped hospitals;

(III)a dental college with such institutional facilities for the practice of dentistry and for the practical training of students as may be necessary;

(IV)a nursing college sufficiently staffed and equipped for the training of nurses;

(V)rural and urban health organisations which will form centres for the field training of the medical, dental and nursing students of the Institute as well as for research into community health problems; and

(VI)other institutions for the training of different types of health workers, such as physiotherapists, occupational therapists and medical technicians of various kinds;

(G)train teachers for the different medical colleges in India;

(H)hold examinations and grant such; degrees, diplomas and other academic distinctions and titles in under- graduate and post graduate medical education as may be laid down in the regulations;

(I)institute, and appoint persons to, professorships, readerships, lecture ships and posts of any description in accordance with regulations;

(J)receive grants from the Government and gifts, donations, benefactions, bequests and transfers of properties, both movable and immovable, from donors, benefactors, testators or transferors, as the case may be;

(K)deal with any property belonging to, or vested in, the Institute in any manner which is considered necessary for promoting the objects specified in section 13;

(L)demand and receive such fees and other charges as may be prescribed by regulations; (M)construct quarters for its staff and allot such quarters to the staff in accordance with such regulations as may be made in this behalf;

(N)borrow money, with the prior approval of the Central Government, on the security of the property of the Institute;

(O)do all such other acts and things as may be necessary to further the objects specified in section 13.'

(15) The next important provision with which we are concerned, is Sections 4 of the Act which gives the composition of the Institute:-

'4.Composition of the Institute.- The Institute shall consist of the following members, namely:-

(A)the Vice-Chancellor of the Delhi University, ex officio;

(B)the Director-General of Health Services, Government of India, ex official;

(C)the Director of the Institute, ex officio;

(D)two representatives of the Central Government to be nominated by that Government, one from the Ministry of Finance and one from the Ministry of

Education;

(E) five persons of whom one shall be a non-medical scientist representing the Indian Science Congress Association, to be nominated by the Central Government;

(F) four representatives of the medical faculties of Indian Universities to be nominated by the Central Government in the manner prescribed by rules; and

(G) three members of Parliament of whom two shall be elected from among themselves by the members of the House of the People and one from among themselves by the members of the Council of States.'

(16) Much of the argument of the learned counsel for the parties related to Sections 4, 13, 14 and the Statement of Objects and Reasons of the Act. Learned counsel appearing for the petitioners submitted that the third respondent was not eligible to be nominated as a Member and the President of the second respondent as on a plain grammatical construction of Section 4(e) the Central Government can nominate five persons representing the Indian Science Congress Association of whom one is required to be a Non-Medical Scientist. The third respondent not being a Medical or Non-Medical Scientist representing the Indian Science Congress Association did not fulfill the criteria laid down therein. He further submitted that assuming that there was doubt with regard to the meaning of Section 4(e) of the Act, the external aids for the interpretation of the statute could be resorted to, which would clearly indicate the intention of the legislature. In this regard he invited my attention to the speech of Smt. Raj Kumari Amrit Kaur, the then Minister of Health dated February 20, 1956, which she delivered in the Parliament, in response to the questions put by a Member of Parliament, while piloting the Aims Bill and the Minister while giving her reply categorically stated that there will be only 3-4 officials out of 17 members of the Aims as the Non-Medical Scientists and those representing the Indian Science Congress Association would not be officials. Learned counsel for the petitioner, relied upon various decisions for the proposition that legislative material can be relied upon by the Courts as an aid for finding out the true import and meaning of the statutory provisions. Referring to the Statement of Objects and Reasons of the Act and

Sections 13 and 14 thereof he submitted that one of the most important functions of the Institute lies in the field of Medical Research and Development. He alluded to the fact that in the objects and reasons emphasis has been put on the promotion of Medical Research so that the country acquires self sufficiency in Post Graduate Medical Education. According to him, it is clear that Research and Development in the field of medical sciences is one of the paramount functions/responsibility that the Institute is required to discharge. Having regard to the objects and reasons, functions and the aims of the Institute, the Central Government cannot appoint any five persons unless four of them are Medical Scientists and one is a Non-Medical Scientist representing the Indian Science Congress Association and this interpretation, as per the learned counsel, conforms with the intention of the Parliament to constitute a balanced body of persons so as to enable the Institute to achieve its objects and functions. It was pointed out by learned counsel that in case this interpretation was not accepted, the Central Government will come to enjoy arbitrary powers in appointing any four persons out of five as Members of the Indian Institute of Medical Sciences thus rendering the statute violative of Article 14. thereforee, according to the learned counsel, Section 4(e) will have to be read down so as to bring it in conformity with Article 14 and for that purpose the guidance must be taken from the Statement of Objects and Reasons of the Act, Sections 13, 14 and clauses (a) to (d), (f) and (g) of section 4 of the Act. In any event he submitted that the third respondent was nominated as a Member and the President of the Aiims in his capacity as the Minister of Health and Family Welfare and not in his personal capacity and on demission of his office as Minister of Health and Family Welfare on December 22, 1994, he ceased to be a Member and the President of the Aiims

