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Centre for Public Interest Litigation Vs. Union of India (Uoi) and ors.

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SooperKanoon Citation : sooperkanoon.com/703702

Court : Delhi

Decided On : Mar-29-2007

Reported in : 139(2007)DLT289

Judge : Swatanter Kumar and; H.R. Malhotra, JJ.

Acts : All India Institute of Medical Sciences Act, 1956 - Sections 2, 3, 4, 6, 6(1), 6(2), 7, 7(1), 10(3), 11, 11(1), 11(5), 15, 17, 18, 25, 26, 28, 29 and 29(1); ;All-India Institute of Medical Sciences (Amendment) Act, 2000 - Sections 6(1); ;Agricultural Marketing Act, 1958; CCS Conduct Rules - Rule 2(10), 7, 7(1), 7(3), 4, 9, 12A, 14 and 56; Central Government Rules; ;All India Institute of Medical Sciences Regulations, 1999 - Regulation 4, 4(3), 4(4), 4(5), 5, 9, 24, 30, 30(2), 30(3), 31 and 32; ;Constitution of India - Articles 102, 103(2) and 226

Appeal No. : W.P. (C) No. 8485/2006 and LPA No. 2045/2006

Appellant : Centre for Public Interest Litigation;all India Institute of Medical Sciences

Respondent : Union of India (Uoi) and ors.;dr. P. Venugopal

Advocate for Def. : Gopal Subramaniam, ASG, ; R. Venkataramani, ; Mukul Gupta

Advocate for Pet/Ap. : Prashant Bhushan,; Rohit Kumar Singh, ; Sumeet Sharma,;

Judgement :

Swatanter Kumar, J.

1. Centre for Public Interest Litigation (CPIL), a registered Society stated to have been formed for the purposes of conducting public interest litigation in an organized manner approached this Court under Article 226 of the Constitution of India praying for issuance of a writ of quo warranto alleging that the respondents no.1 and 2 have illegally permitted Prof. P. Venugopal, respondent no.3, Director of the All India Institute of Medical Sciences (hereinafter referred to as 'the Director') to continue against the post in complete and vent on disregard of the statutory regulations as he is being permitted to continue in that post beyond the age of 62 years as well as he is occupying the post of Cardio Thoracic Vascular Surgeon since his appointment as Director in July 2003.

2. The Society claims that it has eminent lawyers as members of its Executive Committee and they are generally interested as public spirited professionals to take legal steps in accordance with law to ensure that appointments to high offices where the interest of the public at large is directly affected, is not done in a manner contrary to law. The reports were published in a weekly 'Tehelka' dated 25.2.2006 and 'The Hindustan Times' dated 29.2.2006 despite which corrective steps were not taken by the official respondents resulting in the petitioners filing the present writ petition.

3. As per the averments made in the writ petition, somewhere in April'03, the Institute had notified the vacancy of the Director and had asked for nominations from different institutions. Number of candidates from all over the country including eminent professors from within the Institute had submitted their applications and out of the names received, the body of the Institute had recommended Dr. Venugopal's name for appointment to the post of the Director. Vide letter dated 3.7.2003, the Government of India conveyed the approval of the Appointment Committee of the Cabinet for appointment to the post of Director for a period of 5 years and until further orders and permitted to him to continue as Professor in the Department of Cardio Thoracic and Vascular Surgery. In furtherance to its

approval, the Institute issued a memorandum of the same date containing the appointment of Dr. Venugopal for a period of 5 years. The Director was at that time already 61 years of age and in terms of the letter of his appointment, he would continue to hold the job till 66 years of age. This was not permissible as he would have attained the age of 62 years on 6.7.2004 and his continuation thereafter would be in blatant disregard to the statutory regulations, as no person could continue in the employment of the Institute after attaining the age of 62 years. It is also the case of the petitioner that a specific request was made by the respondent no.2 seeking an amendment of Regulation 30 of the All India Institute of Medical Sciences Regulations, 1999 (hereinafter referred to as the 'AIIMS Regulations') seeking extension in service of faculty members on case to case basis up to the age of 64 years which was not granted and vide letter dated 15.7.2002, the Department of Personnel and Training had declined such a request. Acting upon the said advise, two other Professors who had retired and were re-employed for a period of 2 years beyond their normal age of superannuation of 62 years, their services were also terminated. Despite these clear instructions and the relevant rules, respondent no.3, the Director of the Institute was permitted to continue which appointment and continuation is being challenged in the present writ petition on different grounds.

4. While referring to the different provisions of the Act, Rules and Regulations and relying upon the judgments of the Supreme Court in the case of Dr. S.K. Kacker v. AIIMS : (1996)10SCC734 , the contention raised on behalf of the petitioner is that the Director cannot continue in the appointment of the Director beyond the age of 62 years and the appointment per se is banned in law and hence illegal. It is also contended that the said respondent cannot hold the post of Professor in the Department of Cardio Thoracic and Vascular Surgery at AIIMS while holding the Post-in-Charge of Director. On this premise, the petitioner has prayed for the following reliefs:

(i) issue writ, order or direction in the nature of quo-warranto or any appropriate writ/order quashing the appointment/continuance of the Respondent No.3 against the post of Director of Respondent No.2; and

(ii) issue writ, order or direction in the nature of quo-warranto or any appropriate Writ declaring that the continuance of the Respondent No.3 in the post of the Professor in the Department of Cardio-Thoracic and Vascular Surgery is without the authority of law; and

(iii) Pass any such further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

5. This writ petition has been opposed on behalf of the different respondents through different counsel and interestingly we must notice that there is a serious dispute raised before us as to who is the competent person to represent the AIIMS (the Institute Body) before the Court. The Union of India has filed its reply by way of an affidavit sworn by Dr. Asha Thomas, Director, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.

6. Reply on behalf of the Institute through and on behalf of the President of the Institute has been filed by way of affidavit sworn by Mr. P.K. Hota, Secretary, Ministry of Health and Family Welfare and member of the Institute body.

7. Respondent no.3 has filed his own affidavit and had submitted reply while taking up preliminary objections as well as made allegations in the writ petition on merits.

8. On behalf of the Union of India, it is stated that respondent no.3 was selected and appointed to the post of Director with effect from July.2003 and was also holding the position of the Head of the Department, CTVS and Chief of C.N. Centre by virtue of his position as Professor at the time of his selection as Director. The Union of India also relied upon the case of Dr. S.K. Kacker (supra) and stated that the issue is settled that after his appointment as Director, he cannot continue as Professor and Head of the Department. It is also stated on behalf of the Union of India that in terms of the case of Dr.L.P. Agarwal v. Union of India : (1993)IILLJ825SC the concept of superannuation is alien to such appointments but the Supreme Court has also observed in that case, that the age of 62 years provided under the Regulation 30 (2) of the AIIMS Regulations shows that nobody can continue beyond the age of 62 years. They have also referred to the case of Dr. P.K. Dave, predecessor of respondent no.3, who was initially appointed for a

period of 3 years from 1.10.1996 or till the date of superannuation at the age of 60 years i.e. 30.6.1999, whichever is earlier. The age of retirement was, thereforee, increased to 62 years with effect from 25.2.1999, his appointment was extended for a period of 5 years from the date of assumption of the charge of the post of the Director. While relying upon Section 11(1), Section 29(f) of the AIIMS Act, Rule 7 (1) of the Rules and Regulation 30 of the AIIMS Regulations, it is argued that respondent no.3 cannot continue after attaining the age of superannuation as a member of the faculty of teaching i.e. 62 years. According to the Union of India, the appointment of Respondent No.3 is contrary to law and in fact paragraph 12 of their reply affidavit reads as under:

12. That the decision of the AIIMS to appoint the Respondent No.3, for a tenure of five years appears to be based on the provisions obtaining in the Recruitment Rules framed by the Institute Body. However, these Rules are to be read in consonance with other provisions of the Regulations. Accordingly, on the face of clear provision, no employee can be allowed to continue beyond 62 years. The appointment of Respondent no.3 at the age of 61 years, for 5 years is contrary to the statutory provisions.

9. In addition to the above specific stand taken by the Union of India. It has also been averred that Dr. K.K. Talwar had been appointed as Director of PGIMER, Chandigarh, where the provisions were somewhat similar to that of AIIMS, for a period of 5 years from the date of joining or till he attained the age of 62 years or until further orders, whichever was earlier. It is thereforee stated that the appointment of Respondent no.3 at the age of 61 years thus cannot continue for a period of 5 years.

10. According to the averments made in the reply affidavit filed on behalf of the Institute, through Sh. P.K. Hota, Secretary, Ministry of Health and Family Welfare, the stand taken is somewhat similar to that taken by the Union of India, it has been stated that the Institute Body is headed by the Union Health Minister and he had selected respondent no.3 with a 5 years tenure. The decision of the Institute to appoint respondent no.3 for a tenure of 5 years appears to be based on the provisions appearing in the Recruitment Rules framed by the Institute Body.

However, these rules are to be read in consonance with the other provisions of the AIIMS Regulations. It is stated that on the cumulative reading, the post of 'Director' does not find place in the category of teaching faculty for the purposes of Regulation 30 and thereforee the upper age limit should normally be 60 years and even if the post of Director is treated as a faculty post, the age of superannuation should be 62 years and the petitioner cannot continue thereafter. According to this respondent Regulation 30 was amended with effect from 25.2.1999 whereby the upper age limit of teaching faculty was raised up to 62 years and resultantly nobody can continue in employment thereafter. The stand about Dr. Talwar is similar to the stand taken by respondent no.1. It is specifically averred on behalf of these respondents that as per the records of the AIIMS, after assuming the charge of the Director, Dr. P.K. Dave relinquished the charge of Head of the Department (Orthopaedics) which position he was holding at the time of his appointment as Director and Prof. M. Farooqui assumed the charge of Head of the Department. The stand of both the above respondents in relation to the grant of relief to the petitioner is that the appointment of respondent no.3 beyond that age was a complete departure from the statutory provisions in the AIIMS Act. In that sense, these respondents are practically supporting the petition of the petitioner.

11. Dr. P. Venugopal, who has filed his reply affidavit as respondent no.3 has taken objection that the petitioners have no interest, much less public interest in the appointment to the post of Director, which has been made in accordance with law and lack of locus as well as substantial direct interest of the petitioner to maintain a public interest litigation renders the petition untenable. Hence, the present petition is not even maintainable as a public interest litigation. According to him, such petition is liable to be dismissed on that ground itself.

12. In addition to taking up this objection, it is also pleaded that there is a deliberate suppression and concealment of material facts and in any case a writ of quo warranto at the instance of the petitioner is not maintainable in view of the judgments of the Supreme Court in the case of Ashok Kumar Pandey v. State of West Bengal : AIR 2004 SC280 and Dr. B. Singh v. Union of India and Ors. : AIR 2004 SC1923 and the ground of delay and laches is also taken by this respondent. Without prejudice to the aforestated objections, the case of respondent no.3 is that

the post of Director is to be filled up in accordance with Rule 7(3) and 4 of the Rules which is an ex-cadre post having a fixed tenure. The Rules only contemplate maximum age for entry but there is no upper age provided clearly showing that the concept of superannuation to the tenure post is alien and the Director cannot be compelled to retire or superannuate at the age of 62 years in view of the judgment of the Supreme Court in the case of Dr. L.P. Agarwal v. Union of India (supra). It is also stated that Regulation 30 has no application to the post of Director. According to this respondent the petitioner is a registered Society which claims to be engaged in propagating health awareness among the people of the Country and have several Doctors as members of the Society. As such they must have come to know of the appointment of the Dr. Venugopal in the year 2003 itself and the present petition suffers from the defect of delay and laches and in any case, the petitioner being not an aggrieved person, cannot maintain this petition. The Institute is a corporate entity with perpetual succession under Section 4 of the Act and the Director is a member of the Institute Body. He is also the Principal Secretary of the Institute and the Director alone has the power to represent the Institute as he is the Chief Executive Officer of the Institute. thereforee, the affidavit filed on behalf of the respondent no.2 dated 5.9.2006 by the Secretary is not authorised or permitted by Law and should not be taken into consideration. According to this respondent in the year 2003, he had been acting as Professor of Cardio-Thoracic Vascular Surgery Department of AIIMS when his name was recommended to be conferred with the office of the Director and required to continue as Professor of CTVS Department of the Institute. This appointment was approved by the Cabinet Appointments Committee and a memoranda was issued on 3.7.2003. According to this respondent the legislative intent as incorporated in the scheme of the Act, Rules and Regulations made there under, though by prescribing for a permanent period of 5 years to the Director, has purposely and consciously fixed no upper age limit and as such the Director can continue in terms of his appointment. The appointment of a Director is a composite appointment for a permanent term of 5 years and has been duly approved by the Courts while referring to the facts in the cases of Dr. L.P. Agarwal v. Union of India (supra) and Dr. S.K. Kacker v. AIIMS (supra). It is stated that they were holding the office of the Director and were given duties of the Professor of Opthalmology

and ENT respectively in the concerned departments at the time of their appointment as 'Director'. Relying upon various judgments of the Court including in the case of Health India (Regd.) v. Union of India and Ors. 102 (2003) DLT 19 (DB), it is contended that its tenure and composite appointment for a period of 5 years cannot be curtailed or frustrated by the authorities. The faculty members in some cases were granted extension up to the age of 64 years and as such there is no sanctity to the age of 62, the age alleged to be applicable for superannuation from the post of Director. Respondent no.3 has prayed for dismissal of the writ petition.

13. The above writ petition had been filed in the Registry of this Court on 12.5.2006. However, on 6.7.2006, Dr. Venugopal, respondent no.3 in the above writ petition, filed a writ petition bearing CWP No. 10687/2006 praying for issuance of a writ of certiorari or any other order calling for the records of the respondents and for quashing the decision dated 5.7.2006 deciding to terminate the tenure appointment of the petitioner. They have also prayed for a direction that the Union of India should be restrained from nominating any Minister as a member or as the President of the Institute in terms of Section 4, holding an enquiry against respondent no.4 in his writ petition in terms of Article 102 of the Constitution of India, as he had earned a disqualification and for passing appropriate orders in that regard and also quashing the notification dated 7.2.2005 whereby the respondent no.2 had been nominated as a Member under Section 4(e) of the Act. In addition to the above noticed facts the plea taken on behalf of Dr. Venugopal in the writ petition was that the concept of democratic functioning of different organs was required under the Constitution of India without interference from bureaucratic red-tapism. This was particularly the requirement whenever it related to the Institutions of utmost importance and significance in the country. The All India Institute of Medical Sciences is one such Institution in the field of medicines. While relying upon the scheme contained in Sections 4, 6 and 11 of the Act and the regulations framed by the Union of India vide its notification dated 3.3.1958, the contention is that the Director is the Chief Executive Officer of the Institute, who will be appointed by the Institute and has to look after the functions of the Director. Reiterating the stand in relation to the tenure and composite post, it is stated that the question of prematurely retiring the petitioner does not arise. The Government

of India while exercising the jurisdiction under Section 4(e) of the Act has nominated the Health Minister as one of its nominee. A writ petition has been filed by way of common cause petition contending that the Government of India has not been able to do so. The writ petition had been heard and as a result of difference of opinion between the members of the Division Bench, reference was made to a third Judge and the third Judge took the view that the Government of India could not make such a nomination. However, the Supreme Court in the case of B. Shankaranand v. Common Cause and Ors. : [1996]3SCR214 upset the view taken by the High Court and held that the Government was entitled to make a nomination of the Minister to the body of the Institute. An Amending Act 33 of 2000 came into force on 25.8.2000 vide which Section 6(1) was amended by adding a proviso to say that as soon as a member becomes a Minister or Minister of State or Deputy Minister, or the Speaker, or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States, he shall loose his membership of the Institute which had become available to him under Section 4. According to the petitioner in that petition, the aspect of autonomy of the Institute received greater recognition and continuous acceptance by passage of time. The legislative mandate behind amending the proviso to Section 6(1) of the Act by Amending Act of 25.8.2000 excluding the category covered under Section 4(g) from being nominated to the body of the Institute shows the need for reducing the Government interference in the functioning of the Institute. The petitioner was appointed as a Director on 3.7.2003 and was entitled to continue his research and clinical work in view of his letter of appointment for a fixed tenure of 5 years. The Government of India issued a notification on 7.2.2005 in exercise of its powers under Section 7(i) nominating respondent no.2, Dr. Anbumani Ramadoss, the Minister of Health and Family Welfare as President of the Institute. According to the petitioner, this was contrary to Law and as such the notification was liable to be set aside. Various allegations have been made against the said respondent in relation to appointment of an IPS officer as an OSD and providing of accommodation to him; appointing Mr. D.S.Moorthy, a former police Inspector from Tamill Nadu as an OSD and making him stay in Government House and appointing Dr. K.S. Reddy, one of the senior-most faculty member, as Dean of the Institute. It is further alleged that without considering the names proposed by the

Committee, he had appointed Dr. R.C. Deka, a Doctor at 24th position in the seniority list as the Dean. Various other allegations were also made by the Director against the President indicating the bias in his mind towards the petitioner.

