

(2006) 04 DEL CK 0081
In the Delhi High Court
Case No : WP (C) No. 8792 of 2004

Dr. Alok Thakar

APPELLANT

Vs

AIIMS and Another

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

All India Institute of Medical Sciences Act, 1956 — Section 10, 10(5)
All India Institute of Medical Sciences Rules, 1958 — Regulation 12, 17

Citation : (2006) 04 DEL CK 0081

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Rajeev Dutta, Rashi Malhotra and Misha, in WPC No. 8792/200, for the Appellant; Mukul Gupta, for respondents 1 to 3 and Raj Kumar Gupta, in WP(C) No. 8792/2004 and Mukul Gupta, for respondent No. 1, Raj Kr. Gupta and Rajeev Dutta Rashi Malhotra and Misha for respondent No. 3 in CM No. 4786/2006 in WP(C) No. 3834/03, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—By the present judgment and order CM 4786/2006 in WP(C) No. 3834/2003 as well as WP(C) No. 8792/2004 are being disposed of.

2. As would unfold from the facts noted herein CM 4786/2006 as well as WP(C) 8792/2004 are result of an error committed by AIIMS while compiling in a tabular form, grades awarded to different candidates who appeared for an interview for selection to the post of Assistant Professor of Otolaryngology (ENT).

3. By and under CM 4786/2004 it is prayed that in the judgment and order dated 12th February, 2004 necessary corrections be made in respect of the grades awarded to the candidates as also the presence of the members of the selection committee.

4. In WP(C) No. 8792/2004, petitioner who was respondent No. 3 in WP(C) No. 3834/2003, by relying upon the grades noted in para 20 of the judgment and

order dated 12.2.2004 in WP(C) No. 3834/2003 prays that ranking of Dr. K.K. Handa above him be quashed. He prays for a mandamus against AIIMS to rank him at Sr. No. 1 of the Select List and Dr. K.K. Handa at Sr. No. 2 of the Select List.

5. In para 20 of the judgment and order dated 12.2.2004 disposing of WP(C) No. 3834/2003 following was recorded :-

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

Resp.2 Resp.3 Petitioner 1. Dr. S.P. Aggarwal A+ A+ C 2. Dr. P. Venugopal A+ A+ C 3. Dr. Rajendra A+ A+ C Tandon 4. Dr.(Mrs.) V.Y. A+ A+ C Deshpande 5. Dr. H.S. Shukla A+ A+ C 6. Dr. P.K. Dave A+ A+ C 7. Prof. Deepak A+ A+ C Nayyar 8. Dr. Abraham A+ A C Thomas 9. Sh. Suresh Absent Pachori (MP) EXPERTS 10. Dr. N.K. Goel B+ A+ C (Ext.) 11. Dr. S.B.S. A A+ C Mann(Ext.) 12. Dr. R.C. Deka B- A+ C (Int.)

6. Respondent No. 2 in WP(C) No. 3834/2003 was Dr.K.K.Handa. Respondent No. 3 was Dr. Alok Thakar, writ petitioner of WP(C) No. 8792/2004

7. Dispute raised by Dr. Alok Thakar is the consequence of reply filed by AIIMS in WP(C) No. 8792/2004 wherein following information pertaining to the presence of the members of the select committee, experts and grades awarded have been disclosed :-

GRADINGS BY THE STANDING SELECTION COMMITTEE

Under Section 10(5) OF AIIMS ACT.

Dr. K.K. Handa Dr. Alok Thakkar 1. Dr. S.P. Aggarwal A+ A+ 2. Dr. P. Venugopal A+ A+ 3. Dr. R. Tandon A+ A+ 4. Dr. V.Y. Deshmukh A+ A+ 5. Dr. H.S. Shukla A+ A 6. Dr. P.K. Dave A+ A 7. Dr. A. Thomas A+ A 8. Shri S. Pachori A+ A+ 9. Dr. Deepak Nayyar Absent Absent EXPERTS 10. Dr. N.K. Goyal A A+ (Ext.Exp.) 11. Dr. S.B.S. Maan B+ A+ (Ext.Exp.) 12. Dr. R.C. Deka B- A+ (Int.Exp.)

8. A perusal of what was recorded, pursuant to information given by AIIMS, in para 20 of the judgment and order dated 12.2.2004 in WP(C) No. 3834/2003 and the information provided in the counter affidavit filed by AIIMS in WP(C) 8792/2004 shows the following discrepancies :-

(a) Professor Deepak Nayyar, a member of the selection committee has been shown present in the earlier response. In the second response he is shown as absent.

(b) Shri Suresh Pachori is shown absent in the first response and in the second response is shown as being present.

