

(1995) 01 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Petition No. 2453 of 1995

Common Cause and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-01-1995

Acts Referred:

All India Institute of Medical Sciences Act, 1956 — Section 4

Citation : (1996) 62 DLT 28

Hon'ble Judges : Mahinder Narain, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : G.L. Sanghvi, Vipin Sanghi, Preetesh Kapur, M.C. Sekharan, Madan lokur, Monica Singhal, Sunita Sharma, S.P. Kaira, G. Ramaswamy, W. Singh, Sanjay Hegde, Mukul Gupta, Mukta Gupta and B.K. Sinha, for the Appellant;

Judgement

Mahinder Narain, J.

(1) By this order I propose to dispose of the writ petition C.W. No. 2453 of 1995, which is filed as public interest litigation by (1) Common Cause (a registered Society under the Societies Registration Act) and (2) Forum for justice and Peace (a registered Society under the Societies Registration Act).

(2) The petitioners have invoked the writ jurisdiction of this Court in public interest in view of "the serious situation created due to various acts of commission and omission of respondent No. 3 in relation to the respondent No. 2 Institute which is the most prestigious medical and research facility in the country." The respondents in the petition are Union of India, respondent No. 1, Ail India institute of Medical Sciences, respondent No. 2, and B. Shankaranand, respondent No. 3.

(3) The writ petition was amended by the petitioners, and the amended petition was taken on record by order dated 12.7.1995. In the amended petition the following reliefs were claimed by the petitioners :-

(I) A writ order or direction in the nature of Quo Warranto or any other

appropriate writ declaring that respondent No. 3 is not entitled to hold or continue in office as the President/Member of the respondent No. 2 institute, or as the Chairman of the governing body of the respondent No. 2 Institute. (ii) A writ order or direction in the nature of mandamus thereby restraining respondent No.3 from functioning as the President/Member of the respondent No. 2 Institute or the Chairman of the governing body of the respondent No. 2 Institute. (iii). A writ order or direction in the nature of certiorari quashing the proceedings, deliberations and minutes of the meetings of the institute body and governing body of respondent No. 2 held on 5.6.1995 or any subsequent date called and presided over by respondent No. 3. (iv) Any further or other orders as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

(4) The Union of India filed its counter-affidavit on 7.8.1995, and respondent No. 3 for himself and for respondent No. 2, filed counter-affidavit on 5.8.1995. Respondent No. 2 has filed another reply-affidavit on 11.8.1995 through Dr. S.K. Kacker, Director of the Institute.

(5) The question in this writ petition for issue of Quo Warranto will turn on interpretation of the provisions of the All India Institute of Medical Sciences Act, 1956, (hereinafter called the "said Act").

(6) As the writ is one of Quo Warranto, questioning the appointment of respondent No. 3 as a Member of the Institute, and as President of the Institute by nomination of respondent No. 1, it is necessary to deal with the criteria for appointment of members of the institute.

(7) Section 4 of the said Act postulates the persons who are to be members of the institute. The said Section reads as under:-

4.Composition of the Institute.-The Institute shall consist of the following members, namely:- (a) the Vice-Chancellor of the Delhi University, ex officio; (b) the Director-General of Health Services, Government of India, ex officio, (c) the Director of the Institute, ex officio, (d) two representatives of the Central Government to be nominated by that Government, one from the Ministry of Finance and one from the Ministry of Education; (e) five persons of whom one shall be a non-medical scientist representing the indian Science Congress Association, to be nominated by the Central Government; (f) four representatives of the medical faculties of Indian Universities to be nominated by the Central Government in the manner prescribed by rules; and (g) three members of Parliament of whom two shall be elected from among themselves by the members of the House of the People and one from among themselves by the members of the Council of States.

(8) Adding up tile number of members which compose the Institute, it will be seen that the institute comprises of 17-members. The persons mentioned in Sections 4(a), 4(b) and 4(c) are ex officio members of the Institute. Section 4(d) provides for representative of two ministries, as nominees of the Central

Government; one from the Ministry of Finance and one from the Ministry of Education. Section 4(f) provides for four representatives of the medical faculties of the Indian Universities, who are nominated by the Central Government in the manner prescribed by the rules. Section 4(g) provides for three members of Parliament, two from the Lok Sabha (House of People) and one from the Rajya Sabha (Council of States), who are to be elected by the members of the respective houses.

(9) The provision with which we are concerned in the instant petition, is of Section 4(e) of the said Act. I have to determine as to who are the persons eligible to be considered u/s 4(e) of the said Act, for the purposes of being nominated as members of the Institute in view of the phraseology of Section 4 and specifically of Section 4(e) of the said Act.

(10) To my mind. Section 4(e) circumscribes inherent limitation with respect to the members who are to be nominated under that provision. It is clear from reading of Section 4(e) as a whole, that it is not permissible to make nomination of more than five persons under the provision of Section 4(e), equally it is clear from reading of the provisions of Section 4(e) that it is not permissible to nominate less than five persons u/s 4(e) of the said Act. The above said are the maxima and minima which is prescribed by Section 4(e) of the said Act.

(11) As regards who are to be the nominees there is a great deal of dispute. The area regarding which dispute does not exist, is that one of the persons has to be a non-medical scientist, it is essential that a non-medical scientist be appointed u/s 4(e) of the said Act.

(12) To find out what kind of person is a scientist, it is convenient to refer to Shorter Oxford Dictionary, Volume 2, page 1094. In that the word "scientist" is defined as "a man of science". The words "man of science" are defined (as in modern use) to be "a man who has expert knowledge of some branch of science usually of physical or natural science, and devotes himself to its investigation". Thus there is no dispute that one representative has to be a person who investigates scientific phenomena in the field which is not connected with medicine. The dispute between the parties centres around about the qualities of the other four persons who are to be nominated u/s 4(e) of the said Act.

(13) According to the contention of the petitioners, when Section 4(e) of the said Act is read in juxtaposition with other provisions of Section 4, it is clear that it was the intention of the Parliament to get different kinds of experts who are needed for the purpose of making the Institute of medical sciences function efficiently. The experts in various fields were to constitute the Institute. Thus according to the petitioners. Section 4(a) of the said Act deals with educational expert. Section 4(b) deals with expert in the field of public health and medicine. Section 4(e) deals with a person who is the head of the Institute by virtue of the office he holds. Section 4(d) deals with two persons, one of whom is expert in matters of finance, and the other an expert in matters of education. According to

the petitioners, Section 4(e) deals with the nomination of scientists and the nature of their expertise. Section 4(f) deals with experts in the field of medical education of Indian universities, and Section 4(g) deals with public men represented by the members of the Parliament.

