

(2006) 10 DEL CK 0146

In the Delhi High Court

Case No : C.M. 12471 of 2006 in Writ Petition (C) . No. 10687 of 2006

Dr. P. Venugopal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-10-2006

Acts Referred:

All India Institute of Medical Sciences Act, 1956 — Section 6
Constitution of India, 1950 — Article 226, 311

Citation : (2006) 10 DEL CK 0146

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Arun Jaitley, Maninder Singh and Kirtiman Singh, for the Appellant; Gopal Subramaniam, ASG, P.N. Lekhi and Mukul Gupta for Respondent No. 3, Public Prosecutor Malhotra, A.S.G, Suresh Kait, for the Respondent

Judgement

Anil Kumar, J.—The petitioner/applicant has sought stay of notice dated 29th September, 2006 whereby an extraordinary meeting of the Institute's body was called for 10th October, 2006. The petitioner has also prayed that the issue regarding continuation of petitioner as director of the Institute be not taken up in the meeting on 10th October, 2006 and in any subsequent meetings of the Institute's body.

2. The regulation of All India Institute of Medical Sciences under Clause 4 contemplates an ordinary meeting and an extra ordinary meeting of the Institute. The ordinary meeting requires a notice at least two weeks prior to the date of such meeting along with an agenda. Where it is not possible to send the agenda along with the notice, the same is to be sent at least 10 days before the meeting.

3. For urgent business an extra ordinary meeting of the Institute can be called by the president giving at least seven days notice and the agenda is also required to be sent at least five days before the meeting. An extra ordinary meeting can also be called at the request of not less than nine members of the Institute within one

month of the receipt of the requisition.

4. From the regulations it is apparent that for deliberation by the Institute" body, the agenda must be sent along with the notice and if it is not possible to send the agenda with notice even than it should be sent at least 10 days before the meeting.

5. The regulation regarding an extraordinary meeting does not stipulate that the agenda must be sent along with the notice, however, it still contemplates that the agenda must be sent at least five days before the meeting.

6. It is contended by the petitioner that the President of the Institute, respondent No. 2 by a note dated 21st September, 2006 had asked the petitioner to call a meeting of the Institute's body as per the regulation 4 (3) of the AIIMS Regulations on 10th October, 2006. The petitioner being the member secretary of the Institute body by his communication dated 25th September, 2006, 23rd and 24th September, 2006 being Saturday and Sunday, immediately asked the respondent No. 2 to issue instructions to concerned officials to make the agenda available. The relevant regulation 4(3) of the AIIMS Regulations is as under:

REGULATION 4

(3) For an ordinary meeting of the Institute a notice specifying the place, date and time of the meeting shall be given by the Secretary to the members at least two weeks prior to the date of such meeting and under a certificate of posting, if sent by post. The agenda shall also be sent Along with the notice of the meeting and where it not possible, the agenda shall be sent at least ten days before the meeting under a certificate of posting, if sent by post.

7. Instead of sending the agenda, by a communication dated 27th September, 2006 respondent No. 2 asked the director, petitioner to issue notice for 138th extra ordinary meeting for 10th October, 2006 in place of an ordinary meeting on the ground that the petitioner avoided to issue the notice. It was communicated that the agenda and material will be sent to the members later as per regulations. The regulation for extraordinary meeting of the AIIMS is as under:

REGULATION 4

4) An extraordinary meeting of the Institute may be called by the President at any time for the transaction of urgent business of the Institute.

5) For extraordinary meetings, notices specifying the place, date and time of the meeting shall be sent by the Secretary to the President and the members at least seven days before the date of the meeting, under a certificate of posting, if sent by post, or by telegram. The agenda shall be sent under a certificate of posting, if sent by post, at least five days before the meeting.

6) An extraordinary meeting of the Institute shall also be called on a written request of not less than nine members of the Institute within a period of one month of the receipt of the requisition. The request made by members for a

requisitioned meeting shall indicate the purpose of the meeting.