(17) On the other hand, learned Additional Solicitor General appearing for the first respondent submitted that Section 4(e) of the Act clearly envisages nomination of five persons out of which only one is required to be a Non-Medical Scientist representing the Indian Science Congress Association. He also submitted that in case Section 4(e) is held to require the Central Government to nominate Medical Scientists representing Indian Science Congress Association in that event the court would be substituting and inserting words in the Section which would impinge upon the domain of the legislature. Learned Additional Solicitor General

canvassed that the word 'persons' occurring in Section 4(e) is of a wide amplitude and permits the Union of India to nominate any four persons as members of the AIIMS. When the legislature has not chosen to fetter the discretion of the Government, it would not be for the Court to restrict the meaning of the word 'persons'. He submitted that there is no justification for holding that the word 'persons' occurring in Section 4(e) means Medical Scientists belonging to Indian Science Congress. It was also submitted that the discretion to nominate persons under Section 4(e) has been vested in a -high authority like the Central Government and there is a presumption that when power is vested in such an authority, the same shall be exercised in a reasonable manner. He also submitted that when the statute is clear there is no reason to give a purposive interpretation. According to the learned Additional Solicitor General, the third respondent was the most suited person for being nominated as a Member and the President of the Institute Body. He pointed out that the third respondent had been a Minister of Health and Family Welfare and has wide and varied experience of administration.

(18) Learned counsel appearing for respondents No.2 and 3 reiterated the submissions made by the Additional Solicitor General. Besides, she invited my attention to the fact that Smt. Raj Kumari Amrit Kaur, the then Health Minister was its first President and continued to be so for some time even after she demitted the office as Health Minister. She had also invited my attention to a long list of Health Ministers of the Union who had been nominated as the Members and the Presidents of the AIIMS. She argued that applying the Rule of Contemporanea expositio the only interpretation which can be given to Section 4(e) is that except one Non- Medical Scientist representing the Indian Medical Congress Association, any four persons can be nominated by the Central Government to the Institute Body. She also submitted that any person who in the opinion of the Central Government is competent enough to further the objects and functions of the Act can be nominated as Member of the Aiims under Section 4(e) of the Act. She contended that the discretion of the Government in making nominations is not unguided and is controlled by the objectives of the Act. She further submitted that in the present case the nomination of the third respondent has been validly and properly made and by no stretch of imagination the Central Government can be said to have abused the discretion vested in it. According to her the third

respondent was fully competent and experienced for being nominated as the Member and President of AIIMS. She canvassed that it was not necessary to have a medical scientist as the Member and President of the Institute Body. According to her, it is the job of the teaching staff of the Institute to make continuous research in their own disciplines of Medicine besides teaching the students.

(19) MR.BARUN K. Sinha appearing for the intervener has followed the line of arguments of the learned counsel who preceded him.

(20) I have considered the submissions of learned counsel for the parties and I have also perused the separate judgments rendered by the learned Judges of the Division Bench. For the resolution of controversy, I will first focus my attention to clauses (a) to (d), (f) and (g) of Section 4. These clauses deal with the composition of the Institute. Out of these clauses, first three, namely, clauses (a) to (c), deal with ex-officio members. The Vice Chancellor of the Delhi University, the Director General of Health Services, the Director of the Institute (AIIMS) are members by virtue of their office. Clause (d) deals with nominations of two representatives of the Central Government, one from the Ministry of Finance and the other from the Ministry of Education. As per clause (f) the Central Government is required to nominate four representatives of the Medical Faculties of Indian Universities in the manner prescribed by the Rules. According to clause (g) two Members of the House of People are to be elected from amongst themselves by the Members of the House and one amongst themselves by the Members of the Council of States. From a reading of clauses (a) to (d) and clauses (f) and (g), three things are clear. Firstly, these clauses create different sources from which members of the Institute are to be drawn. Secondly the very act of creation of the sources restricts the area or range of choice. Thirdly each one of the clauses mentions a particular person who is class or category of persons which are separate from the class or category of persons mentioned in other clauses from which members are to be drawn. Persons belonging to different class/classes or category/categories have not been clubbed together in a single clause as is evident from clauses (a) to (d) and (f) and (g) of Section 4 of the Act. In other words the source for membership of the Institute mentioned in one clause is different and distinct from the source mentioned in the other and the choice of persons is circumscribed by these

clauses.

(21) Under clause (a) it is limited to the Vice Chancellor of the Delhi University. Similarly clause (b) is confined only to the Director General of the Health Services. The same pattern appears in clause (c) which is confined to the Director of the Institute. This design also appears from clause (d) by virtue of which the choice is restricted to two officials of the Government of India. Clause (f) is confined to the representatives of Medical Faculties of Indian Universities. Clause (g) is restricted to three Members of Parliament. Thus each clause representing the source from which the members are required to be drawn, is confined or restricted to only one person or one set of persons of the like type. Now coming to clause (c), it mentions five persons of whom one shall be a Non-Medical Scientist representing the Indian Science Congress, to be nominated by the Central Government. Learned counsel for the petitioners submitted that out of five persons mentioned in the said clause four are bound to be Medical Scientists representing the Indian Science Congress Association, while one is to be a Non-Medical Scientist from the same Association. On the other hand learned counsel for the respondents submitted that out of five persons only one need be a Non-Medical Scientist representing the Indian Science Congress and the remaining four persons could be appointed at the discretion of the Central Government. According to the learned counsel for the respondents, the clause envisages two sets of people who can be nominated. One - A Non-Medical Scientist representing the Indian Science Congress, the other, any four persons. This interpretation would mean that two different sets or categories of persons have been clubbed together in clause (c) from amongst whom five members of the Institute Body are required to be nominated, i.e., for nominating one person the source would be Indian Science Congress and for the remaining four persons the Government could make nominations from any unspecified source or sources. This interpretation if accepted would not be in consonance with the design and pattern as exhibited by the remaining clauses of Section 4. If the four persons out of five are not required to be drawn from the Indian Science Congress Association there was no reason why the legislature would not have followed the same pattern by making separate provisions for nomination of persons falling under two different categories. In that event instead of one composite clause, there would have been two clauses to the

