

(2015) 12 AHC CK 0114

In the Allahabad High Court

Case No : Writ - A No. 22558, 21309, 21920, 21319 and 21595,37213,36461 of 2014

Anurika Vaish and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Constitution of India, 1950 — Article 14

University Grants Commission Act, 1956 — Section 12, 12-A, 2, 26, 26(1)

Citation : (2016) 2 ADJ 540

Hon'ble Judges : Amreshwar Pratap Sahi and V.K. Birla, JJ.

Bench : Division Bench

Advocate : Rajeev Misra and Amit Verma, for the Appellant; Fuzail Ahmad Ansari, S.C., Triloki Singh and Vaibhav Kaushik, for the Respondent

Final Decision : Allowed

Judgement

1. These seven petitions have been filed by petitioners assailing the impugned cancellation of their appointments as faculties to the posts of Professors/ Associate/Assistant Professors under the impugned resolution of the Board of the Indian Institute of Information Technology, Allahabad contending that they are victims of unmixed disadvantage on account of a hasty decision which according to the petitioners is out of deference to the decisions taken during the tenure of the previous Director, and that their hopes were frustrated because of such a decision which is neither sustainable in law nor on facts. Their contention is that with the change of guard the respondent-Institute is reordering its priorities without following the correct position of law. The respondent-Institute through its present set of authorities defends itself by contending that selections were against rules and of ineligible candidates that was an outcome of the motivated influence exercised by the earlier Director to favour the petitioners and therefore the cancellation of such appointments was obvious and was after due deliberations without any premeditation of any malice or revenge. The deliberations were carried out dispassionately and the consequences thereof

were unintended and are a natural outcome of the facts that are on record.

2. Sri Shashi Nandan, learned senior counsel, Sri Rajeev Misra, Sri R.P. Tewari, Ms. A. Gaur, Sri Nimai Das Advocates have been heard for the petitioners. Sri U.N. Sharma and Sri Vipin Sinha, learned senior counsel assisted by Sri Vaibhav Kaushik, Sri Anil Tewari have been heard for the Institute and Sri Trilok Singh for the Union of India and Sri R.A. Akhtar for the U.G.C. have advanced their submissions.

3. The Government of India, in the wake of a growing continuing demand of the application of information technology in every sphere of life, came up with a scheme for setting up Universities and Institutions of Information Technology throughout the country, and one such Institute was proposed at Allahabad which is now known as the "Indian Institute of Information Technology Allahabad Society". The need to set up such an Institute on account of unprecedented technical break through was realised, and the proposal was initiated with letters dispatched by the Ministry of Human Resource Development, Department of Education, Government of India, to convene a meeting for consideration of setting up of such an Institute vide letter dated 17.12.1998.

4. The Institute was established under the aegis of a Society known as "Indian Institute of Information Technology Allahabad Society, registered under the Societies Registration Act, 1860. A copy of the Memorandum of Association duly registered has been brought on record together with the Rules that govern the Society. The Management of the Society is entrusted to a Board of Management as per Clause 5. The Board has been described as "Independent of the Society with full autonomy to perform it's academic and administrative responsibilities". Clause 5.02 (iii) empowers the Board to appoint such Professors, Associate Professors, Assistant Professors and other academic staff as may be necessary on the recommendation of the Selection Committee. Clause 5.02 (ii) empowers the Board to create teaching and academic posts, to determine the number of cadres and qualifications thereof as approved by the University Grants Commission, and statutory bodies concerned, and the emoluments of such posts in consultation with the Finance Committee.

5. At this stage, it would be appropriate to refer to Clause 3.09 of the said Rules of the Society which defines Commission as the University Grants Commission constituted under Act No. 3 of 1956 read with Clause 3.23 thereof.

6. The Society was established and since the deemed University status under the U.G.C. Act, 1956, was pending consideration, the Government of India issued a post sanction letter dated 17.5.2000 whereby 6 teaching posts were initially sanctioned in the Institute followed by another set of 9 teaching posts and 14 non-teaching posts vide letter dated 22.3.2001. The Institute was granted a deemed University status in the year 2000 itself under the 1956 Act.

7. In order to regulate Universities and Colleges that were recognized under the University Grants Commission Act, 1956, the Commission in exercise of powers

under Section 26(1)(e) and (g) framed regulations of Minimum Qualifications for appointment of teachers. A copy of the said regulations have been filed alongwith the counter-affidavit of the University Grants Commission. After the promulgation of the regulations in March, 2000, the Commission issued a letter clarifying certain norms for relaxation in minimum relation to NET qualification. However, while issuing the said clarification, the said letter recites that the regulations issued by the Commission are mandatory and all Universities are advised to strictly comply with them. It further recites that it shall be necessary for the Universities and the Management of Colleges to make the necessary changes in their Statutes, Ordinances, Rules, Regulations etc. to incorporate these regulations.

8. These regulations were amended vide Notification dated 31.7.2002 and further vide Notification dated 14.6.2006. This was followed by the 2010 Regulations relating to Minimum Qualifications (MQ Regulations) in supersession of the earlier Minimum Qualification Regulations referred to herein above. These fresh regulations for Minimum Qualification for appointment of teachers and other academic staff in University and Colleges was framed on 30.6.2010 and published in the Gazette of India on 18.9.2010.

9. It is noteworthy to mention that the IIIT, Allahabad, had framed its own Rules that have been appended alongwith the Memorandum of Association and it had also framed it's Rules of Recruitment, copy whereof has been filed on record. These rules were enforced w.e.f. 18.11.1999 upon being approved by the Board of Governors and are described as "Recruitment and Service Rules". The Institute is a Centrally Funded Institute by the Government of India and it does not receive any grant-in-aid from the University Grants Commission. The Institute was broadly patterned on the guidelines of the Indian Institutes of Technology established through out the country, and the norms of recruitment of such Institutes was being followed in matters of appointment as also reflected in the conditions of the letter of sanction by the Government of India.

10. Such Institutes are known as Centrally Funded Technical Institutions (CFTIs) and the Central Government, from time to time, has been extending the benefits of Pay-scale etc. as available to Central Government employees.

11. The University Grants Commission (Deemed to be University) Regulations 2010 (DU Regulations) were published on 21.5.2010. These regulations were promulgated in the exercise of powers under Section 26(1)(f) and (g) of the 1956 Act in supersession of the earlier regulations.

12. Thus, the entire edifice of this dispute has now to be looked into from the point of view of the impact of all the aforesaid Rules, Bye-laws and Regulations read with University Grants Commission Act, 1956.

13. The dispute in all these petitions relates to the advertisements that were issued in 2013 on various posts of Associate and Assistant Professors. The selections, which are presently in dispute, relate to the appointment of the

petitioners pursuant to the resolution of the Board dated 6.4.2013.

14. The Institute appears to have proceeded with the advertisement for appointment on teaching posts on the same pattern that were being published in the past since it's inception containing qualifications as per IIT norms. The petitioners contend that the Institute appears to have been following the same even though the Minimum Qualification Regulations 2010 had been introduced. The Institute is stated to have maintained its autonomy in matters of such procedure. This was clearly on oath by the Institute in the affidavit filed in previous litigations.

15. However, a turn in the stand of the Institute in the counter-affidavit in the present matters appears to have taken place with the judgment delivered by a Division Bench of this Court on 16.7.2013 in the case of *Prithish Kumar Varadwaj Vs. Union of India and Others*, , where it has been held that the UGC Regulations are binding on the Institute relating to minimum qualifications and appointment on the posts in the Institute.

16. It may also be put on record that the stand taken by the Institute in the aforesaid case was clearly to the effect that the Institute is an autonomous body and being a Centrally Funded Institute, with no grants from the Commission, it was following the norms of appointment as available in the IIT's through out the country. This was the consistent stand taken as against the applicability of the Minimum Qualifications Regulations of 2010 framed by the Commission. The aforesaid stand of the Institute was ultimately rejected by the court in the aforequoted decision and it was held that the Minimum Qualifications Regulations framed by the Commission was binding on the Institute. The petitioners were not parties to the said case and they also contend that the issues and facts that have been brought to the fore in the present case were neither noticed, nor raised or decided by the court so as to have any binding effect on the cause of the petitioners.

17. The Institute challenged the said judgment before the Apex Court in SLP No. 35510 of 2013 (*Indian Institute of Information Tech. & others v. Prithish Kumar Varadwaj & others*) again contending that the Minimum Qualification Regulations 2010 framed by the Commission should not be imposed upon it as it is an Autonomous Information Technology Institute and is governed by the norms of IIT's. The Institute in its wisdom, however, withdrew the said Special Leave Petition which was dismissed as withdrawn on 24.2.2014.

18. The validity and the applicability of the Minimum Qualification Regulations or the DU Regulations of the UGC have to be noticed in the light of certain more developments that have taken place in between. So far as this Court is concerned, the division bench judgment dated 16.7.2013 holds that the UGC Regulations of 2010 are applicable and the SLP filed against the same by the Institute has been unilaterally withdrawn, even though the said position was being all throughout contested by the respondent institute by clearly opposing

the applicability of the regulations.

19. However, the Madras High Court in the case of SRM University v. Secretary went on to examine this issue and a learned Single Judge of that Court vide judgment dated 30th August, 2011 struck down the 2010 DU Regulations framed under the UGC Act, 1956. The same issue however was raised before the High Court of Karnataka and a learned Single Judge went on to uphold the 2010 DU Regulations. However, this issue is now engaging the attention of the Apex Court where the matter is still reported to be under consideration. There is no interim order operating against the judgment of the Karnataka High Court referred to hereinabove.

20. There is yet another development about the UGC Act being applied to the IITs & IIITs. The Parliament has framed the Indian Institute of Information Technology Act, 2014 published on 9th December, 2014 in the Gazette whereby all IIITs are now to be governed under the aforesaid Act and under the control of the Central Government directly. Thus all such future issues now stand avoided with the promulgation of the said Act but so far as the present case is concerned since the selections are of the period when this dispute existed, the matter may have to be considered accordingly.

21. The position, therefore, that emerges is that this Court has now to first ascertain as to the status of the applicability of the relevant services Rules and Regulations having a direct impact on the selection of all the petitioners in these petitions that have been annulled through a Board Resolution. The stand taken in the counter-affidavits, apart from the reasons given in the resolution, is that the petitioners do not fulfil the eligibility conditions of the UGC Minimum Qualification Regulations of 2010 and their appointments having been made in violation thereof, they have no right to claim continuance on their respective posts. It is in this background that we will now proceed to consider the applicability of the Rules & Regulations which the petitioners contend has to be in accordance with the norms of IIT's as the post sanctioning orders issued by the Central Government also recite the same, and since the Commission does not give any grant to the Institute, the norms and standards of eligibility and qualifications will be the same as prescribed under the Rules for recruitment of the Institute coupled with the directions issued by the Human Resource Ministry, Government of India, in this regard.

