

IN THE HIGH COURT OF DELHI AT NEW DELHI

CW No. 3834/2003

Dr.Sudhir Kumar Majhi Petitioner
! through: Mr.S.K.Sinha, Advocate.

VERSUS

\$ All India Institute of Medical Sciences
& Ors. Respondent
^ through: Mr.Mukul Gupta, Advocate,
for AIIMS.
Mr.Raj Kumar Gupta, Advocate,
for respondent No.2.
Mr.Sandeep Sharma, Advocate,
for respondent No.3.

RESERVED ON: 09-12-2003

% DATE OF DECISION: 12-02-2004

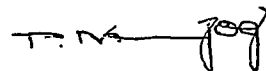
CORAM:

* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

For orders, see CW No.4107/2003.

February 12th, 2004


PRADEEP NANDRAJOG, J.

Fresh CM for Direction
No. 4786/06

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IN THE HIGH COURT OF DELHI AT NEW DELHI

1. CW No. 4107/2003

Dr.Dilip Kumar Parida Petitioner
! through: Mr.Devender Singh, Advocate.

VERSUS

\$ All India Institute of Medical Sciences
^ & Ors. Respondent
through: Mr.Mukul Gupta, Advocate,
for AIIMS.
Mr.Dinesh Dwivedi, Sr.Advocate
with Mrs.Geetanjali Mohan &
Ms.Apoorva Mishra, advocates,
for respondent No.4.
Mr.Y.Prabhakar Rao with
Mr.J.P.Mishra, Advocate
for respondent No.5.

2. CW No. 3834/2003

Dr.Sudhir Kumar Majhi Petitioner
! through: Mr.S.K.Sinha, Advocate.

VERSUS

\$ All India Institute of Medical Sciences
^ & Ors. Respondent
through: Mr.Mukul Gupta, Advocate,
for AIIMS.
Mr.Raj Kumar Gupta, Advocate,
for respondent No.2.
Mr.Sandeep Sharma, Advocate,
for respondent No.3.

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RESERVED ON: 09-12-2003

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CORAM:

* Hon'ble Mr. Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? yes
3. Whether judgment should be reported in Digest? yes

: **PRADEEP NANDRAJOG, J.**

1. The two writ petitioners claim that ignoring the recommendations of the experts who had rated the petitioners as the most suitable candidates for selection, the respondent has effected empanelment of the private respondents in the two writ petitioners, by awarding them grading above the petitioners and as a consequence pray that selection of the private respondents be quashed and directions be issued to redetermine the merit list in accordance with the grades awarded by the experts.

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2. CW No. 4107/2003 pertains to the faculty post of Assistant Professor in the department of Radio Therapy. Selection of respondents 4 and 5 is questioned.

3. CW No. 3834/2003 pertains to the selection to the faculty post of Assistant Professor in the discipline ENT. Selection effected in favour of respondents 2 and 3 is questioned.

4. On 26.3.2002, All India Institute of Medical Sciences invited applications to fill up 164 posts of Assistant Professors in various disciplines. As per the advertisement, 9 posts were reserved for members of the scheduled castes, 13 for members of scheduled tribes and 46 for other backward communities. It was stated in the advertisement that the reservation aforesaid of posts, is floating and would be adjusted wherever, reserved category candidates in the particular discipline is available. Petitioner in CW No. 4107/2003 as also the respondents 4 and 5 therein applied in response to the advertisement pertaining to the discipline Radio Therapy. As per the advertisement 3 posts of

Assistant Professor in the said discipline had to be filled. Petitioner in CW No. 3834/2003 and respondents 2 and 3 therein applied for the post of Assistant Professor ENT. As per the advertisement, 4 posts had to be filled up.

5. As per the advertisement since the reservation of posts was floating, there was no discipline-wise reservation.

6. Petitioner in CW No. 3834/2003 in addition claims that the respondent acted malafide in awarding higher grades to respondents 2 and 3 as they were already working as Assistant Professors on ad hoc basis and the entire selection process was an eye wash. Petitioner further claims that he belongs to the OBC category and was wrongly omitted for being selected.