following effect:- 'i) Four persons to be nominated by the Central Government, ii) one Non-Medical Scientist representing the Indian Science Congress Association to be nominated by the Central Government.' It cannot be disputed that each of clauses namely (a) to (d) and (f) and g) of Section 4 represent singular, distinct and different streams, not similar to one and another, from which persons are required to be drawn for the membership of the Institute Body. If six clauses show a particular intention of the legislature, there is no reason why clause (e) should be read differently; striking a discordant note and chartering a different path which does not fit in with the scheme of the other clauses of the Section. There is also no plausible reason why the words 'Indian Science Congress' should only go with the words 'one of whom shall be non-medical scientist' and not the words 'five persons' immediately preceding them and appearing in conjunction with them even without as much of a comma between them. It seems to me that various clauses of Section 4 clearly exhibit a common pattern, design and scheme running through them. Thus the position which emerges from reading the various clauses of Section 4 is that each clause indicates separate and distinct source confined to a person or persons of the same category and class from amongst whom members of the Institute are required be drawn. therefore, in clause (e) two different and separate sources for purposes of making nominations could not have been mixed together by the legislature. Thus, all the five are required to come from one source, i.e., Indian Science Congress.

(22) Putting it differently, clauses (a) to (d), (f) and (g), lay down identifiable, definite and specific sources for members of the Institute, the only remaining clause, which is clause (e), cannot be construed in a manner which would be opposed to the general trend exhibited by the rest of the clauses. therefore, when clause (e) talks of nominations of persons by the Central Government it does not mean any person traceable to unidentifiable, indefinite and unspecified source but means persons representing the Indian Science Congress Association which is the source for the persons being appointed as members under this clause. Thus, construing clause (e) of section 4 of the Act in the aforesaid manner, the inescapable conclusion which follows is that all the five persons mentioned in clause (e) of section 4 must be representing Indian Science Congress.

(23) The intention of the legislature can also be gathered and gauged by referring to the speech of the Minister of Health in Parliament regarding the clause in question. This extrinsic material is admissible though it may not be conclusive. If the aforesaid interpretation of the statute and the one which may be reached by having resort to the statement of the Minister at the time of its passing through Parliament coincide with each other, it will lend assurance to the former. In *Mysore v. R.V. Bidap* : (1973) IILLJ418SC , Krishna Iyer, J., speaking for the Supreme Court pointed out that the rule of exclusion of the legislative material from consideration for the purpose of construing a statute was open to criticism. In this regard it was held as follows:-

'THE trend of academic opinion and the practice in the European system suggest that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. Recently, an eminent Indian jurist has reviewed the legal position and expressed his agreement with Julius Stone and Justice Frankfurter. Of course, no- body suggests that such extrinsic materials should be decisive but they must be admissible. Authorship and interpretation must mutually illumine and interact. There is authority for the proposition that resort may be had to these sources with great caution and only when incongruities and ambiguities are to be resolved. There is a 'strong case for whittling down the Rule of Exclusion followed in the British Courts and for less apologetic reference to legislative proceedings and like materials to read the meaning of the words of a statute. Where it is plain, the language prevails, but where there is obscurity or lack of harmony with other provisions and in other special circumstances, it may be legitimate to take external assistance such as the object of the provisions, the mischief sought to be remedied, the social context, the words of the authors and other allied matters.'

(24) In *Fagu Shaw and others vs. The State of West Bengal* : 1974 CriLJ486 while endorsing the view of Krishna Iyer, J. the Constitution Bench held as follows:-

'WE may, therefore, legitimately refer to the Constituent Assembly debates for the purpose of ascertaining what was the object which the constitution makers had in view and what was the purpose which they intended to achieve when they enacted

clauses (4) and (7) in the present form.'

(25) Learned counsel for the respondents, however, submitted that the Court cannot go into the general debates in the House for ascertaining the meaning of a statute except for the limited purpose of ascertaining mischief which it seeks to remedy. Be that as it may, even if we proceed on this basis, the rule of exclusion will not apply to the speech made by the concerned Minister in the House for the purpose of ascertaining the object and purpose of the enactment and for the meaning to be ascribed to a provision thereof which may be ambiguous. As noticed by the Supreme Court in *K.P. Varghese v. Income-tax Officer, Ernakulam and another*, : [1981]131ITR597(SC) , the recent trend in juristic thought is that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. In that case the Apex Court while noticing with approval the three of its earlier decisions in *Loka Shikshana Trust v. Commissioner of Income-tax* : [1975]101ITR234(SC) ; *Indian Chamber of Commerce v. Commissioner of Income-tax* : [1975]101ITR796(SC) ' , and *Addl. Commissioner of Income-tax v. Surat Art Silk Cloth Manufacturers Association* : [1980]121ITR1(SC) , relied upon the speech of the Finance Minister made in Parliament in connection with the Bill for ascertaining the reason for introducing the same.

