

S.M. Bose Vs. All India Institute of Medical Sciences and ors.

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Court : Delhi

Decided On : May-13-1993

Reported in : 1993(26)DRJ544

Judge : B.N. Kirpal and; A.B. Saharya, JJ.

Acts : [All India Institute of Medical Sciences Act, 1956](#) - Sections 10

Appeal No. : Civil Writ Petition No. 2663 of 1992

Appellant : S.M. Bose

Respondent : All India Institute of Medical Sciences and ors.

Advocate for Pet/Ap. : C.K. Mahajan,; S.P. Kaira,; Gopal Subramaniam and;

Judgement :

A.B. Saharya, J.

(1) By this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a writ of mandamus for quashing the appointment of respondent No.3 as Professor in the Department of Surgery, and for appointing the petitioner to the post, in conformity with the recommendations made by the Selection Committee, in pursuance of advertisement No.3/91 published by the Institute of Medical Sciences, New Delhi (hereinafter referred to as the Institute).

(2) The Institute was established and incorporated under Section 3 of the All India Institute of Medical Sciences Act, 1936 (hereinafter referred to as the CWP.2663/92 Act). Section 5 of the Act declares the Institute to be an Institution of national importance. The Institute, through its Director, Dr. S.K.Kacker is Respondent No. 1. Respondent No.2 is the Governing Body of the Institute constituted from among its Members under sub-section (1) of Section 10 of the Act. The Governing Body is the Executive Committee of the Institute and exercises such powers and discharges such functions as the Institute may prescribe by Regulations made in this behalf or confer upon it. Respondent No.3, Dr. Sada Nand Mehta is the person whose appointment is under challenge. Respondent No.4, Prof. Upendra Baxi, was, at the relevant time, the Chairman of the Selection Committee which is one of the Standing Committees constituted by the Institute in the exercise of its powers under sub-section (5) of Section 10 of the Act.

(3) The basic facts which are not in dispute may be stated first. In 1991, the Institute invited applications from Indian citizens for appointment to a number of posts in various Departments, including one post of Professor for Surgery (hereinafter referred to as 'the post'). Information regarding each post, including the qualifications and experience required for appointment, was published in the advertisement. Relevant extract from the advertisement applicable to the post is reproduced below:-

'ALLINDIA Institute Of Medical Sciences Ansari Nagar, New DELHI-110029 Advertisement N0.3/91.ESTT.I Applications will be received by the Director, All India Institute of Medical Sciences, Ansari Nagar, New Delhi-29 from Indian Citizen up to the 25th May 1991 for the following temporary posts:- 1. PROFESSORS: Eleven : Two for (1) Gas .lm5.3' troenterology and one each for (2) Nephrology (3) Physical Medicine & Rehabilitation (4) Cardiac Path- ology (5) Cardio- logy (6) Virology (7) Nero-Surgery (8) Prosthodontics (9) Physiology and (10) Sur-gery. Pay SCALE: Rs.5900-200-7300+ Npa for medically qualified candidates only. xxxxxxxx xxxxxxxx Academic Qualifications (for medical disciplines): 1. A medical qualifications included in Schedule I and li or Part li of the third Schedule of the Indian Medical Council Act of 1956 (candidates possessing the qualifications included in Part-11 of the third schedule should also

fulfill the conditions specified in Section 13(3) of the Act). 2. A post graduate qualification e.g. M.D./M.S. or a recognised qualification equivalent thereto in the respective discipline/subject. and/or D.M. for Medical super specialty of Gastroenterology Nephrology, Cardiology and M.Ch. for Surgical super specialty of Neuro-Surgery or qualification recognised equivalent thereto. EXPERIENCE: Fourteen years teaching and/or research experience in a recognised institution in the subject of speciality after obtaining the qualifying degree of M.D./M.S. or Twelve years after obtaining D.M./ H.Ch. or qualifications recognised equivalent thereto. xxxxxxxx xxxxxxxx'

(4) The petitioner, who was working as Additional Professor of Surgery in the Postgraduate Institute of Medical Education and Research (PGI), Chandigarh, applied for appointment to the, post. Respondent No. 3, who was already working as Additional Professor in the Department of Surgery in the Institute, and many other candidates also applied. A screening Committee examined the bio-data and other particulars of the various applicants and cleared the names of 17 eligible candidates. These 17 candidates were called for interview. The Selection Committee, assisted by two external experts in the field of Surgery, nominated specially for this purpose (hereinafter referred to as the Experts), thoroughly interviewed them one by one on 5th of March 1992. One of the Experts graded the petitioner and another candidate Dr. N.M.Gupta 'A' (outstanding) and respondent No.3 as 'C' (poor), while the other Expert graded the first two 'B+' (well above average) and respondent No.3 as 'B' (average). In other words, in the opinion of both the Experts, the petitioner and Dr. N.M. Gupta were assessed to be in the same grade and higher than respondent No.3. The Selection Committee, after considering the performance of the candidates, their qualification, experience and record and also the opinion of the Experts, unanimously recommended the petitioner and Dr. N.M. Gupta and placed them at No.1 and No.2 respectively on the List of selected candidates for appointment. The recommendations made on 5th of March 1992 bear the signatures of all the Members of the Selection Committee, including the Chairman and the Member-Secretary. On the same sheet, underneath the signatures of all concerned, a separate note dated 6th of March 1992 is appended. It reads as follows:-