7. It may be noted that while effecting selection of SC/ST/OBC candidates, they are considered along with general category candidates and are placed in the relative merit list by stepping up the grade awarded to them to the next higher grade. For example, a candidate falling in the reserved category who is awarded the grade B by the

institute is stepped up to the next higher grade i.e. B+ and in this manner he is placed in the merit list.

8. In addition to the plea of ignoring the grades awarded by the experts, petitioner in CW No. 4107/2003 raised three additional issues. The same were:-

(i) The advertisement in question for the post of Assistant Professor in Radiotherapy stipulated that :- 'experience in operating linear accelerator is desirable'. He was the only one who had experience in operating linear accelerator, besides a comparison of the bio-data of the petitioner and respondents 4 and 5 shows that the had far better credentials.

(ii) Members of the Selection Committee were not competent to assess the merits of the candidates. Reliance was placed on the recommendations issued by the Medical Council of India, pertaining to appointment of examiners for post-graduate courses, contention raised was

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Assistant Professors to be appointed were to have post-graduate qualifications and, therefore, their comparative merit could be adjudged only by such persons who were competent to examine them as per the recommendations of the Medical Council of India.

(iii) The respondent in the past was following the procedure that at the first instance, experts would give the grading to the candidates, which grading was thereafter considered by the Selection Committee and recommendation made to the governing body of the institute. This procedure gave transparency, in that, grading by the experts was separately and independently shown. But for the first time while effecting selection, the institute, deviated from the past practice followed. Contention raised was that by so doing value of the opinion expressed by the subject experts was diluted and since the selection committee was

constituted by the governing body, the select panel could be manipulated.

9. Before going into the factual matrix of the issues involved, reference to the provisions of the All India Institute of Medical Sciences Act, rules and regulations framed thereunder and procedure for selection may be noted.

10. All India Institute of Medical Sciences was created by an Act of Parliament being the All India Institute of Medical Sciences Act, 1956. The institute was created as a body corporate by virtue of Section 3 of the said Act. Section 2 of the Act defined the governing body, member, regulation and rule as under:-

(a)

(b) 'Governing Body' means the Governing Body of the Institute;

(c)

(d) 'member' means a member of the Institute;

(e) 'regulation' means a regulation made by the Institute;

(f) 'rule' means a rule made by the Central Government.

11. Section 4 of the Act deals with the composition of the institute. Section 4 reads as under:-

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

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

(b) the Director-General of Health Services, Government of India, ex officio;

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

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

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

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

(g) three members of Parliament of whom two shall be elected from among themselves by the members of the House of the people and one from among themselves by the members

of the Council of States."

12. Section 10 of the Act deals with the governing body and other committees of the institute. The same reads as under:-

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

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

(3)

(4) The procedure to be followed in the exercise of its powers and discharge of its functions by the Governing Body, and the term of office of, and the manner of filling vacancies among, the members of the Governing Body shall be such as may be prescribed by regulations.

(5) Subject to such control and restrictions as may be prescribed by rules, the Institute may constitute as many standing committees and as many ad hoc committees as it thinks fit for exercising any power or discharging any function of the Institute or for inquiring

into or reporting or advising upon, any matter which the Institute may refer to them.

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

(7)

13. Section 28 of the Act provides for power to make rules. Relevant part of Section 28 reads as under:-

28. Power to make rules.- (1) The Central Government, after consultation with the Institute, may, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that consultation with the Institute shall not be necessary on the first occasion of the making of rules under this section, but the Central Government shall take into consideration any suggestions which the Institute may make in relation to the amendment of such rules after they are made.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the manner of nomination of members

under clause (f) of section 4;

(b) the control and restrictions in relation to the constitution of standing and ad hoc committees under sub-section (5) of section 10;

(c) the conditions of service of, the procedure to be followed by, and the manner of filling vacancies among, members of the Institute;

(d) the powers and functions to be exercised and discharged by the President of the Institute;

(e) the allowances, if any, to be paid to the President and members of the Institute;

(f) the number of officers and employees that may be appointed by the Institute and the manner of such appointment;

(g) the form in which and the time at which the budget and reports shall be prepared by the Institute and the number of copies thereof to be forwarded to the Central Government;

(h) the form and manner in which returns and information are to be furnished by the Institute to the Central Government;

(i) any other matter which has to be or may be prescribed by rules.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is

in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule]."