(26) The following extract from the speech of Smt.Rajkumari Amrit Kaur, the then Minister for Health which was made in the House in reply to one of the questions posed by a Member of Parliament regarding the composition of the Institute would be relevant:-

'NOW some criticism has been leveled I have so little time to reply-as to the official character of the Governing Body. I may bring to the notice of Members that there are merely three or four officials out of the seventeen members, because the non-medical scientists and those representing the Indian Science Congress certainly won't be officials. Representatives of the medical faculties are not likely to be officials. Then there are three Members of Parliament who certainly are not officials. So that objection really does not stand.'

(27) According to the aforesaid reply it appears that the Minister was speaking with regard to clause 4(e). The reference in her speech to Non-Medical Scientist and those representing the Indian Science Congress Association is a clear pointer towards that. In her reply she categorically stated that there will be 3-4 officials out of 17 members of the Institute body as the Non-Medical Scientists and those representing the Indian Science Congress Association would not be officials. The reply shows that the Minister clearly meant that apart from the Non-Medical Scientist, the other persons mentioned in clause 4(e) would be from the Indian Science Congress. The use of the expressions 'Non-Medical Scientists' in the plural form, by the Minister shows that she was not confining her statement to one time constitution of the Institute Body but she was referring to its future re-constitution as well.

(28) Learned counsel for the respondents also submitted that in case the legislature wanted all the five persons to be from Indian Science Congress then it would have used a language something like this; 'five representatives of the Indian Science Congress Association out of which one shall be a Non-Medical Scientist to be nominated by the Central Government.' I am afraid that this Submission of learned counsel is of no avail to them. While making this submission they overlooked the fact that clause (e) does not talk of four representatives of the Central Government to be nominated by that Government either. The argument of the learned counsel for the respondents misses the fact that if the legislature intended to have the representatives of the Government under clause (e), it would have specifically stated so as in clause (d) of Section 4.

(29) Learned counsel for the respondents urged that the word 'persons' mentioned in clause (e) shows that the Central Government can nominate any four persons as members of the Institute Body. This argument of the learned counsel for the respondents is not in keeping with the scheme, spirit and intention of the legislature. If the interpretation suggested by the learned counsel for the respondents is accepted, this would confer arbitrary and un-guided powers on the Central Government in which event the provision would be rendered unconstitutional. Faced with this situation, learned counsel for the respondents argued that for nominating four persons, other than a Non-Medical Scientist, under

clause 4(e)' the Central Government would be guided by the objectives laid down in the other provisions of the Act. Persons having wide and varied experience and who are capable of achieving the purpose of the Act are nominated by the Central Government as the members of the Institute. In other words the argument of the learned counsel for the respondents is that in so far as the nominations of the four persons other than the Non-Medical Scientist are concerned, the guidance for making the choice of the persons can be sought from the Act itself but when it comes to the meaning of the word 'persons', the contention is that there is no use for a purposive interpretation as the meaning of the clause is clear. It appears to me that there are two sets of provisions in the Act. One set is which delineates or lays down the functions and objectives of the Act. The other set is meant to fulfill those objectives and functions by providing the necessary means & machinery for this purpose. As already noted the functions and objectives of the Act are enumerated in Sections 13 and 14 thereof and the same can also be found in the Statement of Objects and Reasons of the Act. The various Sections including Section 4(e) are meant to fulfill and subserve the policy objectives and to promote the purpose of the Act. therefore, the true meaning of Section 4(e) must be guided by the objectives of the Act. As is apparent from the Statement of Objects and Reasons of the Act, one of the most important goals of the Institute is to acquire facilities for Medical Education of a very high order for both Under Graduate and Post Graduate Medical Education and Research in the various fields of medicine. Sections 13 and 14 of the Act also lay down the same objectives for the Institute. The goals to be achieved by the Institute and set by these Sections, inter-alia, are to provide Under Graduate and Post Graduate teaching in the Science of Modern Medicine and other allied sciences including physical and biological sciences; to provide facilities for research in various branches of such sciences; and to develop patterns of teaching in Under Graduate and Post Graduate Medical Education in all its branches so as to demonstrate a high standard of education to all Medical Colleges and other allied Institutions in the country. Since these are the aims and objectives of the Institute which it is required to achieve the question which arises is whether it could be the intention of the legislature to authorise Central Government to nominate under clause (e) of Section 4 any four persons on the Institute body irrespective of their qualifications

in the field of Medicine and Medical Research. The answer obviously would be in the negative.

(30) As already seen above, 'persons' contemplated in clause (e) of section 4 are the ones representing the Science Congress. This is the first essential requirement. But is that the only requirement? To my mind that is not the only requirement. The word 'persons', in so far as it relates to four persons other than a non-medical scientist, must be judged for its meaning, width and amplitude by keeping in view the words associated with it, the avowed purpose and the objectives of the Act. It appears to me that the four persons (hereinafter represented by the word 'persons') must be Medical Scientists and for this conclusion my reasons are as follows :-