8. The petitioner, Therefore, sent a notice dated 29th September, 2006 to the members of the body of the Institute for the meeting on 10th October, 2006. Apprehending that first calling an ordinary meeting of the Institute without agenda and thereafter converting an ordinary meeting to Extra ordinary meeting and not circulating the agenda with the meeting's notice was aimed at circumventing the order of this Court dated 7th July, 2006 which was not modified or set aside in appeal. He, Therefore filed the present application seeking stay of notice dated 29th September, 2006 whereby the extraordinary meeting of the Institute's body was called for 10th October, 2006. The petitioner also prayed that the issue regarding continuation of petitioner as director of the Institute be not taken up in the meeting on 10th October, 2006 and in any subsequent meetings of the Institute's body

9. The above application came up for hearing on 6th October, 2006 when the counsel for the respondents stated that they had not been given copies of the application and Therefore the petitioner/applicant were directed to supply copies and the copies were given to all the counsel who appeared for all the respondents and the matter was adjourned to 10th October, 2006. On that day notice was issued to all the non-applicants, though the advance copies were given in the court on 6th October, 2006. The respondents were directed to file replies within four days and the matter was adjourned for 16th October, 2006.

10. On 10th October, 2006 the learned additional Solicitor General who had appeared for respondent No. 3 intimated that the extraordinary meeting has been adjourned to 18th October, 2006. This Court had inquired from the additional Solicitor General as to whether the agenda has been circulated or not and on enquiry it was disclosed that the agenda shall be circulated and till that date the agenda had not been circulated.

11. The reply to application has been filed by respondent No. 3, Health Secretary to the Government of India who has contended that the counter affidavit to the writ petition was filed on 10th August, 2006 but the petitioner has not yet filed any rejoinder within the stipulated time and Therefore the present application is not permissible. It was asserted that the application is an unfortunate attempt to preclude an open and frank discussion on issues which concern the Institute and also the accountability of the director to the Institute. According to the Health Secretary grant of any relief to the petitioner would prohibit the operation of the Institute body which is a legitimate body constituted under the statute. A great emphasis has been laid on filing the writ petition against the Institute through the medical superintendent who is an appointee of the governing body and subordinate to the petitioner. An assertion has also been made about an attempt to obtain the signatures of the medical superintendent and the complaint by him to respondent No. 3. According the non-applicant/respondent No. 3, the application is an attempt to set at naught the order dated 25th July, 2006 of the Division Bench against the order dated 7th July, 2006 passed by this Court. The

application has also been resisted on the ground that it is outside the scope of the present writ petition, as the present application by the petitioner is entirely misconceived. According to the Health Secretary the 134th extra ordinary meeting of the Institute body was held 13th March, 2004 The plea of the respondent No. 3 is that the business which is required to be considered either before the Institute body or governing body is always made known to the members within the time period provided under the regulations and Therefore the petitioner cannot seek pre-emptive judicial review without seeing the agenda which is required to be sent within the time frame provided under the regulations.

12. The writ petition was filed by the petitioner as his tenure appointment had been terminated by an order dated 5th July, 2006 pursuant to a decision in an extraordinary meeting held on the same date. It had been pleaded that an already prepared draft resolution had been circulated to the members for termination of the tenure of the petitioner on ill-conceived, concocted, false and baseless allegation. The termination was stated to be on the ground of mala fide and biased attitude of respondent No. 2.

13. This Court by the order dated 7th July, 2006 had held that the prime facie the material on which the decision was taken to terminate the tenure appointment of the petitioner was not sufficient to draw such inference as were drawn by the governing body but mainly on the ground that no such material was placed before the Institute's body nor it was considered by the said body. The plea of sufficiency of material to draw the inference regarding termination of the tenure of the petitioner was considered on account of the specific pleas of malafide and bias on the part of and attributable to respondent No. 2 though ordinarily it is for the Institute's body to consider the facts and circumstances and material and draw inferences based on that and the court is not to substitute its inference with that of the Institute's body. The court had been concerned with the relevant material being not placed before the governing body and consequently their being no deliberation and consideration. It was contended that the agenda of the general body was not circulated on the ground that till the last minute efforts were made for graceful exit of the petitioner hoping that he will resign.

14. For the decision in the extraordinary meeting held on 5th July, 2006 the material which was placed before the governing body was the note of the Ministry of health and family welfare but it was admitted by the learned Counsel for the respondents during arguments and he had agreed that the decision was based not only on the note but other material and reasons, which other material and the basis was not put before the governing body. It was stated that violation of rule 9 of the Code of Conduct was not the sole ground for taking a decision to terminate the tenure of petitioner but material for other grounds was also not put up before the Governing body.