14. Section 29 of the Act provides for power to make regulations. Relevant part of Section 29 reads as under:-

29. Power to make regulations.- (1) The Institute with the previous approval of the Central Government, may by notification in the official Gazette make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for -

(a)

(b)

(c)

(d)

(e) the procedure to be followed by the Governing Body and standing and ad hoc

committees in the conduct of their business, exercise of their powers and discharge of their functions:

(f)

(g)

(h)

(i)

(j)

(k) the professorships, readerships, lecturerships and other posts which may be instituted and persons who may be appointed to such professorships, readership, lecturerships and other posts;"

15. In exercise of the power conferred by Section 28, All India Institute of Medical Sciences Rules 1958 have been enacted. Rule 7 is relevant and may be noted. Same reads as under:-

7. Creation of posts and appointment thereon;

(1) The institute may create posts, subject to specific provision in the budget, on scales of pay applicable to similar posts under the Govt. or on scales of pay approved by the Govt. classified them into grades and specify their designation; provided that no post above the associate professors level shall be

created except with the prior approval of the Government.

(2)

(3)

(4)

16. In exercise of the power vested under Section 29 of the Act regulations have been framed called All India Institute of Medical Sciences Regulations, 1958. Regulations 4, 5, 6, 11 and 12 are relevant. Same reads as under:-

"4. Meetings of the Institute:

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

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5. Constitution of the Governing Body

The Governing Body shall consist of the following eleven members, namely:

(a) President of the Institute - Chairman

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

(c) Representative of the Ministry of Finance
- Member

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

(e) One member elected by the members of
the Institute from amongst the three
members of the Parliament elected to the
Institute.

(f) Six members to be elected by the
members of the Institute from amongst
themselves.

6. Powers and functions of the Governing
Body:

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

11. Powers and duties of the Director:

The Director shall be the 'Head of
Department' in terms of S.R.2(10) and shall
exercise the powers of 'Head of Department'
and inter-alia, discharge the duties
mentioned below:

(a) he shall be incharge of the administration
of the Institute. He shall allocate duties of
officers and employees of the Institute and
shall exercise such supervision and executive
control as may be necessary subject to the
rules and these regulations.

X X X X X X X X

12. Standing Committees:

(1) In addition to the Standing Finance Committee referred to in rule 6, the Institute may constitute other Standing Committees in accordance with sub-section (5) of Section 10 of the Act, consisting of a Chairman, a Vice-Chairman and not more than seven other members. The Director shall be a member and ex-officio Secretary of each committee. The Chairman, the Vice-Chairman and other members of each committee shall be nominated by the Institute.

 X X X X X X X X

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

 X X X X X X X X

(5) All Standing Committees shall be advisory committees.

16. A perusal of the provisions of the Act, Rules and Regulations noted above would show that the institute is composed of the members as described in Section 4. The governing body is constituted as per Section 10, read with Rule 5 of the Rules. Powers and functions of the governing body would be those as are vested in it as per Rule 6. The other committees could be constituted under Sub Section 5

of Section 10, composition of said committee would be as per Regulation 12 of the Regulations.

17. Role of the committees constituted, it would be relevant to note, as per Clause 5 of Regulation 12 is advisory.

18. For the purposes of effecting appointments in question, the institute had constituted a standing selection committee in terms of Section 10(5) of the Act read with Regulation 12. As per Regulation 10, the standing selection committee had to consist of the Chairman, Vice Chairman and not more than 7 other members of the Institute. The said 7 members had to be from amongst the members of the Institute. Members of the Institute were the persons listed in Section 4 of the Act. Selection committee consisted of (1) Dr.S.P.Aggarwal, (2) Dr.P.Venugopal, (3) Dr.Rajendra Tandon, (4) Dr.(Mrs.) V.Y.Deshpandey, (5) Dr.H.S.Shukla, (6) Dr.P.K.Dave, (7) Professor Deepak Nayyar, (8) Dr.Abraham Thomas and (9) Shri Suresh Pachouri (M.P.). Since a passing reference was made during arguments that