(c) Grades recorded as awarded by Professor Deepak Nayyar in the earlier response have now been shown as the grades awarded by Shri Suresh Pachori.

(d) Grades awarded to Dr. Alok Thakar in the earlier response by Dr. H.S. Shukla and Dr.P.K.Dave have been shown as A+ each. In the second response the said two members of the selection committee have been shown to have awarded grade A to Dr. Alok Thakar.

(e) In respect of grades awarded by the experts, in the earlier response Dr. N.K. Goel is shown to have awarded grade B+ to Dr. K.K. Handa in the earlier response as against grade A in the second response. Dr. S.B.S. Maan has been shown to have awarded grade A to Dr. K.K. Handa in the first response and in the second response he is shown to have awarded grade B+.

8. Shri Rajiv Dutta, learned Sr. Counsel appearing for Dr. Alok Thakar urged that the grades awarded are the ones which are reflected in the earlier response and if the same are to be treated as the basis for determining the comparative merit of Dr. K.K. Handa and Dr. Alok Thakar, position which emerges is that as against 10 A+ and 1 A grade awarded by the members of the selection committee and the 3 experts to Dr. Alok Thakar, Dr. K.K. Handa has been awarded 8 A+, 1 A, 1 B+ and 1 B-. Counsel urges that Dr. Alok Thakar has to rank above Dr. K.K. Handa.

9. Counsel urged that as per the decision taken by the governing body of AIIMS wherein on 15.1.1997 certain decisions were taken, inter alias one of them being that selection will be made on the basis of total gradings given by the selection committee and the technical experts to the candidates, aforesaid stand taken by Dr. Alok Thakar stands vindicated.

10. Shri Rajiv Dutta, learned Sr.Counsel relied upon decision reported as 1996 V AD(Delhi) 608, Dr. Pramod Kumar Garg v. AIIMS as also a Division Bench judgment reported as 66 (1987) DLT 386 Dr. Raghunath Chand Anand v. AIIMS to bring home the point that AIIMS has been held to be a chronic interpolator and fabricator of records.

11. Per contra, Shri Mukul Gupta counsel for AIIMS contended that the issue between the parties and the legal position stands conclusively resolved and determined vide judgment and order dated 12.2.2004 disposing of WP(C) 3834/2003, challenge to which decision failed before the Division Bench. On the issue of grades awarded, Shri Mukul Gupta, learned Counsel for AIIMS labelled the same as either a typographical error or the result of computerisation where cutting and pasting, without exercising due care and diligence is resulting in erroneous charts being generated. Counsel urged that between 3rd February, 2003 to 8th February 2003, thereafter from 21st March, 2003 to 28th March 2003 followed by 1st April, 2003 to 5th April, 2003 interviews were held for selection of candidates to over 60 disciplines in AIIMS. Since selection committee members were common in all interviews external experts differing depending upon the discipline, while compiling the data, cutting and pasting was resorted to and this is the reason why Shri Suresh Pachori was shown as absent when the first response was filed but was shown as present when the second response was

filed. Counsel submitted that the correct position is that Dr. Deepak Nayyar was absent whereas Shri Suresh Pachori was present. To resolve the controversy, Shri Mukul Gupta produced the original record showing attendance, mark sheets of each member of the selection committee and the 3 experts as also the original select panel prepared by the members of the selection committee.

12. Original record was shown to Shri Rajiv Dutta, learned Sr. Counsel appearing for Dr. Alok Thakar. It was perused by the court.

13. The record shows that for the post of Assistant Professor of Otolaryngology interviews were held on 5.2.2003. 18 candidates had applied and grading sheets containing the names of 18 candidates were prepared. Each member of the selection committee who was present and the 3 experts have recorded the grades in their respective grade sheets. This information signed by the respective member of the selection committee and the 3 experts.

14. The record shows that the grades as reflected in the second response are a correct compilation of what was awarded by the experts and the members of the selection committee. Indeed, Dr. Deepak Nayyar, a member of the selection committee was not present on 5.2.2003 when the interviews were held nor did he participate in the deliberations of the selection committee. He is shown to be not present on 5.2.2003.

15. What has actually happened is that in the earlier response grades awarded by Shri Suresh Pachori, while compiling the data have been shown as the grades awarded by Dr. Deepak Nayyar. Shri Suresh Pachori has been shown to be absent.

16. I have seen the grade sheets of Dr. H.S. Shukla and Dr. P.K. Dave. Both have awarded grade A to Dr. Alok Thakar.

17. I have seen the grade sheets signed by Dr. N.K. Goel, Dr. S.B.S. Maan and Dr. R.C. Deka. The grades reflected as awarded by the 3 experts in the second response filed have been correctly reflected.