(31) The words 'five persons' occurring in clause (e) of Section 4 appear in conjunction with words 'of whom one shall be a non-medical scientist'. The word 'scientist' appears to be the key word. The Rule of construction represented by the principle 'nocturne a sociis' would apply and the meaning of the word 'persons' must be judged by the words which are keeping company with it. The philosophy behind the principle is that the meaning of a doubtful word in a statute may be ascertained by reference to the meaning of the words associated with it. In *Director of Public Prosecutions vs. Jordan*, (1976) 3 All ER 775, the House of Lords in construing the words 'other objects of general concern' occurring in Section 4(1) of the Obscene Publications Act, 1959, was guided by the words preceding and following the said words. That Section which provides an exception to the offence under Section 2 thereof enables the accused to prove that the publication of an article is justified as being for the public good on the ground that it is in the interest of science, literature, art 'or all other objects of general concern'. It was held that the general words namely 'other objects of general concern' operated in the same area which was covered by the words science, literature, art or learning and these words did not fall in a totally different area of sexual behavior and could not enable the accused to prove that articles seized, which were pornographic, had some psychotherapeutic value for various categories of persons, thus cutting the width of general words of wide amplitude so as to fall in line with the words associated with it. In *Rohit Pulp Paper Mills Limited v. Collector*

of Central Excise, Baroda, : 1990(47)ELT491(SC) , it was held by the Supreme Court as follows:-

'THE principle of statutory interpretation by which a generic word receives a limited interpretation by reason of its context is well established. In the context with which we are concerned, we can legitimately draw upon the 'nocturne a sociis' principle. This expression simply means that 'the meaning of a word is to be judged by the company it keeps.' Gajendragadkar, J. explained the scope of the rule in State of Bombay v. Hospital Mazdoor Sabha : (1960)ILLJ251SC in (the following words : (SCR pp. 873- 74)

'THIS rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in 'Words and Phrases (Vol.XIV, p. 207): 'Associated words take their meaning from one another under the doctrine of nocturne a sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim ejusdem generis'. In fact the latter maxim 'is only an illustration or specific application of the broader maxim nocturne a sociis'. The argument is that certain essential features or attributes are invariably associated with the words 'business and trade' as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that nocturne a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service.'

This principle has been applied in a number of contexts in judicial decisions where the court is clear in its mind that the larger meaning of the word in question could not have been intended in the context in which it has been used.'

(32) This maxim was also applied in *Rainbow Steel' Ltd. Muzaffarnagar and Birla Cotton Spinning and Weaving Mills Ltd, Delhi v. C.S.T., U.P. and State of U.P.*, : [1981]2SCR727 , where it was held as, follows:-

'HAVING given our anxious consideration to the rival contentions urged before us, we are clearly of the view that the principle of *nocturne a sociis* is clearly applicable to the construction of the expression 'old' occurring in Entry 15, and that expression will have to be given a restricted meaning - a sense analogous to that of the less general words clubbed with it. The principle is explained in Maxwell on the Interpretation of Statutes (12th Edn.) at page 289 thus:

(33) Where two or more words which are susceptible of analogous meaning are coupled together, *nocturne a sociis*, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general.

Moreover, in the two decisions relied upon by counsel for the respondents where this Court refused to apply the principle of *nocturne a success* while construing the definition of industry' in the two concerned enactments because the legislature had deliberately used wider words in order to make the scope of defined words correspondingly wider, the court has observed that 'it is only when the intention of the legislature in associating wider words with words of narrower significance is doubtful or is otherwise not clear that the present rule of construction can be usefully applied.' In other words, if the wider words used are in themselves vague, imprecise or ambiguous and there is no indication that these have been deliberately used to infuse wider meaning then this rule of construction can be invoked.'

(34) Applying the principle of *nocturne a sociis* and having regard to the aforesaid decisions of the Supreme Court and the House of Lords, larger meaning to the word 'persons' can not be given. The word 'persons' does not mean any persons.

It calls for a narrow meaning taking its bias from the attending words. It must mean a scientist. To further unravel the true meaning of the clause regard must be had to the substance of the matter as it emerges from the object and purpose of the Act, the context in which the expression 'persons' is used and the consequences necessarily following upon the acceptance of any particular interpretation of the provision. The Supreme Court in *Empress Mill vs. Municipal Committee, Warda* : [1958]1SCR1102 , while construing the general words, held that they must be so interpreted as being confined to the real objects of the Act. In this regard the Court observed as follows:-

'IT is also a recognised principle of construction that general words and phrases however wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual objects of the Act.'

(35) In *Maunsell vs. Olins and another* 1975 (1) All ER 16, Lord Wilberforce observed that all general words are open to inspection, to see whether they really bear their widest possible meaning. According to the law Lord the width or amplitude of the general words has to be confined to the actual objects of the Act and are to be construed in the context in which they are used. In *Utkal Contractors and Joinery Pvt. Ltd. and others vs. State of Orissa and others* : [1987]3SCR317 , the Supreme Court held that the fact that general words are used in a statute is not in itself a conclusive reason why they should be given their literal meaning. General words should be construed in the context of the purpose of the Act which may well indicate that the wide or general words should be given a restrictive meaning. In this regard the Supreme Court held as follows :-

'IN considering the rival submissions of the learned counsel and in defining and construing the area and the content of the Act. and its provisions, it is necessary to make certain general observations regarding the interpretation of statutes. A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of committees which preceded the

Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed 'ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is necessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the words of an enactment are important, the context is no less important. For instance : ...the fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by that statute, and the context of an Act may well indicate that wide or general words should be given a restrictive meaning. [Halsbury 4th Edn., Vol. 44 page 874]

(36) In *Attorney-General v. H.R.H. Prince Ernest Augustus*, (1957) 1 All Er 49, 53, Viscount Simonds said:

MYLords, the contention of the Attorney-General was, in the first place, met by the bald general proposition that, where the enacting part of a statute is clear and unambiguous, it cannot be cut down by the preamble, and a large part of the time which the hearing of this case occupied was spent in discussing authorities which were said to support that proposition. I wish, at the outset, to express my dissent from it, if it means that I cannot obtain assistance from the preamble in ascertaining the meaning of the relevant enacting part. For words, and particularly general words, cannot be read in isolation; their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine

every word of a statute in its context, and I use context in its widest sense which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy.