Professor Deepak Nayyar, Dr. Abraham Thomas and Shri Suresh Pachouri (M.P) could not be the members of the standing committee to set the record straight it may be noted that as per Clause (a) of Section 4 of the Act, the Vice Chancellor of the Delhi University is an ex officio member of the institute. Professor Deepak Nayyar being the Vice Chancellor of the Delhi University was therefore a member of the institute. Dr. Abraham Thomas was one of the 4 representatives nominated by the Central Government from out of the medical faculties of Indian Universities under Clause (f) of Section 4 of the Act and Shri Suresh Pachouri (M.P.) was a member of the institute under Clause (g) of Section 4 of the Act which stipulates that 3 members of Parliament, two from the house of people and one from the council of States would be members of the institute. Regulation 12(1) of the institute required constitution of the Standing committees to be from amongst the members of the instituted and therefore, no exception could be made to the said three persons on being the standing selection

committee.

19. Three experts were associated with the selection committee to aid and advice the committee.

20. Record of the standing selection committee was produced at the hearing. For the posts of Assistant Professor in ENT, grades awarded by the members of the standing selection committee and the experts are as under:

	Resp.2	Resp.3	Petitioner
1. Dr.S.P.Aggarwal	A+	A+	C
2. Dr.P.Venugopal	A+	A+	C
3. Dr,Rajendra Tandon	A+	A+	C
4. Dr.(Mrs.)V.Y. Deshpande	A+	A+	C
5. Dr.H.S.Shukla	A+	A+	C
6. Dr.P.K.Dave	A+	A+	C
7. Prof.Deepak Nayyar	A+	A+	C
8. Dr.Abraham Thomas	A+	A	C
9. Sh.Suresh Pachouri (MP)	Absent		

EXPERTS

10. Dr.N.K.Goel (Ext.)	B+	A+	C
11. Dr.S.B.S. Mann(Ext.)	A	A+	C
12. Dr.R.C.Deka (Int.)	B-	A+	C

21. Contention of the petitioner in CW No. 3834/2003 Dr.S.K.Majhi that the subject experts awarded him grades higher than respondents 2 and 3 is not borne out from the record. Individual grades awarded show that 8 members of the standing selection committee and the 3 subject experts, each, acting individually awarded grade 'C' to him. One member of the standing selection committee namely Shri Suresh Pachouri (M.P.) was absent. Respondents 2 and 3 were awarded grades 'A', 'A+' by the members of the standing selection committee who were present. The subject experts awarded grades 'B-', 'B+' and 'A' to respondent No.2. All the three subject experts awarded grade 'A+' to respondent No.3. Petitioner being in the OBC category, being awarded grade 'C' by the members of the standing

selection committee and by the 3 subject experts would be entitled to be stepped up by one grade, namely, would at best be entitled to be graded 'B-'. Contention of Dr.S.K.Majhi that on an objective consideration based on the grades awarded by the subject experts he ought to have been placed above respondents 2 and 3, therefore, is without any factual basis. His contention that a perusal of the biodata of respondents 2 and 3 vis-a-vis his biodata would show that he was a better qualified person is again of no aid because this court, exercising power of judicial review under Article 266 of the Constitution of India would not review the relative merits and demerits of the candidates. This court cannot sit as an appellate forum over the decision of the selection committee.

22. As regards the case of Dr.Dalip Kumar Parida, writ petitioner in CW No. 4107/2003 is concerned, record of the standing selection committee which was produced reveals the following grades awarded by the members of the standing selection committee individually and the three

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subject experts individually:-

	Resp.4	Resp.5	Petitioner
1. Dr.S.P.Aggarwal	A	A	B+
2. Dr.P.Venugopal	A+	A	A
3. Dr,Rajendra Tandon	A+	A	A
4. Dr.(Mrs.)V.Y. Deshpande	A+	A	A
5. Dr.H.S.Shukla	A+	A	A
6. Dr.P.K.Dave	A+	A	A
7. Prof.Deepak Nayyar	Absent		
8. Dr.Abraham Thomas	Absent		
9. Sh.Suresh Pachouri(MP)	Absent		