(14) Counsel for the petitioners also contends that the provisions of Section 4(e) of the said Act, in fact every provision of Section 4, should be construed, keeping in view the provisions of Sections 13 and 14 of the said Act. Section 13 of the said Act sets out the objects of the Institute. The said provision reads as under :-

13. Objects of the Institute. The objects of the Institute shall be - (a) to develop patterns of teaching in under-graduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions in India; (b) to bring together in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and (c) to attain self-sufficiency in post-graduate medical education. Section 14 of the said Act sets out the functions of the Institute. Section 14 reads as under:- 14. Functions of the Institute. With a view to promotion of the objects specified in Section 13, the Institute may- (a) provide for under-graduate and post-graduate teaching in the science of modern medicine and other allied sciences, including physical and biological, sciences; (b) provide facilities for research in the various branches of such sciences; (c) provide for the teaching of humanities in the under-graduate course; (d) conduct experiments in new methods of medical education, both under-graduate and post-graduate, in order to arrive at satisfactory standards of such education; (e) prescribe courses and curricula for both under-graduate and postgraduate studies; (f) notwithstanding anything contained in any other law for the time being in force, establish and maintain -

(I) one or more medical colleges with different departments, including a department of preventive and social medicine, sufficiently staffed and equipped to undertake not only under-graduate medical education but also post-graduate medical education in different subjects; (ii) one or more well-equipped hospitals; (iii) a dental college With such institutional facilities for the practice of dentistry and for the practical training of students as may be necessary; (iv) a nursing college sufficiently staffed and equipped for the training of nurses; (v) rural and urban health organisations which will form centres for the field training of the medical, dental and nursing students of the Institute as well as for research into community health problems; and

(VI) other institutions for the training of different types of health workers, such as physiotherapists, occupational therapists and medical technicians of various kinds; (g) train teachers for the different medical colleges in India; (h) hold examinations and grant such degrees, diplomas and other academic distinctions and titles in under-graduate and post-graduate medical education as may be laid down in the regulations; (i) institute, and appoint persons to, professorships, readerships, lectureships and posts of any description in accordance with

regulations; (j) receive grants from the Government and gifts, donations, benefactions, bequests and transfers of properties, both movable and immovable, from donors, benefactors, testators or transferors, as the case may be; (k) deal with any property belonging to, or vested in, the Institute in any manner which is considered necessary for promoting the objects specified in Section 13; (l) demand and receive such fees and other charges as may be prescribed by regulations; (m) construct quarters for its staff and allot such quarters to the staff in accordance with such regulations as may be made in this behalf; (n) borrow money, with the prior approval of the Central Government, on the security of the property of the Institute; (o) do all such other acts and things as may be necessary to further the objects specified in Section 13.

(15) It is contended by Counsel for the petitioners that if the provisions of Section 14 are kept in view, then it becomes clear that the All India Institute of Medical Sciences, which name is given by Section 3 of the Act, has come into existence as a body corporate, having perpetual succession and a common seal, to fulfill the objects and reasons for which the said Act was enacted. The objects and reasons for the bringing into being the above said Institute, are set out in the AIR Manual Civil & Criminal, 5th Edition 1989, which read as under:-

"FOR improving professional competence among medical practitioners, it is necessary to place a high standard of medical education, both post-graduate and under-graduate, before all medical colleges and other allied institutions in the country. Similarly, for the promotion of medical research it is necessary that the country should attain self-sufficiency in a post-graduate medical education. These objectives are hardly capable of realisation unless facilities of a very high order for both under-graduate and post-graduate medical education and research are provided by a central authority in one place. The Bill seeks to achieve these ends by the establishment in New Delhi of an institution under the name of the All-India Institute of Medical Sciences. The institute will develop patterns of teaching in under-graduate and postgraduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions, will provide facilities of a high order for training of personnel in all important branches of health activities and also for medical research in its various aspects.

The Institute will have the power to grant medical degrees, diplomas and other academic distinctions which would be recognised medical degrees for the purpose of the Indian Medical Council Act, 1933". Gaz. of Ind" 21.9.1955, Pt.II-Sec.2, Extra page 444. Act 30 of 1987.- The All India Institute of Medical Sciences, New Delhi and the Post-Graduate Institute of Medical Education and Research, Chandigarh are statutory autonomous bodies wholly financed by the Government of India. Both the Institutes are expected to provide accommodation to their staff either within or outside the Institute's complex. However, it has not been possible to achieve maximum possible satisfaction in the matter of allotment of quarters to the staff due to the over all financial constraints of the

Government. It has, Therefore, been decided to empower both the Institutes to borrow money, with the previous approval of the Central Government, on the security of the property of the Institutes. A clarificatory amendment has also been proposed to enable the construction of staff quarters and allot them in accordance with the regulation to be made by the Institutes. 2. The Bill seeks to achieve the above objects by amending the relevant provisions of the Acts establishing the Institutes. -S.O.R. - Gaz. of Ind" 11.3.1987,Pt.II,S.2,Ext., p.3 (No. 5).

(16) Counsel for the petitioners avers that reading the Statement of Objects & Reasons together with the provisions of Sections 14(a) and 14(b) of the Act, makes it clear that the objects of the Institute are to bring into being an Institute for improving professional competence among medical practitioners, to run a medical collage for graduate and post-graduate studies with the object of demonstrating a high standard of medical education, to promote research in all branches of medical science.

(17) In other words, the Institute was to be a premier Institute concerning medicines and medical education at graduate and post-graduate level and to be, as it were ,a guiding star to all the institutes of medical education and provide facilities of the highest order for the training of personnel in all important branches of health activities are adopted and pursued. The Institute was also to provide facilities for research in all the branches of medicines and allied science including physical and biological science, of high standard, and of the highest order.

(18) It is contended that high standard in medical education and the highest order in educational facilities were not possible to achieve unless scientists are represented in the Institute as work of medical research is to be carried on by using instruments which are also in non-medical field. It was considered essential by the Parliament to have scientists, both from the medical and the non-medical fields, to ensure the highest attainment in medical and scientific research by persons working in the Institute. The only way to ensure this was to ensure the presence of scientists as a constituent of the Institute, and this is what has been done by Section 4(e) of the Act. It is also clear from reading the provisions of Section 4 of the Act that no other provision other than Section 4(e) can possibly relate to any scientists.

(19) It is clear that Section 4(f) deals with representatives of the medical faculties of the Indian universities, which means those who teach medical science and not those who do research in medical science. The persons who teach medical faculties, are distinct from those who do research in medical sciences just as they are distinct from medical practitioners who practice medicine as general practitioners, or as surgeons.

(20) In order to justify the contention regarding Section 4(e) of the said Act, it is stated that same has to be construed by the Court, keeping in view the objects

of the Act, mentioned in Section 13 of the said Act, and the functions of the Institute mentioned in Section 14(b) of the said Act. It is contended that the object of Section 4(e) of the said Act is to get five scientists, at least one of whom is to be a non-medical scientist, to be the constituent part of the Institute as medical and scientific research is needed to be conducted at the Institute in accordance with Section 14(b) of the said Act.

(21) Another reason put forward to include five scientists to constitute the medical Institute is that the persons who compose the medical Institute should be persons who are well versed in the nature of work and functions which are formed at the Institute, particularly, in view of the fact that it is only u/s 4(e) of the said Act that inclusion of scientists as constituent part of the Institute is contemplated and none of the other clauses of Section 4 enables inclusion of medical scientists or non-medical scientists as constituents of the Institute.

(22) It is contended that if one examines the entirety of Section 4 of the said Act, it comes clear that representatives of the Central Government are to be included u/s 4(d), one being representative of the Ministry of Health and other being representative of the Ministry of Finance. It is contended that as the maximum members of Government representatives are two in number, the back door entry of persons under cover of other provisions of Section 4 should not be permitted.

(23) Questioning the appointment of respondent No. 3 and three others by the order of appointment made u/s 4(e) of the Act, it is averred that neither respondent No. 3 nor three other nominees have been authorised by the Indian Science Congress to be representatives of the Indian Science Congress.