18. No doubt, in Dr. Raghunath Chand Anand's case and Dr. Pramod Kumar Garg's case, this Court adversely reflected upon record produced by AIIMS. But what held true in the year 1996 and 1997 need not be true in the year 2003. Those who were in charge of the management of AIIMS when the controversy in Dr. Raghunath Chand Anand's case and Dr. Pramod Kumar Garg's case surfaced are no longer in the helm of affairs of AIIMS in the year 2003. The Institution is run by human beings. If in the past those who managed the affairs of an Institution were found to be dented would not mean that those who are in charge of the affairs of the Institute today are also dented.

19. Charts prepared are a secondary source of information as they are the result of compilation of primary date. Attendance sheet and grade sheets are the primary evidence. As noted above, primary evidence being the attendance sheets and the grade sheets have been produced in original and have been seen. Any conflict between primary evidence and secondary evidence requires primacy to

be given to the primary evidence and secondary evidence to be eschewed.

20. I have used the expression "secondary evidence" for charts prepared from primary evidence in the context of the same being a stated reflection of the primary evidence.

21. Issue otherwise stands concluded against Dr. Alok Thakar by the judgment and order dated 12th February, 2004 in WP(C) No. 3834/2003. The said decision noted the legal entity of All India Institute of Medical Sciences as per All India Institute of Medical Sciences Act, 1956. It noted the powers of the governing body and the selection committee. It noted the All India Institute of Medical Sciences Regulations, 1958. It noted decisions of this Court reported as 1992 (26) DRJ 544 Dr. S.M. Bose v. AIIMS and the decision in Dr. Raghunath Chand Anand's case. It was held that decision making process by a collective body would not necessarily mean that the mathematical formula of adding the sum total of grades individually awarded and dividing the same by the number of persons awarding the grade has to be adopted for empanelment. In para 33 of the decision, it was opined that it does happen that a person acting individually awards grades keeping in mind factors which he thinks are important. It was opined that this obviously influences the individual decision. However, when the individual persons act collectively and pool their resources together as also deliberate as to what should be their collective decision, pooled ideas may throw a different result. It was opined that during discussions it is quite possible that an individual may agree with the collective decision based on factors disclosed by others. It was held :-

This court cannot probe the mental process of the members of the Standing Selection Committee when they acted collectively in light of the data available to them in the form of individual grades awarded by each one of them and the subject experts....

Indeed, no mala fides is alleged against any member of the Standing Selection Committee.

22. Noting the observations of the Division Bench in Dr. S.M. Bose case, in para 37 and 38 of the judgment and order dated 12.2.2004 in WP(C) No. 3834/2003, it was held as under :-

37. Division Bench of this court, on a perusal of the provisions of the Act, Rules and Regulations framed there under noted that although the role of the standing committee's constituted under Regulation 12 of the Regulations of the institute was advisory in nature but that did not mean that it's recommendations could be ignored by the institute without any justifiable cause. It was held that scheme of the Act, Rules and Regulations framed there under shows that different functions relating to the process of appointment are distributed to different authorities. The selection committee and the governing body are two such authorities constituted by the institute from amongst it's members for the purposes of discharging different functions of the institute. It was noted that u/s 10 of the

Act, the governing body was vested with the power to make appointments and in that sense, it is the appointing authority. It was held that undoubtedly, the governing body has to apply its own independent mind for the purpose of a proper exercise of its power. But, the role of interviewing and selecting the best out of the available and eligible candidates for appointment has been entrusted by the institute to the selection committee. In that view of the matter, recommendations of the selection committee have to be given primacy subject of course to the governing body acting to the contrary on good and justifiable reasons. In para 20 of the judgment it was held:-

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

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

23. Noting the certain observations in the decision in Dr.Raghunath Chand Anand's case, in paras 39 to 41, it was observed as under :-

39. Dr. Raghunath Chand's case posed the question where again, the Governing

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

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

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

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

24. Decision in WP(C) No. 3834/2003 was questioned in LPA No. 360/2004 Vide judgment and order dated 6.2.2006, Division Bench of this Court affirmed the same and in para 26 observed as under :-