14. It was further stated that on 5.7.2006, an extra-ordinary meeting of the Institute was held and in that meeting, the President had brought a pre- prepared draft resolution which had been circulated to the members terminating the tenure of the petitioner as Director of the Institute on completely ill- conceived, concocted, false and baseless allegations, attributing completely untrue acts of omissions and commissions against the petitioner. On 6.7.2006, a decision had been taken to terminate the 5 year tenure of the petitioner illegally and contrary to the settled principles. This decision was publicly announced and the petitioner has placed a formal copy of the communication of the impugned decision. The petitioner, thus, questions the correctness of that order.

15. This writ petition bearing no. 10687/2006 came up for hearing and was contested on behalf of the respondents. The prayer clause of the said petition reads as under:

In view of the facts stated and submissions made hereinabove, the petitioner most respectfully prays that this Hon'ble Court may be pleased to pass orders:

a) Issuing a writ of certiorari or any other writ, order or direction in the nature thereof calling for the record pertaining to the impugned decision publicly announced on 5.7.2006 passed by the respondent no.3 deciding to terminate the tenure appointment of the petitioner and to quash the same. And issue of writ of prohibition restraining the respondent no.1 from passing any order on the decision of the Institute body taken on 5.7.2006.

b) Issuing a writ or direction in the nature of writ of certiorari and mandamus or any other writ in the nature thereof calling for the records pertaining to the notifications both dated 7.2.2005 issued by respondent No.1 whereby respondent No.2 had been nominated as member under Section 4(e) and nominating him as the President of the AIIMS under Section 7(1) of the All India Institute of Medical Sciences Act, 1956 - and quashing the same;

c) Issuing a writ of prohibition or any other writ direction in the nature thereof prohibiting respondent no.1 from nominating any minister either as a member or the president of the institute under the provisions of Section 4 and Section 6 of the Act.

d) Issue a writ of mandamus or any other writ or direction in the nature thereof directing respondent No.4 to hold an inquiry under Article 102 of the Constitution of India for determining incurring of disqualification by the respondent No.2 and passing appropriate orders against him in accordance with law.

e) Pass any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

16. Vide order dated 7.7.2006, the Court had stayed the operation of the order dated 5.7.2006 and the respondents were also restrained from passing any further order on the basis of the said impugned decision.

17. This writ petition was hotly contested by the respondents. The counter affidavit was filed on behalf of the Union of India and the Institute. They had taken the stand that the writ petition was not maintainable on account of misguide of causes of actions and non-joinder of necessary parties. They stated that the allegations made have no reasonable nexus with the facts pleaded and the documents annexed thereto. According to these respondents, the writ petition is liable to be dismissed. It is contended that on harmonious construction of the amendment to Section 6(1) of the Act and keeping in view the principles stated in the case of B. Shankaranand v. Common Cause and Ors. (supra), a Minister can be nominated as President to the body of the Institute. It was further stated that the Government provides all funds to the Institute and has the power to overlook the working of the Institute and there was no interference caused by the Government in the autonomy of the Institute. In terms of Section 15 of the Act, each year a financial aid is to be given by the Government and which has to maintain the proper accounts in such forms as may be directed by the Government in accordance with Sections 17 and 18 of the Act. The Institute is bound to carry out the directions issued by the Government from time to time and in case of any dispute between the Institute and the Government, the decision of the Government is final in terms

of Sections 25 and 26 of the Act. According to these respondents, the petitioner had been mishandling the affairs of the hospital and he had taken one Mr. Mayank Sharma on deputation for three years as Senior Financial Advisor. On 1.3.2005, Sh. Debashish Panda, was appointed as Deputy Director (Administration) who gave him all administrative functions in violation to the procedures. The allegation is that there was administrative and financial mismanagement and even the patient care services were not taken care of in its proper perspective. The allegations in regard to infringing autonomy are seriously denied and it is stated that when the President of the Institute started taking steps to solve the problems of the Institute, the Director started raising hue and cry. There was improper user of funds as the funds being allocated under the planned budget by the Government were not fully utilized and were being surrendered which was nothing but administrative and financial mismanagement. Somewhere on 15.6.2006, the petitioner had addressed the faculty, residents and employees, after taking over as the Director and made certain observations which were undesirable. Thereafter, the petitioner proceeded on leave on 3.7.2006. In view of the impending circumstances, the issue relating to the conduct of the petitioner was discussed in relation to the financial mismanagement, inaccessible compromise with patient care services, indiscipline and an opinion was formed that his services should be terminated in public interest. It is specifically averred that the authorities did not wish to hurt the sentiments of the petitioner and the agenda relating to violation of Rule 9 of the CCS Conduct Rules was placed and the matter was sent for ratification/approval to ACC. There was chaos in the Institute and the Director had taken no steps to bring normalcy of the patient care services, particularly in the Institute and the action taken by the respondents was correct. It was further stated that no inquiry is called for under Article 102 of the Constitution in view of the judgment of the Supreme Court and in contemplation of Section 4(e)(g) and Section 6, and the said respondent can be nominated as President of the Institute. It is stated that the Institute had decided to curtail the tenure of the petitioner under Regulation 31 and that the provisions of Fundamental Rules 56(j) are paramateria same as that of Regulation 31 and there was no requirement of following the principles of natural justice and the services of the petitioner can be dispensed with in view of the judgment of the Supreme Court in the case of Union of India v.

J.N. Sinha and Anr. : (1970)IILLJ284SC . On this premise, they prayed for dismissal of the writ petition.

18. We may also notice that in the writ petition, the Election Commission has been imp leaded as respondent no.4 who has also filed counter affidavit and submitted that in view of the Constitutional provisions and submissions made, no case is made out directing the answering respondent for conducting an enquiry in contemplation of Article 103(2) and the complaint dated 19.7.2002 made by Sh. Umesh Saigal, IAS (Retd.) was being looked into and it was further stated that the Court has no jurisdiction to direct the said respondent to hold an enquiry under Article 102 of the Constitution of India.

19. These are the questions which are not a matter of concern at this stage of the proceedings. We have noticed these facts only to complete the record and it is in any case not the ground stated by the learned Single Judge for passing the impugned order.

20. As already noticed, the learned Single Judge in Civil Writ Petition No. 10687/2006 on 7.7.2006 had passed an order restraining the respondents from taking action on the basis of the decision of 5.7.2006. The operative part of the order reads as under:

Therefore, on his appointment to the permanent post as a Director, he has probably lost his lien on the post as a professor and head of his department. thereforee on his alleged removal from the post of Director he may not revert to his post of heard of his department and will be without any post and work which will cause irreparable injury to his interests. Ouster of such an eminent doctor, whose professional eminence, fortunately has not been disputed even by the respondents, may be a great loss not only to the Institution but to the general public at large. The inevitable inference in the facts and circumstances is that the balance of convenience is in favor of the petitioner. thereforee, till all the allegations and counter allegations are considered and sorted out and in order to nullify the probability of any irreparable loss to any of the parties and considering the facts and in totality of the circumstances, in the meantime till the next date of hearing, the decision dated 5.7.2006 terminating the tenure appointment of

petitioner is stayed and respondents are further restrained from passing any further order on the basis of the said impugned decision. It is clarified that anything stated hereinabove is not expression of final opinion on the pleas and contentions of the parties.

Sd/-

ANIL KUMAR, J.

July 7, 2006

21. Against this order, the respondents in the writ petition had filed an LPA being LPA No. 1674/2006 along with an application for interim stay being CM No. 9935/2006 which was dismissed as withdrawn and order was passed on 25.7.2006:

% 25.07.2006

Present : Mr. Gopal Subramanium, Additional Solicitor General, with Ms. Mukta Gupta and Mr. Mukul Gupta for the appellant. Mr. Arun Jaitley, Senior Advocate, and Mr. Rajiv Dhawan, Senior Advocate, with Mr. Maninder Singh, Ms. Pratibha M. Singh and Mr. Kirtiman Singh, for the respondent.

Caveat No. 86/2006

Notice discharged.

CM 9936/2006

Allowed subject to just exception. LPA No. 1674/2006 and CM 9935/2006 Mr. Gopal Subramanium says that the appellant without prejudice to the rights and contentions of the parties in this appeal as well as before the learned Single Judge, will have a fresh look of the entire matter. Let them do so. Dismissed as withdrawn.

22. Thereafter, Dr. Venugopal filed a CM being CM No. 12471/2006 in Civil Writ Petition No. 10687/2006 seeking the stay of the notice dated 29.9.2006 whereby

an extraordinary meeting of the Institute was called for on 10.10.2006 and also praying that the petitioner should be permitted to continue as Director and his matter be not taken up for consideration in that meeting or in any subsequent meeting thereto. The prayer clause of that application reads as under:

In view of the facts stated and submission made hereinabove the applicant petitioner humbly prays that this Hon'ble Court may be pleased to pass order:

a) Allowing the present application directing the stay of the notice dated 29.9.2006 and

b) Further directing that the issue regarding continuation of the applicant petitioner as Director of the Institute Body for the permanent terms of 5 years shall not be taken up in that meeting scheduled for 10.10.2006 or in any subsequent meeting of the Institute Body without the leave of this Hon'ble Court.

c) Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

23. It was stated in this application that the action was being taken in furtherance to the malafides of respondent no.2 who continues to be President of the Institute. It was stated that he had asked the petitioner on 21.9.2006 to call for the meeting on 10.10.2006. In the notice, it was stated that the agenda would be sent later. As per Rules, the agenda has to be included with the notice unless there were exceptional circumstances to be stated. However, the extraordinary general meeting of the Institute was directed to be held on 10.10.2006 at 11.00 a.m. and as the respondents had already made up their mind to remove the petitioner from service, the above prayer was made. On this application, the learned Single Judge after hearing the parties vide order dated 18.10.2006 passed certain additional directions and the relevant operative part of the said order reads as under:

43. Despite all these pleas and contentions of the parties, the right of the Institute body to consider and transact the matters pertaining to the Institute should not be completely curtailed even in respect of appointment and termination of the tenure of the director, if permissible in law, more so on the hope that the alleged bias is

not infinite and may be countered by the unbiased members of the body and even the alleged bias towards an individual may acquire a secondary characters on account of prevailing conditions in the institute and for the improvement of the Institute and for the service of the people for which the institute was established and is functioning. But at the same time, a director whose contributions to the institution and its functioning cannot be doubted, can be left to bear the consequences of any action actuated by bias and based on violation of regulations and other rules on the premise that the Institute body has such absolute independent rights even to destroy itself. In order to meet the twin objectives it will be appropriate to allow the Institute's body to consider everything but not to allow the implementation of any adverse order, decision or resolution against the petitioner without judicial review and scrutiny of the court in the present facts and circumstances. Such an action will meet the ends of justice and will be within the competence of this Court. However, this order will not be construed to mean that the actions of the respondents regarding extraordinary meeting on 18th October, 2006 are in consonance with the regulations of the respondent no.3, Institute.

44. For the aforesaid reasons the respondents are directed not to implement any adverse decision or resolution, if passed, against the petitioner till further orders regarding his tenure appointment and his functioning as Director of the All India Institute of Medical Sciences and any such resolution and decision shall be subject to the outcome of this writ petition. With these directions the application is disposed of. October 18, 2006 ANIL KUMAR, J.

24. LPA NO. 2045/2006 has been filed by the Institute in its own right while the LPA No. 2046/2006 has been filed by the Union of India. In both these Letters Patent Appeals, the order dated 18.10.2006 has been impugned.

25. That is how the writ petition bearing no. 8485/2006 and LPAs No. 2045/2006 and 2046/2006 were listed together for hearing. Arguments were advanced by all the learned Counsel appearing for the parties in all the three cases. Of course, the arguments on merits of the case were addressed subject to the plea taken by Dr. Venogopal's counsel as to the maintainability of the petition and locus of the petitioners to maintain this petition. Thus, we would dispose of the writ petition and

the Latters Patent Appeals by this common judgment.

DISCUSSION

Institute, its President and Director

26. The Institute under Section 2(c) of the Act means 'All- India Institute of Medical Sciences established under Section 3'. Section 3 declares that the Institute as notified by the Central Government shall be a body corporate by the name afore-said having perpetual succession and a common seal and amongst others, by the said name, shall sue and be sued. Composition of the Institute is explained in Section 4 of the Act while the term of Members of the Institute body is stated under Section 6 of the Act. The said Section reads as under:

6. Term of office of, and vacancies among, members.-(1)Save as otherwise provided in the Section, the term of office of a member shall be five years from the date of his nomination or election: Provided that the term of office of a member elected under clause (g) of Section 4 shall come to an end as soon as he ceases to be a member of the House from which he was elected.

(2)The term of office of an ex officio member shall continue so long as he holds the office in virtue of which he is such a member.

(3)The term of office of a member nominated or elected to fill a casual vacancy shall continue for the remainder of the term of the member in whose place he is nominated or elected.

(4)An out-going member shall, unless the Central Government otherwise directs, continue in office until another person is nominated or elected as a member in his place.

(5)An out-going member shall be eligible for re-nomination or re-election.

(6)A member may resign his office by writing under his hand addressed to the Central Government but he shall continue in office until his resignation is accepted by that Government.

(7)The manner of filling vacancies among members shall be such as may be prescribed by rules.

27. Proviso to Section 6(1) was amended vide The All-India Institute of Medical Sciences (Amendment) Act, 2000 and the amended proviso reads as under:

Provided that the term of office of a member elected under clause (g) of Section 4 shall come to an end as soon as he becomes a Minister or Minister of State or Deputy Minister, or he Speaker or the Deputy Speaker of the House of the People, or the Deputy Chairman of the Council of States or ceases to be a member of the House from which he was elected.

28. The Institute has to have a President and he shall be a person who will be nominated by the Central Government from among the Members other than the Director of the Institute. The President has to exercise such powers and discharge such functions as are laid down in the Act or may be prescribed by Rules or Regulations. By virtue of his being President of the Institute as contemplated under Section 10(3) of the Act, he has to be the Chairman of the Governing Body and would exercise such powers as may be prescribed by Regulations. In addition to this, the Institute can constitute as many Standing Committees as it may deem fit and proper. These provisions give us a birds eye view about the top bodies of management in the hierarchy of the Institute.

29. Section 11 postulates that there shall be a Chief Executive Officer of the Institute, who shall be designated as the Director of the Institute and shall, subject to such rules as may be made by the Central Government in this behalf, be appointed by the Institute. The Director is required to act as Secretary to the Institute as well as the Governing Body. Section 11(5) further requires that the Director and other Officers and employees of the Institute shall be entitled to such salary and allowances and will be governed by such conditions of service, as may be prescribed by Regulations in this behalf. Under Regulation 11, the Director is vested with very vast powers as he is in charge of the Administration of the Institute and he has to allocate duties and functions to all, exercise powers under Schedule I and also delegate powers vested in him, subject to such limitations as may be imposed by the Governing Body. This is the wide spectrum of duties,

functions and responsibilities of the Director of the Institute and ambit of his involvement in the affairs of the Institute.

30. Schedule-II to the Regulations deals with the description of posts, appointing authority, competent authority to impose penalty and the appellate authority. The post of Director has been placed as Group 'A' post and gives the details as under:

xxx xxx xxx

1. Group 'A' Posts Institute subject Institute All, subject to

(i)Director to Rule 7 of the condition that All India Institute penalties (v) of Medical Sciences to (ix) shall not Rules be imposed without the prior approval of the Central Government.

(ii)Other posts Governing Body (a)Governing Body All penalties Institute

(b)President Penalties (i)to(iv) Governing Body

xxx xxx xxx

31. Schedule I to the Regulations gives full powers to the Director of the Institute for re-appropriation of funds from sanctioned budget.

32. Regulation 11 dealing with the powers and duties of the Director reads as under:

11. Powers and duties of the Director:

The Director shall be the Head of Department in terms of Supplementary Rules 2(10) and shall exercise the powers of Head of Department and discharge the duties mentioned below, namely:-

(a)He shall be in charge of the administration of the Institute. He shall allocate duties to the 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.

(b)He shall also exercise the powers specified in Schedule I to these regulations.

(c)He shall also have powers to delegate any of his powers to the officers on the administrative side subject to such limitations as may be imposed by the Governing Body.