(37) In *Chertier Udc v. Mixnam's Property* (1964) 2 All Er 627, Lord Reid said that the general effect of the authorities was properly stated in Maxwell's Interpretation of Statutes as follows :

GENERAL words and phrases therefore, however, wide and comprehensive they may be in their literal sense, must usually be construed as being limited to the actual objects of the Act.'

(38) The Supreme Court in *U.P.Bhoodan Yagna Samiti, U.P. v. Braj Kishore and others* : AIR 1988 SC2239 , held that when one has to look to the intention of the legislature one must have regard to the circumstances, the background and the purpose for which the law was enacted. The real meaning of the statute can only be understood by understanding the reference, context and circumstances in which it was made.

(39) The general word 'persons' would operate in the same cognate and analogous area which is covered by the word 'scientist', thus, governing and restricting the range of the general word so as to bring it in harmony with the remaining part of the clause. therefore, persons contemplated by section 4(e) must be 'scientists' associated with the main field covered by the objectives of the Instate viz. Medicine & Medical Research. Thus having regard to the words following the word 'persons', especially the key word 'scientist', appearing in conjunction with the words 'non- medical scientist' preceding it, and keeping in view the Statement of Objects and Reasons of the Act and the objectives and functions contained in sections 13 and 14 of the Act, 'persons' contemplated must not only be representing the Indian Science Congress Association but they ought to be Medical Scientists as well. The extended literal meaning being ascribed to the said word by the learned counsel for the respondents would nullify the purpose which Section 4(e) is required to sub-serve and would also invest the Central

Government with arbitrary powers giving rise to consequences which the legislature could not possibly have intended, and the result would be the one as exemplified by the instant case. It appears from the summoned file produced by the first respondent that the Joint Secretary on September 10, 1993 suggested names of certain eminent persons in the field of Medical Science for being nominated under Section 4(e) as she was of the opinion that they were worthy of finding a place on the Body of the Institute. It is noteworthy that the name of the third respondent was not suggested by the Joint Secretary. When the file came to the third respondent in his capacity as the Minister of Health and Family Welfare, he on November 26, 1993 apart from nominating the persons under Clauses (d) and (f) of Section 4 of the Act, made nominations under Section 4(e) as well. Under that provision he also nominated himself as a Member Along with four other persons, one of whom was a non-medical scientist, belonging to Indian Science Congress. It is significant to note that none of the other three persons nominated by the Minister were from the list of persons suggested by the Joint Secretary. He also directed that immediate action should be taken in regard to the aforesaid nominations. The Desk Officer, however, pointed out that the prior approval of the Prime Minister had to be obtained in view of the past practice. This was also the opinion of the Joint Secretary and the Secretary and is reflected in their notes dated December 2, 1993. The matter was then referred to the Prime Minister's Office (for short 'PMO'). Pmo communicated the approval of the Prime Minister to the constitution of the new Body of the Aiims on March 1, 1994. but at the same time it clarified that the Union Minister for Health and Family Welfare was approved as the Member and President of the Institute Body.

(40) The nomination of the third respondent can be compared to a situation where a person is a judge in its own cause. The principle that a man may not be a judge in his own cause in so far as it relates to judicial and quasijudicial matters is too well established. In administrative matters the same exigency very often arises. The Supreme Court in *A.K.Kraipak and others vs. Union of India and others* : [1970]1SCR457 , quashed the selections to the posts in Indian Forest Service, on the ground that Shri Naqishbund, who was a contender for the post of Chief Conservator of Forests, was also a member of the selection committee though he ha.. withdrawn himself from the deliberations of the Committee when his name

was being considered by the selection committee. The Supreme Court while quashing the selection held as follows:-

'THE dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

IT is unfortunate that Naqishbund was appointed as one of the members of the selection board.....

BUT then under the circumstance' it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canone of justice to make a man judge in his own cause.'

(41) As far back as 1610, Chief Justice Coke in Bonham's case went to the length of saying that the Court could declare an Act of British Parliament void if it made a man judge in his own cause.

(42) Learned counsel for the respondents pointed out that the nomination of the third respondent in his capacity as a Minister for Health and Family Welfare was

approved by the Prime Minister. This does not improve the situation as the subsequent approval cannot be disassociated from the note of the third respondent dated November 26, 1993 which was the foundation of the final Notification issued in this regard on March 9, 1994. In this context, it will be advantageous to emphasise the following observations of the Apex Court in the Kraipak case (supra) :-

(43) If the decision of the selection board is held to have been vitiated, it is clear to our mind that the final recommendations made by the Commission must also be held to have been vitiated. The recommendations made by the Union Public Service Commission cannot be disassociated from the selections made by the selection board which is the foundation for the recommendations of the Union Public Service Commission. In this connection reference may be usefully made to the decision in 1967-2 Qb 864 (supra).'