26. The recruitment is concerned with a teaching post in a medical specialization. Advances in modern technology require that experts, equipped to handle and assess performance are given due weightage. Selection to posts in academic and technical organizations or institutions can be no exception. This has to be also balanced with the need to ensure that a candidate though possessing technical competence and merit, is suited for the particular needs of the institution. After all teaching and research constitute perhaps the most important charter of an academic institution like the All India Institute of Medical Sciences. Therefore, assessment by the Selection Committee, keeping in perspective the institutional objectives or goals and the potential of the candidate to fill the assigned role, would also be crucial and of great significance. If all these aspects are cumulatively put together, the role of the Court in judicial review, in the absence of a direct and active role of the experts (mandated by law) in the selection process, and in the absence of allegations of mala fides, has to be non-interventionist. The Court cannot substitute its opinion and sit as a Super Selection Committee, directing that the choice made by the experts should prevail when Rule 17(b) clearly states that the view of the Selection Committee will prevail. In the absence of illegality or other proven grounds, judicial

intervention by the Court would be destructive of the autonomy enjoyed by AIIMS. We are, Therefore, of the opinion that the reasoning of the learned Single judge cannot be faulted. The role of the experts is only advisory, while that of the Selection Committee is decisive under the Rules.

25. Shri Rajiv Dutta, learned Sr.Counsel for the petitioner urged that in the earlier decision and even before the Division Bench decision taken by AIIMS on 15.5.1997 pertaining to the manner of selection was not considered as it was not placed. Counsel urged that the said decision shows that the method of preparing the select panel is to total the grades/markings given by the selection committee and the technical experts.

26. Following was relied upon :-

ii) The gradings given by all the members of the Selection Committee and the technical experts should be placed before the Chairman of the Selection Committee and the final selection of the candidates will be made on the basis of total grading/markings given by the Selection Committee and the technical experts to the candidates as mentioned above.

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The Sub-Committee has recommended as under :-

1. As per the present practice only the experts give their grading/markings. Perhaps the members of the Selection Committee could also give marking/gradings.

2. The Technical experts who are asked to leave after giving the grading/markings before the final selection is made should continue to remain till the final selection process is over.

3. To make selections more transparent, the grading/markings given by the members of the Standing Selection Committee should be kept as records which could be scrutinized by the Governing Body, in case of need.

4. In case of appeals, the Governing Body should scrutinize the appeals as to whether they should be entertained. If any appeal/representation has a reasonable basis, the same should be referred back to the full Selection Committee for reconsideration and the experts assisting the Committee during reconsideration, should not be the same who participated in the original selection.

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The gradings given by all the members of the Selection Committee and technical experts should be placed before the Chairman of the Selection Committee and final decision of the candidate will be made on the basis of grading/markings given by the members of the Selection Committee and the technical experts as mentioned above. In case, there is a tie in the gradings in respect of any candidate, the final decision for the selection of the candidate, should rest with

the Chairman of the Selection Committee after discussion with other members of the Selection Committee.

27. It may be true that the minutes of AIIMS dated 15.1.1997 were not considered when the earlier decisions were rendered, but that, in my opinion would make no difference for the reason consistent view taken by this Court is that under the All India Institute of Medical Sciences Act, 1956 and the All India Institute of Medical Sciences Regulations, 1958 and the All India Institute of Medical Sciences Rules, 1958, role of the experts is only advisory and the view of the selection committee would prevail. I may additionally note that in the Division Bench judgment dated 6th February, 2006 in LPA 360/2004, Rule 17 of the All India Institute of Medical Sciences Rules, 1958 was noted and in light thereof Division Bench returned a categorical finding in para 26 as noted above.

28. Last submission made by Shri Rajiv Dutta may be noted. Counsel urged that AIIMS has been given contradictory versions as to when it noted the error in the data compiled pertaining to the interview in relation to the grades awarded by the members of the Selection Committee and the experts.

29. In my opinion I need not go into this issue for the reason I have looked into the primary source of information being the grade sheets containing the grades awarded by each individual member of the selection committee who was present and the subject experts. The said controversy Therefore becomes a non- issue once purity of a stand gets determined in the context of the primary evidence.

30. A submission of Shri Mukul Gupta, learned Counsel for AIIMS may be noted. Counsel urged that Dr. Alok Thakar challenged the judgment and order dated 12.2.2003. He filed a Letters Patent Appeal No. 601/2004 which he ultimately withdrew as not pressed without reserving any right to question the selection by a separate petitioner. Counsel urged that Dr. Alok Thakar was respondent No. 3 in WP(C) 3834/2003 wherein Dr. Sudhir Majhi at Sr. No. 1 of the select panel. Counsel urged that in that view of the matter, writ petition 8792/2004 was not maintainable.

31. Since I have dealt with the issue on merits and am returning a finding against Dr. Alok Thakar, I need not decide on the said primary issue.

32. WP(C) No. 8792/2004 is accordingly dismissed.

33. CM 4786/2006 stands disposed of directing that grades awarded to Dr. K.K. Handa and Dr. Alok Thakar as mentioned in para 20 of the judgment and order dated 12.2.2004 in WP(C) No. 3834/2003 shall stand corrected and would be as reflected in para 7.