33. This shows the status of the Director, his conditions of service and his duties and functions qua the Institute. Another provision which deals with the appointment of a Director and is likely to have bearing on the matters in issue, is Regulation 24, which reads as under:

24. Qualification 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.

34. The term of the Office of the Director is controlled by the provisions of Regulation 31 while the age of superannuation and age at recruitment are regulated by Regulations 30 and 32. Reference to these Regulations can essentially be made before we proceed to discuss the merits of the contentions:

30. Superannuation

(1)The age of superannuation of an employee of the Institute other than teaching faculty shall be 60 years; Provided that the medical and scientific specialists may be granted extension in service, on a case to case basis, up to the age of 62 years in the case of persons who are exceptionally talented for reasons to be recorded in writing and subject to physical fitness and continued efficiency of the person concerned. Provided further that this provision shall not apply in the case of a person who is on extension in service.

(2)The age of superannuation of a member of the teaching faculty of the Institute shall be 62 years; Provided that this provision shall not apply in the case of a person who is on extension in service.

(3)Notwithstanding anything contained in sub-regulations (1) and (2), the appoint authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any employee of the Institute by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice -

(i)If he is in Group A or Group B service or post and had entered the service of the Institute before attaining the age of thirty-five years, after he has attained the age of fifty years; and

(ii)in any other case, after he has attained the age of fifty-five years; [Provided that nothing in this sub-regulation shall apply to an employee in Group D service or post who entered service on or before the 1st December, 1962]

(4)Any Institute employee may, by giving notice of not less than three months in writing to the appointing authority, retire from service after he has attained the age of 50 years, if he is in Group A or Group B service or post and had entered the service of the Institute before attaining the age of thirty-five years, and in all other cases after he has attained the age of 55 years: Provided that -

(a)nothing in this sub-regulation shall apply to an employee in Group D service or post who entered service on or before the 1st December, 1962.

(b)it shall be open to the appointing authority to withhold permission to an employee under suspension who seeks to retire under this sub-regulation.

Explanation: In this regulation the expressions 'member of the teaching faculty' mean : Professor, Additional Professor, Associate Professor, Assistant Professor, Medical Superintendent, Additional Medical Superintendent, Principal, College of Nursing, Lecturer in Nursing, Senior Nursing Tutor and tutor in Nursing and other employees of the Institute as may be declared to be members of teaching faculty by the Central Government from time to time.

31.Term of office of Director:-Notwithstanding anything contained in these regulations, the Institute shall, if it is of the opinion that it is in the public interest to do so, have the right to terminate the term of office of Director at any time before

the expiry of his term by giving him a notice of not less than three months in writing or three months' salary and allowances in lieu thereof. The Director shall also have the right to relinquish his office at any time before the expiry of the fixed term by giving to the Institute a notice of not less than three months in writing.

32.Age at recruitment:-The maximum age of a candidate at the time of recruitment to the service of the Institute shall normally be 50 years for teaching posts and 30 years for non-teaching posts or as indicated in the Recruitment Rules for each post (except for Senior Demonstrators/Senior Residents in the pre- and para-clinical and Radiotherapy Departments of the All India Institute of Medical Sciences where it shall be 33 years). This limit is relaxable by the Governing Body.

35. Section 28 empowers the Central Government to make rules to carry out the purposes of this Act, but such rules can be framed by the Government after consultation with the Institute.

36. Section 29 of the Act empowers the Central Government to make such regulations as it may deem fit and proper and notify them in the official Gazette. The power to make the Regulations covers a wide field of subjects indicated in that provision but Clause (f) of Section 29(1) can usefully be reproduced at this stage-

the tenure of office, salaries and allowances and other conditions of service of the Director and other officers and employees of the Institute including teachers appointed by the Institute;

37. In furtherance to the powers vested in the Central Government under Section 29 of the Act, the Government framed regulations and notified them in the Official Gazette on 25.2.1999. These Regulations were called 'The All India Institute of Medical Sciences Regulations, 1999' and they defined the expression 'Director' to mean 'the Director of the Institute, appointed under Sub-Section (1) of Section 11 of the Act' and defined the expression 'Chairman' as the Chairman of the Governing Body under Sub-Section (3) of Section 10 of the Act.

38. Regulation 5 specified that the Governing Body shall consist of the eleven members, which were as under:

(a) President of the Institute -Chairman

(b) Director General of Health Services -Ex-Officio Member

(c) Representative of the Ministry -Member of Finance

(d) Director, All India Institute of -Member Medical Sciences

(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.

39. Regulation 9 relates to the term of office of members of Governing Body and declares that the term of office of a member other than an ex-officio member of the Governing Body, shall be five years subject to his continuance as a member of the Institute, entitling him for re-election.

40. In light of the above provisions, let us proceed to discuss one of the main contentions raised before us on behalf of Dr. Venugopal that the Minister cannot be nominated to the Institute Body and, thus, he has no right to participate in the meetings of the Institute body. As far as Governing Body is concerned, the President of the Institute is a Member by force of law. The President of the Institute is to be appointed by the Central Government vide a notification by nominating in terms of Section 7 of the Act. Section 4 does not, in explicit language, refer to the President and the President of the Institute is also not specifically named in the members from whom the Institute body shall consist of. Section 4(e) requires five persons of whom one shall be a non-medical scientist representing the Indian Science Congress Association, to be nominated by the Central Government and Section 4(g) further commands that 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. thereforee, the power of nomination is available to the Central Government under Section 4(d), (e) and (f) respectively. As already noticed, the provisions of Section 6 carves out an implied restriction to the term of office of the members on the body of the Institute and states that the term of office of a member shall be five years from the date of his nomination or election. The Legislature with an intention to limit participation of the Executive/Government and to give greater emphasis to the functional autonomy of the Institute amended the Act. The persons covered under Section 4(g) i.e three Members of Parliament who are elected amongst others by the Members of the respective Houses, to be on the body of the Institute, their term would come to an end as soon as they become Minister or Minister of State or Deputy Minister, Speaker or Deputy Speaker of the House of the People, Deputy Chairman of the Council of States or ceases to be a member of that House.

41. The contentions raised on behalf of the private respondents are that the Legislature intended to ensure that there is no executive interference in the working of the Institute and its autonomy would be adversely effected if the persons, who are Ministers, are permitted to effectively participate in the affairs of the Institute. It is further their contention that after the amendment made in the year 2000, no Minister can, in fact, be notified to be on the Body of the Institute. On the other hand, the contention raised on behalf of the Institute appearing through the President and the Government is that the Legislature in its wisdom did not amend the proviso of Section 6(1) so as to effect directly or indirectly the provisions of Section 4(e) of the Act. The amendment has to be strictly construed as it only covers Section 4(g) of the Act and curtails the term of office of the Members of the Parliament in the Institute of the Members of the Parliament who under that category are covered and are appointed to the posts indicated therein. The object is that these members would obviously be not able to devote time in the affairs of the Institute Body as true members of the public because they would be holding an office within the Government itself.

42. We are not able to find much substance in the contention raised on behalf of the private respondents. It is a settled rule of interpretation that whenever a provision is amended, the amendment must be construed and read on its simple

language and there is no occasion before the court to expand the meaning and scope of that provision. The 'Doctrine of Plain Meaning' is a primary and often applied principle to the rule of interpretation. The author says that it may look somewhat paradoxical that plain meaning rule is not plain and requires some Explanationn. The rule that plain words require no construction, start with the premise that words are plain, which itself is a conclusion reached after construing the words. When the words of a statute are clear, plain and unambiguous, i.e. they are reasonably susceptible to only one meaning, the courts would give effect to that meaning and not influenced by consequences. The rule stated by TINDAL, C.J. in Sussex Peerage case is in the following form: 'If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver'. This doctrine is a first principle of rule of interpretation and it requires the court to interpret the provisions on their simple and plain reading without any addition or deletion. Maxim 'A pactis privatorum publico juri non derogatur' is an accepted principle of interpretation of provisions in England as well as in India. From the words of law, there should not be any departure. When the precise and unambiguous words are used in a rule or instruction, then, they must be understood and expound limited to their natural and ordinary sense. The words used best declare the intention of the rule maker.

43. The Legislature in its wisdom had amended the provisions of Section 6 limited in the scope of its application to provisions of Section 4(e). The language of amendment made in the year 2000, does not indicate that the legislative intent is to extend the application of this provision to Section 4(g) by necessary implication. The language of the amended provision does not admit any ambiguity. The Explanationn rendered on behalf of the Union of India is more plausible and acceptable. The object of Section 4(g) of the Act is to elect members on the Body of the Institute out of the elected members of both Houses. The elected members of both the Houses are representatives of the public. In a democratic society, the elected members are required to express the views of the public at large and their participation in the affairs of the Institute, while being on the Institute Body, is to expose the mall-functioning of the Institute, make suggestions to achieve the

objects of the Act and ensure maintenance of higher health standards and health quality. These functions would require these representatives to devote some time, energy and require their effective participation in the body of the Institute. These elected members is a class apart to the class indicated under Section 4(e). They are incapable of any interchange and have no features of over-lapping. They are exclusive in themselves and criteria, qualification and term of office of these members, thus, is incapable of being applied by inference to other Sections. Once they become part of the Government/Executive by becoming a Minister, Speaker, Deputy Speaker etc., there will be double impediments in their effective performance of functions as members of the Institute. Firstly, they would hardly find time for affairs of the Institute body and secondly the possibility of a bias or an influenced mind, would tilt in favor of the Government and its policies qua the health services and would prevent them from taking a fair approach in the interest of the Institution. Such principles would have no application per se on the ground of implication to the class of persons falling under Section 4(e) of the Act. The persons nominated under Section 4(e) of the Act, would, thereforee, be always beyond the purview of the scope of disqualification/curtailment of term contemplated under proviso to Section 6(1) of the Act. It is not necessary for us to deliberate on this issue in any further detail primarily for the reason that in somewhat similar circumstances, the question came for consideration before this Court as afore- referred in the case of Common Cause and Ors. v. B. Shankaranand, WP(C)No. 2453/1995, decided on 29.2.1996, wherein there was a difference of opinion between the Members of the Bench which was resolved by reference to a third Judge and by majority view, it was stated that under Section 4(e), the Minister of Health and Family Welfare could not be nominated to the Body of the Institute. The view of this Court was upset by the Supreme Court in the case titled as 'B. Shankaranand v. Common Cause and Ors.' (1996) 8 SCC 764', where considering the scope of Section 4 and Section 6, of course without the amendment of provisions of Section 4(g) read with Proviso to Section 6(1), the court had in no uncertain terms held that the Minister could be nominated to the Body of the Institute. The Apex Court in that case held as under:

5. It is true, as contended by Shri G.Ramaswamy, learned Senior Counsel, that the word' person' has to be understood in the context in which the language was

couched and the person mentioned in clause (e) would be other than those scientists either medical or non-medical. It is also true, as contended by Shr.D.D.Thakur, learned Senior Counsel, that when Section 6 contemplates ex officio members, their term is conterminous with their cessation of office. Section 4(e) does not seemingly intend to refer to nomination associated with the office, but to the individual members other than non-medical scientists representing Indian Science Congress Association. But on a harmonious and conjoint interpretation, we are of the opinion that the Government, while enacting the Act, appears to have intended to preserve the autonomy of the AIIMS, and also to have a say in its management. Under those circumstances, the Government appears to have nominated the Minister of Health and Family Welfare and the Secretary of Department of Health as Chairman and member respectively so that in the ultimate management of the supreme body constituted under the Act, the Government also will protect the interests of the institution. Otherwise, it would appear that the Government does not seem to have any say or control in the management of the AIIMS. Considered from this pragmatic background and from the point of view of the importance of the institution and public interest, we are of the considered view that the Central Government is justified to nominate four persons, other than scientists and the fifth being the non-medical scientists representing the Indian Science Congress Association. However four members may be integrally connected with the management and associated also with the working of the AIIMS. If this interpretation is given, we are of the view that it would subserve the greater public interest in the proper, effective, efficient and orderly management of AIIMS and the purpose of establishing the institution to maintain high standards, discipline and order in its management would be best subserved. However, there should be no undue interference by the Government of India in the autonomous management of the AIIMS and it should not be treated as any other Department of the Government, since the object of the Act is to improve excellence and high standards in all faculties of medical specialties and of treatment.

6. Accordingly, we hold that the appellant was nominated by virtue of his office as the Minister of Health and Family Welfare and he would be entitled to continue in that office as long as he held that office. Thereafter, he ceases to be a member of

the supreme body and consequently to be the Chairman of the body as nominated by the Government in the same order dated 9-3-1994. In his place the incumbent succeeding to the office of Minister of Health and Family Welfare would be entitled to be nominated by the Central Government and he would hold the office for the residue period. This will be consistent with Sub-Section (2) of Section 6 also.

44. We have already held that the amended proviso to Section 6(1) of the Act does not effect the tenure of office or does not subscribe any disqualification to the class of the persons of the Institute Body belonging to Sections 4(d) and 4(e) of the Act. On the correct principle of ratio-decidendi, the present case is covered on this aspect by the dictum of the Supreme Court in the case of B. Shankaranand (supra). The Minister, thus, could be nominated on the Institute Body by the Government in exercise of its powers vested under Section 4(d) of the Act as the Minister is involved in the policy making and functions of the Institute, even otherwise. thereforee, we reject the contention raised by the private respondents as well as Director of the Institute.

45. The other question that was argued with some vehemence before us by the learned Counsel appearing for the parties was with regard to stature of the Director, his tenure and who is competent person to represent the Institute in legal proceedings.

46. The post of Director under the recruitment rules afore-indicated clearly contemplates it a post under Group 'A'. For the post of Group 'A' i.e. the Director post, the appointing authority is the Institute, the disciplinary authority is also the Institute but for imposition of major penalties, prior approval of the Central Government is necessary. The post of Director is under command of Section 11 of the Act and he is stated to be the Chief Executive Officer of the Institute. His terms and conditions of appointment, qualifications, functions and duties are statutorily controlled under the provisions of the Act, Regulations or such executive instructions which may be issued by the competent authority from time to time. Section 11(5) requires that salary and allowances of the Director shall be governed by such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed under the Regulations. The Government

is required to formulate Regulations in regard to tenure, office, salary, allowances etc. of the Director and other employees and not only the Director but even the Chairman of the Governing Body is expected to exercise such powers and work strictly in accordance with the spirit of the Regulations framed by the Government under these provisions. Of course, it was argued but half-heartedly that the Director is not an employee of the Institute. The provisions of law referred to by us above would clearly show that there is relationship of employee-employer and all matters including conditions of service, pay, leave and other matters ancillary thereto, are statutorily stated which will be operative during and even after the retirement of the Director from the Institute. The Institute body is the disciplinary authority of the Director which is a Group 'A' post, subject to the limitation stated under the Schedule. We have no hesitation in coming to the conclusion that the Director is an employee of the Institute and is subject to the control and supervision of the competent authority in terms of the Regulations and the Schedule framed there under.

47. In respect of the the legal proceedings before the court of competent jurisdiction and even other Forums, it is an established canon of law that the person to represent the body would be a person authorized by law by resolution or by any other special mode acceptable in law. It will not only be undesirable but even unacceptable that any or every person starts representing an institution body, company or a corporate sector on his own. The Supreme Court in fact has commented adversely wherever members of a body tried to put forward their own cases before the courts in a litigation where the Institute or a public body was a party. The collective wisdom of such bodies was said to be true representation of the case of the Institute or a body. Wherever the law grants powers or authority to a person or office bearer to be in charge of its affairs, he would be the best person to represent the body before the court of competent jurisdiction. It is not higher or lower status in the hierarchy of the body which would determine the right to represent but it should be the person authorized by due process of law who must be given this responsibility. Divergent stands put forward on behalf of a body or an institute, in no way, speak well of the affairs of the Institute. Delegation of authority or resolution of the body are the best known forms of empowering a person for making such representation on behalf of the body. In terms of Section 3 of the Act,

the All-India Institute of Medical Sciences is a body corporate having a perpetual succession and a common seal and is entitled to sue and liable to be sued in that name. The language of Section 11 of the Act is unambiguous and clearly states that there shall be a Chief Executive Officer of the Institute who shall be designated as the Director of the Institute. In other words, the post of Director pre-supposes that such a person would be the Chief Executive Officer of the Institute. The expression 'Chief Executive Officer' indicates that he will be executive head of the Institute and in addition thereto, he shall be Secretary to the Institute and Governing Body in terms of Section 11(2). In other words, he would be part of the collective decision making process of the Governing Body as well as the Institute Body but also would be head executive officer of the Institute.