(44) In the instant case it was not a matter where on account of administrative necessity the Minister could not avoid sitting as a judge in his own cause. Surely the matter of nomination could have been taken up by his Deputy or the note of the Joint Secretary could have been straight away placed for the consideration of the Prime Minister. The third respondent would have been well advised if he had not taken up the matter as he was himself a candidate seeking to be a Member and President of the Institute Body of AIIMS.

(45) Learned Additional Solicitor General submitted that since no salary was attached to the office of a Member or the President of the Institute, the criteria meant for making selections for posts carrying remuneration cannot apply. The submission of the learned Additional Solicitor General overlooks the fact that the incumbent in the instant case not only enjoys certain statutory powers attached with the office but is also entitled to certain privileges.

(46) There is nothing in the file which reflects as to why the persons he commended by the Joint Secretary for being nominated as members of the Institute were ignored even though, as recorded in her note, they were the persons who by virtue of their eminence in the field of Medical Science deserved to be nominated. The note also indicates the field of Medical Science in which they had

acquired eminence. The submission of learned counsel for the respondents that while making nominations the Central Government is guided by the objectives of the Act does not appear to be convincing. The note dated November 26, 1993, does not give any clue as to the basis on which persons mentioned in the note were considered fit for being nominated. The aforesaid file of the department does not speak as to what was the standard and the criterion applied to nominate the third respondent. The deficiency is sought to be made good by the learned counsel for the respondents by stating that the third respondent had wide and varied experience including the experience as a Minister of Health and Family Welfare. The submission of the learned counsel is no substitute for the reasons which should have been recorded at the time of the nomination of the third respondent in the contemporaneous record. Besides the other question is who should have considered the suitability of the third respondent for his nomination as Member and President of the AIIMS. Surely he himself could not do that for otherwise it will not be an objective evaluation of his capability and experience. It needs to be clarified that a reference to this aspect of the matter has been made only to analyze the consequence of a wide and literal construction of the word 'persons' and not for striking down the nomination of the respondent on this score.

(47) Learned counsel for the respondents also submitted that discretion to nominate under Section 4(e) was vested in the Central Government and it must be presumed that when power is vested in a high authority, it would be exercised in a reasonable manner. The Supreme Court in *Central Inland Water Transport Corporation Limited and another v. Brojo Nath Ganguly and another* : (1986) IILLJ171SC , and *Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others*, 1991 Supp (1) Scc 600 at page 716, made a clear departure from this principle. In the latter decision, the Supreme Court observed as follows :-

'THERE is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense,

circumspection and fairness does not go with the posts, however high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law. '

(48) These are very telling observations and leave no scope for any further argument on this aspect of the matter. Learned counsel for the respondents relied upon a decision of the Punjab and Haryana High Court in *Dr. Naginder Singh v. The Punjab University, Chandigarh and others* , but in view of the decision in *Delhi Transport Corporation (supra)* it need not detain me.

(49) It seems to me that the legislature did not envisage giving a free hand to the Central Government to appoint any four persons at its discretion as members of the Institute as otherwise, to use the language of Coke as noticed by the House of Lords in *Pettit vs. Pettit* 1970 Ac 777 at 808, this would be to substitute the uncertain and crude cord of discretion for the golden and straight met wand of the law. Learned counsel for the respondents, however, submitted that from the very inception of the constitution of the Institute, the Central Government was nominating four persons under Section 4(e) who were not medical scientists. In this regard they prepared a list of persons who were nominated as Presidents of the Aiims from the year 1956 to 1994 and presented the same in the Court and submitted that they were not medical scientists. Learned counsel for the respondents however, were not able to say whether the persons mentioned in the list were members of the Indian Science Congress or not. Learned counsel further submitted that on the principle of *contemporanea expositio* the interpretation as placed by the learned counsel for the petitioner on section 4(e) of the Act be rejected. In this regard they relied upon the decisions of the Supreme Court in *Des Bandhu Gupta and Co. v. Delhi Stock Exchange Association* : [1979]3SCR373 ; *K.P. Varghese v. Income-tax Officer, Enakulam and another* , : [1981]131ITR597(SC) ; *Indian Metals and Ferro Alloys Ltd. v. Collector of Central Excise, Bhubaneswar* : 1991ECR11(SC) ; and *Raymonds Synthetics Ltd. and*