EXPERTS

10. Dr.D.P. Aggarwal (Ext.	C	B-	A
11. Dr.Rakesh Vyas (Ext.)	B-	B-	A+
12. Dr.G.K.Rath	B-	B	A+

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23. For record, it may be noted that there were three posts to be filled up in the discipline of Radiotherapy. The candidature of persons at serial No.1 and 3 of the select panel has not been challenged. Respondent No.4 was placed at serial No. 2 of the select panel. Name of respondent No.5 was placed at serial No.4 of the select panel and name of petitioner was placed at serial No.5 of the select panel.

24. Case of the petitioner Dr.Dalip Kumar Parida is that the subject experts graded him as 'A', 'A+' and 'A+'. They graded respondent No.4 as 'C', 'B-' and 'B-'. They graded respondent No.5 as 'B-', 'B-' and 'B-'. He, therefore, contends that the standing selection committee has totally ignored the recommendations of the subject experts. He contends that he is not calling upon this court to sit over judgment of what has happened but calls upon this court to objectively consider whether the standing selection committee could ignore the grading awarded by the experts. Petitioner relies upon the judgment of this court reported as 1993 (26) DRJ 544 **Dr.S.M.Bose Vs. A.I.I.M.S. & Ors.**

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Drawing the attention of this court to paragraphs 20, 21, 23, 24 and 25 of the said judgment, he contended that recommendations of the subject experts could not be ignored by the institute save and accept where justifiable reasons were brought on record as to why the recommendations of the subject expert were ignored by the institute. Judgment reported as 66 (1997) DLT 386 **Dr. Raghunath Chand Anand Vs. AIIMS** was also relied upon. Additional submissions made by this petitioner have been noted by me above in para 8 above.

25. Before dealing with the issue of the grades awarded and whether in view of the grades awarded by the experts, petitioner could be placed below respondents 4 & 5, the said three submissions made by this petitioner be dealt with.

26. First submission was that the advertisement in question stipulated that experience in operating linear accelerator is desirable. Contention was that only the petitioner had said experience. Respondents 4 and 5 did not have the said experience. To my mind this submission does

not further the case of the petitioner. Experience in operating the linear accelerator was not an essential requirement to be fulfilled as an eligibility condition. It was listed as a **desirable requirement**. Respondents 4 and 5 were otherwise eligible. Desirability of a particular experience stipulated in an advertisement would only mean that some weightage would be given to a person having the desirable experience and no more. Contention therefore that since the petitioner was the only one having experience in operating linear accelerator and on that account was entitled to be selected above respondents 4 and 5, is rejected.

27. Second contention that the members of the standing selection committee were not competent to assess the merits of the candidates is based on the recommendations of the Medical Council of India. The said recommendations of the Medical Council of India relate to the appointment of post-graduate examiners. The recommendations stipulate as to who should be an examiner at the examinations conducted for awarding post-graduation

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degrees in medical disciplines. Requirement of an examiner at examinations leading to award of post-graduation degree in medicine is entirely a different field vis-a-vis the field of empanement of candidates holding post-graduation degrees to be appointed on the faculty. The recommendations of the Medical Council of India do not stipulate that selection committees to select suitable candidates to the faculty should have specified norms. As per the Act and the Regulations framed thereunder, the standing selection committee has to be constituted from amongst the members of the Institute. A glance at the members of the standing selection committee would show that all the six members who were present are from the medical fraternity. It was not disputed at the bar that all of them hold senior faculty positions. The second contention is therefore also rejected.

28. As regards the third contention, pertaining to the past practice followed by the institute, in that the experts would grade the candidates and thereupon the standing

selection committee would deliberate, counsel for the petitioner relied upon guide-lines for advisors/experts framed by the Institute. The same reads as under:-

" A. Procedure for interview:

1. The object of the interview is to find out whether a candidate is adequately equipped for the post for which he has applied. For this purpose, it is necessary to assess the level and depth of his professional knowledge. It is mainly the responsibility of the Advisers/Experts to do this. More important than this, they must ascertain whether he has the ability to use the knowledge in practice and whether he can think independently.