15. While justifying the decision of the governing body of 5th July, 2006 before the court, the material which was not before the governing body was relied on

which was not taken into consideration prima facie by the Court on the ground that when a statutory body or a functionary makes an order based on certain grounds, its validity must be judged by the reasons considered and so mentioned and cannot be supplemented by fresh reasons.

16. An appeal was filed against the said order of this Court dated 7th July, 2006 on prime facie view without a detailed reply of the respondents. In the appeal on 25th July, 2006 it was stated on behalf of the respondents that they will have a fresh look at the entire matter and the appeal was dismissed as withdrawn without prejudice to the rights and contentions of the parties. The order dated 7th July, 2006 was not modified or set aside by the appellate court.

17. In the reply filed by the respondent No. 3 it is stated that the material relevant shall be circulated before the Institute's body. The petitioner had categorically pointed out that the agenda has not been circulated for the meeting of 10th October, 2006 and he was directed to issue the notice for the meeting on 10th October, 2006 and the ordinary meeting was converted into extra ordinary meeting. Why the agenda could not be circulated along with the notice and at least ten days before the ordinary meeting, why the nature of meeting had to be changed from ordinary meeting to the extraordinary meeting and why the agenda of the extraordinary meeting also could not be circulated has gone unanswered except bare denials. This is despite an order categorically passed by this Court on 7th July, 2006 on account of not putting the agenda before the meeting and rejecting the plea of the respondents that till last minute the negotiations or efforts were made so that the petitioner could resign. This order of the Court has not been set aside or modified in appeal and the writ petition is listed for hearing on a subsequent date.

18. Brazenly the respondents have again not disclosed in the reply filed by the respondent No. 3, the agenda for the extra ordinary meeting to be held, now, on 18th October, 2006. There is not a whisper of any reason as to why the agenda for 10th October meeting could not be sent along with the notice or 10 days before the meeting nor whether a new notice has been sent for the meeting of 18th October, 2006 and whether the agenda has been circulated and if not, the reason for not circulating it.

19. It has been pointed out by the learned Counsel for the petitioner that the Institute body has already decided to curtail the tenure of the petitioner under regulation 31 on the ground that the provision of fundamental Rules 56 (j) is parametric same as that of Regulation 31. Reliance for this has been placed on the Letters Patent Appeal filed by the respondent No. 3 through Health Secretary under the instructions of the respondent No. 2, President of the Institute. The relevant ground as taken by the respondent No. 3 in its appeal is as under:

3.39 It is also submitted that the Institute body has decided to curtail the tenure of the respondent under Regulation 31 and that the provision of fundamental Rules 56(j) is parametric same, as that of Regulation 31.

20. On the prime facie view this Court has already held that the termination of the tenure post of the petitioner is vitiated under law by order dated 7th July, 2006. The said order has not been modified or set aside in the appeal though filed by the respondent No. 3. It was held that the post of director is not in the same cadre as the post of Professor in the respondent No. 3 and in case of termination of petitioner he may not revert to post of head of the department and will be without any post and work which will cause irreparable injury to his interests. It was observed that the ouster of such an eminent doctor, whose professional eminence, fortunately has not been disputed even by the respondents, may be a great loss not only to the institution but to the general public at large. Despite this order being not set aside or modified in the appeal, the respondents want to put the tenor of the order dated 7th July, 2006 to naught in the garb that the division bench has permitted it. This appears to be a sheer misinterpretation of the order of the division bench to achieve, apparently one point agenda, to oust an eminent doctor by any means and which is canvassed so rhetorically for 'Public Interest'.

21. The respondents have not produced the agenda for the extra ordinary meeting on 18th October, 2006 nor the material for the agenda items nor anything to show as to when the agenda and the material pertaining to it was circulated to the members of the Institute body along with their reply. However, a copy of the agenda and the material has been produced by the learned Counsel for the petitioner.