'ADDITIONALLY one post of Professor in Renal Transplant Unit of General Surgery should be allotted and Dr. S.N. Mehta may be offered this post'

This note is signed by the Director, who was the Member-Secretary, and four other members. The date is written in hand only under the signatures of the Director. It does not bear the signatures of the Chairman of the Selection Committee.

(5) On 25th of April 1992, the recommendations made by the Selection Committee were put up before the Governing Body. The Governing Body decided that the Selection Committee should reconsider the case. The reasons and the circumstances which resulted in this decision are recorded in the minutes of the meeting, in the following terms:-

'In respect of the recommendations of the Selection Committee for the post of Professor of Surgery, the Director pointed out that the same should be reviewed by the Committee, as the candidature of Dr. S.N. Mehta, has not been appropriately appreciated by the Experts. The factual position in this case to the effect that renal transplant surgery is treated in Aiims as an integral part of the General Surgery Department was dully explained by the Director and it was brought out that somehow the Experts did not appreciate this aspect appropriately. therefore, the Governing Body decided that the Selection Committee should reconsider the case.'

This is all that is said about the recommendations made by the Selection Committee. So far as the note dated 6th of March 1992 is concerned, the minutes of the meeting of Governing Body held on 25th of April 1992 are silent.

(6) CONSEQUENTLY. on 4th of July 1992, the Selection Committee took up the matter for reconsideration. On this occasion, the Director explained to the members the circumstances in which the case was referred back from the Governing Body. It is recorded in the minutes of the meeting that after examining in detail the records of its earlier meeting, including the applications and other particulars of the candidates, and after careful examination and due deliberation, the Selection Committee reiterated its earlier decision.

(7) Finally, the Governing Body took up the case, along with certain other matters, at its meeting held on 6th of July 1992. The minutes of the meeting reveal the stand adopted on this occasion by the Governing Body. Relevant portions of the minutes are reproduced below:-

'THE Governing Body is supreme and has the unfettered right to approve, disapprove or modify any recommendation of the various standing committees/adhoc committees constituted by the Institute and the Governing Body has the sole authority of taking decisions on these recommendations.....The Governing Body in the exercises of its powers could have overruled the recommendations of the Selection Committee butto maintain the dignity and the credibility of Selection Committee all such cases were referred back to the Selection Committee for reconsideration. xxxxxxxx Dr. Sadanand Mehta may be offered the post of Professor of Surgery.'

Hence, respondent No.3 joined as Professor of Surgery on 7th of July 1992, and the petitioner is aggrieved.

(8) Now, let us refer to the provisions of the Act the Rules and Regulations framed there under by which the Institute, the Governing Body and the Selection Committee are governed. The relevant provisions are set out below:-

'ALLINDIA Institute Of Medical Sciences Act, 1956.

2. Definitions In this Act, unless the context otherwise requires - xxxxxxxx (b) 'Governing Body' means the Governing Body of the Institute; (c) 'Institute' means the All-India Institute of Medical Sciences establishment under section 3;

3. Establishment and incorporation of the Institute.

(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established for the purposes of the Act an institution to be called the All India Institute of Medical Sciences.

(2) The Institute shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

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-officio; (c) The Director of the Institute, ex-officio; (d) Two representatives of the Central Government, to be nominated by the 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. 5 Declaration of the Institute as an institution of national importance. It is hereby declared that the Institute shall be an institution of national importance.

10. Governing Body and other Committees of the Institute.

(1) There shall be a Governing Body of the Institute which shall be constituted by the Institute from among its members in such manner as may be prescribed by regulations.

(2) The Governing Body shall be the executive committee of the Institute and shall exercise such powers and discharge such functions as the Institute may, by regulations made in this behalf, confer or impose upon it.

(3) xxxxxx

(4) The procedure to be followed in the exercise of its powers and discharge of its functions by the Governing Body, and the term of office of, and the manner of

filling vacancies among, the members of the Governing Body shall be such as may be prescribed by regulations.

(5) Subject to such control and restrictions as may be prescribed by rule the Institute may constitute as many Standing Committees and as many ad hoc committees as it thinks fit for exercising any power or discharging any function of the Institute or for inquiring into, or reporting or advising upon, any matter which the Institute may refer to them.

(6) A Standing Committee shall consist exclusively of members of the Institute; but an ad hoc committee may include person who are not members of the Institute but the number of such persons shall not exceed one-half of its total membership.