The question at the interview should relate to the duties of the post and the latest developments in the field of specialisation of the candidate. Where required, his knowledge of the conditions of rural areas and problems of rural population should also be assessed. Some hints on interview technique are given in paragraph 'B' below.

2. Procedure for conducting the interviews:-

- i) The Chairman, Standing Selection Committee will preside over the interview Board.
- ii) The Chairman will initiate the proceeding and question the candidate, first. He will

be followed by the other Member and thereafter by Experts/Advisers. The Chairman will give an indication to the candidate about the conclusion of his/her interview.

iii) In no case should the candidate be given any indication, directly or indirectly during or after the interview, about his/her suitability or otherwise for the post and secrecy should be maintained.

3. The Experts/Advisers will be supplied with a form where the grading is to be recorded.

4. The role of Government/Departmental representative, if called for assisting the Selection Committee, will be only to assist the Committee regarding responsibilities which the post carries. He/she, however, will not put any question to the candidate.

The entire proceedings of the interview are to be kept **Secret**.

B. Hints on interview technique for the guidance of Advisers/Experts.

1. The experts are to assist the Selection Committee in selecting the most suitable candidates for the job in question. They should assess the suitability of the candidates without fear, favour or any other consideration.

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Note:- EXPERTS SHOULD GRADE THE CANDIDATES INDEPENDENTLY AND NOT CONSULT OTHER EXPERTS."

29. The guide-lines aforesaid would reveal that the role of the experts is to assist the selection committee. The guide-line shows that the deliberations of the standing selection committee in which subject experts are associated result in a panel being prepared which has then to be forwarded to the Institute for purposes of effecting appointments.

30. Record shows that the subject experts graded the petitioner above respondents 4 and 5. Grades awarded to the petitioner and respondents 4 and 5 by members of the standing selection committee individually and the 3 subject experts individually have been noted by me in para 22 above. Record further shows that after the interviews were over and members of the standing selection committee had before them the individual grades awarded to each individual candidate, individually by the members of the standing selection committee and the subject experts, select

panel was prepared placed respondent No.4 at serial No.2.

respondent No.5 at serial No.4 and petitioner at serial No.5.

Issue would be, can this court sit over judgment of the collective decision taken by the standing selection committee? It be noted that the governing body of the institute did not change the relative position of the candidates as forwarded by the standing committee.

31. Petitioner contends that the standing selection committee, acting collectively could not ignore the gradings awarded by the subject experts. He contends that the 3 subject experts graded the petitioner as 'A', 'A+' and 'A+'. Respondent No.4 was graded as 'C', 'B-' and 'B-'. Respondent No.5 was graded as 'B-' by each of the 3 subject experts. It was not a case of minor variations in the grades awarded was the submission. Two of the subject experts awarded the highest grade of 'A+' to the petitioner and one graded him as 'A'. Respondent No.4 was graded 3 grades below by subject experts and 4 grades below by one subject expert. Respondent No.5 was graded 3 grades below by each

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of the subject experts. Per contra, counsel for the institute and counsel for respondent Nos. 4 and 5 contended that the members of the standing selection committee who were present, were also doctors. They come from the medical fraternity. Each one of them held the highest post in their respective institute. They were men of the highest caliber, evidenced by the fact that they had reached top positions in their disciplines. The said members had individually assessed respondent No.4 at 'A' or 'A+'. In fact only 1 member awarded the grade 'A' and the remaining 5 awarded the grade 'A+'. All the 6 members awarded grade 'A' to respondent No.5. To the petitioner, 1 awarded grade 'B+' and the other 5 awarded grade 'A'. It was further contended that gradings by the members of the standing selection committee, acting individually, showed a pattern of consistency which pattern got grossly distorted in the grades awarded by the subject experts. It was therefore contended that when the standing selection committee deliberated as a group, noting the aforesaid factor, select panel was

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prepared. It cannot therefore be said that the select panel prepared by the standing selection committee was so glaring one in the face that it could be faulted with.