48. As far as planned expenditure is concerned, the Director of the Institute has full powers in terms of Schedule I of the Regulations. All these legal provisions reflect authority and control of the Director over the affairs of the Institute. Of course, performance of such duties and functions by him, has to be under the control of the Institute Body and the Regulations framed in that behalf. His position can safely be compared to the Secretary or the Managing Director under the Company and Corporate Law where being part of the company management, he is empowered to represent the company in its legal affairs and even for its business affairs in accordance with law. Once stature of the person is explained under the Regulations or the provisions of the Act, there is hardly any scope for taking any other view. Examining it from the point of view of fairness and institutional interest, the answer still would be the same. It would be fair and in the interest of an institution that a person responsible for maintaining the records of the Institute in its day to day functioning and who is also a head executive functionary of the Institute, well- conversant with the business of the Institute, should represent the case of the Institute before the court. In fact, he would be the best man in respect of number of matters necessary for that purpose and the principle of fairness would require and impose responsibility upon him to bring true and correct facts as per the records of the Institute before the court without fear or favor. In these circumstances and in view of the clear position of law in that regard, we have no hesitation in coming to the conclusion that the Director of the Institute is the competent person to represent the Institute before the courts of competent

jurisdiction. But this general rule is bound to have an exception and that exceptional situation had arisen in the affairs of the Institute more than often in the recent times, i.e. who should represent the Institute when the Director of the Institute himself is a petitioner or is personally a party in the litigation? Whenever there is a possibility of his interest clashing with the interest of the Government of India or the Institute Body, the rule of fairness, even remotely, would require that he should not represent the Institute in that situation and the Institute Body and/or Governing Body preferably the Institute Body should pass a resolution as to who should represent the Institute in such cases. Once that decision is taken, that person alone and none else should handle the affairs of the Institute in that case. Needless to notice that such authorized person has to be one who is familiar with the records, day-to-day business and requirements of the Institute. It was conceded before us by the learned Counsel appearing for the different parties that there is no provision under the Act and/or the Regulations framed there under clearly stating the term of office of the Director of the Institute.

49. Section 29 of the Act requires the Central Government to frame regulations with regard to tenure of office, salaries and allowances and other conditions of service of employees of the Institute including the Director under Clause (f) of Sub-Section 29(1) of that Section. In exercise of its powers, the Central Government had framed Regulation 24. The said Regulation states that age, experience and other qualification 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 but subject to one condition that non-medical personnel shall not be appointed to the post of Director. In other words, the post of Director has to be manned only by a medical personnel. The object is clear beyond ambiguity. Regulation 30 relates to the concept of superannuation and provides that the age of superannuation for teaching faculty would be 62 years while that for non- teaching would be 60 years. Regulation 30(3) states that the appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any employee of the Institute by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice, subject to the limitations provided in that Regulation. Regulation 30(4) again gives such a right to the

Institute when a person has attained the age of 50 years in relation to the Group A or Group B posts and who had entered the service of the Institute before attaining the age of 35 years and in all other cases after he has attained the age of 55 years. Explanationn under this Regulation explains that member of the teaching faculty means Professor, Additional Professor, Associate Professor, Assistant Professor, Medical Superintendent, and other persons specifically stated there but does not include the Director. Regulation 31 further declares and opens with a non- obstinate clause in exception to these Regulations. The Institute would have the right to terminate the term of office of Director at any time before the expiry of his term by giving him a notice of not less than three months in writing. Even the Director has a right to relinquish his Office at any time before the expiry of the fixed term by giving to the Institute a notice of not less than three months in writing. Regulation 32 provides for age at recruitment. It is clear that no provision directly deals or provides the age of retirement of a Director or even the term of his Office.

50. On behalf of the appellants in the appeal and the petitioner in the writ petition, it is argued that the Rules and Regulations do not permit continuation in employment of any employee of the Institute beyond the age of 62 years in the case of teaching faculty and 60 years in the case of non-teaching faculty. According to them, the concept of superannuation/retirement would be applicable to the Director like any other employee of the Institute. It is also their contention that the term 'appointment of the Director, cannot be read and construed contrary to the statutory Regulations which must prevail and the respondent/Union of India should be permitted to relieve Dr. Venugopal as he has already attained the maximum permissible age of 62 years. The argument on behalf of the Institute represented through Director in the writ petition and in the appeals on behalf of Dr. Venugopal is that the appointment to the post of Director is a term appointment and is not covered under the concept of superannuation. The appointment of the Director is for a term which is incapable of being curtailed or tinkered with during the currency of the specified term. With reference to the above provisions, it is also argued on their behalf that the Regulation 30 has no application and the framers of the Regulations have not intentionally provided for age of retirement of a Director of the Institute, though it has taken care in specific terms to provide the age of

recruitment for other posts in the Institute. Before we appreciate these contentions in light of the afore-referred provisions, we may refer to the letter of appointment of Dr. Venugopal to the post of Director.

No.V.16020/8/2003-ME Desk-I

Government of India

Ministry of Health and Family Welfare (Department of Health)

Nirman Bhawan, New Delhi

Dated the 03rd July 2003

To

The Director,

All India Institute of Medical Sciences,

Ansari Nagar,

New Delhi

[Kind Attn: Shri N.Baijendra Kumar, Dy.Director (Admn)]

Sub: Appointment to the post of Director, All India Institute of

Medical Sciences, New Delhi-regarding

Sir,

I am directed to refer to your OM No.F.1-5/2003-Estt.I dated 27.6.2003 on the above cited subject and to convey the approval of the Appointments Committee of the Cabinet for appointment of Prof. P.Venugopal as Director, All India Institute of Medical Sciences, New Delhi in the pay scale of Rs.26000/- (fixed) + NPA for a period of five years from the date he assumes the charge of the post and until

further orders. He will also continue as Professor in the Department of Cardiovascular and Thoracic Surgery, AIIMS, New Delhi.

His CR dossiers is returned herewith, the receipt of which may please be acknowledged.

Yours faithfully

Sd/-

(R.L.Malhotra)

Under Secretary to the Government of India

Encl.as above

51. On the basis of the above, following memorandum of appointment was issued by the Institute.

ALL INDIA INSTITUTE OF MEDICAL SCIENCES

ANSARI NAGAR, NEW DELHI-110 029

No.F.1-5/2003-Estt.I Dated the 03rd July, 2003

M E MO R A N D U M

Subject:- Appointment of Director, AIIMS, New Delhi

In accordance with the decision of the Institute Body, AIIMS and with the prior approval of the Central Government conveyed by the Ministry of Health and Family Welfare Vide letter NO.V.16020/8/2003-ME Desk-I dated the 3rd July, 2003, Dr.P.Venugupal, Dean and Chief of Cardio Thoracic Centre and Professor of Cardio Thoracic and Vascular Surgery, is hereby appointed as Director, All India Institute of Medical Sciences, New Delhi for a period of 5 (five) years from the date he assumes the charge of the post and until further orders. He will also continue as Professor in the Department of Cardiovascular and Thoracic Surgery at the AIIMS, New Delhi.

Dr.P.Venugopal will get a pay of Rs.26,000/-(fixed) plus Non Practicing Allowance (NPA) at the rate of 25% of the basic pay, subject to the condition that Pay + NPA does not exceed Rs.29,500/- per month, and other allowances as admissible to the Central Government Employees. Other terms and conditions of his appointment will be in accordance with the rules of the Institute.

[Authority:- Item No.1 of the Institute Body Meeting held on 23rd June, 2003]

Sd/-

(N. BAIJENDRA KUMAR)

DEPUTY DIRECTOR (ADMN.)

Dr.P.Venugopal

Dean and Chief of C.T.Centre and

Professor of Cardio Thoracic and Vascular Surgery,

A.I.I.M.S., New Delhi

Distribution:

1. The P.S. to the President AIIMS

2. The P.S.to the Health Secretary, Ministry of Health and F.W.

3. All Chief of Centres

4. All heads of the Departments /Sections/Units

5. The P.S.to the Director/Dean/D.D.(A)

6. Personal file of Dr.P.Venugopal.

52. In contra-distinction to the above letter of appointment, earlier the Government/Institute used to issue letters of appointment while appointing a person as Director for a tenure post and also including the age uptill 62 years,

whichever is earlier.

53. Non-inclusion of such term is conspicuous by its very absence and implies a definite meaning. He was appointed for a period of five years from the date he assumed the charge of the post and until further orders. The expression 'until further orders' in place of 'he is appointed for a period of five years or till he attains the age of 62 years? is a term which needs to be noticed and would have certain consequences in law. Regulation 24 vests wide discretion and power in the appointing authority to prescribe age, experience, and other qualifications for appointment while keeping in mind the view of the Central Government in relation to similar posts. The appointing authority in exercise of its powers, can specify such terms and conditions which it may find fit in the facts and circumstances of the case. While exercising this power, the authorities issued the memorandum of appointment on 3rd July, 2003 appointing him for a period of five years. The appointment letter specified the period without any ambiguity. Of course, the period of five years was to be read in conjunction with the term 'until further orders'. Regulation 30 deals with superannuation of members of teaching as well as non-teaching faculty. As already noticed, the Explanationn to this Regulation refers to who are the members of teaching faculty. This certainly does not name and include the Director. Once the expression 'teaching faculty' has specifically excluded the term 'Director', there is no occasion before the court to include the same by implication. If the provisions of Regulation 30 per se were applicable to the post of Director, there was hardly any occasion for introduction of Regulation 31 on the Statute Book of Regulations. Regulation 30 gives power to the competent authority for compulsory retiring a person in public interest and in that situation, there would have been no occasion to restate the same principle, may be in a different language under Regulation 31. The competent authority had in exercise of its powers under the Regulations and otherwise specified the qualifications, scale of pay for the post of Director and the same reads as under:

ENCLOSURE-I

STATEMENT SHOWING THE QUALIFICATIONS, SCALE OF PAY ETC. PRESCRIBED FOR THE POST OF DIRECTOR, AIIMS, NEW DELHI.

1. PRESCRIBED QUALIFICATION ESSENTIAL

i)A high postgraduate qualification in Medicine or Surgery or Public Health and their branches.

ii)Teaching and/or research experience of not less than ten years.

iii)Twenty-five years standing in the Profession.

iv)Extensive practical and Administrative experience in the field of medical relief, medical research, medical education or public health organization and adequate experience of running and important scientific educational institution either as its Head or Head of a Department

2. SCALE OF PAY Rs.26000/-(fixed) plus N.P.A. of 25% of basic pay but pay + allowance does not exceed Rs.29500/-

3. UPPAR AGE LIMIT 50 years. Relaxable for Government Servants or specially qualified candidates for direct recruits and promotees.

4. TENURE OF SERVICE Post permanent; Appointment on tenure of 5 years (one year probation)

5. PROBATION One year

6. OTHER INFORMATION (a) Government servants in service can be appointed as on deputation on Foreign Service up-to a period of five years. Retired Government servants can be re-employed.

(b) Employees of the Institute are not Government Servants.

(c) Employees of the Institute are entitled to pensionary benefits under the Central Government rules.

(d) Residential accommodation will be provided in the Institute's campus on payment of standard rent under F.R. 45 or 10% of pay,whichever is less.

54. The language of the instructions issued by the competent authority prior to the appointment of the present Director, clearly shows that it was a term appointment and its conditions of services were distinct and different from that applicable to the post of Professors etc. In our view, the appointment to the post of Director is a term appointment and such term can be curtailed or tinkered with only for justifiable reasons that too in accordance with the Regulations and principles of natural justice. In support of the above view that we are taking, we can usefully refer to the judgment in the case of Dr. L.P. Agarwal (supra), where considering the question of effect of the letter of appointment in somewhat similar language, except the age restriction, it was treated to be a tenure post but the Supreme Court left the question of curtailment of tenure post open, in the facts and circumstances of that case, but in unambiguous terms held that the concept of superannuation was not attracted to a tenure post and the Apex Court held as under:

16. We have given our thoughtful consideration to the reasoning and the conclusions reached by the High Court. We are not inclined to agree with the same. Under the Recruitment Rules the post of Director of the AIIMS is a tenure post. The said rules further provide the method of direct recruitment for filling the post. These service conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise. The age of 62 years provided under proviso to Regulation 30(2) of the Regulations only shows that no employee of the AIIMS can be given extension beyond that age. This has obviously been done for maintaining efficiency in the Institute services. We do not agree that simply because the appointment order of the appellant mentions that 'he is appointed for a period of five years or till he attains the age of 62 years', the appointment ceases to be to a tenure-post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. Can such person be retired prematurely curtailing his tenure of five years' Obviously not. The appointment of the appellant was on a five years tenure but it could be curtailed in the event of his attaining the age of 62 years before completing the said tenure. The High Court failed to appreciate the simple alphabet of the service jurisprudence. The High Court's reasoning is against the clear and unambiguous language of the

Recruitment Rules. The said rules provide 'Tenure for five years inclusive of one year probation' and the post is to be filled 'by direct recruitment'. Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtained on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant. The High Court fell into error in reading 'the concept of superannuation' in the said order. Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. The appellant could not thereforee have been prematurely retired and that too without being put on any notice whatsoever. Under what circumstances can an appointment for a tenure be cut short is not a matter which requires our immediate consideration in this case because the order impugned before the High Court concerned itself only with premature retirement and the High Court also dealt with that aspect of the matter only. This Court's judgment in Dr. Bool Chand v. Chancellor, Kurukshetra University : (1968)IILLJ135SC relied upon by the High Court is not on the point involved in this case. In that case the tenure of Dr.Bool Chand was curtailed as he was found unfit to continue as Vice-Chancellor having regard to his antecedents which were not disclosed by him at the time of his appointment as Vice-Chancellor. Similarly the judgment in Dr. D.C.Saxena v. State of Haryana : (1987)IILLJ360SC has no relevance to the facts of this case.

55. In the case of Dr.S.K. Kacker (supra), the Supreme Court reiterated the principle stated in Dr. L.P. Agarwal's case (supra) and also stated that incumbent appointed to the post of Director is a tenure post and normally his tenure could not be curtailed. A Division Bench of this Court in the case of Health India (Registered) v. Union of India and Ors. 102 (2003) DLT 19, also took the view that the post of Director was a tenure post but the court was concerned with the question of extension beyond 62 years, which question also was left for determination by the competent authority.

56. The concept of tenure appointment obviously indicates appointment for a fixed term. That term is one of the essential conditions of service and is binding on the employer and employee. Its curtailment normally would not be in consonance with the substantive term of appointment. May be the term appointment is not controlled by the concept of superannuation in stricto sensor but that does not mean that an employer has no control over his employee and despite any omission or commission, irrespective of gravity, the employer is bound to retain the employee for the period of the term appointment. We have already noticed that the Director is an employee of the Institute belonging to Group 'A' post and his conditions of service, functions and duties are controlled statutorily by the provisions of the Act, Regulations and the instructions issued by the appointing authority by way of terms of his appointment. The Institute authority itself has treated the post of the Director as a tenure post and appointed Dr. Venugopal for a period of five years on tenure basis. Curtailment of this tenure is possible only for justifiable reasons and in consonance with the principles of natural justice. In view of the principle enunciated by the Supreme Court in the case of Dr. L.P. Agarwal (supra), any other approach would even be impermissible. This is a post out of the cadre of Professors and the Director by virtue of his appointment to that post, loses lien on his post of Professor. Regulation 31 specifically grants power to the Institute to terminate the term of office of the Director in public interest. The expressions 'term of office' and 'before the expiry of fixed term' are the expressions clearly indicative of the appointment being for a fixed term and squarely falling within the concept of tenure appointment, normally uninterruptedly but for exceptions carved out in the Regulations. Public interest is a ground of wide connotation and the authorities concerned would have some element of discretion to curtail that term or terminate the fixed term prior to its expiry, of course, subject to the settled can one of law applicable to such a situation. We have already discussed that in terms of the Regulations, the appointing authority has the discretion to fix terms and conditions of services of appointment to the post of Director. In its own wisdom, they have fixed the tenure of five years. Such exercise of discretion patently is neither arbitrary nor discriminatory. The administrative decisions taken by the authority would not call for any judicial intervention so far they do not suffer from the vice of arbitrariness. Fixation of such period, is

otherwise relatable to the provisions of Regulation 5 according to which the Director of the Institute is a Member of the Governing Body and tenure of the Members of the Governing Body and the term of the office of the Member of the Institute is, five years from the date of their nomination and/or election in accordance with the provisions of Section 6 of the Act. The Director is also a member of the Governing Body, which is the executive committee of the Institute and the term of the office of the member of the Governing Body other than ex-officio is also five years under Regulation 9 and his term is co-relatable to the Institute Body. Thus, the terms of five years is not without any basis. Furthermore, it has been the practice of the Institute to appoint the Director for a period of five years in the past years. There are no grounds before us to show that such a practice adopted by the Institute is offending any law or is otherwise injurious to the administration of the Hospital. On the contrary, to provide consistent and gradual improvement in research health care and administration of the institution, it could well be said that a Director should have a reasonable period to chalk out better policies and achieve higher objects and results. It is settled principle of law that a good practice which is not offending in law and has been prevalent for a considerable time, get the force of law. Reference in this regard can be made to a judgment of a Division Bench of the Punjab and Haryana High Court in the case of Dr. Sudha Suri v. UOI and Ors 2002 (1) SLR 665, where the court held as under:

41...We are of the firm view that the recommendation of the Director should always be in writing, preferably on the basis of the record. Reference in this regard can be made to a Division Bench judgment of this Court in the case of Ms. Prerna Dean v. Christian Medical College, Ludhiana and Ors. C.W.P. 9546 of 2001, decided on 8.11.2001 where Court held as under:

A Division Bench of this Court in the case of Sujita Raj v. Post Graduate Institute of Medical Education and Research Chandigarh etc., CWP No. 12914 of 2001 decided on 11.10.2001, held as under:

It is a settled principle of law that practice adopted and followed in the past to the knowledge of the public can legitimately be treated as good practice acceptable in law. The practice so adopted can fairly be equated to instructions or rules unless it

is offending any specific provisions of law or written instructions issued by the government in that behalf....