(7) xxxxxxxx

13. Objects of the Institute. The Objects of the Institute shall be: (a) To develop patterns of teaching in undergraduate and postgraduate 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 postgraduate medical education.

14. Functions of the Institute. With a view to the promotion of the objects specified under Section 13, the Institute may - xxxxxx (i) Institute, and appoint persons to, professorships, readerships, lectureships and post of any description in accordance with regulations; xxxxxx (o) Do all such other acts and things as may be necessary to further the objects specified in Section

13.

28. Power to make Rules.

(1) The Central Government, after consultation with the Institution, may, by notification in the official Gazette, make rules to carry out the purposes of this Act:

x xx xxxx

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: xxxxxxxx (f) the number of officers and employees that may be appointed by the Institute and the manner of such appointment; xxxxxxxx

29. Power to make Regulations

(1) The Institute, with the previous approval of the Central Government, may by notification in the Official Gazette make regulations consistent with this Act and the rules made there under to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for xxxxxxxx (e) the procedure to be followed by the Governing Body and standing and ad hoc committees in the conduct of their business, exercise of their powers and discharge of their functions; xxxxxxxx (k) the professorships, readerships, lectureships and other posts which may be instituted and persons who may be appointed to such professorships, readerships, lectureships and other posts; xxxxxxxx B. All India Institute of Medical Sciences Rules, 1958.

7. Creation of posts and appointment there on:

(1) The Institute may create posts, subject to specific provision in the budget, on scales of pay applicable to similar post under the Govt. or on scales of pay approved by the Government, classify them into grades and specify their designations: Provided that no post above the Associate Professor's level shall be created except with prior approval of the Government.

(2) xxxxxxxx

(3) xxxxxxxx

(4) xxxxxxxx C. All India Institute of Medical Sciences Regulations, 1958.

4. Meetings of the Institute:

(1) The Institute may meet as often as may be considered necessary by the President for the transaction of the business of the Institute, but shall meet at least once a year. xxxxxxxx

5. Constitution of the Governing Body The Governing Body shall consist of the following eleven members, namely: (a) President of the Institute - Chairman (b) Director General of Health Services - Ex-Officio Member (c) Representative of the Ministry of Finance -Member (d) Director, All-India Institute of Medical Sciences - Member (e) One member elected by the members of the Institute from amongst the three members of the Parliament elected to the Institute. (f) Six members to be elected by the members of the Institute from amongst themselves.

6. Powers and functions of the Governing Body: The Governing Body shall exercise such powers and discharge such functions as are laid down in these regulations and in Schedule I as the powers and functions of the Governing Body.

11. Powers and duties of the Director: The Director shall be the 'Head of Department' in terms of S.R.2(10) and shall exercise the powers of 'Head of Department' and inter-alia, discharge the duties mentioned below: (a) He shall be in charge of the administration of the Institute. He shall allocate duties of officers and employees of the Institute and shall exercise such supervision and executive control as may be necessary subject to the rules and these regulations. xxxxxxxx

12. Standing Committees:

(1) In addition to the Standing Finance Committee referred to in rule 6, the Institute may constitute other Standing Committees in accordance with sub-section

(5) of Section 10 of the Act, consisting of a Chairman, a Vice-Chairman and not more than seven other members, The Director shall be a member and ex-officio Secretary of each committee. The Chairman, the Vice-Chairman and other members of each committee shall be nominated by the Institute. xxxxxxxx

(3) The term of office of members of a Standing Committee shall be five years. An out-going member shall be eligible for renomination. x x x x xxx

(5) All Standing Committees shall be advisory committees.

13. Ad Hoc Committees

- (1) An Ad Hoc Committee may be constituted by the Institute for such purposes as it may be necessary.
- (2) The Chairman and members of an Ad Hoc Committee shall be nominated by the Governing Body.
- (3) The term of office of members of an Ad Hoc Committee shall terminate as soon as the specific function for which the Committee is appointed is completed.
- (4) Any casual vacancy in an Ad Hoc Committee shall be filled by nomination by the Chairman of the Governing Body.

24. Qualifications for appointment:

- (1) Age, experience and other qualifications for appointment to a post under the Institute shall be prescribed by the appointing authority keeping in view the qualifications and experience prescribed by the Central Government for similar posts before applications of candidates are called for subject to the condition that non-medical personnel shall not be appointed to the post of 'Director'. xxxxxxxx

26. Seniority: The seniority of employees of the Institute in each category shall be determined by the order of merit in which they were selected for appointment to the grade in question; those selected on an earlier occasion being ranked senior to those selected later. Schedule I (See Regulations 3, 6 & II)

Sl.	Name of Powers	Extent of powers	No.	Director	President	Governing	Institute	Body	Body	Remarks
1	2	3	4	5	6	7	Xx	Xx	Xx	Xx
Xx	Xx	Xx	Xx	Xx	Xx	Xx	Xx	Xx	Xx	

21. Power to make appointments to posts (subject to Rule

- 7) (i) Ad-hoc/Temporary xx xx (ii) Permanent Group C& Group B Group A D posts posts xx xx xx xx xx xx'

- (9) Challenge in the petition is primarily based upon the ground that the Selection Committee had selected and recommended the petitioner and not respondent No.3, but the Governing Body has, on extraneous considerations, and by arbitrary exercise of its power, appointed respondent No.3 to the post.