22. They also contend that the said norms have been in force and are continuously being invoked, and realising this autonomous status of the Institute of Information Technology, the same have now been finally taken outside the purview of counter-Affidavit of the University Grants Commission with the framing of 2014 Indian Institute of Information Technology Act. The contention is that the Institute was never intended to be governed by the directives and regulations of the University Grants Commission as it was an independent Centrally Funded Information Technology Institute being run by its own bye-laws and rules and the mere declaration of the Institute as a deemed University would

ipso facto not bring it under the Minimum Qualifications Regulations of 2010.

23. It has also been canvassed that the said Minimum Qualification regulations were neither adopted nor incorporated in the Rules, Statutes or Ordinances and hence their enforceability vis-à-vis the selection and appointment of the petitioners is absolutely unwarranted. As would be noticed herein after, there are variations and differences in the qualifications as well as in the methodology of selection, as such, it would be necessary for us to delineate on the sets of Rules, Bye-laws and Regulations that have been enforced from time to time and the impact of the enforcement of the University Grants Commission Minimum Qualification of Regulation 2010.

24. This will have to be looked into as it has been urged by the petitioners, that this assessment in chronological and empirical manner was not attempted by the High Court when the judgment was delivered on 20.7.2013 Pritish Kumar Varadwaj's case (supra) holding that the U.G.C. Regulations of 2010 are binding and, therefore, the matter may have to be viewed from the point of view as indicated herein above.

25. For that purpose one has to come first to the Memorandum of Association and the Rules that have been appended alongwith the record of writ petitions and were the foundation of governance at the commencement of the Society. A perusal thereof leaves no room for doubt that the role of the University Grants Commission was also envisaged therein and the UGC was not a foreign body to the Institute. It is correct that the Institute was formed as a Society independently of any other act but at the same time, the Memorandum of Association and the Rules do indicate that the University Grants Commission was a body acknowledged in the Memorandum of Association itself. The reason is not far to see inasmuch as after the Institute was created and established and the posts were sanctioned by the Human Resources Ministry, the Institute itself applied for being granted the status of a Deemed University before the University Grants Commission under the 1956 Act. The Institute was granted the status of a Deemed University in the year 2000 itself. Once that is the position then one will have to advert to the University Grants Commission Act, 1956, which provides under Section 3 that the Central Government may, on the advice of the Commission, declare by notification in the Institution for higher education other than University to be deemed to a University for the purposes of the Act and on such declaration under Section 3 thereof, all the provisions of the Act are to apply as if it were a University within the meaning of the Act. It is, thus, clear from Section 3 that once the Central Government notifies in consultation with the commission an Institute of higher education to be a Deemed University then the provisions of the 1956 Act shall apply. It is in this context that one has to refer to Section 26 of the 1956 Act which reads as under:--

"26. Power to make regulations.--(1) The Commission [may, by notification in the Official Gazette, make regulations] consistent with this Act and the rules made thereunder:--

- (a) regulating the meetings of the Commission and the procedure for conducting business thereat;
- (b) regulating the manner in which and the purposes for which persons may be associated with the Commission under section 9 ;
- (c) specifying the terms and conditions of service of the employees appointed by the Commission;
- (d) specifying the institutions or class of institutions which may be recognised by the Commission under clause (f) of section 2 ;
- (e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University having regard to the branch of education in which he is expected to give instructions;
- (f) defining the minimum standards of instruction for the grant of any degree by any University;
- (g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities;
- [(h) regulating the establishment of institutions referred to in clause (ccc) of section 12 and other matters relating to such institutions;
- (i) specifying the matters in respect of which fees may be charged and scales of fees in accordance with which fees may be charged by a college under sub-section (2) of section 12-A ;
- (j) specifying the manner in which an inquiry may be conducted under sub-section (4) of section 12-A]

(2) No regulation shall be made under clause (a) or clause (b) or clause (c) or clause (d) [or clause (h) or clause (i) or clause (j)] of sub-section (1) except With the previous approval of the Central Government.

[(3) The power to make regulations conferred by this section [except clause (i) and clause (j) of sub-section (1)] shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.]"

26. A perusal thereof would indicate that sub-clause (1)(e) of Section 26 empowers the commission to frame regulations defining qualifications that should ordinarily be possessed by any person to be appointed to the teaching staff of the University having regard to the branch of education in which he is instructed to give instructions.

27. Clause (f) of Section 26(1) prescribes minimum standards of instruction and clause (g) requires the framing of regulations for maintenance of standard and

coordination of work or facility in the University.

28. Thus, the regulations that can be framed under Clause (e) are clearly in relation to the qualifications of any person to be appointed as any staff in the University.

29. A perusal of the Minimum Qualifications Regulations of 2000 as amended from time to time and succeeded by the Minimum Qualification Regulations of 2010 clearly spell out that they were being framed in exercise of the powers under Clause (e) and clause (g) of Section 26(1) of the 1956 Act. Thus, these regulations being within the powers of the University Grants Commission, have the force of law read with Section 3 of the 1956 Act.

30. It is in this background that the recruitment rules that were enforced by the Institute on 18.11.1999 have to be considered as against the applicability of U.G.C. Regulations.

31. The society was formed and a Memorandum of Association coupled with rules was drawn up and forwarded to the Government of India, Human Resources Development Ministry. The Memorandum of Association is dated 12th of March, 1999 and is accompanied by a set of rules framed for governing the society. The Government of India through Ministry of Human Resources on receipt of such Memorandum of Association, dispatched a letter on 19th March, 1999 formally setting up the institute. The institute in its turn also framed the rules of recruitment dated 18.11.1999.

32. The Memorandum of Association as was drawn up incorporated powers conferred on the Board of Governors including the power to create posts and make appointments against such posts on the recommendations of a Selection Committee. This power in the Original Memorandum of Association is contained in Clause 5.02(iii) as follows:--

"Clause 5.02 (iii). To appoint such Professors, Associate Professors, Assistant Professors and other academic staff as may be necessary on the recommendation of the Selection Committee."

33. The Board has been extended powers under the Memorandum of Association itself to delegate its powers to the Director or to any officer under Clause 5.07 with a further stipulation that the action so taken by the delegatee shall be reported to the Board:--

"5.07 Delegation of Powers of Board of Management

The Board of Management may, by a resolution, delegate to the Director or any other officer of the institution deemed to be university of the Standing Committee or the Ad-hoc Committee such of its powers as it may deem fit subject to the condition that the action taken by the Director or the officer concerned or the Standing Committee or the Ad-hoc Committee concerned in the exercise of the powers so delegated shall be reported at the next meeting of the

Board of Management."

34. The Memorandum of Association was revised and registered on 20.5.2003.

35. Clause 5(a)(7) confers powers on the Board of Governors to create posts with prior approval of the Central Government and also confers powers to alter rules with prior approval of the Central Government. Clause 5(b) confers powers on the institute to delegate powers on the Board and in turn the Board has been extended the authority to delegate its powers to any committee or officer of the institute. The delegation of an officer includes a Director, inasmuch as, under the rules framed that have been appended to the aforesaid memorandum of association. Rule 10(b)(1) empowers the Director to exercise all delegated powers as the Principal Executive Officer read with Rule 10(b)(10). The Director has been given the authority to redelegate some of his powers under Rule 10(b)(11). The rules however provide that all powers which are to be exercised by way of delegation, the original responsibility would vest in the original Authority that has delegated its powers as per Rule 27(2).

36. The question of all policy decisions is left to the Board with the approval of the Central Government under Clause 5(d) of the Memorandum of Association. In the event of any dispute relating to interpretation of the Memorandum of Association or rules, the matter has to be referred to the Central Government as per Clause 5(e) of the Memorandum of Association.

37. Then comes the rules where the University Grants Commission has been defined under Rule 3(i). Rule 5(b) defines the powers of the Board of Governors and Rule 5(b)(2)(d) empowers the Board to create posts to fix qualification etc. for appointment by way of recommendation through a selection committee with the prior approval of the Central Government.

38. Rule 9(a) defines a Selection Committee with the Director as Chairman. The constitution of the Selection Committee is followed by the recommendations of the selection committee to be made to the Board or the Director for appointment under Rule 9(b)(1) all such appointments are to be reported to the Board as per Rule 9(b)(9) which also provides that if the Board disagrees with the recommendations of the selection committee then the matter has to be referred to the Chairman whose decision shall be final.

39. The selections are to be preceded by an advertisement as described in Rule 9(b)(8) of the said rules.

40. Rule 20 empowers the Board to frame Bye-laws. The Bye-laws can provide for making of appointments against posts with prior approval of the Central Government under Rule 20(10) and the Central Government has been conferred residuary powers to review the action of the institute on a report being made under Rule 24. Rule 22 of the said rules bars the filing of any suit or legal proceedings in respect of any action taken pursuant to the orders or notifications of the Central Government, the University Grants Commission and expert bodies

like AICTE.

41. The action or the resolution taken by any of the committees or the authorities as defined under the rules are not to be invalidated by virtue of any defect in the constitution of such a committee.

42. Then comes the rules of recruitment that have been framed dated 18th November, 1999 where the procedure for recruitment has been entailed.

43. The institute in its counter affidavit has accepted that it had been following the said rules and regulations. This was intervened by the norms that were introduced by the Government of India vide letter dated 18.8.2009. According to the petitioners, these norms were clearly that of the IITs throughout the country that were being followed in IIIT as well.

44. It is to be mentioned that the Deemed University status was granted to the Institute in the year 2000 itself and a certain Minimum Qualifications Regulations had been framed by the University Grants Commission in the year 2000 that were amended from time to time.

45. The posts in the institute were sanctioned by the Government of India, Ministry of Human Resources Development vide several letters as noted above and the institute is admittedly a Centrally Funded Technical Institute. It does not receive any grant or funds from the University Grants Commission.

46. The University Grants Commission framed regulations in exercise of powers under Section 26(1)(f) and (a) known as Deemed University Regulations 2010 that were notified on 21st of May, 2010. These regulations again introduced certain provisions that also included the structuring of selection committees for the purpose of making appointments in universities and colleges that have been given the status of such deemed university as presently involved. The said regulations were forwarded to the IIIT Allahabad as well for its adoption and incorporation.