57. To state it more simply, the Government in exercise of its powers under the Provisions of the Act and Regulations had granted fixed tenure appointment to the Director for a period of five years. Such appointment is relatable to the prevailing laws and was in consonance with the 'practice' adopted and prevalent in the Institute for a considerable time. This discussion leads us to conclude on this point by holding that the appointment of the Director in the Institute is a tenure appointment which can only be curtailed and/or tinkered with for justifiable reasons, in the discretion of the disciplinary authority and in compliance to the minimum mandate of principles of natural justice.

CAN DIRECTOR OF THE INSTITUTE ALSO HOLD POST OF PROFESSOR IN THE DEPARTMENTOF HIS SPECIALITY

58. This controversy arises in the present cases before us from the expression used by the appointing authority in the letter of appointment issued to the Director of the Institute dated 3rd July, 2003 to the effect that 'He will also continue as Professor in the Department of Cardiovascular and Thoracic Surgery, AIIMS, New Delhi'.

59. According to the Director, it is permissible and in fact, is in the interest of public and the Institute that he holds the post of professor in his own branch of specialty i.e. Cardiovascular and Thoracic Surgery. It is contended that it is not only desirable but legally permissible in view of the provisions governing the affairs of the Institute.

60. On the contrary, the contention raised on behalf of other parties is that no person can hold dual posts and deprive someone-else of his legitimate claim in his own department. It is also the contention that holding of two posts is legally impermissible and is prejudicial to the interest of the Institute.

61. It is indisputable that All India Institute of Medical Science (AIIMS) besides being an Hospital of importance is a Research Institute and has reasonably huge

administrative set up. The holders of different posts in hierarchy in the Institute are expected to formulate their policies and perform their functions and duties keeping in view the object and functions of the Institute. `Health Care' is a priority subject in the National Agenda. In order to discharge its public obligation created under the directive principle, the Government has provided for establishment of institutions of such immense importance. Institution like AIIMS have primarily 3 functional fields viz. (a) patient care, (b) medical education/research and (c) administration. The responsibility and obligation of any person holding a post in the Institute would be more enormous with the appointment to the higher post. An Associate or Assistant Professor in a particular specialty may have medical education/research and patient care work of a higher magnitude but administrative work would obviously be very limited and that too confined to the unit of his department, while a Professor may have comparatively higher responsibilities but within that limited sphere. When a Professor takes charge of the department and becomes the professor and Head of Department, he has wider responsibility in all the three fields but there is definite expansion in discharge of his duties in regard to administration. He is responsible for running the entire department and various units there under. He is concerned with purchase of machinery, equipment etc. for that department and can exercise various financial powers in accordance with Regulations. He assigns duties and perform functions of a greater impact in regard to patient care as well as medical education/research. `Research' includes his own research, teaching the students as well as to be the guide of the students, who are pursuing their post graduate, doctoral or super-specialized studies in that department. Out of the Head of Departments, a Dean is appointed but the post of Director is the ultimate appointment for an individual in the hierarchy of the Institute. Besides being the Chief Executive Officer of the Institute, he also has the jurisdiction to be the in charge of the administration of the Institute and to allocate duties to the officers and employees of the Institute. To exercise general supervision and control, he can delegate his functions, subject to conditions imposed by the Governing Body and shall also exercise powers under Schedule-I to the Regulations. In terms of the instructions issued by the administrative authorities, the essential qualification for promotion to the post of Professor is a High Post Graduate Qualification in Medicine or Surgery, teaching and/or research

experience of not less than 10 years and 25 years' standing in the profession with extensive practical and administrative experience in the field of medical relief etc. Another very important essential qualification is that he should have adequate experience of running an important scientific educational Institution either as its Head or Head of a Department. In other words, a person has to be the Head of the Department of a specialized department in Medicine or surgery before he could be considered even for being selected to the post of the Director of the Institute. Thus, the post of Director takes in its ambit performance of all functions i.e. administrative, patient care and medical education/research. These functions are not only required to be performed by the Director in his individual capacity as such but even in a supervisory capacity. His concern is not only the department of the specialty to which he belongs to but the entire Hospital and the Institute is his responsibility. He is expected to work in all these fields more objectively, passionately and with no special preference for any special department particularly his own specialty. The rules and regulations and even professional commitment places very heavy obligation upon the Director to ensure development of the Institute in all these fields as one unit. The Director is expected to perform all three functions and that obviously would be in larger public interest. To say that Director of the Institute by virtue of his appointment as such, is expected to deprive himself of performing functions of his specialty and medical education/research activity, would not be only adverse to the interest of the Institute but would also be not in conformity with the object of the Institute and spirit of the regulations framed by the Government. The services of a super-specialized surgeon are expected to be utilised for the benefit of the public at large and not to permit his skill to be rusted beyond repair by total involvement in administrative matters, howsoever, trivial or important they might be. Under Schedule-II to the Regulations, the post of `Director' and `others' are specified as `Group A' posts. Only the Director is required to be appointed by the Institute while all other appointments are by the Governing Body. That is the significance of this post, which obviously is not a post falling in any cadre of the Professors/Head of Department and even Dean. This is an exclusive post itself and cannot be equated to any other post. Explanationn to Regulation 30 relating to supervision of faculty as well as non- faculty members falling in different cadres of service of the Institute, do not include the post of

Director in specific term. The normal consequence thereof is that the post is excluded from the operation of the said provisions, as discussed by us above. Once this post is held by an individual, he is bound to loose his lien on the post of professor from the day he is appointed to that post. It is an accepted norm of service jurisprudence that no person can hold 2 substantive posts at the same time. There is a clear distinction in law between the dual charge and holding of two substantive posts. Dual charge is a concept, which can hardly apply in the facts and circumstances of the present case. Director is the Head of the Institute while there might be number of Heads of Departments as well as Professors in each specialty, who are directly answerable to the Director in regard to discharge of their administrative functions. In terms of the hierarchy of the Institute, the post of the Head or Professor implicate is no way comparable to the post of Director of the Institute. It is indisputable that the Central Government Rules are applicable to the Institute particularly wherever there are no specific rules framed by the Institute relating to any subject. Under Fundamental Rule 13 relating to general conditions of service, a Government Servant cannot be appointed substantively to two or more permanent posts at the same time. Under Fundamental Rule 12A, unless it is otherwise provided in the rules, a Government servant on substantive appointment to any permanent post, acquires a lien on that post and ceases to hold any lien previously acquired on any other post. In fact, Fundamental Rule 14 puts the matter beyond any doubt, which requires that the competent authority shall suspend the lien of a Government servant on a permanent post, which he holds substantively, if he is appointed in a substantive capacity to a tenure post or even provisionally to a post which he holds where another Government Servant was holding the post and whose lien stands terminated. Thus, the Fundamental Rules not only make it impermissible for an employee to have lien on two substantive posts but make it obligatory upon the authority to terminate the lien even where a person substantially appointed to a tenure post. In fact even the respondent in appeal before us (Dr. Venugopal) would be bound by his own admission that the provisions of Regulation 30 do not apply to the post of Director. We have already accepted this contention but what needs to be noticed further is that Explanationn to Regulation 30 does not refer to the post of Director inasmuch as Director is not a post implicate of teaching faculty. The reason for exclusion is

obvious that upon appointment as a Director, he looses his lien on the post of Professor and thereforee, is not included in the Explanationn. If he was to continue as a Professor and keep his lien on the post of Professor in the cadre then he would be bound to be superannuated upon attaining the age of 62 years. The very essence of keeping the post of Director beyond the prescribed age of superannuation, is termination of lien and a fixed tenure appointment.

62. In Dr. Kackar's case (supra), the Supreme court in an unambiguous language enunciated the principle that the Director cannot hold two substantive posts and held as under:

12. Shri Jaitely placed strong reliance on the resolution on the resolutions passed by the Governing Council permitting the appellant to continue as Professor and Head of the Department and approval thereof by the Institute Body. That was also reflected in the counter-affidavit filed by the Union of India indicating that his superannuation as Professor is on 31-7-1998. that would mean that he was allowed to continue as a Professor and that, thereforee, he is entitled to revert as Professor and Head of the Department. It is true that such resolutions came to be passed. The question, however, is whether such resolution have statutory basis' They are by their very nature administrative resolutions passed by the authorities. When, admittedly, Dr. Kacker is a permanent government servant governed by the Fundamental Rules, he cannot hold two substantive posts at the same time, namely, the post of Professor and Head of the Department and also the post of Director. In view of the findings recorded hereinbefore, the appellant lost his lien in the post of Professor and Head of the ENT Department on his substantive appointment to the post of Director. thereforee, such resolutions which are inconsistent with the statutory rules have no role to play nor do they have any legal efficacy. The administrative instructions would only supplement the yawning gaps in the statutes but cannot supplant the law. The resolution is, thereforee, a self-serving one without legal back up.

13.Thus considered, we are of the view, though for different reasons, that the High Court was right in holding that the appellant cannot revert as Professor and Head of the ENT Department, on his ceasing to be the Director of AIIMS.

63. It is required of all the authorities that they would act in accordance with law. The Law requires the authority to ensure termination of lien of the Director on his post and fill up those vacancies in accordance with the rules. It was not disputed before us that upon appointment of Dr. Venugopal as Director of the Institute, no resultant vacancy has been filled up either by direct selection or otherwise. The contention raised on his behalf before the Court was that it may not be administratively convenient for the Director to release the post of Professor or Dean in his own speciality. He will continue to perform surgeries and teach or guide the students in matters of research. He may not be able to do this work unless and until he continues to be Head of the Department of Cardiovascular and Thoracic Surgery. This argument impress us the least. If a Doctor is not able to administer his hospital in a manner befitting the post of a Director, it is bound to be a reflection on his capability and capacity to work and control the Hospital. It is expected of a Director to continue his specialized activities and it is required of every Professor and Head of the Department to provide due assistance to the Director for performance of his functions in the Department. We in fact would prefer not to deliberate on this issue any further because the Director is supposed to perform under Section 11(3), which provides that the Director shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Institute or the President of the Institute or by the Governing Body or the Chairman of the Governing Body. There is no embargo upon the authorities concerned that the Director shall not continue to perform certain functions in relation to medical education/research and activities of his specialty. In fact, counsel appearing for the parties were ad idem that the Director should and ought to perform all these functions, of course, subject to the limitations of law and not at the cost of administrative and executive functions. He is expected to discharge his onus/responsibility on all the three fields with complete sincerity.

64. Another ancillary issue falling under this head is when the Director of the Institute keeps on occupying and blocks the post of a Professor and Head of the Department of a particular specialty, then besides it being impermissible in law, it also causes great administrative hindrances and dis-advantages, which obviously are not in the interest of the institution. Firstly, there would be frustration in the

concerned Department itself as the senior-most Professor would not be able to act as Head of the Department of that specialty, which in normal course, he ought to discharge; secondly, that by virtue of his appointment as a Director, there is consequential vacancy in the post of Professor, which should go to the appropriate person whether by way of direct selection or otherwise and it will be unjust and unfair that another qualified person is deprived of the chances of appointment in a prestigious institution like AIIMS just because the Director wishes to hold two posts together and last that , (c) the Director exercises all financial powers of planned expenditure of the Institute while the Head of the Department of a particular speciality is expected to exercise limited financial powers qua his department only. He is expected to submit proposals in relation to purchase of equipments, machineries and new methods of running his department, which may or may not be accepted by the competent authority including Institute Body, Governing Body and the Director himself. Thus, there will be no proper delegation of power contemplated in the rules and normal canon of administration, if he is permitted to occupy both the posts. Seen from another angle, the Director would obviously be not able to find so much time because of his pre-occupation and commitments to various problems of the Institute as a whole and he may not be able to give proper attention and concentration to that department and its affairs.

65. Besides all this, no provision has been brought to our notice under the Fundamental Rules or under the statutory provisions of the Institute stating that, in any circumstance, a person can hold two posts. In other words, no provision has been brought to the notice of the Court, which carves out an exception to the general rule of one man to hold one substantive post. It is a settled canon of law that things must be done as law requires them to be done. An administrative authority is expected to follow the basic procedure of rule and not cause things to be done, which are contrary to the rules. There is no justification whatsoever before the authorities to vary the rule of termination of lien on a post. They were and are expected to fill up the resultant vacancy at the earliest so that there is proper strength of the department and its various units, which would obviously be in the interest of patient care as well as the students doing research. Following procedure of law would no way place limitations upon the performance of functions by the Director of the Institute in his own field. In light of the above enunciated

principles and provisions of law, there can only be one inevitable conclusion that the Director of the Institute cannot hold directly or indirectly two posts substantively and the Institute is under obligation to terminate the lien and fill up the resultant vacancy in accordance with law. The Director would obviously be entitled to perform all three functions i.e. administrative, medical education/research and patient care without any obstruction in his own right.

66. Needless for us to reiterate the legal position under the Act and the Regulations that the Director is the executive Head of the Institute. All are expected to carry out his directions issued in accordance with law and his decision to perform certain functions relating to research and patient care can hardly be discarded by the authorities much less the Professor and other functionaries of the Institute subordinate to him, administratively or otherwise.

67. Under the Regulations, he is empowered to assign duties and functions. We fail to understand that when he can assign duties to others, why can't he assign the duties to himself, which are akin to his professional specialty. He is capable of defining the way and performance of his functions in accordance with rules. Discussion on LPA No. 2045/2006

68. The facts have already been noticed by us in great detail in the very beginning of this judgment. The questions arising in the appeal as well as the writ petition before us, to a larger extent are common and the main issue which remains to be answered is the nature and extent of prohibitory orders which could be passed by the Court in the facts and circumstances of the case. To reiterate the relevant facts in a concise manner we may notice that various allegations and counter allegations were made in the writ petition, which during the pendency of the case even attained further gravity. The difference between the President of the Institute on the one hand and the Director on the other, not only surfaced but became public, damaging the high reputation of the All India Institute of Medical Sciences. According to the President of the Institute, the Director was not performing his duties and functions in accordance with the Rules and even the patient care services at the hospital had suffered a setback. Pointing out various difficulties, it was stated that there was slackness on the part of the Director even in discharge

of his administrative duties, while according to the Director, the President was unnecessarily interfering in the day-to-day administration of the Institute and in fact, was hurting the autonomy of the Institute. While alleging the grounds of malafides and arbitrariness, the Director, after referring to certain instances even stated that the President was asserting undue influence upon the Institute Body and had already made up his mind to terminate the tenure of the Director and to achieve that object, he was prepared to follow any path, even which is contrary to law. On 5.7.2006, a meeting of the Institute Body was held and according to the Director, no agenda was circulated in accordance with Rules and the President in an arbitrary manner, by mis-stating the facts, persuaded the authorities to take the decision to dispense with the services of the Director and curtail his tenure appointment. Before any order can be served upon the Director he had filed the writ petition and an interim order dated 7.7.2006 was passed by the Court granting protection to the Director. In the order dated 7.7.2006, the Court had noticed the averments made by the parties in the writ petition and the counter affidavit and that the decision taken on 5.7.2006 which had been sent to the Government for its approval, was not in consonance with Law and granted interim protection to the Director, against termination of his tenure. The operative part of the said order has already been reproduced above.