(10) In opposition, the stand taken by the respondents in a joint counter-affidavit filed by the Director on behalf of respondents 1,2 and 3, is that the recommendations made by the Selection Committee are of an advisory character and are not binding on the Governing Body which is the sole appointing authority. The Institute required a Professor for Renal Transplant Surgery, to fill up the post that fell vacant in the year 1988 on the voluntary retirement of Dr. I.K. Dhawan who was the Professor in charge, in Unit No. 2. The Experts and the Selection Committee, it is averred, did not properly appreciate the fact that Renal Transplant Surgery is included in and is an integral part of the Department of Surgical Discipline in the Institute. The Experts had no experience in the field of Renal Transplant Surgery and the candidature of respondent No.3 had not been appropriately appreciated by the Experts and the Selection Committee. It is stated that these were the reasons that were pointed out by the Director, on the basis of which the Governing Body rejected the recommendations made by the Selection Committee and it decided to appoint respondent No.3 to the post. The Department of Surgery, it is explained, has four Units and each Unit is headed by a Member of the Faculty of the rank of Professor/Additional Professor, and that the seniormost Professor in any of the said four Units is designated as the Head of the Department. The Units are:-

Unit i - P General and Endocrine Surgery Unit Iip - P General, Renal Transplant and Reconstructive Surgery. Unit Iii - P General and Gastro Intestinal Surgery I
Unit Ivp - P General and Gastro Intestinal Surgery li

It is stated that the Department of Surgery came to be redesignated and the aforementioned four Units were put together to constitute the Department of Surgical Disciplines in 1989. The Director, in his affidavit, has also extolled the qualifications, experience and achievements of respondent No.3 to justify his appointment.

(11) Respondent No.3 also filed an affidavit dated 15th of December 1992, after the petitioner filed his rejoinder to the earlier mentioned joint affidavit of the Director, separately setting out his own version. He has alleged that the petitioner is in fact a Specialist in Endocrine Surgery and the field of his speciality falls within

Unit No. 1 where there was no vacancy, while appointment was sought to be made to the post in Unit No.2 on account of the vacancy caused by voluntary retirement of Dr. Dhawan. It is stated that previously Faculty members were given designations indicating their specialities or sub specialities, but that practice was discontinued on reorganisation and re designation of the Department in 1989. It is averred that after reorganisation. Faculty posts were advertised in the main discipline and sub specialities shown earlier in brackets such as Renal Transplant and Reconstructive Surgery etc. were not advertised. In an additional affidavit dated 12th of January 1993, he has tried to recapitulate the course of 'questions and answers' that took place, according to him, at the time of his interview. This way, he has tried to support the stand taken by the Director in his affidavit that the Experts and the Selection Committee did not properly appreciate the requirement of the Institute and even the qualifications, experience and capability of respondent No.3 for appointment.

(12) We find no substance in the stand taken on behalf of the respondents. The organisation or reorganisation of the Department of Surgery is a matter of internal management of the Institute. It is up to the Institute to divide any Department into units and designate or redesignate posts for its own administrative convenience. When an appointment is sought to be made on the basis of public advertisement, the prospective candidates would go only by what is stated in the advertisement. If there is any special information or requirement that may be intended to be taken into consideration, it must be so declared in the advertisement. Where the process of selection and appointment is influenced by the consideration of any factors other than those made known in the public advertisement, it would be unfair.

(13) In the present case, the advertisement did not stipulate nor indicate in any manner whatsoever that the post of Professor was meant for a particular Unit or that preference would be given to a person professing special qualifications or having experience in super speciality of Renal Transplant Surgery. For this reason alone, it was not open to anyone to take this factor into consideration.

(14) If the Institute really required a person in the super speciality of Renal Transplant Surgery, this would have been the guiding factor at each and every

stage of the process of selection. First, the Screening Committee should have weeded out at the threshold applications of those candidates who were not qualified to fulfill this requirement. Next, for purposes of interviewing the eligible candidates. Technical Experts had to be nominated. The two Experts nominated for this purpose were eminent surgeons in the person of Dr. T.E. Udwadia from Bombay and Dr. Bhaskar Reddy from Hyderabad. We were told that neither of them is a specialist in the field of Renal Transplant Surgery. It was wholly unnecessary to trouble such eminent persons to come down to Delhi for assessing any candidate for appointment to a post outside their field of specialisation. It is far from fair for any one now to turn round and say that they were not specialists in the field of Renal Transplant Surgery and, therefore, they were unable to properly appreciate the requirement of the Institute and even the candidature of respondent No.3. Unreasonableness of this plea of convenience is writ large on its face.