(24) In support of the aforesaid contention, the Counsel for the petitioners refers to *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, to say that while construing the provisions of Section 4(e) of the Act, the objects of the Act have to be kept in view :

"COUNSEL for the petitioners has also brought to our notice the judgment reported as *Fagu Shaw and Others Vs. The State of West Bengal*, wherein at page 169 it has been held that if the language of the statute is clear, then the reference to parliamentary debates is not required. The petitioners submit that in view of the rival contentions between the parties and the facts and circumstances of the case, the instant case is a fit one for referring to the parliamentary debates in connection with enactment of the provisions of Section 4(e) of the said Act. Counsel for the petitioner has referred to the parliamentary debates, and has also brought to our notice the contention at page 267 of the amended writ petition, and also referred to the statement of the Minister of Health & Family Welfare, who had moved the Bill in the parliament which is to the effect that out of the body of 17 members who are to constitute the All India Institute of Medical Sciences, only three or four officials are to be members. The Minister had justified the provisions and rebutted the criticism of the members of the

parliament that most of the persons who constitute the Committee, would be the officials of the Central Government. The Minister rebutted this in the parliament by saying that "non-medical scientists and those representing the Indian Science Congress are certainly not Government officials. The representatives of the medical faculties are not likely to be officials. Then there are three members of Parliament, who certainly are not officials. So that objection really does not stand".

(25) The reference by the Counsel is, Therefore, to support his contention that Section 4(e) of the Act was not intended for getting officials of the Central Government into the All India Institute of Medical Sciences as constituent members of the Institute. The Counsel for the petitioners contends that the averments in the affidavit of respondent No. 3 on behalf of himself and on behalf of the Institute at page 8 of the reply affidavit, are contrary to what was stated in the Parliament by the Minister who had moved the bill, as respondent No. 3 contends that the contention of the petitioners that under clause (e) of Section 4 of the said Act, the persons must be nominated by the Indian Science Congress, must represent Indian Science Congress, is untenable.

(26) Counsel for the petitioners also refers to the contention of the Union of India, respondent No. 1 in its counter-affidavit, which is to the effect that "interpretation given by the petitioners that all the five nominees u/s 4(e) of the said Act should necessarily be representatives of the Indian Science Congress Association, is not tenable. From the very beginning interpretation has been that one representative of the Indian Science Congress and four others are nominated by the Central Government. In the light of these averments Counsel for the petitioners submits that the true interpretation of the provisions of Section 4(e) of the said Act will have to be determined on the basis of the meaning which can be ascribed to the words "from the context in which they appear". It is also contended that if contention of the respondents is accepted, then the provisions of Section 4(e) of the Act would itself become arbitrary, inasmuch as it will enable the Government to pick and choose anyone for becoming a constituent member of the Institute.

(27) It is further contended that if the interpretation of the respondents is accepted regarding Section 4(e) of the said Act, then the Court must also go further and hold that the provision is arbitrary, and strike down the said provision, as arbitrary.

(28) As regards the contention of respondent No. 1 that respondent No. 1 has always believed that u/s 4(e) of the said Act, respondent No. 1 could nominate any five persons, one non-medical scientist and four other persons, is also not justified on the basis of the principle of contemporaneous exposition of the meaning of legislation. Inasmuch as, the said aid to construction is valid only in case statutes which are old, and are used when words having old meaning, have been used in the statute, which old meanings are lost in antiquity.

(29) Counsel also relies upon the judgment of the Supreme Court in *J.K. Cotton Spinning and Weaving Mills Ltd. and Anr Vs. Union of India (UOI) and Ors*, , which is to the effect that the principle of contemporaneous expositio must give way to the language of the statute when the same is unambiguous. The petitioners also contend that the said Act being of 1956, the principles of contemporaneous expositio do not apply, as the statute uses the prevalent and current language and words. Therefore, how it was understood by the Government, is irrelevant. In any case the principle of contemporaneous expositio comes into play when there is a judicial pronouncement with respect to the language used in the statute, and has no application in case of actions of the Government. Counsel for the petitioners advances the proposition that words used in a statute take colour according to the context in which they are used, refers to *Pandit Ram Narain Vs. The State of Uttar Pradesh and Others*, in support of the said proposition. The contention of the Counsel for the petitioners is that keeping in view the objects and functions postulated by Sections 13 and 14 of the said Act, it becomes clear that one of the functions of the Institute is to carry on research in the field of medical science. He submits that the only provisions which exist regarding inclusion of scientists as constituent members of the Institute are to be found in Section 4(e) of the said Act. The said provision, according to the Counsel for the petitioners, deserves to be so interpreted that some medical scientists, and not merely one non-medical scientist, becomes a constituent member of the Institute. It is contended that induction of five scientists, one non-medical scientist and four medical scientists as constituent member is essential to ensure that the persons who constitute the Institute can understand the medical research and non-medical research work which is being carried on in the Institute, and the benefit of the skill and experience of said persons should be available to other constituent members of the Institute, who are not medical or non-medical scientists, to explain the nature of the work done, when necessary. Counsel refers to the judgment of the Supreme Court reported as *Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others*, , wherein it has been held that the words of the statute will take colour for the purpose and object of the Act itself. On this account also. Counsel contends that Section 4(e) of the said Act, should be so interpreted that it includes medical scientists as constituent members of the Institute. He says this would be the result if Section 4(e) of the said Act is interpreted, keeping in view the provisions of Sections 13 and 14 of the said Act.

(30) It is the further contention of the Counsel for the petitioners that looking at the documents which are on record of the instant case, it is clear that induction of respondent No. 3 as a member of the Institute, was on account of his being Minister of Health, and not in any other capacity.

(31) It is the contention of the petitioners that respondent No. 1 has nominated the respondent No. 3 as constituent member of the Institute owing to the fact that at the time of his nomination he was holding the office of Union Minister of Health and Family Welfare. According to the petitioners, this was done on 9th

March, 1994 by a notification of the said date. In the said notification, the Secretary of the Department of Health, Mr. M.S. Dayal, who is an I.A.S. officer, was also appointed as one of the constituent members of the Institute. The petitioners contend that the said notification appointing respondent No. 3 as constituent member of the Institute was part and parcel of the intention to make the Minister of Health and Family Welfare the President of the Institute which was done by another notification dated 9th March, 1994. It is the contention of the petitioners that Government has been appointing the persons who are Minister of Health and Family Welfare as the Presidents of the Institute as is apparent from the appointment of Smt. Mohsina Kidwai; Shri P.V. Narsimha Rao; Shri Motilal Vohra, Shri Ram Niwas Mirdha; Shri Rafique Alam Khan; Shri Nilamani Routray, Shri Raseed Masood, Shri Shakeelur Rehman, Shri Chandrasekhar, Shri M.L. Fotedar.

(32) The petitioners say that it was only for the period 18th April, 1991 to 26th June, 1991, the Minister of Health & Family Welfare was not appointed as the then Health Minister, i.e., the Prime Minister had by name nominated Shri Anant Ram Jaiswal as the President of the Institute. The petitioners contend that the only reason in nomination of respondent No. 3 as the President of the Institute that he was Minister of Health. It is asserted that he is not possessed of any qualification, achievement or recognition which could be considered relevant for nominating respondent No. 3 as the constituent member of the Institute in his individual personal capacity, as distinguished from his official capacity.

(33) The aforesaid contentions regarding appointment of respondent No. 3 as member of the Institute, are also advanced regarding appointment of Mr. M.S. Dayal, Secretary to the Government of India, Ministry of Health & Family Welfare, Department of Health, as a member of the Institute by the aforesaid notification.

(34) It is the contention of the petitioners that inasmuch as respondent No. 3 did not hold office as Minister of Health & Family Welfare from 22nd December, 1994 in the wake of security scam, the J.P.C. report as well as the investigation report of C.B.I., he automatically ceased to be a member, or President of the Institute as he was not appointed as a member or President of the Institute in his personal capacity or as a person. The petitioners, Therefore, contend that on respondent No. 3 demitting the office of the Minister of Health, a communication was addressed to respondent N 0.3 on 28th December, 1994, by the Secretary, Department of Health, in the following terms : "Dear Shri Shankaranand ji, The Central Government had nominated the Union Health Minister, Government of India, as Member and as the President of the Institute Body New Delhi (AIIMS). Your name, in your capacity as the Union Health and Family Welfare Minister, was Therefore, notified as a Member and as President of the Institute Body of AIIMS. As you demitted the office of the Union Minister of Health and Family Welfare on 22.12.1994, you have ceased to be the Member and the President of the Institute Body of AIIMS from time of demission of your office as the Union Minister of Health and Family Welfare. This is for your information. A copy of this

letter is being endorsed to Director, AIIMS. Yours faithfully, sd/- (M.S. DAYAL)
Shri B. Shankaranandji, 8, Tees January Marg, New Delhi."