32. A perusal of the individual grades awarded to the petitioner and respondents 4 and 5 by the members of the standing selection committee and the subject experts acting individually would reveal that the members of the standing selection committee, acting individually graded respondent No.4 above the petitioner. Respondent No.5 was graded virtually at par with the petitioner, save and except one member, Chairman of the standing selection committee who graded respondent No.5 at 'A' and the petitioner at 'B'. This grading got reversed when one looks to the gradings awarded by the subject experts.

33. It does happen that persons acting individually award grades keeping in mind individual factors which they may have in mind and which obviously would influence their individual decisions. When all such persons pool their resources together and deliberate as to what should be their

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collective decision, ideas get pooled. Discussions ensue, and it is quite possible that as a result of the said collective discussion, an individual may agree with the collective decision and based on the factors disclosed by others, he agrees to their view. This court cannot probe the mental process of the members of the standing selection committee when they acted collectively in light of the data available to them in the form of individual grades awarded by each one of them and the subject experts, at the end of the interview. Indeed, no malafides is alleged against any member of the standing selection committee. No malafide is alleged against any member of the institute.

34. As noted above, the unanimous view of the standing selection committee was of placing respondent No.4 above respondent No.5 and was that of placing the petitioner below respondent No.5. The institute acted upon the same.

35. Petitioner relied upon the judgment of this court in SM Bose's case and Dr.Raghunath Chand's case. I would be failing if I do not deal with the said judgment.

36. S.M.Bose's judgment dealt with appointment to the post of Additional Professor in the Department of Surgery in the institute. A selection committee was constituted which was assisted by two external experts in the field of surgery. One of the experts graded the petitioner therein and another candidate Dr. N.M.Gupta as 'outstanding'. Respondent No.3 in the said writ petition was graded as 'poor' by one of the experts. The other expert graded the petitioner and Dr.N.M.Gupta as 'well above average'. Respondent No.3 was graded as 'average'. In other words, in the opinion of both the experts, the petitioner and Dr.N.M.Gupta were assessed in the same grade, higher than respondent No.3. The selection committee also considered the performance of the candidates. It unanimously recommended the petitioner and Dr.N.M.Gupta to be placed at serial No.1 and 2 respectively. The recommendations were sent to the council. The governing body considered the recommendations in its meeting held on 25.4.1992. The governing body decided that the selection committee should reconsider the case.

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The governing body recommended that in its opinion candidature of respondent No.3 has not been properly appreciated by the experts. Selection committee was requested to reconsider the case. Selection committee met again on 4.7.1992. It considered the decision of the governing body requiring it to reconsider the panel. The selection committee reiterated its earlier decision. Governing body met again on 6.7.1992. It recorded that though the governing body was supreme and had the unfettered right to approve or disapprove or modify any recommendations and could have over-ruled the recommendations of the selection committee but to maintain dignity and credibility of the selection committee, the case was referred back to the selection committee for reconsideration, since the selection committee failed to do so, accordingly the governing body resolved that respondent No.3 be appointed as Professor of Surgery. It was said appointment of respondent No.3 which was challenged in the said writ petition.

37. Division Bench of this court, on a perusal of the provisions of the Act, Rules and Regulations framed thereunder noted that although the role of the standing committee's constituted under Regulation 12 of the Regulations of the institute was advisory in nature but that did not mean that it's recommendations could be ignored by the institute without any justifiable cause. It was held that scheme of the Act, Rules and Regulations framed thereunder shows that different functions relating to the process of appointment are distributed to different authorities. The selection committee and the governing body are two such authorities constituted by the institute from amongst its members for the purposes of discharging different functions of the institute. It was noted that under Section 10 of the Act, the governing body was vested with the power to make appointments and in that sense, it is the appointing authority. It was held that undoubtedly, the governing body has to apply it's own independent mind for the purpose of a proper exercise of its power. But, the role of interviewing

and selecting the best out of the available and eligible candidates for appointment has been entrusted by the institute to the selection committee. In that view of the matter, recommendations of the selection committee have to be given primacy subject of course to the governing body acting to the contrary on good and justifiable reasons. In para 20 of the judgment it was held:-