(15) Otherwise also, the plea that the Institute needed a Professor for Renal Transplant Surgery, because the advertised post fell vacant on the retirement of Dr. I.K. Dhawan, who was Head of Unit No.II in the Department of Surgery, does not stand scrutiny. Unit No.II is meant for 'General, Renal Transplant and Reconstructive Surgery' '. In other words, this Unit has to look after cases of three kinds of surgery, namely, (i) General Surgery (common to all the four Units), (ii) Renal Transplant Surgery, and (iii) Reconstructive Surgery. It is stated that Dr. Dhawan, 'was doing Renal Transplant Surgery and also General Surgery'. This cannot be mistaken to suggest that he was a specialist in Renal Transplant Surgery. This is not even the case set up by the respondents. In fact, we were told that Dr. Dhawan was a Specialist in Reconstructive Surgery, about which nothing has been said in the counter affidavit. Reconstructive Surgery (commonly known as Plastic Surgery) is an equally important part of the task of the Unit. Merely because Dr. Dhawan was 'doing' Renal Transplant Surgery, in addition to his own speciality in the field of Reconstructive Surgery, it cannot be said that on his retirement, there was a void in the operations of Renal Transplant Surgery in Unit No.II. Respondent No.3, admittedly, a Specialist in Renal Transplant Surgery, was working and looking after this particular kind of surgery even when Dr. Dhawan was there. It would be wrong to say that public interest would be served only by appointing him as the Professor in charge of the Unit. Even as an Associate

Professor, he was doing very good work in the field of Renal Transplant Surgery, and there is no reason to doubt that he would continue to do so, irrespective of any other person holding the post of Professor in Unit No.II. The plea sought to be advanced by the respondents, thus, appears to be wholly baseless.

(16) Reliance was sought to be placed upon the note dated 6th of March 1992, to contend on behalf of respondent No.3 that the Selection Committee had, in fact, recommended his appointment to the post of Professor in Renal Transplant Unit of General Surgery. This plea, in our opinion, is wholly misconceived. The said note dated 6th of March 1992 purports to be a recommendation made, additionally, for one other post of Professor in Renal Transplant Unit of General Surgery to be allotted and then offered to respondent No.3. No Explanationn is forthcoming to show why and in what circumstances this note was perceived and appended to the earlier unanimous recommendations made on 5th of March 1992. It is pertinent to note what the Director has stated in his counter-affidavit on his aspect. First, in paragraph 1 (e): 'It is submitted that there is no post Of Professor of Renal Transplant Surgery in the respondent No.1 Institute.....' Then, in paragraph 13 it is stated: 'As a matter of fact the Selection Committee after having been apprised of the nature of vacancy and the duties required to be performed in this unit and the experience of the respondent No.3 in renal transplant surgery which was a part of General Surgery in respondent No. 1 Institute thus recommended that a post of Professor of renal transplant surgery be allotted to the respondent No.3. This, however, could not be done until a new post and a separate department was created'. Even otherwise, the power to create posts, to classify them into grades, and to specify their designations, is vested in the Institute by Rule 7. Further, the Rule stipulates in express terms: 'Provided that no post above the Associate Professor's level shall be created except with prior approval of the Government'. It is nobody's case that the Institute referred any such matter to the Selection Committee, which was a Standing Committee meant for a particular purpose. In any event, there is nothing on the record to show that the Governing Body approved of this note. It is not the case of any of the respondents that a separate Unit for Renal Transplant Surgery or a post of Professor for the Renal Transplant Unit of General Surgery were in fact created, or approved by the Government, or even that the appointment of respondent No.3 has been made to that post. This

plea has no merit, and it has to be rejected.

(17) The petitioner has specifically alleged that the Director was personally interested 'in the promotion of respondent No.3', and he misled the Governing Body to act on extraneous considerations. Of course, this is denied by the respondents. Respondent No.3 was already working in the Institute, whereas the petitioner was an outsider from Chandigarh. The allegation of bias has to be viewed in this context. The Director is, by virtue of Regulation 11, in charge of the Administration of the Institute. Regulation 12 provides that the Director shall be a Member and ex-officio Secretary of each Committee whether it be a Standing Committee or an Ad-hoc Committee constituted by the Institute. In this capacity, the Director was closely associated with the entire process of recruitment from the beginning to the end. He was associated with the publication of information about the post in the advertisement, then, with the screening of applications received in pursuance of the advertisement as a Member of the Screening Committee, and, thereafter, with the nomination of Experts for advising the Selection Committee. He was also the Member-Secretary of the Selection Committee as well as the Governing Body. If he genuinely felt that the Institute required a person to be nominated to the post of Professor in the super speciality of Renal Transplant Surgery in Unit No.II, he should have ensured inclusion of this information in the advertisement. Then, if he felt that the petitioner was not sufficiently qualified for appointment to the advertised post, he may well have excluded his application at the very first screening stage. He should have also ensured that Experts in the super speciality of Renal Transplant Surgery were chosen and nominated for a fair and appropriate appreciation and assessment of the calibre of various candidates for the post. Thereafter, if he was motivated by genuine concern about effective functioning of Unit No.2, he should have taken a firm stand on this ground and ought to have expressed his dissent, rather than appending his signatures, when he sat as the Member Secretary, when the unanimous recommendations were made by the Selection Committee. But, he did nothing of the sort. Ironically, the Director turned the other way after the labours of the Selection Committee were complete, and the recommendations had been duly signed by all concerned on 5th of March 1992. It is in this background that the Director briefed up the Governing Body at its meeting held on 25th of April 1992. This is apparent from his statement