(35) It is also the contention of the petitioners that respondent No. 3 changed his stand and asserted that the nomination of respondent No. 3 was by his name and not because of the office held by him and so he is entitled to continue as a Member of the institute and as the President of the Institute.

(36) The petitioners in the alternative submit that if the stand taken by the respondent No. 3 about his nomination being in his own name, and not because of his holding the office of Minister of Health and Family Welfare is accepted, then the exercise of powers nominating the respondent No. 3 as Member and President of the Institute is arbitrary and irrational, and the exercise of powers of nominating respondent No. 3 u/s 4(e) of the said Act, has to be considered as wholly unguided, directionless and arbitrary, and on that account, respondent No. 3 having no academic or other qualifications making him a deserving person to hold the position of Member/President of the Institute, the appointment should be declared to be arbitrary and illegal and he ought not to be permitted to continue to function as Member /President of the respondent No. 2 Institute. The Counsel for the petitioners refers to State of Madhya Pradesh and Another Vs. Dadabhoy's New Chirimiri Ponri Hill Colliery Co. Pvt. Ltd., ., and states that it is well accepted principle of interpretation of statutes that if two constructions are possible, the one that sustains the legislation should be adopted. Therefore, the petitioners advocate the adoption of the construction that only scientists can be appointed u/s 4(e) of the said Act.

(37) It is the petitioners' contention that u/s 4(e) of the said Act, only reputed scientists could be nominated as a Members of the Institute.

(38) It is also contended that as respondent No. 3 is not a Member of the Indian Science Congress, he is not entitled to be nominated u/s 4(e) of the said Act as a Member of the Institute and as the respondent No. 3 cannot be a Member of the Institute, he cannot be nominated as the President of the Institute.

(39) Petitioners refers to Section 10 of the said Act which deals with various Committees of the Institute. Section 10 reads as under:

10. Governing Body and other Committees of the Institute.-(1) There shall be a Governing Body of the Institute which shall be constituted by the Institute from among its members in such manner as may be prescribed by regulations. (2) The Governing Body shall be the executive committee of the Institute and shall exercise such powers and discharge such functions as the Institute may, by regulations made in this behalf, confer or impose upon it. (3) The President of the Institute shall be the Chairman of the Governing Body and as Chairman thereof shall exercise such powers and discharge such functions as may be prescribed by regulations. (4) The procedure to be followed in the exercise of its powers and discharge of its functions by the Governing Body, and the term of office of, and the manner of filling vacancies among, the members of the

Governing Body shall be such as may be prescribed by regulations. (5) Subject to such control and restrictions as may be prescribed by rules, the Institute may constitute as many standing committees and as many ad hoc committees as it thinks fit for exercising any power or discharging any function of the Institute or for inquiring into or reporting or advising upon, any matter which the Institute may refer to them. (6) A standing committee shall consist exclusively of members of the Institute; but an ad hoc committee may include persons who are not members of the Institute but the number of such persons shall not exceed one-half of its total membership. (7) The Chairman and members of the Governing Body and the Chairman and members of a standing Committee or an ad hoc Committee shall receive such allowances, if any, as may be prescribed by regulations.

(40) The petitioners contend that in the light of the provisions of Sections 10, 13 and 14 of the said Act, there have to be at least five scientists as constituent Members of the Institute.

(41) Counsel contends that there is an Indian Council of Medical Research and in fact it is located virtually adjacent to the All India Institute of Medical Sciences.

(42) The petitioners contend that if the files leading to the nomination of respondent No. 3 are looked at, then it will become clear that the nomination of the respondent No. 3 as a Member of the Institute is on account of his being the Minister of Health and Family Welfare and not in his personal capacity. The petitioners say that the Government has since 1956 in its working out the provisions of Section 4(e) of the said Act, has acted contrary to the terms of Section 4(e) when understood in the context of other provisions of the Act, namely. Sections 13 and 14.

(43) Counsel refers to and relies upon Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, for the proposition that when power is not exercised to achieve the end design of the statute, the same is a fraud of powers as the purpose of the statute is to achieve its end design. The purpose for which the All India Institute of Medical Sciences Act was enacted, was stated in the Objects and Reasons and Sections 13 and 14 of the said Act.

(44) The petitioners contend that inasmuch as the power to nominate respondent No. 3 u/s 4(e) of the said Act has been used for the purposes of nominating a person as a Member of the Institute who has no personal qualifications for the purposes of furthering the purpose and objects of the Act, namely, teaching of medicine and nursing, running of hospitals, carrying on the medical research, is a fraud of powers in the matter of appointment of respondent No. 3.

(45) Apart from this, the petitioners contend that the conduct of respondent No. 3 as the President of the Institute is not such as is expected of the President of a Institute like the All India Institute of Medical Sciences for the reasons which are stated in para 11 of the amended writ petition at page 170, which is reproduced

here below and for that reason also the respondent No. 3 should be removed from the constituent Membership of the Institute and as President of the Institute.

"11. That the petitioners humbly submit that in any case, in view of his past conduct as stated herein above and his alleged involvement in the Multi Crore Securities scam, in larger public interest, respondent No. 3 cannot be allowed to function as the President of the prestigious and life saving Institute and/or the Chairman of its Governing Body. The continuance in office by respondent No. 3 is resulting in fall in the standards of respondent No. 2 Institute, fall of its national and international reputation, demoralisation of its staff, exodus of highly capable Medical Personnel, dead lock in its day to day functioning, sufferance for the poor and needy patients who attend the Institute to receive treatment and drain of resources of the respondent Institute which are vitally important to sustain its growth and Scientific Research Programmes. Respondent No. 3 has by his presence, acts and omissions, completely vitiated the pure and highly academic atmosphere which prevailed in the respondent Institute by his whimsical, arbitrary and direct interference even in respect of such affairs which are best left to the judgment of independent highly qualified Technical/Medical experts.

AS would become evident from a perusal of the following paragraphs, respondent No. 3 is leading a totally parasitic life qua the respondent Institute and is dismembering the soul and spirit of the respondent Institute bit by bit. The petitioners humbly submit that the interference in the affairs of the respondent Institute by respondent No. 3 has been widespread and he has tainted all spheres of activity in the respondent Institute with his arbitrary, whimsical and motivated conduct for the satisfaction of his personal benefits."

when there is no ambiguity in the statutory provisions which is to construed. According to him, the terms of Section 4(e) are unambiguous.