47. This is evident from the letter of the institute dated 4.10.2011 that was sent to the University Grants Commission in response where to the UGC vide letter dated 12.10.2011 called upon the Institute to adopt the same and incorporate it accordingly in the memorandum of association. A meeting was held on 15th October, 2011 of the Board of the Institute and where a resolution was passed for adopting the same deemed university regulations and further action was taken to get it registered with the Registrar, Firms, Societies and Chits duly notifying memorandum of association.

48. This registration took place on 26.11.2011 but the said adoption was not approved by the University Grants Commission as is evident from the letters that followed thereafter. The case of the petitioners is that till date no such adoption formally or otherwise to incorporate the same has taken place.

49. The aforesaid Deemed University Regulations were followed by the Minimum

Qualification Regulations framed by the Commission dated 30.6.2010 that was notified on 18.9.2010. The said regulations according to the petitioners were neither adopted nor incorporated nor were followed by the institute after its promulgation and the institute continue to be governed by the terms and conditions of posts sanctioned issue by the Government of India, the norms prescribed by the IITs throughout the country and the recruitment rules that were enforced on 18.11.1999.

50. It is in this background that the advertisement was issued on 30th January, 2013 being Advertisement No. FS-01/2013. The last date for submission of application form was 25th February, 2013.

51. It is relevant to mention here that the then Director of the Institute was Dr. Murli Dhar Tiwari, whose term as Director expired on 26.12.2012. The tenure of a Director is prescribed in Rule 10(a)(1) of the rules appended to the memorandum of association where the provision is that the Director would continue till his successor is chosen or a period of six months. The respondent Institute has also appended the Government Order issued by the Government of India dated 19th July, 2004 issued by the Ministry of Human Resources Development pointing out that it is a general convention which deserves to be followed by terms and conditions of autonomous bodies and ordinarily not take any policy decision or major decision when they are about to retire or their term is about to expire.

52. The advertisement was however issued as indicated above when Dr. Murli Dhar Tiwari was continuing as the Director on his extended period of term as indicated above. His continuance also later on became subject matter of challenge before this court but the writ petition filed by Dr. M.D. Tiwari to continue beyond six months, was dismissed. However before all this could have happened the advertisement had already been issued and the applications had been invited.

53. The chronology of events as unfolded indicates that the sixth meeting of the Board of Management took place on 23rd March, 2013. The said Board meeting by a valid resolution delegated authority to the Director to proceed to execute the selection and appointments and report the matter in the next meeting of the Board. The said delegation and the resolution have neither been rescinded nor recalled.

54. According to the petitioners, the selection committees were duly constituted for the different posts and selections were held on 6th April, 2013 where 16 candidates were selected and appointed against different posts and one candidate was given the benefit of two additional increments on the post earlier held by her.

55. The selection committee as per Clause 9(a) of the rules is chaired by the Director and the power to convene a meeting is also conferred on him under Rule 10(b)(12) as per the rules appended to the Memorandum of Association. The

appointments followed on the same day on which the selections were held with letters of appointment being issued to all selected candidates. The letters of appointment stipulated that their services could be terminated without notice and with six months notice or pay in lieu thereof during the probation period of one year. It is to be noted that Rule 13 of the rules appended to the memorandum of association empowers the Board to make all appointments.

56. The said selections dated 6th April, 2013 and the appointments that followed were placed in the 7th meeting of the Board which was held on 20th July, 2013.

57. It is here that it is again relevant to point out that a dispute with regard to the appointment and service conditions of one Pritish Kumar Varadwaj as Assistant Professor in the institute came up for consideration where he had raised a challenge to his termination during the probation period being Writ Petition No. 56744 of 2012. This writ petition was contested by the institute by filing a detailed counter affidavit that has also been brought on record in these proceedings where the stand taken by the institute is that the UGC Regulations brought forward in the year 2010, including the Minimum Qualification Regulations, had neither been incorporated nor adopted and were not binding on the institute. This argument was raised threadbare and the writ petition was opposed by the Institute taking a clear stand of the inapplicability of the UGC Regulations. The said argument and stand taken by the institute was rejected by the division bench in the above noted decision Pritish Kumar Varadwaj (supra) and it was held that the UGC Regulations are binding on the institute.

58. Challenging the said judgment the institute filed a special leave petition before the Apex Court where again the stand taken was that the UGC Regulations were not binding on the institute as it was governed by the terms and conditions of the post sanctioned by the Government of India and the norms prescribed for appointment and continuance in service that was existing in IITs. The said Special Leave Petition No. 35510 of 2013 was however withdrawn by the institute on 24.2.2014.

59. The aforesaid fact of the intervention of that judgment prior to the 7th meeting is necessary in the background of the dispute which has been raised in the present proceedings. In the 7th meeting, the minutes of the previous meeting were confirmed and at Item No. 12 of the Resolution the selections made on 6.4.2013 were approved. This was however with a rider that such selectees will have to undergo a performance appraisal which would be assessed by the committee so constituted that would meet on 27/28th July, 2013. It was also resolved that a panel of experts should be prepared for future selections and should be well circulated. However, vide a notification of the Director the meeting of the performance appraisal committee that was so scheduled under the Board meeting was postponed vide letter dated 25.7.2013.

60. There are certain facts that require mention with regard to the contents of the 6th Board Meeting that had been signed by the Secretary of the Board,

namely, Professor O.P. Vyas. His wife Dr. Ranjana Vyas was an applicant and was one of the selected candidates in the selections that were held on 6th April, 2013. From the record, it appears that he however did not sign the minutes of the 7th Board Meeting about which there is a controversy between the parties. The respondents state in their counter affidavit that Dr. Vyas did not sign it as it had not been correctly recorded and he had raised a protest in respect of the actual contents of the recorded minutes of the 7th Board Meeting, whereas the petitioners allege that Dr. O.P. Vyas had not signed the minutes of the 7th Board Meeting out of propriety, inasmuch as, his own wife was a candidate whose selection was under consideration in the 7th Board Meeting for approval and that was approved.

61. Then comes the turn of events as Dr. M.D. Tiwari could not continue as Director as he lost the battle before this Court in a writ petition filed by him and his period of six months had expired. The division bench judgment dated 16.7.2013 holding that the UGC Regulations were binding had also come into existence. It is thereafter that one Professor G.C. Nandi took charge as Director under whose chairmanship the 8th meeting of the Board was convened, on 1st of February, 2014. The minutes of these meetings have raised a considerable debate and require consideration as the manner and procedure of drafting of the minutes as well as the contents thereof are being disputed. The 8th Meeting at Item No. 1 confirmed the earlier minutes, namely the minutes of the 7th Board Meeting, but simultaneously at Item No. 16 annuls and cancels the selections of the petitioners on the grounds as mentioned in the said resolution. It refers to the norms not being followed, the advertisement not being in accordance with rules, the UGC Regulations not having been complied with, the selection committees having not been properly constituted and undue relaxation having been given to the candidates who have been selected.

62. The counter affidavit which has been filed to support the resolution of the 8th Board Meeting states that the proceedings that were drawn up in the 6th Board Meeting were on the misrepresentation of facts by the then Director and the selections were carried out under an advertisement that did not have the approval of the Board.

63. Apart from this, the UGC Minimum Qualification Regulations 2010 have been relied upon to contend that they are binding, and having not been followed, the selections held on 6th April, 2013 have been rightly cancelled and the appointments have been rightly annulled.

64. The resolution dated 1st of February, 2014 also begins by reciting that a status report was considered and some members raised an objection with regard to the contents of the minutes that were recorded in the 7th meeting and they were accordingly rewritten.

65. This was followed by a cancellation order issued by the Registrar on 26th March, 2014 whereby all such appointments were cancelled.

66. At this juncture, it is relevant to again mention that one Rahul Gupta who was also one of the applicants had filed writ petition No. 18354 of 2013 challenging the selection process on the ground that Dr. M.D. Tiwari the then Director had tailored the advertisement and the selections were bound to result in a predetermined outcome selecting particular candidates. This writ petition had been filed on the eve of selections in April 2013 but this writ petition was dismissed as infructuous on 26th March, 2014 itself whereafter the cancellation orders were issued by the Registrar.

67. It is aggrieved by such cancellation that all these writ petitions have been filed questioning the decisions so taken on several grounds including that the cancellation was not preceded by any notice or opportunity to the petitioners and therefore the same is in violation of the principles of natural justice.

68. The jurisdiction to cancel has also been raised contending that no power to cancel appointment vests with the respondent institute, once it had been approved in the 7th Board Meeting held on 20.7.2013. It is also contended that the appointments were made by the Director on the resolution of the Board and they have been approved by the Board itself in the 7th Board Meeting as such to put the blame on the Director is absolutely unjustified, inasmuch as, the appointments have been approved on the basis of appropriate selections having been carried out with the approval of the Board.

69. It is urged that no objection was ever raised or challenge raised to the advertisement by the Board itself or by any authority and to the contrary all such appointments prior to the decision dated 16.7.2013 were being made in the same manner as was done in the case of the petitioners. The selection committee has granted relaxation to the selected candidates appropriately and in accordance with rules which power is possessed in terms of the advertisement as also under the inherent powers of the competent authority which is not diluted by any rule or regulation. The selections have to be made as per the terms of the Ministry of Human Resources Development which is the funding authority coupled with the rules of recruitment dated 18.11.1999 and the norms of the IIT.

70. It is urged that all the petitioners fulfil the minimum qualification as prescribed and the somersault taken by the institute in respect of the adoption and incorporation as well as applicability of the UGC Regulations is only an outcome of the division bench judgment dated 16.7.2013 and the unexplained and unwarranted act of the institute in withdrawing the special leave petition in February 2014 after the departure of Dr. M.D. Tiwari even though nothing is mentioned about the legal impact of the said judgment in the resolutions of the Board.

71. The petitioners also urged that the Director had exercised his delegated powers which were conferred on him by the Board itself and once the delegatee had exercised its powers then there was no power with the Board to review the same.

72. According to the petitioners, the Board if it disagrees with any recommendation of the selection committee then in that event alone it can differ and refer the matter to the Chairman but does not possess any power of recall of selections and appointments already made by the Board itself.

73. Learned counsel have urged that the petitioners had already acquired a right and this right vests by virtue of their appointment whereafter the Board had no power to review this decision, inasmuch as, there was neither any fraud or misrepresentation that had preceded said selections and appointments.

74. To the contrary the Board itself had been taking conscious decisions for obtaining performance appraisal reports and to keep such appointees on probation for one year. The cancellation of the appointment was unwarranted and their services having been terminated not on any other ground except a change in the resolution which could not have been done.