made in para I (g) of the affidavit dated 26th of September 1992. The relevant portion is set out below:-

'.....In respect of recommendations of Selection Committee, the deponent, the Director, Aiiims, pointed out that candidature of respondent No.3 had not been appropriately appreciated by the experts. The factual position in this case to the effect that Renal Transplant Surgery is treated. in All India Institute of Medical Sciences as an integral part of General Surgery Department was fully explained by the Director and it was brought out that somehow the experts did not appreciate this aspect appropriately. thereforee the Governing Body decided that the Selection Committee should reconsider the case.'

Yet, again, on 3rd/4th of July 1992, when the Selection Committee took the unanimous decision reiterating its earlier recommendation for the appointment of the petitioner, the Director was a party to it, without demur. Finally, at its meeting held on 6th of July 1992, the Governing Body, on erroneous impression of supreme and sole authority, was misled and it set aside the whole process and took the decision to appoint respondent No.3 as the Professor of Surgery.

(18) We may now deal with the argument strenuously urged on behalf of the respondents that the Governing Body is supreme, and it has unfettered and absolute authority to make the appointment to the post; that the recommendations of the Selection Committee were of purely advisory character, and the Governing Body was not bound to accept the same; and that the appointment of respondent No.3 made by the Governing Body is unquestionable.

(19) The basic power to make all appointments vests in the Institute. The exercise of this power and the authority to discharge the related functions are given by the Institute to different bodies. Group A posts, including that of a Professor, are selection posts. Appointment to such posts is made on the basis of public advertisement. Advertisement of the post, screening of applications, interview, assessment of merit, and selection of eligible candidates are various parts of the process of appointment. Different functions relating to the whole process of appointment, are distributed to different authorities. The Selection Committee and the Governing Body are two such authorities, constituted by the Institute, from

among its members, for the purposes of discharging different functions of the Institute under Section 10 of the Act. The Governing Body has been given the power to make appointments. In that sense, it is the appointing authority. Undoubtedly, the Governing Body has to apply its own independent mind for the proper exercise of its power. But, the role of interviewing and selecting the best out of the available and eligible candidates for appointment, has been entrusted by the Institute to the Selection Committee.

(20) Ordinarily, the power to decide whether to make or not to make any appointment, notwithstanding the availability of a vacant post, vests in the appointing authority. No candidate, even if selected, can claim a right to be appointed. He can raise no grievance if the appointing authority decides not to fill up the vacancy. But, the position will be different where the vacancy is to be filled up. In such a case, where the task of interviewing candidates and making selection is entrusted to an independent body, appointment should be made on the basis of recommendations made by the selection committee, which means in the order of merit of candidates arranged by the selection committee. This, however, does not mean that the appointing authority is bound by the recommendations, nor that it may ignore the recommendations and act on its own sweet will. If the appointing authority wants to agree with the recommendations, there would be no difficulty. But if it wants to disagree with the recommendations, it must give reasons for disagreement. The appointing authority may legitimately not agree with the recommendations, for instance, where it may find some illegality, bias or mala fides, vitiating the recommendation made by the selection committee. It will also be open to the appointing authority not to agree where it finds that the selected candidate suffers from some inherent disqualification, or even where appointment of a particular candidate may not be in public interest for other good reasons viz., bad conduct or character. Should the appointing authority disagree with the recommendations made by the selection committee, it must have good, strong and cogent reasons for doing so. In any event, on a challenge in Court, for whatever the appointing authority may do, it is bound to disclose the reasons to justify its decision. These principles are clearly discernible from decisions of the Supreme Court in *Jatinder Kumar and others V. State of Punjab and others*, : AIR 1984 SC1850 , *Neelima Shangla V. State of Haryana and Others*, 1986 (3) Slr

389, Neelima Misra V. Harinder Kaur Paintal and Others, : [1990]2SCR84 , Shankarsan Dash V. Union of India and Others, 1991 S.C.1612.