(46) According to Mr. G. Ramaswami, in the instant case, interpretation of Section 4(e) is a matter of grammatical construction and not one of interpretation. According to him, the question in the instant petition is whether respondent No. 3 B. Shankaranand was validly nominated. He refers to the notification nominating respondent No. 3 u/s 4(e) of the Act which is at page 72 of the record. That notification reads as under :

(TO Be Published In Part Ii Section 3 Sub Section (ii) Of The Gazette Of INDIA) Government Of India Ministry Of Health & Family Welfare (DEPARTMENT Of HEALTH) New Delhi, dated the 9th March, 1994 Notification S.O.-In pursuance of clause (e) of the Section 4 of the All India Institute of Medical Sciences Act, 1956 (25 of 1956), the Central Government hereby nominates Prof. P.N. Srivastava, Csir Emeritus Scientist, Nuclear Science Centre, Jnu Campus, P.O. Box 10502, New Delhi, a non-medical scientist representing the Indian Science Congress Association and the following persons to be members of the All India Institute of Medical Sciences, New Delhi, namely: 1. Shri B. Shankaranand, Minister of

Health & Family Welfare 2. Shri M.S. Dayal, Secretary, Department of Health. 3. Prof. J.S. Bajaj, Member, Planning Commission, New Delhi. 4. Prof. P. Chandra, Former Dean, AIIMS New Delhi V.16011/2/93-ME(PG)(ii) sd/- (T.K. Das) Joint Secretary to the Govt. of India The Manager, Govt. of India Press, Mayapuri, Ring Road, Copy forwarded to: 1. Shri B. Shankaranand, Minister of Health & Family Welfare. 2. Prof. P.N.Srivastava, Csir Emeritus Scientist, Nuclear Science Centre, Jnu Campus P.O. Box 10502, New Delhi. 3. Shri M.S. Dayal, Secretary, Department of Health. 4. Prof. J.S. Bajaj, Member of Planning Commission, New Delhi. 5. Prof. P. Chandra, Former Dean, AIIMS, New Delhi F-200/D, Sainik Farm, New Delhi. sd/- (A.K. SONI) Desk Officer CC: The Director, All India Institute of Medical Sciences, Ansari Nagar, New Delhi. sd/- (A.K. SONI) Desk Officer"

(47) According to Mr. Ramaswami, it is clear from the above said notification that a non-medical scientist Prof. P.N. Srivastava has been nominated as a Member as required by Section 4(e). That scientist was not elected by the Indian Science Congress. He is a nominee of the Central Government.

(48) Mr. Ramaswami further contends that the word "person" which is mentioned in Section 4(e) of the said Act clearly signifies that those who are to be nominated u/s 4(e) have to be naturally born persons and not those who hold a particular office, not those who are creatures of any statute. According to Mr. Ramaswami, the Health Minister is not a person and, Therefore, it cannot be said that the Health Minister has been nominated u/s 4(e) of the Act. It is only respondent No. 3 who is a naturally born person who has been nominated and according to Mr. Ramaswami, validly nominated as a constituent Member of the Institute inasmuch as the Central Government has got wide powers to nominate any person from a wide field of choice which is available to the Central Government to be a constituent Member of the Institute u/s 4(e) of the said Act.

(49) According to Mr. Ramaswami, the choice of a person to be nominated is not restricted to any particular group as the person nominated u/s 4(e) is required to be a representative, which means a spokesman for the Indian Science Congress. He does not have to be a scientist himself and anybody can be a spokesman for any group.

(50) Mr. Ramaswami contends that inasmuch as the appointment of respondent No. 3 was made in 1994, in 1995 that appointment cannot be set at naught for the reason of delay.

(51) Mr. Ramaswami also contends that the provisions of Section 4(e) of the said Act can easily be construed grammatically and when grammatically construed, the meaning would become clear that the nomination under the provisions of Section 4(e) is of a naturally born person. He is not to be a person who has been elected and inasmuch as only representatives are to be nominated, the field of choice is unlimited.

(52) Mr. Ramaswami also refers to G.P. Singh's interpretation of statutes at page 207. It states that for a long period, a statute has been understood "in a

particular way, that understanding should be accepted". He also contends that in the facts and circumstances of the case, upon production of the documents of the nomination, the Court should not further examine in a Quo Warranto writ whether the respondent No. 3 can continue as the Member and President of the Institute. It is, however, always open to the Government to re-examine the matter, but it is beyond the scrutiny of the Court unless the documents show that invalid appointment has been made.

(53) In any case, it is the submission of Mr. Ramaswami that respondent No. 3 has no desire to continue as the constituent Member of the Institute and as President of the Institute, if this Court came to the conclusion that the nomination of respondent No. 3 was not in accordance with law and the provisions of the statute.

(54) Mr. Chandrasekharan, Addl. Solicitor General appears for the Union of India contends that all that needs to be construed by this Court for the purposes of deciding the instant writ petition is Section 4 of the said Act. According to him, Sections 4(a), 4(b), and 4(e) deals with the persons who are to constitute the Institute by becoming members by virtue of the office they hold. In other words, Sections 4(a), 4(b) and 4(e) deal with the- ex-officio members who constitute the Institute. According to him. Section 4(d) deals with those members of the Institute who are representative of the Central Government from the Central Government's Finance and Education departments. He was unable to state for what official reasons representatives from the Finance and Education departments were selected, although according to him, the reason for selection of representatives of Ministry of Finance and Ministry of Education appear to be that as funds for the Institute are to be provided by the Central Government, there has to be a representative from the Ministry of Finance; and as the Institute is to carry on educational and training programmes in the field of medicine, nursing and dentistry, representative from the Ministry of Education was required to be made a member of the Institute. According to him. Section 4(f) postulates representatives from the medical faculties of the Indian Universities, which, according to him, represent the teachers of medical subjects in the Indian Universities (He promised to look into the matter but for the time being he did not contend that representatives of the medical faculties would also include medical researchers).

(55) According to him. Section 4(g) of the said Act relates to persons who were elected from out of the Members of Parliament, two being from the Lok Sabha and one being from the Rajya Sabha.

(56) If the construction which is proposed by the Solicitor General, is the correct one then the wordings of Section 4(e) of the said Act, would have to be different. if the Parliament had intended to do what has been suggested by the Solicitor General, then it would have been stated in Section 4(e) "Four persons nominated by the Government", and there would have been another Section, "One no medical scientist representing the Indian Science Congress". The aforesaid

course of action not having been adopted by the Parliament, indicates that by wording the Section 4(e) of the said Act the way it has, there was some other purpose and intent in phrasing it that way. The discernible intent is that Section 4(e) of the said Act was intended to ensure that scientists are made members of the Institute, one to be a non medical scientist, and four of them were to be medical scientists.

(57) As regards the construction of Section 4(e) of the said Act, according to him, a perusal of the said provision indicates that the said provision talks of five persons but does not talk of five representatives. He says that the difference in the phraseology of Section 4(e) vis-a-vis other provisions must be noted and the difference given effect to. According to him, if it was the intention to nominate five scientists then it would have been simple enough for the Parliament to enact that five scientists would be nominated by the Central Government instead of saying that five persons are to be nominated by the Central Government. According to him, provision of Section 4(e) in so far as they relate to nomination by the Central Government, the same is in common with all other sub-clauses of Section 4 of the said Act. As regards the principle of interpretation to be invoked in this case there appears to be some controversy. All the parties are at one when they say that the provisions of Section 4 should be given their natural and grammatical meaning and effect. All of them are at one when they say that objects and reasons for enactment of the statute must be kept in view, which are the provisions of Sections 13 and 14 of the said Act, which deal with objects of the said Act and the functions of the Institute respectively. That it has to be ensured that the objects are achieved by the interpretation which is given to Section 4 of the said Act. All the Counsel are agreed that Sections 4(a), 4(b) and 4(e), 4(d) and 4(g) present no difficulty. Section 4(a) deals with ex-officio constituent member holding the office of the Vice Chancellor of the University of Delhi. Section 4(b) deals with the Director General of Health Services of the Government of India as a constituent ex-officio member of the Institute. Section 4(e) deals with Director of the Institute, who is the ex-officio member. Section 4(d) deals with the representatives of the Ministry of Finance and Ministry of Education nominated by the Government of India. They would be nominated by virtue of the position they hold in the respective Ministry of Finance and Ministry of Education. Section 4(g) deals with elected Members of Parliament who have been elected from amongst the Members of the Lok Sabha - two in number - and one who has been elected by the Members of the Rajya Sabha.