75. The petitioners have also urged that there is no occasion or any power to the Board to rewrite a previously confirmed resolution and the relaxation if any granted by the selection committee being satisfaction of the selection committee is unquestionable. Accordingly, the decision being malafide in the background aforesaid, the same being unwarranted and in violation of principles of natural justice, deserve to be quashed.

76. The dispute between the parties commenced with the passing of the resolution in the 8th meeting of the Board on 1st of February, 2014 whereby through resolution at Item No. 16 the selections and appointments of 6th April, 2013 in relation to the petitioners was cancelled. This resolution and the consequential action of the Registrar of the Institute intimating the cancellation of the appointments is basically under challenge in all the writ petitions.

77. The contention of Sri Shashi Nandan, learned Senior Counsel, Sri Rajeev Misra and Sri Nimai Das Advocates, Sri R.P. Tiwari and Ms. Gaur Advocates, are that a very strange procedure has been adopted in recording of the minutes of the 8th meeting and the consequential cancellation and they have therefore taken us extensively through the contents of the 6th, 7th and 8th meetings of the Board. Before we delve into our findings the narration of these three resolutions is necessary.

78. As already noticed above the Board has the power to delegate its authority to any officer of the committees constituted for the purpose of carrying out its functions. It has already been pointed out by us hereinabove that the Director of the Institute is the Principal Executive Officer in whose favour such powers can be delegated. It is in the exercise of such powers of the Board for delegation that the Board proceeded to authorise the Director to issue letters of appointment to the selectees as per recommendations of the Selection Committees. Resolution No. 13 (S-1) of the 6th meeting of the Board dated 23.3.2013 is extracted hereinunder:--

"Item No. 13 (S-1). To consider the process of appointments of Academic Staff after recommendation of the Selection Committee. The Board was apprised by the Chairman that appointments of teachers on the recommendations of Selection Committees are delayed on account of Meetings of the Board being held after appreciable gap of holding of the Selection Committee and some of the selectees get restive and start searching other alternatives elsewhere on account of which the academic staff positions remain vacant.

The matter was considered at length by the Board and it was resolved that appointment letters be issued to the selectees by the Director as per recommendations of the Selection Committees at the earliest and the same may be reported in the next Meeting of the Board."

79. The other resolution passed by the Board was in relation to waiving conditions for consideration of appointment of outstanding candidates. This resolution is recorded as Resolution No. 13 (S-3) which is extracted hereinunder:--

"Item No. 13(S-3). To consider and waive conditions of appointment in outstanding cases in the interest of academics in the Institute.

The Report of Scrutiny Committee of the applications received against recent advertisement was placed before the Members stating that certain candidates having outstanding merits in their academic performances however lack a few days/months required in teaching/research/industrial experience to qualify for the interview.

The Committee recommended that such candidates should also be called for interview.

The matter was discussed at length by the Hon"ble Members of the Board. The Board agreed to the proposal and it was finally resolved that such conditions as may be waived by the Selection Committee in the interest of academic advancement of the Institute may be allowed to be waived."

80. The aforesaid resolutions were clearly in the background of the advertisement that had already been made and which is presently in question. It is also evident from the report of the Scrutiny Committee that the applications received against the advertisement in question was placed and the Committee accordingly resolved recommending that such candidates who were having outstanding merit should also be called for interview. The resolution is also importantly reflecting that the delegation was complete subject to the condition that the recommendations would be given effect to by issuance of letter of appointment and shall be reported in the next meeting of the Board.

81. The said resolution, therefore, proceeded to authorise the selection committee to interview even outstanding meritorious candidates who were lacking in experience for a short time and further authorises the Director to issue letters of appointment as per recommendations of the Selection Committee.

What is noteworthy is that this resolution dated 23rd March, 2013 has neither been rescinded, modified or altered in any form whatsoever either by any resolution of the Board itself or otherwise. This fact deserves mention as it has been strenuously argued by all the learned counsel that once the delegatee has proceeded to exercise his authority pursuant to such authorisation by the delegator, then such exercise of authority would be deemed to be by the delegator itself and cannot be subject matter of any review or recall as has been done in the present case. There is yet another issue which deserves to be remembered is the stand taken in the counter affidavit by the respondents that the Director in view of the Government Order dated 19.07.2004 issued by the Government of India making recommendations to heads of autonomous institutions not to exercise such authority prior to their relinquishing office is also a reason for cancellation of the appointment. The petitioners' counsel clearly contend that the Director on his own was not exercising any individual authority conferred on him under the bye-laws and rules, and therefore it is only an individual act that could have been curtailed under the aforesaid government order.

82. The stand therefore taken in the counter affidavit about the exercise of authority by the Director prior to his retirement and even during his extended period is not correct as the Director had simply proceeded to act as per decision of the Board which was a collective decision and not the individual decision of the Director. The power of appointment of the academic staff is of the Board on the recommendation of the selection committee and which power was delegated to the Director under the said resolution dated 23.3.2013 which has neither been rescinded, modified or undone as noted above.

83. The next meeting which deserves notice is the 7th meeting of the Board held on 20th July, 2013. There is yet another fact which deserves notice at this very stage namely the division bench judgment in the case of *Prithvi Kumar Varadwaj v. Union of India* (supra) where the issue relating to the argument advanced by the respondent IIT about application of the Minimum Qualification Regulations 2010 of UGC was rejected. It was held that any action taken in breach of statutory regulations has to be held to be unreasonable and arbitrary. This decision had been rendered on 16th July, 2013 prior to the Board meeting of the 20th July, 2013. The respondent-IIIT had filed Special Leave to Appeal No. 35510 of 2013 before the Apex Court challenging the aforesaid findings in the judgment of the division bench of this Court and therefore the stand clearly taken was that the Minimum Qualification Regulations 2010 as enforced by the University Grants Commission were not enforceable in the institute which continue to be governed by the norms of IITs throughout the country as per posts sanction orders of the Human Resources Development Ministry, Government of India and the rules and regulations that were framed by the institute itself.

84. It is in this background that the 7th meeting of the Board dated 20th July,

2013 has to be considered. This meeting of the Board at Item No. 1 by a specific resolution confirmed the minutes of the 6th meeting of the Board in its entirety as explained hereinabove without any resolution to the contrary. This fact is necessary to be referred to in the context of the resolution of the 6th meeting of the Board where the delegation of authority of the power of appointment and issuance of letters of appointment stood confirmed without any future alteration.

85. Then comes the resolution at Item No. 12 of the 7th meeting of the Board which is extracted herein under:--

"Item No. 12. To consider and approve selections on the posts of Academic Staff The Board apprised itself with the issue of appointment letters and joining of the selectees of the academic positions as per details presented before it in compliance to the standing order passed by the erstwhile Board of Governors and ratified/recreated by itself in the 6th Meeting held on March 23, 2013 and approved the same.

Although, the Board of Management in its Meeting held on March 23, 2013 authorized the Director to make selections of the faculty members and issue appointment letters to the selected ones, however, during discussions the Board of Management showed the concern about nomination of Experts for the Selection Committee by the Board as was in practice since time of Hon"ble Prof. M.G.K. Menon, Former Chairman of Board of Governors.

After thorough discussions it was decided that the Institute should send the probable large list of experts in various disciplines. Out of it the BOM will approve the names of experts and the panel be maintained for future use for the Selection Committee. The statutory observers/experts as SC/ST/OBC and Minority (Muslim) may be experts or they may be just observer whether reservation policy is being followed as per Govt. of India notifications in this regard.

It was also decided that the vacant positions of the faculty members may be advertised at the earliest. The faculty members selected on April 6, 2013 and appointed be asked for their Performance Appraisal alongwith other faculty members on the date of the selection of faculty members against the advertisement. It was bought in the notice of the Board that the Meeting of the Performance Appraisal Committee of the faculty members including recruits on April 6, 2013 has been fixed for July 27-28, 2013. However, it was agreed that some more time may be given to them and the latter option may be opted for their Performance Appraisal. It was also decided that a copy of the approved list of experts by Board of Management alongwith list of selected faculty members may be sent to Hon"ble Chancellor of the Institute as well for his kind information.

86. A perusal of the said resolution unequivocally indicates that the issue of letters of appointment and joining of selectees that was decided in the 6th meeting is being approved. Thus apart from confirming the minutes the

conferment of such authority appears to have been approved and reiterated at Item No. 12 of the same meeting.

87. Secondly, the same resolution acknowledges the said authorisation specifically but expressed concern about the nomination of experts for the selection committee and it was resolved that the names of the experts in various discipline would be placed before the Board and the Board will approve such names which panel will be maintained for future use. Thus this resolution in respect of any concern about the nomination of experts in the selection committee was clearly resolved for future use.

88. The third important aspect of the said resolution at Item No. 12 is that those candidates including the petitioners who were selected on 6th April, 2013 and who have been appointed be called upon for performance appraisal and for which the date had been fixed for 27/28 July, 2013. The Board however resolved that some more time may be given to the candidates to assess their performance appraisal. This meeting therefore clearly resolved as a subject matter, the consideration and approval of selections that were held on 6th April, 2013.

89. Then comes the controversial recording of the minutes of the 8th meeting held on 1st February, 2014 which is subject matter of challenge. It is at this stage that it needs to be mentioned that by this time the earlier Director had already departed and on 9th January, 2014, Professor G.C. Nandi took over as Incharge Director as the regular Director had not been appointed. This 8th meeting of the Board was convened on 1st February, 2014 where the resolution passed at Item No. 1 is as follows:--

"Item No. 1. To confirm the Minutes of 7th Meeting of the Board of Management held on July 20, 2013

The confirmation of the Minutes of 7th Meeting of Board was discussed.

It was resolved that Minutes as recorded in Item No. 12 and Item No. 13(b) be corrected in the light of comments made by members of the BOM. Accordingly, the ACTUAL minutes that are a true representation of the discussions that took place in the 7th meeting were as follows:

With Reference to Item No. 12, existing matter in the earlier circulated minutes to be replaced as follows:

"The Board apprised itself with the issue of appointment letters and joining of selectees of the academic positions as per details presented before it and expressed serious reservations about the experts chosen for the Selection Committee held on April 6, 2013. In view of the same, the Board decided that:

1) A Panel of Experts from various disciplines henceforth to be presented before it for approval and the experts for selection Committees should be chosen from this list. The statutory observers/experts/OBC and Minority (Muslims) may be experts/observers wherever reservation policy is to be followed, as per Govt. of

India notifications in this regard.