(21) In the present case, in view of the clear-cut statutory provisions, the parameters of the powers and functions performed by the appointing authority, and the selection committee are very much more sharply defined. We have three authorities under the Act: (i) Selection Committee, which is a Standing Committee, (ii) Governing Body, which is the appointing authority, and (iii) the Institute. The supreme body is the Institute, established and incorporated under Section 3. It consists of the members named in Section 4 of the Act. A bare perusal of Section 10, shows that the Governing Body and the various Standing Committees are constituted by the Institute, and each of these authorities consists exclusively of members of the Institute. The Governing Body, apart from being the executive committee, by virtue of Regulation 6, exercises such powers and discharges such functions as are laid down in the Regulations made by the Institute. It has no inherent powers of its own. A Standing Committee also may be constituted by the Institute, for exercising any power or discharging any function that the Institute thinks fit. Thus, it is clear that the Governing Body, as also a Standing Committee, is constituted by the Institute, and it is authorised to exercise such powers and discharge such functions as the Institute may confer. The Institute may constitute various Standing Committees and ad hoc committees for inquiring into, or reporting or advising upon, any matter which the Institute may refer to them. All Standing Committees, as provided by Regulation 12(5), shall be advisory committees. Such committees, it is obvious, are recommendatory bodies. They: are required to give report to and advise the Institute. Viewing these very provisions in negative terms, for the sake of placing greater emphasis on the obvious conclusion, it may be said that the Governing Body itself, as also the Selection Committee, derives its authority from the Institute, and, in this sense, it is not 'supreme'. The Selection Committee is not subordinate to the Governing Body. The exercise of its powers and performance of its functions are not subject to the supervision or control of the Governing Body. The Governing Body has no authority to refer to it for inquiring into or reporting or advising upon any matter. The Selection Committee is not answerable to the Governing Body for anything. the Governing Body has no right, power or authority to interfere, by way of review

or in any other way, with the exercise of powers and discharge of functions of the Institute by Selection Committee. Since the Governing Body as also the Selection Committee consist exclusively of members of the Institute, one cannot be said to be higher or lower than the other in status. Likewise, since each exercises such powers and discharges such functions of the Institute as are conferred or imposed upon it by the Institute, one cannot be regarded as less or more powerful or less or more important. The powers and functions of these two bodies are complimentary and are equally important. The power and function to judge relative merits of competing candidates, and selecting the most suitable candidate for appointment to the post, is imposed by the Institute on the Selection Committee alone, and not upon the Governing Body. The Governing Body had no power or authority, on the first occasion, without good and valid reasons, to refer the matter back to the selection committee for reconsideration, and, in any event, to override the recommendation made by the selection committee, and, instead, to appoint respondent No.3, as it did finally. Even otherwise, the Governing Body was in no position to properly assess and determine merit of any candidate, what to say of comparative merit of all the candidates, as the Governing Body did not have the benefit of itself interviewing the candidates. If at all the Governing Body did not agree with the recommendation made by the Selection Committee, it should have stated its reasons for disagreement and referred the matter to the higher authority, namely, the Institute for decision. In that event, of course, the Institute could have examined whether the recommendation of the Selection Committee should be accepted or not. If any opinion byway of disagreement had been recorded by the Governing Body on that recommendation, the Institute also could be called upon to consider it and then decide with regard to appointment of a particular person in the light of the recommendation and opinion of the two authorities. The Governing Body was not right in assuming that it had the 'unfettered' right to approve, disapprove or modify any recommendation of the various Standing Committees, and that it has the 'sole' authority of taking decision on these recommendations. Obviously, in arrogating to itself 'supreme' authority, the Governing Body did not properly appreciate the intent and purpose of the relevant provisions of the Act and the Regulations.

(22) A similar controversy in respect of appointment to a post of Assistant Professor, Department of Cardiology, in the Post Graduate Institute of Medical Education and Research, Chandigarh, had arisen in almost similar circumstances in the Punjab and Haryana High Court in the case of Dr. Harinder K. Bali V. Union of India and Others. N K Sodhi, J. by a judgment dated 4th of December 1992, set aside the appointment of respondent No.4, and directed Pgi Chandigarh to appoint the petitioner, in accordance with the recommendations of the Selection Committee in that case. The provisions made in the Post Graduate Institute of Medical Education and Research Chandigarh Act, 1966 and the Rules and Regulations by which PGI. Chandigarh, is established and governed, are pan materia to the statutory provisions applicable to the Institute in New Delhi. The learned Judge, after discussing the general principles in the light of relevant statutory provisions, came to the conclusion that if the appointing authority had good reasons, it could refuse to accept the recommendations of the Selection Committee but if it decided to fill up the post, it was bound by the recommendations of the Selection Committee in respect of merit of the candidates. In support of this conclusion, the learned Judge has discussed the matter from the point of view of seniority also. With reference to the provision made in Regulation 34 regarding seniority, he has observed as follows:-