others v. Union of India and others : [1992]1SCR481 . Undoubtedly, this rule of construction is well established, but in the present case the same is of no assistance. Firstly, for the reason that there is nothing to show that the Central Government had actually interpreted and construed Section 4(e) in any other matter in the past. In this regard no writing of any concerned authority interpreting the provision has been produced before me. The mere fact that they were making nominations of persons other than Medical Scientists under Section 4(e) will not amount to an exposition of the provision by the Central Government. Learned counsel for the respondents are not even aware whether in the past persons other than Non-Medical Scientists nominated under Section 4(e) were members of the Indian Science Congress Association or not. Secondly, as laid down in large number of authorities the principle is not applicable to recent statute, though there are few and rare instances where the exposition of recent statutes made by administrative authorities were used for guidance by Courts for construing the same. This has happened in regard to the interpretation of taxing statutes. Two of the decisions of the Supreme Court relied upon by the learned counsel for the respondents, namely, K.P. Varghese v. Income-tax Officer, Ernakulam and another (supra) and Indian Metals and Ferro Alloys Ltd. v. The Collector Central Excise (supra) relate to taxing statutes. In K.P. Varghese (supra) the Central Board of Direct Taxes had issued two circulars which were binding on the department in administering or executing the provisions enacted in sub-section (2) of section 52 of the Income-tax Act, 1962. The Supreme Court was of the view that besides the circulars being binding on the department they were clearly in the nature of contemporanea expositio furnishing legitimate aid in the construction of sub-section (2). Thus, it is evident that in K.P. Varghese' case (supra) the Central Board of Direct Taxes had made exposition of section 52(2) of the Income-tax Act. Similarly, in Indian Metals and Ferro Alloys Ltd's case (supra) the revenue had been consistently interpreting over the years Tariff Item No. 26AA of Schedule I of the Central Excises and Salt Act, 1944. In view of the consistent interpretation of the item by the revenue over a long period of time the Supreme Court applied the principle of contemporanea expositio as a guide to the interpretation of the statutory instrument. In Raymonds Synthetics case (supra) the Supreme Court was concerned with the interpretation of section 73(2A) of the

Companies Act, 1956, and the question involved was when does a company become liable to repay the money received from applicants for shares or debentures in excess of the aggregate of the application money relating to the allotted shares or debentures. The Government of India by its order dated May 31, 1990, allowed the company to issue 7,20,000 equity shares of Rs.10.00 each at par and 33,19,000 (14%) redeemable non-convertible debentures of RS.100.00 each at par, but with the condition that the company shall adhere to the time limit of 10 weeks from the date of closure of the subscription list for allotment of all securities and dispatch of allotment letters/certificates and refund orders. The Supreme Court held that the liability to pay the amounts arises forthwith on expiry of 10 weeks from the date of closure of the subscription lists. The Supreme Court took into consideration, while interpreting the provision, the condition attached to the order of the Government of India dated May 31, 1990, and observed that the construction placed upon an ambiguous section by the administrators entrusted with the task of executing the statute is extremely significant. As would be evident from the aforesaid decisions of the Supreme Court, the contemporary departmental authorities, in each one of the aforesaid cases, had made a deliberate and conscious written expositions of the statutes. This is not so in the instant case.

(50) Besides preponderance of judicial authority shows that the doctrine is confined to the construction of ambiguous language used in old statutes. This rule will also not apply where the interpretation placed by the administrative authority was far fetched and untenable. The Supreme Court in *M/s. Doypack Systems Pvt. Ltd. v. Union of India and others* : 1988(36)ELT201(SC) , while following the decisions of the House of Lords in *Campbell College, Belfast v. Commissioner of Valuation for Northern Ireland*, 1964 1 Wlr 912, and in *Clyde Navigation Trustees v. Laird*, (1883) 8 Ac 658, held that the principle of *contemporanea expositio* could have no application to a modern statute. Again in *M/s. J.K. Cotton Spinning and Weaving Mills Ltd. and another v. Union of India and others*, : 1987(32)ELT234(SC) the Supreme Court recognised the usefulness of the rule for interpreting a statute by reference to the exposition it has received from administrative authority, and also laid down that the maxim applied to construing ancient statute but not for interpreting Acts which are comparatively modern. In

this regard, the Supreme Court held as follows :-

'THIS contention finds support from the decision of this Court in K.P. Varghese v. I.T.O., : [1981]131ITR597(SC) , relied on by the learned counsel of the appellants. Indeed, it has been observed in that case that the rule of construction by reference to contemporanea exposito is a well established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. In our opinion, the language of Rule 9(1) admits of only one interpretation and that is that the specification that has to be made by the Collector is of any premises appurtenant to the place of manufacture or production of the excisable goods. The specification is not required to be made and, in our view, cannot be made of the place of manufacture or production of the excisable goods. Apart from that, as observed by Subba Rao, J., upon a review of all the decisions on the point, in an earlier decision of this Court in the Senior Electric Inspector v. Laxmi Narayan Chopra : [1962]3SCR146 , the maxim 'contemporanea expositio' as laid down by Coke was applied to construing ancient statutes but not to interpreting Acts which are comparatively modern. Further, it has been observed that in a modern progressive society it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time the law was made and, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them. Most respectfully we agree with the said observation of Subba Rao, J. '

(51) In any case, the interpretation placed by the first respondent on section 4(e) in the instant case is not in keeping with the real and rational meaning thereof. An Act must be read purposefully so as to translate the intention of the Parliament & fulfill its objectives and goals. If read otherwise it would result in missing the soul of the legislation.

(52) In nut-shell, four persons out of five mentioned in Section 4(e) of the Act should be Medical Scientists representing the Indian Science Congress Association. Since the third respondent is not a Medical Scientist and also docs

not represent the Indian Science Congress Association, his nomination as Members of the Institute falls foul of Section 4(e) of the Act.

(53) In view of the aforesaid discussion I am of the firm opinion that the third respondent was not validly nominated as the constituent member of the All India Institute of Medical Sciences, and consequently he is not entitled to continue as a President of the Institute and for the same reason he cannot continue as Chairman of the Governing Body. In the result I quash the nomination of the third respondent as constituent member of the All India Institute of Medical Sciences. I answer the reference accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com