2) A copy of the approved list of experts by the Board of Management alongwith the list of selected faculty members to be sent to Hon"ble Chancellor of the Institute as well for his kind information.

3) All the academic staff thus selected by the Committee on April 6, 2013 must appear before another selection Committee before the end of their probation period. The experts for this Committee must be chosen from the Board approved panel. This Committee would decide the future continuation or otherwise in respect of all these selectees/appointees.

4) The vacant positions of the faculty members may be advertised at the earliest."

In respect of Item No. 13(b), the Board of Management perused the MOA and Rules adopted by IIIT-A, Serious concerns were expressed about the modification made in the UGC Regulations, 2010 by the IIIT-A Society.

The provision 13.1(ii) which currently states that:

"Provided that notwithstanding the expiry of the period of 5 years, he/she may continue in office for not more than six months or till his/her successor is appointed and the latter assumes office, whichever is later."

Should be reverted back as per UGC Regulations, 2010 to as follows:

"Provided that notwithstanding the expiry of the period of 5 years, he/she may continue in office for not more than six months or till his/her successor is appointed and the latter assumes office, whichever is earlier."

Further the Board suggested that the meeting of the IIIT-A Society be convened at the earlier convenience of its members to resolve this issues related to MOA.

At this point, Prof. O.P. Vyas, Member Secretary of the 7th BoM, who was also present in the 8th meeting of the BoM as a member of the BoM, apprised the Board as follows:

He was asked by the erstwhile director to sign the minutes of the 7th meeting, as were communicated to the BoM members earlier. Prof. Vyas was in disagreement with the way the minutes on above agenda items were written as that was not what had transpired in the 7th BoM meeting. Prof. Vyas further apprised that he was then pressurized to sign the same, and since he was unable to withstand the pressure, he was compelled to resign from the post of the Member Secretary of the BoM. Consequently, the minutes as circulated to the members, were signed by erstwhile director singly in his capacity as the Chairman of the BOM.

This revelation by the former BOM Member Secretary took all the BOM Members by surprise. It then resolved to put in place such systems and processes which would deter any future incumbent to resort to such means."

90. It begins by saying that the minutes of the earlier meeting that this 7th meeting of the Board at Item No. 12 and Item No. 13(b) be corrected in the light of the comments made by the members of the Board of Management. Accordingly, the actual minutes that were a true representation of the discussions of the 7th meeting were recorded and rewritten accordingly.

91. The first aspect to be noted is that could the earlier minutes recorded be subject matter of correction and rewriting, inasmuch as, learned counsel for the petitioners have vehemently argued that nothing has been disclosed as to what was the incorrect representation or incorrect recording in the minutes of the 7th meeting. As a matter of fact the entire resolution of the 7th meeting dated 20th July, 2013 has been rewritten after almost 6 months on the basis of comments made by the members of the Board of Management. This rewriting according to the petitioners was done deliberately and was impermissible in law, inasmuch as, no law of meeting authorises the rewriting of a resolution and what could have been done was only the passing of a fresh resolution.

92. According to Sri Shashi Nand, learned Senior Counsel, either the minutes of the 6th meeting could have been confirmed or not confirmed. This strange method of rewriting the previous resolution already passed was unknown to the procedure prescribed in law and cannot be justified by any method. It is therefore necessary to examine as to whether the Board could have rewritten the said resolution or was authorised to do so on the basis of any comments made by the members of the Board of Management.

93. The second aspect that there was a departure from the resolution of the 6th meeting relating to the performance appraisal of the selected candidates. By virtue of the resolution in the 7th meeting a decision appears to have been taken that the candidates selected on 6th April, 2013 must appear before another selection committee before the end of their probation period whereafter the committee would decide their future continuation or otherwise against their selections and appointments. This resolution once again therefore allows the candidate to continue on probation but restricts their continuance on their being subjected to appear before another selection committee before the end of their probation period.

94. The petitioners have criticised this resolution but contend that inspite of the resolution being strange in law, the petitioners to appear before another selection committee no decision in this item number was taken to cancel the appointments.

95. It is further contended by the petitioners that there were certain reservations about the experts chosen for the selection committee dated 6th April, 2013 and therefore it was decided to draw a panel of experts from various disciplines henceforth for nominating experts of selection committees. The resolution nowhere indicates any disqualification or under qualified experts having participated in the selection held on 6th April, 2013. The resolution nowhere at

Item No. 1 indicates the same and is only a resolution for future selections. They therefore contend that there was no occasion for subjecting the petitioners to another selection proceeding which is unknown under the rules without annulling the earlier selections.

96. It is here that one has to notice the rules and regulations to ascertain the permissibility of a reference to a fresh selection committee of a candidate already selected. The Board ought to have examined this issue as well that does not appear to have been done.

97. Thus, Item No. 12 of the 7th meeting of the Board was rewritten in a manner that was described as a true presentation of the discussions that took place. This resolution at Item No. 1 also did not in its entirety annul the proceedings of the earlier meeting and Item No. 1 was clearly with regard to the confirmation of the 7th meeting of the Board. It is therefore to be seen as to what would be the impact of this modified confirmation according to the rewritten resolution.

98. Then comes the controversial resolution at Item No. 16 of the same 8th meeting of the Board dated 1.2.2014. We have already indicated and extracted the resolution at Item No. 1 of the same. The resolution of Item No. 16 is extracted hereinunder:--

"ITEM No. 16

To consider the Status Report on Selection of Academic Staff done on April 6, 2013.

The Board considered the Status Report on the selection of the Academic Staff and deliberated upon it at length. In the context, in addition to the minutes as at Item No. 1 of this meeting, it was apprised by some Board members that the advertisement brought out by IIITA for these selections was NOT as per norms. Also for some of the appointments, eligibility criteria were unduly relaxed, taking incorrect pretext of the earlier BOM resolutions.

The Board also noticed that through a GO issued vide F. No. 3.11014/11/04-CDN dated 19th July, 2004, MHRD had advised heads of all autonomous Bodies prohibiting all the retiring Directors, for any action to make selections/promotions two ? three months before the expiry of their term or retirement, as the case may be. Further, the erstwhile director's term expired on 26th December 2012 and he was on six months extension in April 2013. Therefore, in April 2013, he was neither competent nor authorized to call for any selections.

When these facts became known to the Board in this meeting, it became clear that the entire process of selection/appointment and other recommendations mentioned by the selection committee therein, was wrong ab initio.

Accordingly, the BoM in this Meeting recommended, in supersession to the earlier decisions of the Board in this matter, that all selections/appointments done on April 6th, 2013 are CANCELLED. Similarly, the recommendations of awarding

increments to a few Faculty members on April 6th 2013, are also CANCELLED."

99. The first issue is that Item No. 16 indicates some status report on the selections held on 6th April, 2013. There is nothing on record to demonstrate as what was that alleged status report.

100. Learned counsel for the petitioners have also urged that the content of any such status report is not known nor is it decipherable from the said resolution. The counter affidavit also does not bring on record any such status report. The contention therefore on behalf of the petitioners is that the very foundation of the said resolution being absent, the decision so taken to cancel the appointments is based on no material and therefore it deserves to be set aside. The petitioners were not aware of any such status report nor were they put to notice about the same.

101. The second indication in the resolution is that the advertisement issued was not as per the norms. The resolution nowhere indicates as to what was the infirmity in the said advertisement. The allegations in the counter affidavit of the IIIT are that the advertisement is not in accordance with the Minimum Qualification Regulations and there is no power of relaxation whereas the advertisement wrongly prescribes relaxation being given in appropriate cases.

102. Thirdly, for some of appointments the eligibility criteria has been undoubtedly relaxed on the ground of earlier Board resolutions.

103. Fourthly, reference has been made to the Government Order dated 19.7.2004 whereby Heads of the Autonomous Institution were prohibited for any action to make selections and promotions three months before their retirement. The resolution recites that the Director retired on 26.12.2012 and he was on extension in April, 2013 therefore he was not competent nor authorised to call for any selections. This part of the resolution has to be remembered in view of what has been stated with regard to the 6th Board Meeting referred to hereinabove. It is on this ground that the entire process of selection and recommendations made on 6th April, 2013 including the appointment of the petitioners has been held to be wrong ab-initio and have been cancelled in supersession to the earlier decisions of the Board. Similarly, the recommendations for awarding increments to few faculty members have been annulled.

104. Item No. 16 has been criticised by the petitioners' counsel contending that if in the same meeting at Item No. 1 a resolution has been passed for compelling the selected candidates to appear before a new selection committee before their probation period ends, then to take a simultaneous decision in the same meeting to cancel the selection in its entirety is incongruous and inconsistent.

105. The learned counsel have further contended that the manner in which it has been resolved reflects a predetermined mind to annul everything in an absolutely peculiar way that is full of inconsistencies. This resolution drafting process

therefore is absolutely contrary to all known principles of decision making through meetings and it is not comprehensible that the same resolution would at one place allow the continuity of selections subject to a fresh selection and at the same time annul the same.

106. It is also to be seen as to whether the approval to the appointments as urged by the petitioners keeping in view the resolution of the 6th and 7th Board Meetings could have been reviewed once the selections were over and letters of appointment had been issued without complying with the principles of natural justice.

107. It is in the aforesaid background that we have now to assess the status of these resolutions and the alleged infirmities as pointed out hereinabove.

108. There is no provision that can be specifically located empowering the Board to rescind a resolution. The specific power being absent in the bye-laws, one has to fall back upon the generally known procedures whereby a body incorporated has the power to do something, then there is a presumption that it can undo the same. The rescission of a previous resolution may be possible by a special or extraordinary resolution of the same body at a later duly convened meeting. (See Ch. 7, Head 5, 7-31 of Shackleton on the Law and Practice of Meetings, 9th Edition by Sweet & Maxwell). An agenda, therefore, would be required specially to rescind a resolution. In the instant case no resolution to annul the earlier resolutions has been passed. To the contrary there are confirmations of the action taken earlier.

109. The facts as unfolded indicate that there was some information including that of Mr. Vyas that the minutes of the meetings had not been recorded correctly and which required correction. In our opinion, a correction is entirely different from re-writing the entire resolution which amounts to annulling the effect of the earlier resolution. As pointed out by the learned counsel and indicated hereinabove the resolution ultimately annulling and cancelling the appointments is based on reasons which are contrary to the decisions taken in the 6th and 7th Board Meetings as also Resolution No. 1 of the 8th Board Meeting. If a conscious decision is being taken for reappraisal of the candidates, then the same resolution taking a decision to annul their appointments does not stand to reason that too even by an August Body of Academic Experts who form part of the Board. A conscious decision taken earlier and recorded in the minutes was sought to be upturned under the garb of a correction which, in our opinion, was not permissible applying the principles of law of meetings as discussed in Shackleton's Book referred to hereinabove.