"20. Ordinarily, the power to decide whether to make or not to make any appointment, notwithstanding the availability of a vacant post, vests in the appointing authority. No candidate, even if selected, can claim a right to be appointed. He can raise no grievance if the appointing authority, decides not to fill up the vacancy. But, the position will be different, where the vacancy is to be filled up. In such a case, where the task of interviewing candidates and making selection is entrusted to any independent body, appointment should be made on the basis of recommendations made by the selection committee, which means in the order of merit of candidates arranged by the selection committee. This, however, does not mean that the appointing authority is bound by the recommendations, nor that it may ignore the recommendations and act on its own sweet will. If the appointing authority wants to agree with the recommendations, there would be no difficulty. But if it wants to disagree with the recommendations, it

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must give reasons for disagreement. The appointing authority may legitimately not agree with the recommendations, for instance, where it may find some illegality, bias or malafides, vitiating the recommendation made by the selection committee. It will also be open to the appointing authority not to agree where it finds that the selected candidate suffers from some inherent disqualification, or even where appointment of a particular candidate may not be in public interest for other good reasons viz., bad conduct or character. Should the appointing authority disagree with the recommendations made by the selection committee, it must have good, strong and cogent reasons for doing so. In any event, on a challenge in Court, for whatever the appointing authority may do, it is bound to disclose the reasons to justify its decision."

38. The judgment aforesaid would show that this court was considering the issue where the selection committee had made a recommendation and the governing body was acting contrary to the said recommendations. The court noted that though the governing body had the final say in the matter but if it disagrees with the recommendations of the selection committee, good, strong and cogent reasons must be disclosed to the court justifying its decision for

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disagreement with the recommendations of the selection committee.

39. Dr.Raghunath Chand's case posed the question where again, the Governing Body of the Institute adopted a course contrary to the recommendations of the selection committees. It was also a case where there was dissent within the selection committee. This court, on facts, found it to be a case of interference by the Chairman of the Institute and hence a case of bias and mala fide. On an overall view it was held:

" 21..... the petitioner's case was rated as "outstanding" by both the experts/specialists called in to aid the Selection Committee. We have not been able to see from any of the rules of the All India Institute of Medical Sciences, nor have we been informed of any practice in the All India Institute of Medical Sciences that only A+ candidates or exceptionally brilliant persons are appointed to the post of Medical Superintendent in the All India Institute of Medical Sciences. We do not see how a person found to be outstanding and admitted to be outstanding by at least five members of the Selection Committee can be prevented from being appointed to an advertised post, candidates wherefore have been screened according to the rules applicable to the functioning of the

Selection Committee in the matter of
appointment to the post. (Emphasis
supplied)

40. Though there are observations in the judgment which tend to show that the Division Bench laid great emphasis on the recommendations of the experts.

41. Ratio of a judgment is what it decides and not what logically follows. Observations in Dr.Raghunath Chand's case have to be viewed in the light of the facts of said case.

42. In the instant case, the governing body has acted upon the unanimous recommendation of the standing selection committee. Indeed, in view of the provisions of the Act, Rules and Regulations as interpreted in S.M.Dose's case and Dr.Raghunath Chand's case, it cannot be held that, on the facts of the present case, the decision is vitiated in law.

43. I have given the reasons in para 33 above as to in what manner, in law, it cannot be said that the decision of the standing selection committee is illegal or unjustified. Indeed as reasoned by me above, persons acting individually would evaluate persons on factors which they perceive to be

relevant but while taking a group decision, may agree to the collective wisdom based on inputs provided by all the members. What is noteworthy in the present case is that no malice has alleged against any person, merely because the unanimous view of the standing selection committee was somewhat incongruous with the grades awarded by the subject experts by itself would not taint the decision of the standing selection committee and in particular when one keeps in mind the individual grades awarded by the members of the standing selection committee, acting individually.

44. The two writ petitions fail. The same are dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.

February 12th, 2004
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PRADEEP NANDRAJOG, J.

- RP 226/06
- AM 0822/06 for Enrich
- AM 0823/06 for Delay