69. We had asked the learned Counsel appearing for the parties to produce on record, the deliberations of the meeting of the Institute Body held on 5.7.2006, which were produced before the Court. The main allegation against the Director as brought in the noting placed before the Institute Body as a 'tabled agenda item' was that the action is required to be taken against the Director in terms of Rule 9 of the CCS Conduct Rules. This was for the reason that the Director had gone to the media with unwarranted words alleging interference by the Government in functioning of the Institute for the last two years. It was stated that the allegations made in the media were factually incorrect. The Government, in fact, had provided maximum grant/financial help to the Institute in the last two years. However, the Institute Body could not take any final view on the alleged violations of Rule 9, as it intended to grant a hearing to the Director. The relevant part of the note can be usefully referred at this stage:

Dr. V.K. Malhotra requested that no decision on the alleged violation of Rule 9 of Conduct Rules should be taken without hearing the person concerned i.e. Dr. Venugopal, Shri R.K. Dhawan wished that the Director, AIIMS need not have created a situation which looked like a war between President of the Institute Body and the Director. He drew attention of the members to Sections 25 and 26 of the AIIMS Act (1956) indicating that the Institute was to work in accordance with the procedures and systems laid down by the Government. Dr. Paintal requested that the decision should be taken after an independent inquiry and magnanimity should be shown. It was brought to the notice of members that Dr. Venugopal was advised to conduct himself within the confines of expected conduct becoming of a government servant, but Dr. Venugopal paid no heed and organized an open gathering in the auditorium of the Institute to criticize Government. Dr. Malhotra opined for conducting a proper enquiry against Dr. Venugopal before taking any decision. The provisions of Regulation 31 was analysed in the meeting and it was pointed out that Regulation 31 did not talk of any chargesheet or formal enquiry. It was further pointed out that Dr. Venugopal was functioning as Director after reaching the age of 62 and his appointment order mentioned his functioning 'until further orders'. This read together with Regulation 31 authorised the Institute Body to apply its mind to the exigencies of the situation that had arisen in the Institute leading to gross indiscipline and that no chargesheet etc. were needed. However the President decided that Dr. Venugoppal would be requested to participate and clarify his stand on the issues raised by the President in the agenda. Dr. Venugopal then participated in the meeting and voluntarily read out the statement which he had given in the auditorium of the Institute. He then reiterated in his defense that he had done nothing which would be construed as violation of Rule 9 of CCS Conduct Rules. Some excerpts of the speech read out by Dr. Venugopal were as reproduced below:

...The Institute is a temple of learning, research and patient care. During the last about two years there has been a systematic undermining of the Institute and the authority of its Director. I being the Director, am disturbed with the humiliation to the respect and dignity of my faculty, officers, residents, students and staff. As the head of AIIMS family, it is my bounden duty to either ensure that legitimate interests of the institute and its functionaries are maintained or to seek justice from

appropriate authorities. And I know in this country of great parliamentarians, academicians and enlightened citizens, it would be difficult for anyone to trample upon this great institute for vested interest....

Dr. Venugopal also stated that he was advised to meet the President of the Institute-the Health Minister-and resolve the issues created by his speech. However, he clarified that he did not do so, as the Minister was out of the country. The President clarified to the Members that Dr. Venugopal gave his speech on 15th June and the Minister went out of the country only on 22nd June night. Dr. Venugopal never submitted to the President anything in writing about any difficulty or interference in the matters of AIIMS. Nor Dr. Venugopal sought any meeting with him after he made his unwarranted and unfounded allegations about interference etc. for last two years in the affairs of the Institute.

Members considered the defense of Dr. Venugopal including the speech read out by him and later the President asked all members to express their views on the acceptance or otherwise of the proposed recommendations to Government of the IB recommending termination of services of Dr. Venugopal under rule 31 of the AIIMS regulation. Except for note of dissent expressed by Dr. Malhotra, Dr. Aggarwal and Dr. Paintal, all the remaining 12 members approved the agenda for termination of services of Dr. Venugopal as Director of AIIMS under Regulation 31 of AIIMS and resolved that it was of the opinion that it was in public interest to terminate the term of the office of Dr. Venugopal as Director of AIIMS and recommend to Government that the services of Dr. Venugopal should be terminated by giving him three months salaries and allowances in lieu of notice as per Regulation 31 of AIIMS.

70. As is clear from the above note, the Institute Body had taken a decision that services of Dr. Venugopal be terminated in public interest and recommended the same for approval of the Central Government in accordance with rules. Before the recommendations could be approved by the Central Government and given effect to, the court vide its order dated 7th July, 2006 had restrained the respondents from terminating the tenure appointment of the petitioner and from passing any further order. On the basis of the said impugned note dated 5th July, 2006, the

appellant (in LPA No. 1674/2006) challenged the correctness of the order before a Division Bench of this Court. During the hearing of that appeal, the authorities had decided to withdraw the said appeal with liberty to take a fresh look of the entire matter. The court specifically observed that the appellants could do so and permitted the appeal to be dismissed as withdrawn vide order dated 25th July, 2006. From the documents produced before us, it appears that vide office note dated 21st September, 2006, the President of the Institute had said that the next meeting of the Institute Body be convened on 10.10.2006 at 11 a.m. at Nirman Bhawan, New Delhi and the Director was required to issue notice of the said meeting under Regulation 4(3) of the Regulations within a period of three days and report compliance thereof. However, vide letter dated 25th September, 2006, the Director had informed the President that the said Regulation made it obligatory for the Member Secretary to send the notice of the meeting of the Institute Body along with the agenda and requested that instructions may be issued to the concerned officials for making the agenda available so as to comply with the provisions. This was not appreciated by the President of the Institute who vide his note dated 28th September, 2006 observed as under:

Your letter dated 25.9.2006 addressed to the President, AIIMS, clarifies that you are aware that the notices of the meeting of the IB/GB are sent without agenda and material, which are sent subsequently, but still you avoided to sent the notice for 10.10.2006. Now, thereforee you are again called upon to issue notice of the 138th EXTRA ORDINARY meeting of the IB for 10.10.2006 at 11 AM at Committee Room, Nirman Bhawan, New Delhi. I also call upon you that the notices be sent by 28.9.2006 and the compliance submitted to my office, latest by 29.9.2006. The agenda and material will be sent to the members later on, as per AIIMS Regulations. I make it clear that still in case you avoid/fail to issue notice, further steps would be taken by my office for holding the extra ordinary meeting of the IB on 10.10.2006.

71. After receipt of this note, the Director issued a notice for the meeting to be held on 10th October, 2006. While giving background, the following notice was sent:

Pursuant to the note of the Hon'ble President dated 21.9.2006 for a notice of meeting of the Institute Body under Regulation 4(3) of the AIIMS Regulations, the Director had informed that the said Regulation of AIIMS makes it obligatory that the Director shall send the agenda along with the notice for the meeting unless it is not possible to circulate the agenda along with the notice. Accordingly, it had been requested that the Hon'ble President may issue instructions for making available the agenda for sending it along with the notice under Regulation 4(3) of AIIMS Regulations. However, thereafter through a note dated 27.9.2006 the Hon'ble President required the Director to issue a notice for 138th Extra Ordinary meeting of the Institute Body. AIIMS Regulation 4(4) provide for calling of an Extra Ordinary meeting of the Institute Body for transacting any urgent business. For an Extra Ordinary meeting of the Institute Body for any urgent business, a 7 days notice is required. The power to call such a meeting is qualified and for there to be a valid Extra Ordinary meeting there should at least be an indication of the nature of urgent business. AIIMS Regulation 4(5) requires that agenda for the Extra Ordinary meeting shall be sent at least 5 days before the meeting. In accordance with the direction of the President, AIIMS, it is informed that the President, AIIMS is pleased to convene the meeting of the Institute Body as under:- Date: 10th October, 2006 Time: 11.00 AM Venue: 3rd Floor, Committee Room, Ministry of Healthy and Family Welfare, Nirman Bhavan, New Delhi The President and all the members of the Institute Body are requested to kindly make it convenient to attend the meeting. The agenda, when made available from the office of the President, shall be sent to the members.

72. However, according to the Union of India, the meeting scheduled for 10th October, 2006 was re-scheduled for 18th October, 2006 due to serious spreading of dengue problem in AIIMS. On 18th October, 2006, certain matters were discussed at great length and detail. The minutes of the said meeting certainly reflect that all was not well in the Institute. In order to place on record these aspects, we would like to refer to certain part of the minutes of the meeting dated 18.10.2006, which are as under:

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HFM initiating the discussions welcomed the new member Dr. Shyam Prasad who has been nominated in place of Dr. A. Rajasekharan, who has resigned from the IB in view of his pre-occupation. He placed on record the contributions of Dr. A. Rajasekharan for the Institute. He mentioned that the Government and he as a President of the Institute, are interested in progress and development of AIIMS and the Institute should be brought to the level of Harvard University or John and Hopkins University. However, he is unhappy with various recent developments in the Institute. The general feeling is that AIIMS is not functioning optimally. Thereafter, he initiated the discussion on the agenda items.

Before the agenda items could be taken up for discussion, Dr. V.K. Malhotra, Hon'ble M.P. and Member of the IB has mentioned that that the minutes of the last meeting were not circulated. The papers forwarded also do not reflect the entire deliberations of the earlier meeting. Since the meeting has been convened after 3 months, formal minutes should have been circulated. He also mentioned that out of issues that are proposed to be discussed in the meeting, some of them pertains to matters that are subjudice. According to him, such meeting is unconstitutional and illegal. He expressed that he would not like to participate in this meeting and accordingly left the meeting.

Hon'ble Mr. R.K. Dhawan, Hon'ble MP and Member of the IB stated that he do not agree with views of Dr. Malhotra. The IB is not condemning the Institute but discussing various issues which would improve the functioning of the Institute. He pointed out that the observations made by Dr. Malhotra are not based on facts'.

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Dr. Deepak Paintal, Vice Chancellor of Delhi University and Member of the IB has also voiced his concern against the discriminatory action against SC/ST students. He maintained that any such action in any institution can not be tolerated. In regard to the functioning of AIIMS and its strengthening, he observed that since there is no referral system in AIIMS, the doctors are working under great pressure. The Primary Health Care system is almost defunct. The doctors are not attending duty at these centers. He suggested that a Committee of doctors should be set up to suggest the ways of improving the medical system and if AIIMS works as a

referral hospital, it would function better.

For the first time in the health sector, a biggest programme i.e. National Rural Health Mission has been launched for providing health care facilities to the rural population. The focus under NRHM is that such services at PHCs, Sub-Centres will be provided with the active assistance of para- medicals. He is also bringing in necessary amendments to the Regulations/Acts etc. for making rural posting of the doctors as mandatory requirement. He intend to include one year rural posting after completion of the mandatory internship, before the doctors are given permanent registration. Dr. Dhawan indicated that along with such posting it should also be ensured that adequate facilities are made available to the doctors as the young doctors, though wants to work in rural areas, for want of facilities revert to urban setting. HFM assured him that these issues would be kept in view.

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Dr. Surendra stated that there has been a gross administrative failure in AIIMS if a student of the institute cannot be treated properly resulting in his death. From the documents he finds that the senior faculties were not available when required for providing treatment, bags are not available for collecting blood when the students offered to donate blood to save the boy. There is gross negligence on the part of the AIIMS administration in providing treatment to its own students. He pointed out that off late, there have been frequent strike by students/doctors in AIIMS. Normally, Institutions have contingency plans when resident doctors or students go on strike, and adequate security is also provided to those who are working. However, in AIIMS despite frequent strikes, off late, there appears to be no well laid down contingent plan for ensuring continued patient care services to the people. It was pointed out that some of the Departments were locked with new locks with the result those who are willing to provide services were locked out. The senior faculty was threatening the residents of dire consequences of failing them in their examination if they join duty. It was also pointed out that though only authorized persons could interact with the media, twisted comments are given to the media by number of unauthorized persons in AIIMS.

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Secretary (Hand FW) stated that doctors unconnected with the policy and administration are interacting with the media. They are also expressing their personal views to the media even on issue of dengue where we have to organize ourselves to cope up with the situation. The Director is generally not available for comments or discussions. He further stated that there are number of institutions under the Ministry of Health and F.W. which receive much less grant but are working with close association and there has never been any issue of interference in their functioning. AIIMS is heavily supported by the Ministry. The perusal of last 10 years budgetary allocation would clearly indicate the extent of support that has been rendered to the Institute. He further stated that one has to rise above the personal egos in promotion of an Institution of his nature.

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Dr. Kartar Singh pointed out that considering the huge task the Director has to perform in an Institution of the size of AIIMS, he should spend around 80% of his time on administrative issues leaving the remaining period on his profession. It was decided that the Director may also react to the suggestion made by the Member, while submitting his reply to various issues contained in the agenda item and number of issues, including the report of AS and FA, raised during the meeting within 15 days.

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HFM also pointed out that after the decision of the last IB meeting, the matter was dragged to the Court of Law due to which he had to take number of decisions as President of AIIMS in defending the case. He sought ratification of the decisions taken by him. The IB ratified his decisions and also authorized him to take such decisions in future on behalf of IB in defending various court cases.

Mr. Dhawan has reiterated that the Director may be asked to furnish his replies on various issues raised in the agenda, the issues raised by members in the meeting, including the report of the AS and FA, within 15 days. Accordingly, the IB decided to seek the reply from Dr. Venugopal, Director, AIIMS in writing on various issues raised in the agenda, in the meeting by members and the report of AS and FA on

financial irregularities in CN/CT centre in AIIMS. It was also decided that the reply so furnished by the Director may be sent to the members in advance, before convening the next meeting of the IB to reconsider the earlier decisions of IB.

In this regard, Dr. Venugopal has asked for the copy of the Valiathan Committee report. After discussion, it was decided that the Ministry in the first instance should examine the report and take decision on various recommendations. Thereafter the report along with the Action Taken Report may be made available to the IB and Ors. The meeting ended with a Vote of Thanks to the Chair.

73. The above deliberations, correspondence exchanged between the President and the Director and the comments of the Members of the Institute Body, show that there was hardly any working harmony between the members and everybody had some grievance and no collective decisive solutions were suggested in the meeting.

74. Before the meeting of 18th October, 2006, the Director of the Institute filed an application being CM No. 12471/2006 in WP No. 10687/2006. In this application while emphasizing on compliance to the provisions of Regulation 4 dealing with the convening of ordinary or extra-ordinary meeting of the Institute Body and while relying upon the orders dated 7.7.2006 and 25.7.2006 passed by the court, the Director made the following prayers:

In view of the facts and submissions made hereinabove the applicant petitioner humbly prays that this Hon'ble Court may be pleased to pass order:

(a)Allowing the present application directing the stay of the notice dated 29.9.2006 and

(b)Further directing that the issue regarding continuation of the applicant petitioner as Director of the Institute Body for the permanent term of 5 years shall not be taken up in that meeting scheduled for 10.10.2006 or in any subsequent meeting of the Institute Body without the leave of this Hon'ble Court.

(c)Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

75. This application was heard by the learned Single Judge and vide order dated 18th October, 2006, the application was allowed restraining the respondents not to implement any adverse decision or resolution, if passed, against the petitioner till further orders regarding his tenure appointment and his functioning as Director of the All India Institute of Medical Sciences and any such resolution and decision will be subject to the decision in the writ petition. The correctness of this order has been questioned by filing two LPAs-one on behalf of the Institute, which was filed by Mr. P.K. Hota, Health Secretary (Govt. of India) and the other on behalf of the Union of India, which was filed by Ms. Aastha Khatwani, Director, Ministry of Health, Govt. of India. As far as the order of the court passed in CM 8169/2006 in WP 10687/2006 dated 7.7.2006 is concerned, that has attained finality inasmuch as the Division Bench of this Court vide its order dated 25th July, 2006 in LPA 1674/2006 declined to interfere and, in fact, while granting liberty to the appellants in that appeal to have a fresh look of the entire matter, permitted the appeal to be withdrawn. The appellants, thus, obviously cannot take any action on the basis of the decision dated 5th July, 2006. But, at the same time, they are entitled to have a fresh look upon the entire matter. The order dated 7th July, 2006, thus, cannot be a matter of controversy in the present appeal and must be permitted to operate in its terms. But the pertinent question that requires consideration by the court in the present appeal is whether the order dated 7th July, 2006 would operate in perpetuity and would debar the appellants from taking any action against the Director for any omissions or commissions even other than what has been stated in the decision of 5th July, 2006. In that decision, the Institute Body was primarily concerned with the Director violating Rule 9 of the CCS Conduct Rules for making certain statements against the Government, as a result whereof, certain exigency of situation had arisen in the Institute leading to gross indiscipline and for which the action was required to be taken in terms of Regulation 31. The Director is an employee of the Institute and his tenure of appointment is regulated by the Regulations and such instructions, as may be issued by the competent authority. Wherever there is no specific provision covering the conditions of service of employees of the Institute, the Central Government Rules are operative. His appointment is to be made by the Institute and under Section 11(5) of the Act, he shall be governed by such conditions of service in respect of leave, pension,

provident fund and other matters as may be prescribed by the Regulations in this behalf. With the aid of Section 29, Regulations were made and under Regulation 24, qualifications etc. relating to the Director's appointment are to be prescribed by the competent authority. The term appointment of the Director in terms of Regulation 31, could be curtailed in public interest. All these provisions sufficiently indicate that the Director of the Institute is under the supervisory and disciplinary control of the Institute Body and in case of punishment, the same would be with the approval of the Government. In any case, it is an accepted norm of service jurisprudence that an employee is always subject to such action by the employer, as is permissible under the Rules and Regulations. It will be very difficult for any court to issue an injunction in perpetuity that a tenure appointment cannot be curtailed under any circumstances. No employee irrespective of his eminence and stature, can claim immunity from disciplinary action, if the person is found erring in regard to serious matters, which obviously has to be for justifiable reasons and with due notice to the person concerned. It is equally true that every trivial issue can be made a ground for such severe action leading to termination of tenure service. Any omissions or commissions which might have come to the notice of the authority prior or even subsequent to 5th July, 2006, can always be considered by the competent authority for seeking Explanationn of the Director and to take such action as may be permissible in law. The order of 7th July, 2006 eclipse the application of disciplinary proceedings against the Director in perpetuity. The Rules, Regulations and law have to be permitted to take their course and judicial intervention in anticipation of an adverse action, per se, may not be sufficient ground for grant of such interim order.