22. Mr. P.P.Malhotra learned senior counsel for the respondent nos. 1 and 2 was asked as to what is the material against the petitioner which has been circulated for consideration by the Institute body. From the copy of the material and agenda supplied by the learned Counsel for the petitioner reliance has been placed on the representations and communications of Prof. A.B.Dey of President Faculty Association and Professor, Department of Medicine complaining about gross underutilization of funds under plan allocation; total administrative collapse arising out of indecisiveness and lack of interest in long term development of the Institute on the part of petitioner; appointment of Shri Mayank Sharma, senior financial Advisor as the officiating director; gratitude shown to the president, respondent No. 2 for recalling order of Shri Mayank Sharma; complaint to the respondent No. 2 that the petitioner has vitiated the atmosphere in the institute.

23. The other material allegedly circulated is mainly the copy of the appeal filed by respondent No. 3 against the order dated 7th July, 2006; copy of the order passed in the appeal; List of professor and Heads who were eligible for the post of Dean as on 4th May, 2006; brief relating to a proposal for amendment to Section 6 of the All India Institute of Medical Sciences Act, 1956; copy of writ petition filed by Vikas Jain which was dismissed as withdrawn by order dated 3rd July, 2006; copy of reply affidavit filed in the present writ petition by respondent No. 3; copy of reply filed by respondent nos.1 and 2; a complaint of AIIMS group of betterment with the copy of account of India International Centre; a copy of

order dated 20th May, 2002 in Civil Writ petition No. 20 of 2002; a copy of contempt petition in case of All India Institute of Medical Sciences v. Sat Prakash Kalia and a copy of affidavit filed by petitioner in the contempt petition and the representation by Progressive Medicos and Scientists Forum and complaints regarding caste based discrimination in the boy's hostel.

24. This is the material, which according to respondents, requires a fresh look into the matter and has been ordered by the division bench or approved by the division bench in the appeal filed against the order dated 7th July, 2006. In the appeal the respondents are categorical that Institute body has decided to curtail the tenure of the petitioner under regulation 31 in the public interest. Is the opinion of Prof. A.B.Dey of President Faculty Association and Professor, Department of Medicine, who I am informed had resigned, is the only relevant material for sacking the Director of the Institute and terminate his tenure appointment. Would the institute's body take decision regarding the termination of the tenure of the petitioner on the basis of the opinion of just one professor of the Institute and some complaints about caste discrimination in the boy's hostel. During the arguments press release dated 4th July, 2006 of Faculty Association, All India Institute of Medical Sciences who was represented by Prof. Dey and whose statements have been relied by the respondents, was produced which is as under:

4th July, 2006 Press Release. The FAIIMS has noted with deep concern various occurrences at the AIIMS over the past few days. This period has witnessed continuing to subvert and destroy the autonomy of the Institute.

The AIIMS was planned and established as a leading medical institution and was provided autonomy at its inception itself to take its decisions in its best interests. Unfortunately, there is a systematic attack on this very basic autonomous character of the Institute as evident by some of the recent decisions imposed by the Minister's office with no regard for rules, regulations or established norms.

The FAIIMS had raised this issue of subversion of autonomy of the Institute earlier also. As a matter of fact, we had met the Hon'ble Prime Minister also on 13th June and had apprised him of these unfortunate happenings at AIIMS. We had also requested him to kindly consider transferring AIIMS directly under the PMO just like the ISRO and similar other organisations so as to prevent the blatant interference in day-to-day affairs of AIIMS as is happening today.

We note with concern the efforts to further interfere with the autonomy of the AIIMS by interfering with the powers normally vested in the office of the director of AIIMS. We would like to reiterate that we have the full faith in the present director, undoubtedly amongst the most reputed and respected stalwarts in the medical field in the country. And we hope that all concerned will respect the autonomy in letter and spirit.

For the proposed meeting of 18th October, 2006 some of the letters of Prof Dey

have been stated to be circulated with the agenda but the other facts of the same Association have either been withheld deliberately or the respondents are oblivious of those things which are not in consonance with their contentions and pleas. Some of the letters of FAIIMS which are even now relied on by the respondents so vehemently to contend that the petitioner has failed as the director of the Institute are ex-facie not liable for consideration without other letters and notices of the same association, as the FAIIMS as far back as on 19th July, 2006 had categorically stated that those letters by Prof Dey had never been approved by the executive council or general body of the Faculty Association. Even Prof. Dey has acknowledged that the contents of his letters written to the president of AIIMS are his personal opinions, yet the respondents are still relying on those letters to put up their plea before the Institute body that the petitioner has failed as a director. What fresh look the respondents want to give to the entire matter, is full of question marks in the facts and circumstances