(58) Difficulty is presented in the matter of construing provisions of Sections 4(e) and 4(f) of the said Act.

(59) In my view if the objects of the statute and the functions of the Institute are kept in mind, then it is clear that neither Sections 4(a), 4(b), 4(e), 4(d) and 4(g) can be said to be dealing with the field of choice of persons who can be related to any of the medical research functions, or teaching of medical subjects postulated by Sections 13 and 14 of the said Act. All the persons who would be appointed as

constituent members of the Institute under the provisions of Sections 4(a), 4(b), 4(e), 4(d) and 4(g) would be either by virtue of the office they hold, or the position they hold in the Government, or on being elected from Members of the Parliament, as the case may be. None of these are primarily concerned with the matters relating to medical education or matters relating to medical research. As the statute in question relates to an Institute for medical research and medical teaching, it would be perverse to assert that Members postulated by Section 4 of the Act should not comprise of those who do not have expertise in medical research or medical education. It appears to me that matters relating to medical education are attempted to be taken care of by Section 4(f) of the said Act when the statute says that "four representatives of the medical faculties of Indian Universities to Be nominated by the Central Government in the manner prescribed by the rules." The rules which have been framed for the purposes of nominating four members in the institute as constituent members would furnish guidelines for the purposes of selection from various medical faculties of the Indian Universities. From the reply which has been filed by the Union of India, and the reply filed by respondent No. 3, one cannot arrive at the conclusion that any of the persons nominated from out of the faculties of the Indian Universities were medical research scientists, or whether they were teachers of medical subjects who had also done medical research or who are also doing medical research. In other words, it cannot be said for the lack of adequate material whether the persons nominated from the medical faculties of Indian universities are medical scientists as distinguished from teachers of medical subjects. To my mind a medical scientist is not to be equated with a general medical practitioner, or a person who teaches medical subjects. All the three are distinct full time occupations.

(60) That there is a distinction between medical teachers and medical scientists is to me obvious perhaps, due to hind sight. I do take note of the fact that there is society in existence called the Indian Council of Medical Research (for short, ICMR). ICMR would hopefully be constituted by persons who are primarily medical scientists. Unless any person is a medical scientist doing the medical research, it is doubtful to me that such a person can be regarded as a person carrying on medical scientific research. In view of the coming into being of the ICMR Society, it is doubtful whether representatives of medical faculties are intended to fill Up the positions of medical scientists. It would be safer to say that representatives of the medical faculties would primarily be teachers of medical subjects and not medical scientists.

(61) If the aforesaid construction is given, then the only provision which would remain for the purpose of accommodating scientists in the medical field is Section 4(e) of the said Act. If the representatives from the medical faculties of the Indian universities are also to be treated as scientists then there will be two provisions in Section 4 of the said Act, which deals with induction of medical scientists as members of the Institute, i.e. 4(e) and 4(f). If the representatives of the medical faculties of the Indian Universities are not to be treated as medical

scientists, then there will be only one provision i.e. Section 4(e) which could relate to induction of medical scientists as constituent members of the Institute.

(62) In my view, while construing Section 4(e) of the said Act, it is essential to keep in view the purpose for which the All India Institute of Medical Sciences Act, 1956, was enacted. The purpose of enactment of the Act obviously is to create an institute for imparting medical knowledge on medical subjects and to carry on medical research. Perhaps, constituent members of the Institute are not to do any medical research themselves, but surely, there have to be adequate number of them in the Institute to enable the rest of them to understand, and appreciate the medical research work being done at the Institute, and guide and encourage useful medical research, and when occasion arose, to discourage such medical research which is already known to have been taken to its limits and discourage medical research results of which are likely to be futile. This cannot be done unless medical scientists are constituent members of the Institute.

(63) There is another way to look at Section 4 of the said Act. The whole of the Section may be read, and let the provisions of the same sink in. Upon reflection of the Section as a whole, it will be noticed that the provisions of Section 4 of the said Act are in the nature of limitation on the field of choice, and in the nature of prohibition in view of the words in which the said provision is couched.

(64) I do not think it would be right for the Courts to cut down the statutory prohibitions because it interferes with the executive discretion, especially when the statutory prohibition is enacted to ensure achievement of the object intended to be achieved by the statute. The statutory prohibition which is contrary to the fundamental rights or any of the provisions of the Constitution of India, must be struck down. A provision which is not vocative of the constitutional provision, is not be. A valid statutory prohibition is enacted for the purpose of ensuring that persons who seek to twist, or pervert the intention of Parliament at kept at bay. So, intention of the Parliament in enacting the prohibition should be given effect to.

(65) Further, little reflection will show that each of the provisions of Section 4 deals exclusively with a person falling within a particular category or class. Further, in none of the provisions different clauses or categories are mixed. The classes or categories are those that are necessitated by the intention to make the Institute obtain its objectives. That is to say; Impart medical education; medical subjects, and nursing, dentistry, medical research, and use of public funds and donations.

(66) Thus, Section 4(a) deals with educationist. Section 4(b) deals with Health Services expert. Section 4(e) deals with the Director of the Institute - all these are ex officio.

(67) Section 4(d) deals with Managers in the field of education and finance; Section 4(e) deals with scientists-medical and non-medical; Section 4(f) deals with medical college teachers; Section 4(g) deals with public men who are

members of parliament. If Health Minister is considered to be a person essential for being made a member of the Institute, then the Ministers being members of parliament, the person who is Health Minister, can seek election u/s 4(g) of the said Act, no other provision of Section 4 needs to be invoked. In none of the sub-clauses specified categories or classes are inter-mixed with others. Why need different categories be mixed up together u/s 4(e)?

(68) In the instant case, the statutory provisions have tried to incorporate prohibitory restrictions in Section 4 which limit and restrict the power of nomination given to the Government by the said provision, by using words that limit the area of applicability and limiting the field of choice of selecting the constituent members of the All India Institute of Medical Sciences.

(69) Thus, Sections 4(a), (b) and (c) of the said Act restricts the choice to those who hold specific office - the office specified in the said provision.

(70) The provision of Section 4(d) restricts the field of choice to those in the Ministry of Education and Ministry of Finance, who are expected to have capacities and capabilities that will aid in achieving the objects for which the All India Institute of Medical Sciences has been constituted.

(71) The provisions of Section 4(e) similarly, are intended to be restrictive vis-a-vis the field of choice. It restricts the field of choice from amongst the scientists - medical and non-medical - and directs that the constituent members shall comprise of scientists, medical and non-medical scientists. It limits the number of non-medical scientist to one, and further requires that such a scientist be a member of the Indian Science Congress. It also limits the choice of members of medical scientist to four, and places the limitation that these medical scientists shall be members of the Indian Science Congress. It is scientists-medical and non-medical alone, who can be appointed as constituent members of the All India Institute of Medical Sciences u/s 4(e), as it is only they who can understand and make the other constituent members of the All India Institute of Medical Sciences understand, and appreciate the nature of the medical research, as set out in Section 13 read with Section 14 of the said Act being carried on at the Institute. In this view of the matter, it is not permissible u/s 4(e) to appoint persons who are neither medical nor non-medical scientists.

(72) Under the provisions of Section 4(f) members of the medical faculties of the Indian Universities have to be chosen. The field of choice is restricted to the members of the faculties of the Indian universities, and under this provision, it is not permissible to select persons who are members of the medical faculties of the non-Indian Universities, either in India or abroad.