76. During the course of hearing, the appellants have brought to the notice of the court and referred to 39 questionnaires containing the allegations in relation to maintenance of hygiene, sanitation in the premises to prevent breeding of mosquitoes, non-completion of work of covering the drain, expenditure being Rs. 22 crores, total administrative collapse arising out of indecisiveness and lack of interest, occupying multiple positions in contravention to established rules, 30 faculty members having left the Institute and steps taken to prevent exodus of faculty from the Institution causing deterioration, mis-user of institutional membership of ICI, financial irregularities, not refunding money to the patients

resulting in accumulation of an amount of Rs. 40 crores in an unauthorized account and number of other allegations. To all these allegations, the Director had submitted voluminous replies not only meeting the allegations but also giving complete details of the practice and procedure of the Institute. According to him, he was, in no way, involved in any financial irregularities and had never used ICI membership for his personal benefits because as and when the lecturers or professors came as guests of the Institute, they stayed there and the bills were raised and paid by the Institute. He had also mentioned that large number of works which were pending for years and had not been completed, were completed during his tenure including covering the drain and providing large additional space to the faculty. He had also stated in his answers that during his tenure, number of super-specialty centres were added and there was definite progress in the Institute in all fields and in all respects. Besides these justifications, the Director also raised a definite plea that the authorities were acting arbitrarily and malafidely, interfering with the autonomy of the Institute and were wanting to terminate his services for one reason or the other. Where according to the appellants, there are serious allegations, there, according to the Director, Explanationns rendered by him are clear beyond ambiguity and there is no cause before the authorities concerned to proceed any further in accordance with law. The court is obviously not concerned with the merit or otherwise of these allegations and replies. In a matter relating to conditions of service, normally, the court will examine the content of the allegations and/or their correctness at the very initial stages of the proceedings. No person is immune to the process of law and the law must take its normal course, unless it was specifically provided otherwise. Under the service jurisprudence and unlike criminal jurisprudence, the court is not entitled to examine the content of the charge or article of allegations at this stage of the proceedings. The competent authority has to apply its mind and consider the matter objectively. If in the opinion of the authority, the matter requires further examination and proposes to take action in accordance with law against the delinquent officer, the judicial intervention at that stage, can hardly be permissible unless the action was patently so baseless, malafide or arbitrary that no common person with reasonable prudence would come to that conclusion. We are of the considered view that the present case does not fall in that class of cases. The

dictum of the Supreme Court in the case of Dr. L.P. Agarwal (supra), is that the tenure appointment could be put to an end or curtailed prior to its expiration but for justifiable reasons and with notice to the delinquent.

77. In the case of State of Punjab and Ors. v. Ajit Singh : (1997)11SCC368 , the Supreme Court clearly stated the principle that in a departmental inquiry, examination of the merits of the articles of charge at the initial stage, in exercise of judicial review, was not proper and the court, in that case, held as under:

High Court erred in setting aside the charge-sheet that was served on the respondent in the disciplinary proceedings. In doing so the High Court has gone into the merits of the allegations on which the charge-sheet was based even though the charges had yet to be proved by evidence to be adduced in the disciplinary proceedings. The High Court, accepting the Explanationn offered by the respondent has proceeded on the basis that there was no merit in the charges leveled against the respondent. This approach of the High Court cannot be upheld. The allegations are based on documents which would have been produced as evidence to prove the charges in the disciplinary proceedings. Till such evidence was produced it could not be said that the charges contained in the charge-sheet were without any basis whatsoever.

78. In the case of Union of India and Ors. v. Upendra Singh 1994 (1) SCR 1970, the Supreme Court while holding that a disciplinary inquiry can be held even with respect to conduct of an Officer in discharge of his judicial/quasi- judicial duties, further indicated that examination of charges on merits was not proper and held that the court can interfere only if on the charges framed, no misconduct or other irregularity as alleged, can be said to have been made out or the charges are contrary to law. In the present case, the articles of allegation have been made against the Director to which he had already submitted the replies. It can hardly be contended that out of 39 allegations, no article of allegation makes out any charge or would not require examination by the competent authority. For the court to examine the merit or demerit of these articles at this stage, may not be quite permissible in law. The competent authority, in fact, as per norms should have looked into the replies filed by the Director and taken a decision in accordance

with law. On behalf of the respondents, it is stated that Regulation 31 empowers them to prematurely terminate the tenure of the Director in public interest. In support of the contention, they have relied upon the judgment of the Supreme Court in the cases of Dr. L.P. Agarwal(supra) and Dr. N.V. Putta Bhatta v. The State of Mysore and Anr. : (1972)IILLJ191SC to further argue that no notice need to be given to the Director. It is true that in normal circumstances, a Government employee who is to be prematurely or compulsorily retired, upon attaining the prescribed age under the Rules, is not entitled to notice. But the present case is beyond the scope of that provision primarily for the reason that the body of the Institute has decided to take action and curtail the term of the Director as a disciplinary measure and is punitive in its nature and consequences. Thus, the dictum of the Supreme Court that such curtailment of tenure appointment should be for justifiable reasons and with notice to the Director, is applicable with greater force.

79. The learned Counsel appearing for the Director while relying upon the case of Comptroller and Auditor-General of India, Gian Prakash, New Delhi and Anr. v. K.S. Jagannathan and Anr. 1986 SCC (L & S) 345 contended that the writ of mandamus can be issued by the court directing the Government or the public authority to exercise discretion in a particular manner and to mould the relief to meet the ends of justice. Reliance was also placed upon the case of Badrinath v. Government of Tamil Nadu and Ors. : AIR 2000 SC3243 .

80. The provisions and percepts controlling the conditions of service of the employees of the Institute including the Director, do provide sufficient leverage to the competent authority to proceed against the person but in accordance with law. The administrative action has to be for justifiable reasons and reasons should be expressed on record. The Director of the Institute, who is the Chief Executive Officer and, in fact, is all in all of the Institute in its hierarchy, of course, is expected to work under the two bodies of the Institute, Regulations and such terms and conditions as may be imposed by the competent authority. Lack of proper application of mind or reasoning may even vitiate such an action because providing of reasoning in administrative action may not be the essence in all such actions but in the present kind. In order to attach credence or fairness and to avoid

apparent arbitrariness, records must indicate application of mind on some basis alike a criteria, if not a bar absolute criteria for determining the choice of the the authority. (Refer 'Dr. Sudha Suri v. UOI and Ors. (supra) and Union of India v. E.G. Nambudiri 1991 (2) SLR 675.

81. While declining to examine the merits of the articles of charge at this stage of the proceedings in the facts and circumstances of the present case, we do hope that the authorities would act fairly, free of arbitrariness and for justifiable reasons. In the impugned judgment dated 18.10.2006, the learned Single Judge has issued prohibitory orders restraining the respondents from implementing any adverse decision or resolution against the petitioner, if passed, not only regarding his tenure appointment but also his functioning as Director of the Institute. We may notice that the courts have recognized the Institute Body's independence to consider and transact the matters relating to the affairs of the Institute. The matters relating to appointment and curtailment of the term of Director would, thereforee, squarely fall within the jurisdiction of the highest body of the Institute which has to act in accordance with law. An order of absolute restraint coupled with the direction that there should be pre-judicial review of the proposed action, can hardly be passed in such cases. Thus, we are unable to contribute to the view taken in the impugned order dated 18th October, 2006. We have already held that the department should be granted permission to exercise its discretion in accordance with law and without unnecessary impediments. The essence of service discipline is that an employer should be permitted to exercise permissible control over his employee and in the interest of the Institute. In the impugned judgment, it was noticed that the agenda for the meeting of 18th October, 2006 was not circulated and was not received by the members of the Institute and, thus, there was violation of Regulation 4(3) of the Regulations. This contention had weighed with the court. This may not be factually correct inasmuch as the agenda meant for the meeting of the Institute Body on 18th October, 2006 was received by the members and particularly the Director of the Institute for which he had executed a receipt. In fact, during the course of arguments, the learned Counsel appearing for all the parties had commonly conceded that the agenda was received prior to the meeting of 18th October, 2006 by its members. Another fact which we must notice is that the relief claimed in CM No. 12471/2006 is beyond

the purview and scope of the writ petition. In the writ petition, the prayer was limited to the decision taken on 5th July, 2006, for quashing the notifications dated 7.2.2005 and against the nomination of any Minister on the Institute Body, while the prayer in the application was with regard to the notice issued by the Institute for holding an extra-ordinary general meeting on 29th September, 2006. We may also notice that the writ petition was never amended. Keeping in view the subsequent events and filing of the application, the matter was heard and the learned court passed the order as afore-noticed. As the parties had participated in the proceedings without any such protest, this objection can hardly be of much consequences and we are only noticing it as a fact in the present judgment. The concept of pre-judicial review to implementation of administrative orders can hardly be applied in such cases. Everybody, irrespective of his stature, is to be governed by the process of rule and law. The competent authority normally should be entitled to look into the conduct of a person and come to a fair decision on justifiable grounds. It is not a case where permitting the authorities to pass an order in accordance with rules, would frustrate the writ petition itself or place the Director in a position of irreparable or irretrievable loss. The court can always mould the relief keeping in view the peculiar facts and circumstances of the case.

82. Regulation 4 relates to the meetings of the Institute. The Institute can call an ordinary meeting as well as an extra-ordinary meeting. An extra- ordinary meeting of the Institute Body can be called by the President at any time for transaction of urgent business of the Institute as required under Regulation 4(4) of the Regulations. To comply with the conditions postulated under Regulation 4(5), an agenda is to be sent to the members under certificate of posting at least five days before the meeting. The provisions of Regulation 4(3) relate to conduct of an ordinary meeting. Once the agenda was available and was duly received by the members of the Body of the Institute including the Director, the objection raised in the writ petition in regard to non-receipt of the agenda items, would lose its significance and, per se, cannot be a sufficient ground to invalidate the entire proceeding. Even where, there is violation of regulatory provisions, there, it should be coupled with the element of prejudice to affect the proceedings. There is nothing on record to show that prejudice was caused to the interest of the Institute or any individual. Subsequent thereto, the Director also submitted a detailed reply

to the questions. In the meeting itself, it was decided to adhere to the principles of natural justice and provide opportunity to the Director to meet the allegations. Merely because an order of injunction was issued by the court on 7th July, 2006, cannot be treated as a ground, which would satisfy the ingredients of prima facie case and balance of convenience in favor of the Director for all times to come. The court would have to examine the cumulative effect of the articles which have been pointed out by the appellants against the Director. Surely, the court will have to ensure that the respondents do not infringe the order of the court dated 7th July, 2006 and do not use those contents in violation to the spirit of the order. The note of 5th July, 2006 clearly shows the triviality of the articles while distinct there from, 39 articles make different allegations against the Director. The Explanationn rendered by the Director, as already noticed by us, is self-explanatory and even supported by documents. Thus, it requires an objective consideration by the competent authority under the provisions of the Act and the Regulations. The scope of judicial intervention in such matters is a very limited one and cannot be enlarged to the extent that the court would become an appellate authority in relation to the subject matter and that too, at such initial stages.

83. In view of this discussion, we do modify the judgment to that extent and permit the respondents to continue with the proceedings against the Director in accordance with law and subject to the directions in this judgment.

LOCUS STANDI, LATCHES AND MAINTAINABILITY

84. The submission on behalf of the Director in the writ petition is that the petitioners have no interest much less public interest, which is capable of invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The petitioners do not have the locus standi directly or indirectly to question the appointment of the Director and his continuation in the office. The writ of `quo warranto' by a person, who does not have a direct interest in the post in question, cannot bring a public interest litigation. The lack of sufficient interest would render the petition void of public interest. There is no violation of rules or statutory provisions in the appointment of Director, which has been made by the competent authority with the approval of Cabinet Appointment Committee and as such, the

writ petition, much less a public interest litigation, would not be maintainable. No public interest is sought to be achieved and the litigation is in fact a proxy litigation filed and conducted at the instance of some interested person.

85. The plea of delay is also raised on the ground that appointment of the Director was made on 3.7.2003 and this fact was known to all concerned including the petitioners. The appointment of the director had received substantial media reporting and the petitioners would be deemed to have knowledge about the appointment of the Director, which they did not question in any manner whatsoever till filing of the present writ petition in the year 2006. Thus, the petition suffers from the defect of delay and latches. These arguments are raised by the learned Counsel appearing for the concerned parties, while relying upon the judgment of this Court as well as the judgments of the Supreme Court in the cases of Health India (Registered) v. Union of India and Ors 102(2003) DLT 19, Ashok Kumar Pandey v. The State of West Bengal and Ors. : AIR 2004 SC280 , Dr. B. Singh v. Union of India and Ors. : AIR 2004 SC1923 , Dattaraj Nathuji Thaware v. State of Maharashtra and Ors. : AIR 2005 SC540 and Gurpal Singh v. State of Punjab and Ors. : AIR 2005 SC2755 . On the other hand, the learned Counsel appearing for the petitioner contended that the writ petition does not suffer from the defect of delay and latches inasmuch as it would be a recurring cause of action. Appointment of the Director even if made in accordance with law, was valid only up to his attaining the age of 62 years and in fact extension beyond this period has caused prejudice to the public interest. According to the petitioners, they are the body involved in ensuring maintenance of Rule of Law raising issues relating to general public interest. Appointment to the post of Director of AIIMS not only effects the administration of the Institute but also can adversely effect the interest of the public at large. Since there is specific violation of the Rules and the age of superannuation contemplated under Regulation 30 (3), which is applicable to the post of Director, the respondents had acted contrary to the statutory provisions. The writ of quo warranto can be instituted by the petitioners because they have substantial interest akin to the larger public interest and once interest of general public and particularly health care of the residents of Delhi is involved, the petition cannot be dismissed on this ground. It is also argued that the judgment of the Supreme Court in the cases of Dr. B. Singh (supra) and Gurpal Singh (supra)

are based upon larger Bench judgment of that Court in the case of Dr. Duryodhan Sahu and Ors. v. Jitender Kumar Mishra and Ors. JT 1998 (5) SC 675 where the Court had enunciated the principles, that individual's right to have locus standi to invoke extraordinary jurisdiction under Article 226 can be relaxed or modified in respect of writ of quo warranto and the writ of quo warranto can be issued by the Court and can undeniably be sought by any person and not necessarily by the person aggrieved. Reliance in this regard is placed by the petitioner upon different judgments of the Supreme Court in the cases of Kashinath G. Jalmi (Dr.) v. The Speaker : [1993]2SCR820 , Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed : [1976]3SCR58 and Centre for Public Interest Litigation v. Union of India : AIR 2005 SC4413 .

86. It is true that a petition involving the question of public interest must be directly relatable to actual interest of the public at large, which has to be a substantial interest. It is not the title of the petition, which would satisfy the ingredients of public interest litigation but it is the substance of the petition, which would be determinative factor. In the case of Dattaraj Nathuji Thaware (supra), the Court did enunciate the principles while following Dr. Duryodhan Sahu's case (supra) that PILs in service matters would be inadmissible and the High Court should be inclined to dismiss such matters. But at the same time in those very judgments, the courts had stated the principles governing such jurisdiction. Redressal of genuine public wrong in contra- distinction to private redressal, without any attempt of publicity orientation and the prayer for grant of resolution of public dispute to serve the public interest, are the factors which the court may consider. Principle of admissibility of petition in service matters relating to quo warranto is not an absolute bar but is one, which must apply depending upon the facts and circumstances of each case. The present petition do raise question of public importance or significance and even in relation to interpretation of law. The post of Director of the Institute is a post of public significance and adherence to rules in such appointments would be necessary. From the preceding paragraphs of the judgment, it would be clear that number of questions arise in the present cases for determination before the Court.

87. We would not like to dwell upon this question in any greater detail or record any specific findings as the question is more academic than of any substantial consequence in the present cases. It is primarily for the reason that the order dated 18th October, 2006 passed in WP No. 10687/2006 has been impugned before us in LPA Nos. 2045/2006 and 2046/2006 where all the questions would arise directly or indirectly for consideration of the Court. As such the Court would be called upon to deal with all those questions on merits in the Latters Patent Appeals themselves. Of course, certain averments and the legal submissions made in that writ petition may also be relevant to substantially determine all the issues involved in the Latters Patent appeals as well as the questions involved in the present writ petition itself. In view of the fact that we have already discussed major issues which arise in the present cases and the time taken in hearing of the cases, we deem it fit and in the interest of justice to pronounce the judgment on merits of the case, rather than dismissing the writ petition on the ground of maintainability or locus standi, even if for the sake of arguments we were to accept the objections raised on behalf of some of the parties taken with regard to maintainability of the petition.