25. In the entirety of facts and circumstances this appears to be a case where any order or resolution, now, may cause serious injury if allowed to be made and implemented, not capable of being entirely erased subsequently. The damage which may be caused not only to professional reputation of the petitioner but the functioning of the Institute will be far-reaching which may not be salvaged in the present facts and circumstances and because of the attitude of the respondents, notwithstanding the rights of the Institute as has been vociferously contended by Shri Malhotra Additional Solicitor General. Though there is a possibility that respondents may still act objectively during the decision-making process of the Institute body but prime facie in the present scenario this possibility is theoretical because of categorical assertion by the respondents that the decision has been taken to curtail the appointment of the petitioner under regulation 31 and some of the facts as detailed hereinbefore.

26. The decision which seems to have been already taken and which is now attempted to be justified in the garb of approval by the division bench to have a fresh look into the matter by the governing body, though maybe subject to judicial review which may be termed as post decisional hearing to the petitioner or consideration of his grievances, but in the present facts and circumstances, in my opinion subsequent judicial review of the decision of the respondents will not sub-serve the rules of natural justice. In this scenario there is bleak chance of the Institute body having a fresh look objectively and the petitioner getting a proper deliberation and consideration and a fair hearing. Even if there is deliberation and consideration and so called fresh look into the matter, it will be appropriate not to permit the respondents to implement any adverse decision by the Institute's body against the petitioner unless it is considered by this Court because failure of natural justice at the Institute's body will not be cured by subsequent judicial review of that decision after its implementation. The observation of the Supreme Court in *Institute of Chartered Accountants of India v. L.K.Ratna* (1984) 4 SCC 537 will be apt in the present facts and circumstances. The Apex Court had held at page 552:

If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.

27. This decision was also considered and referred to by the Supreme Court in *Badrinath Vs. Government of Tamil Nadu and Others*, . It was also held that a legal likelihood of bias means at least substantial possibility of bias. The question depends not upon what actually was done but upon what might appear to be done. The test of bias is whether a reasonable intelligent man, fully apprised of all circumstances would feel a serious apprehension of bias. The Apex Court had also considered the doctrine of necessity and relying on various judgments had also observed that in proper cases, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

28. Refuting the reliance of the petitioner on *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, , learned Counsel for respondent No. 3, Mr. Lekhi, has relied on 1903 All ER 1, *Gasket Radiators Pvt. Ltd. Vs. Employees' State Insurance Corpn. and Another*, , *D.R. Kohli and Ors. v. Atul Products*; 1977 (1) Delhi 272, *Commissioner of Wealth Tax Vs. Dr Karan Singh and Others*, , *Commissioner of Wealth Tax v. Dr.Karan Singh and Ors.* and it was contended on behalf of the respondent No. 3 that the basic rule of interpreting court judgments are the same as those of construing the documents. According to Mr. Lekhi, the only difference is that the judges are presumed to know the tendency of the parties concerned to interpret the language in the judgment differently to suit their purpose and the consequent importance that the words have to be chosen very carefully so as not to give room for controversy. The ratio of the judgment relied on by the learned Counsel cannot be disputed but their applicability to draw the same inference as has been drawn by the respondent No. 3 require consideration. "In *Assam Sillimanite Ltd. (supra)*, a Division Bench of this Court had held that the classical view that the ratio of a judgment is the principle of law which the Judge declares in his judgment to distinguish and explain his

decision is generally based on the principle upon which the case was decided and nothing else. The House of Lords in the matter of Quinn (*supra*) had observed that every judgment must be read as applicable to the particular facts approved or assumed to be proved since the generality of the expression which may be found there are not intended to be the exposition of whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found and a case is only an authority for what it actually decides." Similarly in D.R. Kohli (*supra*), the Apex Court had reiterated that the judgments of the court are not to be construed as acts of Parliament nor a judgment on a particular aspect can be read as a judgment covering all aspects of every question whether such questions and facets of such questions arose for consideration or not in that.