(73) Under the provisions of Section 4(g) of the said Act, the field of choice is limited to members of Parliament. It is further limited in the matter of numbers. Two members are to be elected from Lok Sabha and one member is to be elected from the Rajya Sabha.

(74) It appears to me that there is consistency in all the sub-clauses of Section 4 of the said Act. The consistency lies in the said provision, insisting upon a twofold qualifications with respect to each of the distinct classes mentioned in the sub-Sections of Section 4 of the said Act. Both these qualifications have to continue to be in the member throughout the term for which he is appointed, if he is to remain as constituent member of the Institute. Thus the duality in Section 4(a) is that not only the person nominated, should be the Vice Chancellor of the Delhi University, but he must also continue to be the Vice Chancellor of the Delhi University throughout the term. If the person ceases to be the Vice Chancellor, he loses his constituent membership of the Institute. This is ensured by declaring that the person who is nominated u/s 4(a), has to be the Vice Chancellor of the Delhi University. When the Vice Chancellor goes, and is replaced by another, the replaced person becomes the member, and the old one automatically ceases to be the constituent member of the Institute. In clause (b) of Section 4 of the said Act, the duality is that the Director General of Health Services becomes a member by virtue of his office, and for his continuance as a constituent member, he is required to continue to be the Director General of Health Services, and upon his ceasing to be the Director General of Health Services, he ceases to be the member of the Institute, and his replacement as Director General of Health Services, becomes the constituent member of the Institute. This is ensured by mentioning that the Director General of Health Services is ex officio member.

(75) Same is the case in Section 4(c) of the said Act, in which the duality of condition is to be found also when it is said that the Director of the Medical Institute who is to be the ex officio member. So long as a person continues to be so, he continues to be the member of the Institute. Upon his ceasing to be the Director, he ceases to be a member. As far as Section 4(d) is concerned, although it is not mentioned that the members nominated in this Section are ex officio, but the intention seems to be clear that those nominated members are to be the representatives of the Central Government, and they have to be either from the Ministry of Finance or from the Ministry of Education. If the person nominated ceases to be a member of either of the Ministries, he would cease to be the member of the Institute, and it is his replacement, or another nominee of the Central Government, who must also be a part of the Ministry of Finance or Ministry of Education would become constituent member in his place. Therefore, the duality of qualifications regarding the eligibility at the time of nomination, and continued eligibility throughout the term, is to be found in Section 4(d) of the Act also.

(76) Similarly in the case of Section 4(f) of the said Act, if a person ceases to be a member of the medical faculty of the Indian University during his term he would automatically ceases to be a member. Even here, the duality of qualifications, one at the time of appointment and the other through the term of continuance as a constituent member, is also ensured.

(77) Similarly in Section 4(g) of the Act, membership of the House of the People,

and the Council of States is essential, not only at the time of nomination, but throughout the term of office, and this duality of qualifications being the eligibility at the time of election and throughout the term, is also ensured by Section 4(g) of the said Act.

(78) If Section 4(e) was intended to be a departure from the other provision of Section 4, then there would have been clear statement therein to that effect. If, and only if, one accepts the contention of the Solicitor General that the terms are wide that the person nominated need not be the member of the Indian Science Congress, can there be any chance of departure from the aforesaid duality u/s 4(e) of the said Act. However, if some consistency is to be attributed in the matter of legislative intendment and drafting, then it is obvious that even u/s 4(e) of the Act, there has to be some kind of duality which is clear if each person covered by Section 4(e) of the said Act, has to be a member of the Indian Science Congress. Upon a person nominated ceasing to be a member of the Indian Science Congress, then his constituent membership in the Institute would automatically come to an end. This interpretation of Section 4(e), that it is confined to scientists, whether medical scientists or non-medical scientists, but is available only to members of Indian Science Congress, fulfills another object of the enactment that is to say that the scientists who are to carry on medical and non-medical research in the Institute, can be effectively aided or supervised by four or five of the constituent members of the Institute, and as such, it has to be concluded that the persons who are to be nominated u/s 4(e) of the said Act, must be the persons who are members of the Indian Science Congress, and are either medical or non-medical scientists. To give interpretation which is sought by the Solicitor General, would mean that u/s 4(e) of the Act, all that need to be done, would be to appoint any four persons, may be even the President of India, Chief Justice of India, Speaker of the House of People, Speaker of the Council of States, and Prime Minister, and their appointment will be permitted u/s 4(e) of the said Act. I do not think such could have been the intention of the Parliament in enacting Section 4(e) of the said Act. These persons have their own constitutional functions to perform. It would be unfair to add to those functions to be performed as member of the Institution. The intention of the Parliament was to confine the five persons to be nominated to be the persons who are either medical or non-medical scientists, and any person who is nominated contrary to the provisions of Section 4(e) his nomination is not in accordance with law.

(79) It appears to me that nomination of five persons in Section 4(e) of the said Act is deliberate. It is deliberate because no more than five and no less than five were to be nominated under this provision. It is deliberate to mention five persons to ensure that there is no general license involved in the matter of selection of five persons u/s 4(e) of the said Act. I am of the view that the reference to the "Indian Science Congress" and the "non-medical scientist" is not an idle and useless. It indicates the field from which choice can be made. This was intended to convey that the said provision reserves the area of nomination for scientists. It is also clear to me that a part of the provision relates to one non-

medical scientist, and the other part to 4 medical scientists. It seems to me that non-medical scientist is included as a lot of implements which are devised and in current use by medical scientists are devised by non-medical scientists, and so presence of non-medical scientists would be a help rather than a hindrance in the matter of dealing with the scientific research activity of the Institute.

(80) In the aforesaid light, I do not consider the provisions of Section 4(e) of the said Act to be ambiguous. In my view, the word "persons" mentioned in Section 4(e) of the Act does not enlarge the field of choice to any one, no matter what his credential are, whom the Government may choose to nominate. The provisions of Section 4(e) of the said Act restricts the field of choice to persons involved in medical and non-medical scientists only. I do not accept the contention of the Solicitor General that the use of the word "persons" would give unrestricted field of choice for nomination to the Government.

(81) The contention of the Solicitor General that the provisions of the legal maxim "contemporaneous exposition" would apply to the facts and circumstances of this case, does not commend to me, inasmuch as the Solicitor General has not been able to show to us any document by which the interpretation which has sought to be raised by him, has been expounded by any person. Actions of the Government in nominating non scientists u/s 4(e) of the said Act, cannot be equated to any exposition of an interpretation of a statute.

(82) Mr. Sanghi has placed before us the judgment reported as State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others, , which is to the effect that where there is no exposition by the State, it cannot be said the principle of contemporaneous expositio has been invoked by the State.

(83) In any case, I think that as has been held by Justice Subba Rao who spoke for the Supreme Court in The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others, , the principles of contemporaneous expositio are only applicable to ancient statute, and to my way of thinking the All India Institute of Medical Sciences Act, enacted in 1956, cannot be termed as an ancient statute. Apart from this fact, and admittedly, there is no judicial pronouncement regarding Section 4(e) of the said Act, and, Therefore, the same has to be interpreted in accordance with the principle of interpretation of statutes. It is to be noted that the view expressed by Justice Subba Rao is what is to be found in the book in Broome's Legal Maxims. Apparently Justice Subba Rao accepted what is stated in Broome.

(84) The Solicitor General has contended that arbitrary exercise of power cannot be presumed when power is vested in higher authority.