110. The resolution also takes notice of some status report about which the petitioners were absolutely unaware. The details of such status report is neither on record nor discussed in the resolution itself. Thus, this being totally vague, in our opinion, clearly violates the principles of natural justice vitally affecting the rights of the petitioners to contest the same on merits. The resolution, therefore,

annulling the appointments of the petitioners being contrary to any known rules or regulations, therefore, deserves to be set aside. There is no provision available under the rules of appointment for subjecting a selected and appointed candidate to face a fresh appraisal by the Selection Committee. This position also is not supported by any rules or regulations and is unacceptable.

111. From the facts that have come on record, the resolution of the 6th Board Meeting leaves no room for doubt that the power to issue letters of appointment were specifically delegated on the Director under Item No. 13(S-1) as extracted hereinabove. This was followed by a rider that such a recommendation of the selection committee and the appointment letters issued would be reported in the next meeting of the Board. The delegation was complete and duly authorized by a collective decision.

112. The second part of the resolution is about candidates having outstanding merit and getting interviewed.

113. Whether this procedure was in accordance with the regulations and was in consonance with law that was at that point of time in force, has nowhere been discussed either in detail or even specifically while cancelling the appointment of the petitioners. This is evident from the 16th Resolution of the 8th Board Meeting which is under challenge. The words used in the said resolution are vague and do not specify as to what infirmity as per prescription existed either in the qualifications or in the process of selection and vaguely refers to grant of relaxation or acceptance of candidature in violation of rules. Here we would like to mention that if that was so then the Board ought to have revisited all such appointments after recording as to what rules were applicable and whether the judgment dated 16th July, 2013 in the case of Prithvi Kumar Varadwaj (supra) had any effect or impact on such appointments. It is noticeable that the Board had been throughout taking a stand that the Minimum Qualification Regulations 2010 were not binding. The court pronounced otherwise and such procedure ought to have been noticed when the judgment had already been delivered on 16th July, 2013 long before the 7th and 8th Board Meetings. The consideration of the impact of the judgment is entirely absent in the board resolution which is impugned in the present writ petition.

114. Then comes the issue of rescinding of the resolution. Nothing has been shown through the counter affidavit that any agenda was ever circulated in order to either rescind, modify or record the resolution otherwise by way of correction, modification or a total reversal of the previous resolution. It is not understood as to why such discussions took place without any specific agenda having been circulated in this regard. Consequently, we are of the opinion that the Board ought to have first resorted to observing the rules of tabling a resolution in a Board Meeting in order to assess as to firstly whether they had any authority to review their earlier decisions, and if so, on what specific grounds.

115. The reason for this is also that the resolution had been given effect to with

issuance of letters of appointment. Once a resolution had been given effect to, then while proceeding to cancel appointments or annulling such a resolution, the principles or review are clearly attracted. Once principles of review are attracted then the principles of natural justice are also attracted provided there is any fraud or misrepresentation.

116. In our opinion the subsequent resolutions that have been altered, and ultimately the appointments have been cancelled in the 8th Board Meeting, nowhere reflect the observance of principles of natural justice nor does it reflect any fraud or misrepresentation. At least this is established that the petitioners were not involved in the decision making process, nor is there any allegation against them of having given any misleading information. Thus no fault can be attributed to the petitioners on that count.

117. The resolution reflects the concern expressed particularly by one Mr. Vyas about the resolution not being recorded correctly. It has nowhere been indicated as to what part of the resolution had been incorrectly recorded and it has been simply replaced by recording of the another resolution. What is strange is that while recording this altered resolution also there is a confirmation of the 6th and 7th Meeting of the Board and these resolutions have nowhere been annulled. In our opinion, this could not have been the method of passing of the resolution contrary to what had already been resolved earlier, namely, the decision to proceed with appointments through the Director and issue letters of appointment.

118. There is yet another serious contradiction which has been noticed by us hereinabove namely that the 6th and 7th Board Meeting and even the resolution No. 1 of the 8th Board Meeting confirms all previous resolutions without annulling the appointments. Strangely enough in the same Board Meeting that is the 8th Meeting of the Board the appointments are cancelled by Resolution No. 16 by the same body. It is not understood as to what the Board has proceeded to resolve with its contradictions as pointed out hereinabove, rather what appears is that this has been done with a view to undo every act of the previous Director without complying with the principles of natural justice and without discussing the rules and regulations that were applicable. The simultaneous confirmation and reversals as noticed above vitiate the entire decision making process with an abrupt end by cancelling the appointments.

119. The respondents have given a compilation of judgments to contend that the advertisements giving the details of qualification and relaxation were in contravention of the rules, and the selection procedure in its entirety being invalid, no notice was required to be given. They have also cited decisions to that effect that quashing of the impugned action will have the result of restoring another illegality and Article 14 does not envisage negative equality. It has also been urged on their behalf that the previous director had carried out the selection in a post haste manner and therefore suffers from malice. The following decisions have been cited in support of the aforesaid arguments:--

"ADVTT-QUALIFICATION-ELIGIBILITY-

RELACATION-APPTT IN CONTRAVENTION

1. State of Gujarat and Others Vs. Arvindkumar T. Tiwari and Another,
2. 2011(3) SCC 545 (Prs. 37, 38, 40, 41, 42, 43, 44, 47, 50, 51, 56); State of Orissa v. Mamta Mohanty
3. R.S. Garg Vs. State of U.P. and Others,
4. Secretary, A.P. Public Service Commission Vs. B. Swapna and Others,
5. S.K. Kushwaha Vs. D.K. Joshi and Others,
6. Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others,

ENTIRE SELECTION PROCESS BAD NO NOTICE TO INDIVIDUAL SELECTEES REQUIRED

1. Krishan Yadav and another Vs. State of Haryana and others,
2. Union of India and Others Vs. O. Chakradhar,
3. Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others,
4. M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others,
5. Mohd. Sartaj and Another Vs. State of U.P. and Others,
6. State of Manipur and Others Vs. Y. Token Singh and Others,
7. S.L. Kapoor Vs. Jagmohan and Others,

QUASHING THE IMPUGNED ORDER WILL HAVE THE RESULT OF RESTORING ANOTHE ILLEGALITY

Bhartiya Seva Samaj Trust Tr. Pres. and Another Vs. Yogeshbhai Ambalal Patel and Another,

ARTICLE 14 DOES NOT ENVISAGE NEGATIVE EQUALITY

State of Orissa and Another Vs. Mamata Mohanty,

ACTS DONE IN POST HASTE MANNER ? MALAFIDE PRESUMED

Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others,

120. We have considered the aforesaid judgments and we find that the impugned resolution and the impugned order of cancellation as indicated above were not preceded by any notice or opportunity to the petitioners. The selections were carried out and the Board resolutions were passed confirming the 6th and 7th Board Meeting resolutions with a modification in the 8th Board Resolution.

121. The facts which have now been brought forward through the counter affidavit were not deliberated upon nor any deliberations have been recorded in

the Board Meeting. It is also admitted that no opportunity was given.

122. The decisions which have been cited by the learned counsel for the respondents on the useless formality theory would not be applicable in the present facts in view of the conclusions drawn hereinabove, particularly, when there is no allegation of any fraud or misrepresentation on the part of the petitioners. Secondly, certain rights stood vested in them by virtue of their selection and appointment that were carried out in terms of the resolutions passed by the Board itself. The resolutions were passed by the Competent Authority. The decisions that have been cited by the respondents, particularly, the decision in the case of Y. Token Singh (supra) also clearly explains that where the appointment has been made by a person who was not competent to appoint and there were no posts or sanction orders, then in that event the appointments were held to be void ab initio. This is not the case here. To the contrary the posts did exist, the advertisements were made and the selections were carried out. What is now sought to be planted through the impugned resolution is the alleged ineligibility of the petitioners, the non-availability of grant of relaxation and further certain deficiencies in the selections of experts. These aspects have been seriously contested by the petitioners before us to contend that they were qualified, eligible and some of them were also extended the benefit of relaxation which was permissible under the advertisements and the rules. Such issues could not have been assumed to exist adverse to the petitioners without their participation by putting them to notice and without discussing each individual case on merits by the Board itself, which does not appear to have been done on a perusal of the resolutions. Even assuming for the sake of arguments as contended in the counter affidavit that there were shortcomings in the eligibility criteria of some of the petitioners, this ought to have been examined separately and individually as they were selected and appointed candidates. Thus, the petitioners' appointments cannot be said to be void ab initio without providing them opportunity and without considering the correct position of the applicability of the rules and regulations governing such appointments. This also includes consideration of the sanction letters creating the posts that indicate as to what norms were to be applied for selections.

123. Then comes the cancellation of appointments. It is on record that the appointments were cancelled through the resolution No. 16 of the 8th Board Meeting and the same was simply communicated to the candidates without giving them any prior notice or opportunity before passing the resolution. In our opinion this procedure is clearly in violation of principles of natural justice. Assuming even otherwise though not expressing a conclusive opinion, that there were irregularities or the candidates were suffering from fundamental ineligibilities, or their appointments were in any way affected by the judgment dated 16.7.2013, it was the duty of the respondents to have put all the petitioners to notice about such facts before having proceeded to cancel the appointments. A unilateral decision on assumptions of irregularity clearly violate the principles of natural justice.

124. Learned senior counsel for the respondents Sri Navin Sinha and Sri U.N. Sharma have vehemently urged that most of the candidates are not eligible nor could they have been selected even otherwise as per the then existing qualifications or as per minimum qualifications as prescribed in the 2010 Regulations.

125. We could have proceeded to examine this as these facts have been alleged in the counter affidavit but the resolution nowhere indicates any such specific consideration about the candidates individually. As a matter of fact, in our opinion, each candidates' candidature, who had been selected and appointed, ought to have been dealt with separately as is sought to be canvassed through the counter affidavit. The counter affidavit cannot supplement the resolution. There is yet another reason for the same namely if whatever has been stated in the counter affidavit about the applicability of the rules and the ineligibility as alleged, then the Board will have to revisit all other appointments after June 2010 apart from the appointments of the petitioners which are in violation of the regulations and qualifications that apply as urged in the counter affidavit by the respondents. We are also fortified in our view by the fact that the respondents themselves have proceeded to get an inquiry held through a retired High Court Judge in this regard in respect of the actions taken which have given rise to this controversy. There is nothing on record to indicate that any detailed inquiry or such proceeding was ever held to find out the alleged infirmities or ineligibilities for the appointments which are stated to have been in violation of the rules and regulations that are applicable before passing of the impugned resolution.