'THERE is yet another aspect of the matter. Regulation 34 quoted above makes it clear that while making appointments, the seniority of the employees in each category has to be determined by the order of merit in which they were selected for appointment and those selected on earlier occasions have to rank senior to those who were selected later. Not only this, in the case of members recruited by direct appointment, the order of merit determined by the Selection Committee cannot be disturbed in fixing the seniority. For instance, if A and B are recommended for appointment by the Selection Committee in this order of merit, it would not be open to the appointing authority while accepting the recommendations to make B senior to A. If this is so, how can the appointing authority travel beyond the list of names recommended by the Selection Committee and appoint a person not even recommended for appointment. To test the argument of Shri Garg (counsel for respondents) that the power of appointment is absolute and that the appointing authority could appoint any one

according to its sweet-will, one may notice another example. If A and B are recommended for appointment for two posts in this order of merit, then if the argument of Shri Garg is to be accepted, the appointing authority can appoint B and C and ignore A altogether. In that eventuality, how will the seniority of B and C be determined when C has not been recommended by the Selection Committee. In my opinion, the appointing authority cannot appoint C who was not recommended.'

We are in full agreement with the reasoning and opinion of N.K.Sodhi, J. and, in view of similar provision made in Regulation 26 (supra), we can do no better than respectfully adopt the same here.

(23) In view of the above discussion, we find that the Governing Body of the Institute is the appointing authority; but it did not have the right to overrule, upset, or set aside the selection and recommendations made by the Selection Committee, or even to reject the recommendations made by the Selection Committee. If it did not agree with the recommendations, it should have stated the reasons for disagreement and referred the matter for final decision to the higher authority, namely, the Institute. Even otherwise, the impugned decision of the Governing Body is bad. The reason given by the Governing Body for not accepting the recommendations of the Selection Committee, on the first occasion, was that the Experts did not properly appreciate the candidature of respondent No.3, and that the Institute required a Professor for Renal Transplant Surgery. This appears to be a mere pretence to somehow wriggle out of the recommendations made by the Selection Committee. A part from the validity of this plea already discussed above, it may be noted that initially this criticism was restricted to the improper appreciation of the so-called factual position only by the external Experts. It did not apply to the members of the Selection Committee, who were all members of the Institute, and were well conversant with all the facts. Although, the minutes of the meeting of the Governing Body purport to pin the fault only on the Experts, yet, in the counter-affidavit, it is extended to the members of the Selection Committee, on the mere ipsi dixit of the Director. Be that as it may, for the second time, when the Selection Committee met for reconsideration of the matter, the minutes of the meeting show that the members of the Selection Committee examined everything

afresh, without the assistance of the Experts, and they unanimously reiterated the earlier recommendations, but the recommendations, so made and reiterated by the Selection Committee, were simply cast aside. What was wrong with the recommendations made by the Selection Committee for the second time? No reasons whatsoever for rejecting the recommendation made this time are discernible from the minutes of the meeting of the Governing Body held on 6th of July 1992. The minutes record merely the assertion of supremacy by the Governing Body, and the cryptic decision to appoint respondent No.3. Perhaps, on the basis of the self assumed supremacy, the Governing Body felt that it was not obliged to give any reasons, and that it had the absolute and ultimate authority to do what it liked.

(24) It is clear that the factors that were finally taken into consideration by the Governing Body were not even in the contemplation of anybody when it was decided to fill up the post, or when the qualifications for appointment were stipulated in the advertisement, or when the Screening Committee cleared the names of 17 suitable candidates for interview, or when the two Experts were picked up and nominated for assisting the Selection Committee, or even at the time when the Selection Committee made the selection on the first occasion. The stand that was ultimately taken by the Governing Body was an afterthought. There is, therefore, no escape from the conclusion that the Governing Body did not have any good, much less, strong and cogent reasons for rejecting the recommendations made by the Selection Committee, and that the impugned decision of the Governing Body is based upon extraneous consideration, and the same is wholly unreasonable and arbitrary.

(25) Since the petitioner was selected and recommended by the selection committee and the Governing Body also did not find him unfit for appointment, as respondent No.3 was not selected by the selection committee, and because no cogent reason is forthcoming for rejecting the recommendation made by the Selection Committee, we find it unnecessary to remand the case for reconsideration. therefore, we hereby issue a writ of mandamus and quash the appointment of respondent No.3, and direct the Institute to appoint the petitioner to the post of Professor of Surgery forthwith.

(26) Before parting with the case, however, we may record what we were told at the conclusion of the hearing, that two more posts of Professors in the same Department had fallen vacant after the said post of Professor of Surgery was advertised in 1991. Consequently, in view of Regulation 26, we further direct that the petitioner, who was selected earlier, shall rank senior to those persons selected later for appointment to the two other posts, as Professor in the Department of Surgery.

(27) Accordingly, the Rule is made absolute and the writ petition is allowed with costs. Costs shall be paid by the Institute through respondent No. 1. Counsel's fee Rs. 5,500/-.

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