(85) In response to this, Mr. Sanghi has referred to the observations of Justice Sawant in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, para 230, to the effect that it is incorrect to suggest, as a legal proposition, that those who are in high authority, have high sense of responsibility. I am in respectful agreement with what is stated by Justice Sawant. (94) The Solicitor

General has stated before us that respondent No. 3 was appointed because he was the Minister of Health at the time of his being nominated as a constituent member of the Institute. In other words, respondent No. 3 B. Shankaranand was nominated because of the fact that he was Health Minister at that time, not as person. If the word "person" in Section 4(e) of the said Act takes colour from the context in which it is used, then it cannot relate to an office held before appointment of respondent No. 3 as a Minister. Section 4(e) of the Act does not postulate ex officio appointments like Sections 4(a), 4(b) & 4(e). That the words take colour from the context in which they are used, is a well accepted principle as to construction of statutes, as has been held in *M/s. Oswal Agro Mills Ltd. Vs. Collector of Central Excise and others etc. etc.*, .

(86) It has not been disputed by the respondents that the word "persons" in Section 4(e) of the said Act refers to natural born persons and not to legal personas. For this reason also, the provisions of Section 4(e) of the said Act cannot be invoked for the purpose of appointing a person holding a particular office, whether of Minister of Health, or any other office, or the post of Health Secretary, Government of India. There is a legal distinction between an "office" and a "post", but I do not need to decide it in the present context. Posts are usually stages in the service career of a person who has entered a service, they may be low to higher, or equivalent, but a person holding a particular "office" does not go through different posts so long as a particular office is held. One post may be higher than another in a service, but the office remains constant.

(87) Mr. Wazir Singh for respondent No. 3, adopted the legal submissions advanced by the Solicitor General. As far as his other submission: that proper parties have not been impleaded, is not significant in the public interest litigation. The only question involved in a qua warrant writ is whether a person holding office, under purported authority of law, is holding it in accordance with law. The instant writ being a writ of quo warranto, we are primarily concerned with the legality in the appointment, and not whether functions of the of are discharged in accordance with the highest traditions of propriety or not. this view of the matter, other contentions raised by Mr. Wazir Singh need not be considered.

(88) Mr. Barun Kumar Sinha, had filed an application on behalf of the employees of the All India Institute of Medical Sciences, seeking impleadment, as according to him he had something to say.

(89) The instant litigation being a public interest litigation, we permitted him to address us without formally impleading the employees of the Institute as a party. He had nothing to add to what was being stated by the Solicitor General regarding interpretation of Section 4 of the said Act, but he stated that the instant litigation was not public interest litigation, and that it was at the instance of the Director of the Institute Dr. S.K. Kacker that this petition had been initiated. To my mind, there is no substance in his plea in the facts and circumstances of the case as the case before us involved question of interpretation of Section 4 of the Act, and nature of the power to appoint a

person u/s 4(e) of the said Act with reference to the field of choice, and the person actually nominated, make it a Public Interest Litigation.

(90) Mr. S.P. Kalra, who appears for respondent No. 2, has before us adopted the same stance as adopted by the Solicitor General regarding the interpretation of Section 4(e) of the said Act. He has emphasised that according to the affidavit filed by the Government, respondent No. 3 was appointed because he was the Health Minister. He, however, adopted the same stance with regard to all the contentions which have been given by the Government in this case.

(91) Mr. Madan Lokur, appearing for Mr. Chandrasekharan, stated that in Section 4(e) of the Act, the only scientist who was required, was the person who was a member of the Indian Science Congress, and that the use of the words "no medical scientists" and the reference to the Indian Science Congress would not mean that the aforesaid provisions of Section 4 of the said Act relate to the field of choice from and amongst the scientists medical or non-medical. I do not agree with the submissions for these reasons which have already been stated.

(92) One of the principles of interpretation of statute, which has been approved by the Supreme Court, is that if different interpretation are possible then that interpretation should be adopted as would prevent conferment of arbitrary power which would be violative of Article 14 of the Constitution. According to the petitioner, if the construction sought by the Solicitor General is adopted, then it would confer arbitrary power on the Government to appoint any person, and that itself would be hit by the provisions of Article 14 of the Constitution, and, Therefore, this Court should not accept the contention of the Solicitor General.

(93) In view of the aforesaid principles of construction of statute, it would be appropriate to adopt an interpretation of Section 4(e) of the said Act which would not make it arbitrary, and, thereby liable to be struck down. Giving an interpretation of Section 4(e) of the Act that the same relates to appointment of scientists - medical and non-medical as members, avoids such arbitrariness. It also ensures that medical and non-medical dentists shall have a say in the matter of affairs of the Institute, as there are only five of them, and these are 17 members, and the scientists would not constitute a majority, but their presence would certainly, in my view, aid in arriving at proper decision, insofar as they relate to the medical and scientific research, which is carried on in the Institute as a part and parcel of its functions. *Harijana Sunkunha and Others Vs. State of A.P.*, cited at the Bar does not relate to the matter in issue in the instant case.

(94) In *Administrator Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another*, the Supreme Court has said that the modern positive approach is to have a purposeful construction that is to effectuate the object and purpose of the Act. Since research into medical science is one of the purposes of the statute, it would be appropriate that Section 4(e) of the said Act be so construed that scientists, medical and non-medical, are not excluded from being constituent members of the Institute.

(95) For all the aforesaid reasons, I am of the view that the provisions of Section 4(e) of the said Act relate to nomination of persons who are medical or non-medical scientists, and u/s 4(e) of the Act it is not permissible to nominate any person who is neither medical scientists nor medical scientists, constituent member of the Institute.

(96) Some contentions have been raised as to whether B. Shankaranand, respondent No. 3, was nominated because he was Health Minister, or whether he was nominated u/s 4(e) of the Act as a constituent member, and when one sees the affidavit which has been filed by the Union of India, and the affidavit which has been filed by B. Shankaranand himself as respondent No. 3, and purporting to be on behalf of the Institute as its President, it would be clear that they are not speaking the same language, it is obvious that appointments u/s 4(e) of the said Act are not by virtue of holding of an office. The provisions which exist regarding appointment by virtue of office, are to be found in Sections 4(a), 4(b) and 4(e) of the Act. This would exclude the possibility of any person being nominated on account of office which he holds. Yet in the instant case, the affidavit filed by the Union of India clearly suggests that the nomination of B. Shankaranand, respondent No. 3, which was made for the benefit of the Health Minister, who happened to be B. Shankaranand. The issue is not absolutely clear from the files which have been brought to the Court. Sometimes the reference is to a Minister, and sometimes during the course of the movement of the file, the appointment is sought of Health Minister, and at others the name of B. Shankaranand was also mentioned. In this view of the matter, I do not think that I need to enter into the investigation whether the Health Minister was intended to be nominated as constituent member or it was B. Shankaranand who was to be nominated as constituent member u/s 4(e) of the said Act, either way neither Health Minister is a medical or non medical scientist, nor is B. Shankaranand is a medical or non medical scientist, and the nomination of the Health Minister or of B. Shankaranand u/s 4(e) of the said Act would be contrary to the provisions of Section 4(e) of the said Act.

(97) It is nobody's case, not even respondent No. 3, that he is a medical or a non-medical scientist. He could not have been nominated as a member of the institute u/s 4(e) of the said Act. His appointment as a member, is, Therefore, contrary to law and has to be set aside. Similarly the Secretary Health is neither a medical nor a non-medical scientist. His appointment is contrary to law -

(98) In the aforesaid view of the matter, and in the facts and circumstances of the case, the writ of quo warranto is liable to be issued, and the appointment of B. Shankaranand, respondent No. 3 as a constituent member of the All India Institute of Medical Sciences and nomination of Secretary Health as a member of the Institute, is liable to be quashed and is hereby ordered to be quashed and set aside.

(99) In the facts and circumstances of the case, there is no order as to costs.