GENERAL DISCUSSION :-

88. The Rule of law is the essence of any action including the administrative action. Good governance essentially includes governance by rule of law. Wherever the action or order of the authority is likely to be prejudicial to the interest of an individual or Body, compliance to the basic rule of law is mandatory. The discretion vested in the authorities when exercised arbitrarily, discriminately or in patent violation to the Rules, does not invite judicial catechism as the Courts are very reluctant to interfere in administrative decisions particularly relating to policy and governance. At the same time, the Court also does not allow its process to be abused for an oblique consideration and motive. Being satisfied with the substance and content of the petition and the relief prayed for, the Courts would be inclined to interfere even in the administrative actions in the larger interest of the public. The power emerges from the prescribed jurisdiction under law, which is always introduced on the Statute Book for a public good on account of necessity for dispensing justice. This principle is not restricted only to judicial process but

also in administrative or quasi-judicial actions. The legislative scheme of the All India Institute of Medical Sciences clearly demonstrate that the Legislature in its wisdom intended to secure autonomous management of the Institute and not to be a Department of the Government of India. For attainment of the object, to achieve excellence and high standards of health, medical specialties and treatment for the public at large, could be achieved by least interference from the outside agencies including the concerned Ministry. That does not in any way indicate that the Government of India is alien to the Body of the Institute. Its entire finances, policy matters and even the disciplinary proceedings against a group of employees can be initiated or taken only after approval of the Central Government. Within those limitations of law, certainly the body of the Institute is the final authority in regard to the management and affairs of the Institute and its freedom to achieve its objects should remain uninterfered with by external bodies including the Ministry. The Supreme Court in the case of B. Shanakaranand (supra) held as under:

5. It is true, as contended by Shri G. Ramaswamy, learned Senior Counsel, that the word 'person' has to be understood in the context in which the language was couched and the person mentioned in clause (e) would be other than those scientists either medical or non-medical. It is also true, as contended by Shri D.D. Thakur, learned Senior Counsel, that when Section 6 contemplates ex officio members, their term is coterminus with their cessation of office. Section 4(e) does not seemingly intend to refer to nomination associated with the office, but to the individual members other than non-medical scientists representing Indian Science Congress Association. But on a harmonious and conjoint interpretation, we are of the opinion that the Government, while enacting the Act, appears to have intended to preserve the autonomy of the AIIMS, and also to have a say in its management. Under those circumstances, the Government appears to have nominated the Minister of Health and Family Welfare and the Secretary of Department of Health as Chairman and member respectively so that in the ultimate management of the supreme body constituted under the Act, the Government also will protect the interests of the institution. Otherwise, it would appear that the Government does not seem to have any say or control in the management of AIIMS. Considered from this pragmatic background and from the point of view of the importance of the institution and public interest, we are of the considered view that the Central

Government is justified to nominate four persons, other than scientists and the fifth being the non-medical scientist representing the Indian Science Congress Association. However four members may be integrally connected with the management and associated also with the working of the AIIMS. If this interpretation is given, we are of the view that it would subserve the greater public interest in the proper, effective, efficient and orderly management of AIIMS and the purpose of establishing the institution to maintain high standards, discipline and order in its management would be best subserved. However, there should be no undue interference by the Government of India in the autonomous management of the AIIMS and it should not be treated as any other Department of the Government, since the object of the Act is to improve excellence and high standards in all faculties of medial specialities and of treatment.

6. Accordingly, we hold that the appellant was nominated by virtue of his office as the Minister of Health and Family Welfare and he would be entitled to continue in that office as long as he held that office. Thereafter, he ceases to be a member of the supreme body and consequently to be the Chairman of the body as nominated by the Government in the same order dated 9-3-1994. In his place the incumbent succeeding to the office of Minister of Health and Family Welfare would be entitled to be nominated by the Central Government and he would hold the office for the residue period. This will be consistent with sub- Section (2) of Section 6 also.

89. The autonomy of the Institute is necessary for the purposes of attainment of objects specified under the Act. It will hardly be desirable that the Government of India should interfere in the day-to-day working of the hospital and methods and methodology adopted by the experts for improving the medical education and patient care standards. The domain of professional activity must be free of administrative intrusion but it is always desirable that the policies and larger question affecting the image of the Institute should be taken by the collective wisdom of the Institute Body. The Legislature has commanded that the Institute Body has to be supreme in relation to its affairs and management.

90. Diverse reliefs have been claimed by the parties in these proceedings. One prays for the ouster of the Director, his appointment being in violation of the

provisions of law, while the Director prays for injunctive orders preventing the authorities from curtailing his term or interfering with his work. Still another relief prayed is that the Minister cannot be nominated to the Institute Body and the action of the President against the Director is malafide and arbitrary. We have examined these main questions and the ancillary legal issues arising there from in some detail above. As far as the question of grant of relief is concerned, we have no hesitation in expressing the view that the Court while exercising its jurisdiction in a writ of certiorari or mandamus can also issue such directions as may be necessary in the interest of justice. To limit the jurisdiction of the court under Article 226 of the Constitution of India would be unfair and unjust, keeping in view the settled can none of law regulating the jurisdiction of the court under Article 226 of the Constitution of India. In the case of Comptroller and Auditor General of India v. K.S. Jagannathan 1986 SCC (L & S) 345, the Supreme Court clearly stated the principle that if the circumstances of the case justify the High Court can issue directions in a Writ of Mandamus and made the following observations:

Almost a hundred and thirty years ago, Martin B., in Mayor of Rochester v. Regina 1858 EB & E 1024 said:

But, were there no authority upon the subject, we should be prepared upon principle to affirm the judgment of the Court of Queen's Bench. That court has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a statute : Comyn's Digest, Mandamus (A).... Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable.

The principle enunciated in the above case was approved and followed in King v. Revising Barrister for the Borough of Hanley (1912) 3 KB 518. In Hochtief Gammon case : (1975)IILLJ418SC this Court pointed out (at p. 675 of Reports : SCC p. 656) that the powers of the courts in relation to the orders of the

government or an officer of the government who has been conferred any power under any statute, which apparently confer on them absolute discretionary powers, are not confined to cases where such power is exercised or refused to be exercised on irrelevant considerations or on erroneous ground or mala fide, and in such a case a party would be entitled to move the High Court for a writ of mandamus. In Padfield v. Minister of Agriculture, Fisheries and Food 1968 AC 997 the House of Lords held that where Parliament had conferred a discretion on the Minister of Agriculture, Fisheries and Food, to appoint a committee of investigation so that it could be used to promote the policy and objects of the Agricultural Marketing Act, 1958, which were to be determined by the construction of the Act which was a matter of law for the court and though there might be reasons which would justify the Minister in refusing to refer a complaint to a committee of investigation, the Minister's discretion was not unlimited and if it appeared that the effect of his refusal to appoint a committee of investigation was to frustrate the policy of the Act, the court was entitled to interfere by an order of mandamus. In Halsbury's Laws of England, 4th Edn., Vol. I, para 89, it is stated that the purpose of an order of mandamus is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy yet that mode of redress is less convenient, beneficial and effectual.

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and

lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

91. Similar view was taken by the Supreme Court in the case of Badrinath v. Government of Tamil Nadu and Ors. : AIR 2000 SC3243 where explaining the language of the Constitution of India said 'the jurisdiction is to enable the courts to reach justice wherever found necessary and to mould the reliefs to meet the peculiar and complicated requirements of the country.' Moulding and grant of relief is a concept relatable to the principle of necessity founded on the facts and circumstances of a given case. To prescribe a strait-jacket formula applicably universally, is neither possible nor permissible. Thus, in light of these principles we have to look into the peculiar facts and circumstances of the present case and the relief which could be granted to either party in light of the enunciated principles of law.

92. One of the basic issues on which the parties addressed the Court with some vehemence was the contradictory affidavits that were being filed on behalf of the Institute and even the Government of India. Appointment to the post of Director has been subject matter of controversy, now over a considerable span of time. Right from the case of Dr. L.P. Agrawal, Dr. Kacker, Dr. Dave and now Dr. P. Venugopal, the courts had to examine different aspects of the matter to settle the controversies raised in regard to the various facets of the Institute's functioning. The stand taken by the Government in the writ petition before the learned Single Judge as well as in the present Letters Patent Appeals and the writ petition are not quite in line with each other. Furthermore, the affidavit filed by the Government of India before the Punjab and Haryana High Court is totally at variance. This does not speak well of the process adopted by the authorities for defending its cases. The Government of India should take policy decisions in regard to the post of Director and adopt the said policy uniformally and not vary its stand depending upon the person concerned. It is expected of the Minister and the Ministry to adopt a uniform practice and not follow the path of convenience. 'Show me the face and I

will show you the Rule' is a very weak criteria of administrative governance. Besides its adverse effects, it also violates the Constitutional protection and equality. We direct the Government of India and the Institute Body to formulate a policy covering the various facets and conditions of service of its employees including the Director of the Institute in accordance with law and to uniformly apply such policy in the times to come. This would not only help the Institute and the Government in reducing the litigation, but would also increase the prestige of the Institution. The conflict between the President and the Director of the Institute is more than visible from the records of the cases listed before the Court. In fact, it has become a matter of common knowledge that the working of the Institute is adversely affected by open conflicts between the two authorities in regard to the affairs of the Institute. There is greater need to regulate the affairs of the Institute Body and the Institute with greater care and sincerity. The trivial issues like 'non-circulation of agenda of a meeting' in accordance with the provisions of Regulation 4, became a serious bone of contention between the two high dignitaries of the Institute and ultimately developed into a massive display of strength, by speaking and writing adverse against each other and in this process the obvious victim was the 'Institute'. We are of the considered view that this unpleasant situation could have been easily avoided by proper and harmonious functioning of these authorities. It is truly said 'Do your little bit of good wherever you are. It is those little bits of good put together that overwhelm the world.' Wherever the expression 'good' is substituted intentionally or otherwise to 'bad', the results are bound to be disastrous. 'Do not do to others what you would not like yourself. If you are able to follow it there will be no resentment against you in the family, Institute or even the State.' Instead of aggravating their differences they could have resolved and worked with greater confidence and objectivity, keeping the interest of the Institute in mind. If they failed to resolve and the matters in relation to the administration of the Institute were getting from 'good' to 'bad' then at least the Institute Body, which is a body of most eminent persons from different fields of life, including the doctors, administrators and politicians ought to have taken charge of things and not permitted the individuals to anyway diminish the standards of activities of the Institute. In the present case, we have also no hesitation in noting that the 'Institute Body' itself miserably failed to take stock of things. On the contrary, instead of

resolving the disputes, it aggravated the differences. The collective wisdom of the Institute Body lacked in all respects resulting in damage to the reputation of the Institute. The higher is the Body, the greater is the responsibility to carry, higher is the responsibility towards the proper administration and governance of rule of law. Self-esteem is not everything. Howsoever high calibered be the President, whatever be the professional eminence of the Director, their self-esteem be of any height, but it must essentially fall short of the prestige of the Institution. Any dictate of dictum of any authority, whatever be its status, must fall in comity to the interest of the Institution and public at large. All have a collective and individual duty to ensure that the progress of the Institution in medical education-research, patient care and even administration does not suffer a set- back. We do hope that the authorities concerned would take note of our observations and take effective and remedial measures to rectify the dents caused to the image of the Institution. People come and go, but the Institution stays. Thus, the prestige of the Institution is of essence in any progressive Society. In the action of the State or the Government or the Institute, fairness should be apparent and justice must be done to all. Fiat just rut justitia (Let law prevail, though justice fail). The distinction between a public and private right should be discernly understood by the competent authorities. Public rights ought not to be promiscuously determined in analogy to a private right. They operate in different and distinct fields and are governed by different precepts. The powers and discretion vested in a person holding any status in the Institute Body should be exercised for achievement of a public interest and goal of excellence for which the Institute exists. Whatever be the differences, the public interest must not suffer. If it so happens, then all are to be blamed and without exceptions. Legislature in its wisdom created a three-tier administrative hierarchy in the Institute with the object that if one fails to perform the other would make good the deficiency and in any case nothing would escape the collective wisdom and attention of the Institute Body. This laudable principle was not achieved by the concerned in the present case. We have no hesitation in coming to the conclusion that the relief is required to be moulded to achieve the ends of justice, keeping in view the peculiar facts and circumstances of the case.

CONCLUSION

1. The Director is an employee of the Institute and is appointed by the Institute Body.

2. Appointment to the post of Director is a 'tenure appointment' and is incapable of being curtailed except for justifiable reasons and with notice to the Director, that too in accordance with law. The provisions of Regulation 30 of the All India Institute of Medical Sciences do not take in its ambit and scope the post of 'Director'. In the present case, the Government in exercise of its powers had appointed Dr. P. Venugopal as Director for a period of 5 years from the date he assumes the charge of the post and until further orders.

3. We have considered it appropriate not to examine the merits or otherwise of the questionnaire of the Articles of Charge and reply of the Director to those queries, as such matters would fall squarely in the domain of the competent authority. The present case is not one of such exceptional nature that the Court should permit pre-judicial review at such an initial stage of the proceedings. We have no doubt that the competent authority and the government would deal with the matter objectively and keeping in view the interest of the Institution, as it is the paramount consideration.

4. The competent authority is free to proceed in accordance with law and on the basis of the questionnaire served upon the Director to which he has already replied and pass such orders with the prior approval of the Government, as it may deem fit and proper in the circumstances of the case. However, the order so passed will not be given effect to for a period of 2 weeks from the date it is passed and communicated to the Director.

5. The Director of the Institute cannot hold and have lien on two posts i.e. tenure post of Director as well as post of Professor, Head of the Department, in his own specialty. On his appointment as a Director in accordance with Rules, his lien on the post of Professor should be terminated and steps should be taken to fill up the resultant vacancy without delay, in the larger public interest.

6. The Director of the Institute is essentially required to perform all the three functions i.e. the Administrative, Research-Medical Education and Patient Care.

He is entitled to allocate to himself such duties within four corners of law which he may deem fit and proper, of course, subject to control and supervision of the Governing Body and the Institute Body, as the case may be. It is expected that all who are subordinate to the post of Director should not hamper the required performance of functions and duties by the Director.

7. The Director is the competent authority to represent the Institute before the courts of competent jurisdiction in all matters as he is the Chief Executive Officer of the Institute, which has its own seal and can sue and be sued in its own name. When and wherever the Director of the Institute is personally involved in any litigation and his interest is adverse to or clashes with the interest of the Institute to any extent, normally, the Institute Body and in the case of emergency, the Governing Body of the Institute, shall pass the resolution empowering/authorising a person duly familiar with the affairs of the Institute to represent the Institute in such litigations.

8. The autonomy of the Institute cannot be compromised. Any external body, including the Government, ought not to interfere in the day-to-day management and affairs of the Institute. Of course, its policy matters and decisions of serious consequences in regard to budgeting, service conditions etc. are subject to the approval of the Government, in accordance with the provisions of the Act.

9. The Minister of Health and Family Welfare, Government of India, is directly involved in the affairs of the Institute and can be appointed as a nominee on the body of the Institute by the Government in terms of Section 4(e) of the Act. The bar created under proviso 6 (1) of the Act, only applies to the persons falling in Clause 4 (g) of the Act and its application cannot be extended by implication to the category of the persons falling under Clause 4 (e).

10. The scope of judicial intervention in such matters is a very limited one. The present case does not justify pre-judicial scrutiny to the passing of the order by the competent authority, as the malafides and bias of the President alleged by the petitioner, cannot be construed as a malafide and bias of the Institute Body, which consists of very eminent persons and persons of high status from different walks of life.

11. The Institute can proceed against the Director in accordance with law, but without in any way violating the orders of the Court dated 7.7.2006. The order dated 18.10.2006, thus, stands modified to the extent afore-stated.

12. The President and the Director are expected to leave their personal esteem and differences behind in the larger public interest and work together in the interest of All India Institute of Medial Sciences (AIIMS), an Institute of international recognition.

13. We direct the Government of India and the Institute Body to formulate a policy covering the various facets and conditions of service of its employees including the Director of the Institute in accordance with law and to uniformly apply such policy in the times to come. This would not only help the Institute and the Government in reducing the litigation, but would also increase the prestige of the Institution.

93. With the above directions, the Letters Patent Appeals and the writ petitions are accordingly disposed of. However, keeping in view the important legal issues in all the matters, we leave the parties to bear their own costs.

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