126. The decision by way of a resolution appears to be a hasty decision and is supposedly on the surprise disclosure of Prof. Vyas and Prof. Nandi that set everything into motion. Otherwise the entire operation of any deliberation remains a secret vis-?-vis the petitioners. In our opinion, such a decision could not be anything confidential and ought to have been transparent keeping in view the background that all the earlier resolutions had admittedly been passed by the Board collectively. The decision appears to be as if it was an act of performing ablutions to wash away something that had been done by the previous Director. This had to be done carefully in the background that the decision was to visit civil consequences against the petitioners. The Board itself discloses in the impugned resolution that the disclosure of incorrect recording of minutes had led to all this exercise and therefore it was the Board which was itself the complainant, the prosecutor and the Judge all combined in one that proceeded to resolve against the petitioners. This required a more cautious approach and not an impulsive action. The resolutions of the Board passed earlier being a collective decision can be presumed to be action taken in good faith and, therefore, the Board should have been careful enough in proceeding with the matter after assessing its own authority and propriety to review such decisions. The act of the earlier Director was a clear act of delegation. Once the delegator had exercised such powers then the action was complete and any review of such action may not have been permissible keeping in view the law laid down by the Apex Court in the cases

cited by the learned counsel for the petitioners reported in State of Orissa and Others Vs. Commissioner of Land Records and Statement, Cuttack and Others, and Ishwar Singh Vs. State of Rajasthan and Others, .

127. The first thing that the respondent ought to have done is that in a Board Meeting it should have resolved to consider its own authority to review and then the rules and regulations regarding qualifications that were to be applied for assessing such appointments before cancelling them. There is no such discussion inspite of the legal developments that have been noticed by us hereinabove. Neither the terms and conditions of appointment by the Human Resource Ministry, neither the rules and regulations that were allegedly followed by the respondents and nor the impact of the Minimum Qualifications Regulations has been assessed. The reason to us appears to be that the respondents themselves were all the time projecting that the Minimum Qualification Regulations of 2010 by the UGC were not applicable which is evident from the stand taken before the High Court in the case of Prithish Kumar Varadwaj (supra) and also before the Apex Court where they challenged the said judgment but withdrew the special leave petition later on. The said withdrawal in no way impedes the rights of the petitioners, who were not parties therein, to contest the position again in view of what has been noticed above. The Board therefore has to take a clear stand as it may then have to revisit all appointments after 2010 to 2013 and not a selective stand only against the petitioners to avoid violation of Article 14 . This is also absent in the deliberations of the Board.

128. It is in this context that it is necessary to re-emphasise that the Board has nowhere attempted to examine the issue from the point of view of the judicial pronouncement in matter of applicability of the 2010 Deemed University Regulations as well as 2010 Minimum Qualification Regulations. As pointed out by the learned counsel themselves that the Madras High Court in the case of SRM University (supra) has already struck down the Deemed University Regulations as unconstitutional by its judgment that was very much in existence on the date when the impugned resolutions have been passed cancelling the appointment of the petitioner. The judgment of the Madras High Court has also taken notice of the judgment of the Karnataka High Court that had upheld the regulations. Both these matters have already travelled up to the Apex Court where the matters are stated to be pending.

129. We have also come to know from a press report about the judgment of the Madras High Court by a learned Single Judge that was subjected to a challenge before a division bench and where a direction of status quo was issued therein. Certain other Deemed Universities in Karnataka also challenged the said regulations and after the judgement of the learned Single Judge as noted above the matter was taken up in appeal before the division bench of the Karnataka High Court. A similar challenge was raised before the Punjab & Haryana High Court but no interim order was passed and the same is pending consideration before the Court. Thus, a critical issue was raised as to whether the University-

Grant-Commission had a legal competence to amend the regulations and whether it could be enforced. The Ministry of Human Resources Development, Government of India, filed transfer petition before the Apex Court being Transfer Petition (Civil) Nos. 1555-1561 of 2014 seeking transfer of all the cases from the High Courts relating to such a challenge to the 2010 Deemed Universities Regulations so that the matter can be heard by the Supreme Court itself. We have come across information through the internet that Special Leave Petition arising out of the same matter has been filed being Special Leave Petition 27627 of 2012, Government of India v. S.R.M. University and another where the case status report last updated on 11.7.2015 indicates that the case is likely to be listed on 28.7.2015.

130. This again deserves to be repeated that the judgment had come on 16th July, 2013 whereafter the special leave petition had been filed before the Apex Court. The Board without proceeding to confirm as to what were the rules and regulations that would apply, hastily appears to have drawn up the resolution No. 16 for cancellation of appointments on absolutely vague terms and therefore the same is clearly vitiated.

131. The respondents have vehemently urged that they have brought forward material to indicate the shortcomings in the eligibility of the petitioners and the defect in the selection procedure. The issue of ineligibility of experts has been responded by the petitioners contending that such experts were being nominated in selection committees as per the letter of the Director forwarded to the Chairman of the Board on 27.1.2002. We do not find any such reasons having been specifically recorded in the resolutions as indicated above. The resolution No. 16 of the 8th Board Meeting is obscure without individual assessment.

132. At this juncture it would be appropriate to re-emphasise as to why and in what form reasons have to be recorded when an Administrative Authority is exercised quasi-judicial powers as in the present case relating to the cancellation of the appointments.

133. Reasons have to be recorded carefully and with due deliberation. A rational method of enquiry should be adopted and if that is not done, both situations can be better understood in a lighter way from the following poetry by Oliver Herford, a celebrated American playwright poet and writer born in England, more popularly known as the "The American Oscar Wilde".

"METAPHYSICS

by: Oliver Herford (1863-1935)

WHY and Wherefore set out one day

To hunt for a wild Negation.

They agreed to meet at a cool retreat

On the Point of Interrogation.

But the night was dark and they missed their mark, And, driven well-nigh to distraction, They lost their ways in a murky maze of utter abstruse abstraction.

Then they took a boat and were soon afloat

On a sea of Speculation,

But the sea grew rough, and their boat, though tough,

Was split into an Equation.

As they floundered about in the waves of doubt Rose a fearful Hypothesis,

Who gibbered with glee as they sank in the sea, And the last they saw was this:

On a rock-bound reef of Unbelief

There sat the wild Negation;

Then they sank once more and were washed ashore

At the Point of Interrogation."

134. The formation of an opinion cannot exclude the version of the other side if the rights of a person are being affected. The situation should not be made desperate for the affected person or for even a court of law to try to find out and fish out the real reason if it is absent in the decision making process. But what is reason?

135. The statement of an assessment based on facts, after considering a response from the aggrieved party in case of a contest, and then the analytical conclusion in accordance with rules and logic that may lend support to such statement, may be termed as reasons in the process of decision making. The mentioning of a mere conclusion without indicating as to how the mind had traversed in arriving at that conclusion would be an unreasoned decision. Reasons are a processual discernment on facts and principles applied to arrive at a determination. The conflict has to be resolved on deliberations and not on mere perceptions or argument. "Polished steel will not shine in the dark. No more can reason shine efficaciously unless it is cultivated and refined." (John Foster). Reason is cause or ground for justification. It is the power of explaining and is an exercise of the mental faculty which aids in the process of drawing conclusions which is moderation of thoughts. It polices your mind. That is why science distinguishes man from the lower animals. Reason is something sound or sensible and a conclusion drawn on such analysis deserves to be reasonable. If a wrong reason is given the usual phrase that is used is that it does not stand to reason. Reason otherwise also is facts employed as an argument to justify or condemn some act, prove or disprove some assertions, idea or belief or is a ground or cause or for something. (See Aiyar's Law Lexicon, 3rd Edition, 2012).

136. This is because at times the conclusions mention capsuled general expressions, like the one contained in resolution No. 16 of the 8th Board meeting

in the present case, that appear to be abstract and subject to a task of discovery and interpretation likely to result in conflicting opinions. Giving a reason in such decisions therefore also has to be justified and cannot be a vague reason. Reasons should therefore account for what has been concluded with specifics and explanations, more so in the context of and on a consideration of the version of the aggrieved person.

137. Reason is an outcome of the study of cause and effect ? that on facts and law in the present case ? an objective method of opinion formation. It allows a decision making authority to either adopt or reject any course of action, procedure or belief etc. A reason is an answer to the why's, what's and when's. Reason is analysis and it interprets. It is heightened logic and is vindication for a cause. It persuades to believe and performs the role of an arbiter. Epictetus in his Discourses says "Reason is not measured by size or height, but by principle." Sophism (an argument which appears correct but contains some deception) when perfected becomes reason. Reason is that which makes one convinced about the existence of fact. This generates confidence and that is why faith follows reason. It is the only means to act as a guide for assenting to truth. It reconciles with existence and is discovery for such existence. In essence it is the rationality and the fundamental basis of the intellectual and mental exercise undertaken to adopt a line of action or thought. It is not any and every reason, but the perfect and acceptable reason that is sustainable and can be said to be free from arbitrariness. That is why reason is acknowledged in law as part of natural justice which our apex court and through other judicial pronouncements has been taken within the fold of Article 14 of the Constitution of India. It is for this that reason forms the path to conclusions. If a decision is founded on reasons then it is agreeable. William Penn has stated "In all things reason should prevail; It is quite another thing to be stiff, than to be steady in an opinion".

138. The conventional idea of reason has led to formal research on the modern concept of reason particularly in our legal field. The Court has come across an article downloaded from the internet that succinctly explains the necessity and the elements of reason. The article is by Clayton Utz who while expressing the importance of reasons to ensure fairness, rationality, transparency, consistency and accountability also indicates that legal obligation to provide reasons while performing statutory duties and other administrative functions. He describes the necessity of reasons to supplement to appeal rights, service charter commitments, judicial review and also an axiom of prudence. He then goes on to explain as to what a statement of reasons should contain. The same has been elaborated pointwise as follows:--

1. The decision

The decision that was made should be accurately described. If it was made under legislation, this should be referred to. If there are special conditions attached to the decision, these should be specified. If the decision was made to settle a problem or answer a request, this should be noted. The issue or contention being

resolved by the decision should be identified.

2. The decision-maker

The name and designation of the decision-maker should be given. If the decision-maker was an authorised delegate, this should be stated. It is important to check that the officer who made the decision had legal authority to do so.

3. The process

The main steps taken in making the decision should be listed. The broad categories of information or documents that were before the decision-maker should be outlined. If a relevant government or agency policy was considered, this should be explained. Other agencies or officers who were formally consulted should also be named.

It is important to check if there were statutory procedural requirements to be followed. If so, the steps taken to comply with those procedures should be listed in the statement of reasons.

4. The main facts and findings

The facts on which a decision is based will sometimes be self-evident or controverted ? they may, for example, be taken from a person's application. Other cases will be less straightforward. There may be conflicting views as to the true facts. Or it may be necessary to draw inferences from the facts ? for example, to form an opinion about a person's competence, or about the viability of a proposal.

The main factual basis for a decision ? whether consisting of inferences of self-evident facts ? should be set out in the statement of reasons. Some Acts describe these as "the findings on material questions of fact". For each inference the evidence or information to support it should also be set out.

The statement of facts and findings should also be checked against any relevant legislation to ensure that no irrelevant matters were considered and that all applicable criteria in the legislation were addressed.

5. The reasons

It is possible that only one decision could properly be reached on the facts as found. If so, that should be explained in the statement of reasons.

In other situations there may be a choice open to the decision-maker, that is, there is a discretion as to what decision to make. The reason for choosing one option rather than others should be explained. To do this it may be necessary to point to the influential matters, such as facts or policy considerations. This will at times involve a candid statement of unwelcome views.

Above all, a statement of reasons should fulfil its purpose of informing a person why a decision was made. The logic of the decision should be apparent: the

reasoning that links the decision to the facts, findings and policy considerations on which it is based should be explained. If there is more than one step in the reasoning, or more than one element or criterion to be addressed in making a decision, each should be covered in the statement.

6. Appeal rights

Any avenues that are open to a person to challenge or appeal against a decision should be listed. In particular, if the person is entitled under legislation to seek judicial review of the decision or to appeal to an administrative tribunal, details should briefly be given, including the time limits for taking action. Any procedures operating within the agency to enable internal review of decisions should also be spelt out.

139. Another article from Queensland Ombudsman Australia explains this and while emphasising procedural fairness and compliance of principles of natural justice has stated as follows:--

1. The notice requirement

The notice to the affected person must identify the critical issues and contain sufficient information for the person to be able to participate meaningfully in the decision-making process.

2. The fair hearing rule

A fair hearing means that the affected person is given a reasonable opportunity to "speak or respond" and also that the decision-maker genuinely considers the affected person's submission in making the decision.

3. The lack of bias rule

The person making the decision must act impartially in considering the matter. Bias is a lack of impartiality for any reason and may be in favour of or against the affected person. It may arise from the decision-maker having some financial or other personal interest in the outcome of the decision (conflict of interest), or giving the impression that they have prejudged the issue to be decided (prejudgement).

Bias can be actual or apprehended. Apprehended (or the appearance of) bias is judged by whether a fair-minded observer properly informed as to the facts or the nature of the proceedings or process might reasonably apprehend that the decision-maker might not bring an impartial or unprejudiced mind to the resolution of the issue.

140. It also states as to while making a decision the weight to be given to such matters as also to be taken into account which may be necessary for recording reasons. This is meaningful to enable the persons affected by the decision to understand as to why and how the decision was made on a consideration of their version and then to decide his future course of action.

141. We have also consulted Administrative Law by Wade & Forsyth (Eighth Edition) where on the issue of reasons the learned authors say that the statement of reasons is required to be recorded, as it is quite natural, that in those reasons an error was most likely to be found and therefore a person has a legal right to a reasoned decision.

142. While recording reasons for decisions in the procedure for Statutory Tribunals, the learned authors further say that reasons should form part of the decision. The very purpose of such recording of reason is to show a person that he is receiving justice. The facts for determination have to be based on evidence and while recording reasons this has to be discussed.

143. The statement of reasons must show that the point at issue has been considered between the parties and to support it by evidence for a conclusion. Where there is a conflict of evidence, the decision making authority ought to state its findings.

144. Any departure in opinion requires the recording of reasons which falls within the scope of judicial control. This is necessary to find out any justiciable flaw and is the foundation of access to judicial review. The learned authors say that the rules of fairness require that a presumption should be in favour of giving reasons rather than withholding it.

145. There is yet another aspect namely where a collective decision is taken by a body of people, a decision of a policy matter or a declaration of the manner of functioning or any other administrative matter may not necessarily require giving of reasons but where a decision making process which deals with the individual rights of a person and is governed by rules, regulations and statutes, then the power to decide is conferred by law and regulated by it. In such a situation, even a collective decision by a body cannot afford to be subjective and it has to record reasons. A debate between recording of brief reasons and reasons in detail is always a matter of adjudication. In our opinion, even in a collective decision the reasons even if brief should contain the material on the basis whereof such a reason is being recorded. Any form of vagueness or just cryptically mentioning the conclusion would not suffice to show that reasons have been discussed even while forming a collective opinion. A mere recital of vague reasons would not be sufficient nor a matter like the present one where the aggrieved party has a right to know the reasons for the decision being taken either for or against him.

146. The discovery of facts, the application of the correct law and then analytically and logically applying the same in that given situation is the method which has to be adopted to provide reason for a decision. An administrative authority, if it is exercising quasi-judicial functions, has to apply these principles and even in administrative decisions where civil rights are widely affected such a procedure cannot be ignored as such decisions are likely to end up for interpretation in a court of law. The minimum therefore what is required is that at least the facts that lead to a reasoning and the rule applied must be stated

and considered in the decision itself.

147. It is well known that if a decision does not contain reasons it cannot be supplemented by facts see *Mohinder Singh Gill v. Chief Election Commissioner*, AIR 1978 (1) SCC Page 405. It is not only arbitrariness but discrimination which has to be kept in mind. The same set of standards has to be applied in matters as presently involved in respect of appointments or their cancellations. A discretion exercised in favour of one who stands on the same footing and denial to another would obviously violate Article 14 of the Constitution of India. Therefore, reasoning by analogy has to conform to these principles as well.

148. It is also necessary to point out that on a given fact situation where decision making process is in the hands of expert academic bodies, the same facts may bring about a different opinion when taken up in a court of law, but primarily it is the academic experts who in such matters where rules and regulations of appointment and eligibility of candidates are involved have to give their opinion in the shape of a decision before judicial assessment. The decision is subject to adjudication to discover any arbitrariness or else any judicial inquiry would be limited only to the decision making process. It is for this reason that the body making the decision has to be objective and cannot subjectively describe any procedure that may be vague or carried out without following rules. If such objectivity is missing then such matters even though in the realm of expertise become subject to judicial scrutiny.

149. Sri Rajeev Misra, learned counsel for one of the petitioners has invited the attention of the Court to the details of the members of the Selection Committee for selection of the faculty members. He has filed a compilation to that effect to urge that the profile of Prof. M. Radhakrishna, Prof. Moinuddin, Principle Scientist Sri M.R. Murlidharan, Prof. Ramesh Chandra, Prof. C.L. Khetrapal, Prof. Parvej Talib and Prof. G.N. Pandey, would leave no room for doubt that they were from the concerned field of the subject for which selections were being held. This was done in response to the argument of the respondents that the experts so nominated suffered from ineligibility for participating in the selection committee. It is urged by the respondents that these were experts not nominated as per the rules and regulations and consequently their participation has vitiated the selections.

150. The aforesaid issue in our opinion also does not form part of the deliberations of the 8th Board Meeting by specifying the experts who could not participate or were not entitled to participate in the selections. Consequently, this issue ought to have been determined by the respondents before they could raised this point through a counter affidavit.

151. In such a situation the Board was under an obligation to examine the impact of these judgments vis-?-vis the Deemed University Regulation, 2010 before asserting that the said regulations would apply. The Board did not examine as to whether as per the communications which are on record in

relation to the amendments in the Memorandum of Association and the Rules and Regulations of the Society, they have been adopted or not.

152. Then comes the Minimum Qualification Regulations of 2010. It is here that the exercise by the Board had to assess the situation in relation to all such appointments that were being made and had been actually been made after the promulgation of the 2010 Minimum Qualification Regulations if it had the authority to do so. It is not a selective examination of only the appointments of the petitioners that can be dealt with separately by the Board, inasmuch as the Institute in the case of Pritish Kumar Varadwaj (*supra*) which was decided as late as in July 2013 was still continuing with its stand that the 2010 Minimum Qualification Regulations are not to be applied for appointments which have to be made only in accordance with IIIT norms as the Institute was a centrally funded institute and not funded by the University Grant Commission. The Board, therefore, could have reviewed its action in relation to all appointments which had been made after the Minimum Qualification Regulations of 2010 were brought in force in order to avoid any discrimination to the petitioner as against all such appointments that have been made after 2010 in accordance with the IIIT norms only. This was necessary in order to establish the bonafides of the Institute about the applicability of the Minimum Qualification Regulations, 2010. Such institutes had been continuously asserting their autonomy independent of the UGC Regulations and have ultimately succeeded with a legislation protecting their autonomy which has been brought into force in December 2014 as noted hereinabove. The Institute appears to have not subjected itself in its matter of selection and appointment to the Minimum Qualification Regulations of 2010 during the period when this dispute had arisen and before it. The withdrawal of the special leave petition by the Institute per se would not defeat the rights of the petitioners to contest the aforesaid position. The Board will, therefore, have to take a decision about its own authority and competence to revisit and thereafter the applicability of the said regulations in the light of all the aforesaid developments as it cannot afford to take different stands in different cases. The uniformity of the application of the rules in matters of selection and appointment cannot be deviated unless there is any justification for the same. This justification has to come through a valid sustainable decision by the Board itself. The power to relax qualifications as asserted by the petitioners will also then follow suit after individually assessing as to whether the power was actually exercised or ought to have been exercised if permissible.

153. For all the aforesaid reasons recorded hereinabove the entire decision making process is clearly vitiated and the unclarity on the issue of the authority of the respondents to undertake this exercise as also the correct application of rules and the law in this regard therefore persuade us to strike down the action taken against the petitioners.

154. Consequently, the impugned cancellation orders on the basis of the impugned resolution of the 8th Board Meeting cannot be sustained and the same

are hereby quashed. The writ petitions are accordingly allowed and the impugned cancellation orders in these petitions as well as the 16th Resolution of the 8th Board Meeting are hereby quashed. The resolutions passed in the 7th Board Meeting and 8th Board Meeting only in so far as they are adverse to the petitioners shall be open to consideration in the light of the observations made hereinabove.

155. In view of the findings recorded by us hereinabove, we leave it open to the Board to take a fresh decision as may be permissible in the light of the observations made hereinabove within three months after opportunity to the petitioners.