29. There is no doubt about the proposition laid down by the courts in the judgments relied on by respondent No. 3 but what is to be considered is the applicability and relevance in particular facts and circumstances. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.*, AIR 2004 SC 778 had observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and Anr. is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of Anr. To decide Therefore, on which side of the line a case falls, the broad resemblance to Anr. case is not at all decisive.

However, considering the facts of the present case and the observations of the

Apex Court in Institute of Chartered Accountant (*supra*) it cannot be inferred that the observations made are not relevant.

30. In *H.L. Trehan and Others Vs. Union of India (UOI) and Others*, it was held that the post decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post decisional opportunity. With this proposition it was held that there is no justification to throw the employees out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity which is the condition precedent to action. Once a decision has been taken there is a tendency to uphold it and a mere representation may not yield any fruitful purpose.

31. The contention of Mr. Malhotra, learned Additional Solicitor General, that the petitioner wants to enforce a contract of personal service and the contract cannot be specifically enforced as it has only three exceptions, i.e., where a government servant is enjoying protection under Article 311; industrial employees governed by the Industrial Disputes Act and employees of statutory corporation/body where there is a breach of statutory rules is also not sustainable in the present facts and circumstances. According to him the petitioner is in Group "A" post and continue to be in breach of statutory rules and he cannot maintain any petition. The contention of learned Additional Solicitor General that the petition is not maintainable, is *prima facie*, not justifiable as the respondent No. 3 is a statutory corporation and governed by All India Institute of Medical Sciences Act, 1956 (Act No. 25 of 1956). What is to be determined is whether the petitioner is in breach of statutory rules and regulations or not and the principle of natural justice have been complied with in proposing and taking action against him and there is no such procedural unreasonableness in assessing the alleged breach of statutory rules and regulations by the petitioner which will not entitle him for any interference by this Court under Article 226 of the Constitution of India. The reliance has been placed on behalf of respondent Nos. 1 and 2 on *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, ; *Bank of Baroda Ltd. Vs. Jeewan Lal Mehrotra*, and *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, to contend that the writ petition is not maintainable and so the petitioner is also not entitled to any relief in the application. The writ petition was considered and on *prima facie* view an interim order was passed in favor of the petitioner which has not been set aside in the appeal and the writ petition is pending consideration, Therefore, on the *prima facie* view of the matter it can not be held that the writ petition is not maintainable and the application seeking stay against the Institute body's proposed adverse decisions is not maintainable. The other contention of the learned Counsel is that the institute's body is the only competent body to decide the issue. This cannot be disputed that the Institute body is competent to decide but what is to be seen is whether there is bias which will affect fair and just

consideration and decision and whether the procedure adopted is in consonance with the rules and regulations of the respondent No. 3.

32. Mr. Lekhi, learned senior counsel for respondent No. 3, has contended that the petitioner is on a tenure post of five years and the application by the petitioner is in the nature of injunction and the principles for grant of injunction which are prima facie case, balance of convenience and irreparable loss are to be considered before granting relief to the petitioner in the present application as has been prayed by the petitioner. It will be pertinent to notice that this Court by order dated 7th July, 2006 on consideration of prima facie case, balance of convenience and the irreparable loss had passed an order holding that the decision of terminating the tenure appointment of the petitioner is not sustainable on the prima facie view of the matter. An appeal filed by the respondent No. 3 against the order dated 7th July, 2006 was dismissed as withdrawn by the respondent No. 3 on 25th July, 2006. While withdrawing the appeal, it was stated on behalf of respondent No. 3 that without prejudice to the rights and contentions of the parties, respondent No. 3 shall have a fresh look of the entire matter. The decision of this Court which was given on the prima facie view, balance of convenience and irreparable loss to the parties has not been set aside rather it has been sustained. Therefore, the parameters of prima facie case, balance of convenience and irreparable loss do not get extinguished on account of fresh look to be taken by respondent No. 3 in the matter. The matter is already listed for consideration before this Court on 7th November, 2006. Since the order dated 7th July, 2006 passed by this Court has not been set aside and has merged with the order of the Division Bench in LPA No. 1674 of 2006, the assumption of the respondents that there is no prima facie case or balance of convenience or irreparable loss or the parameters for grant of an order in nature of interim injunction do not exist or have been modified or changed, is erroneous. A fresh look into the matter by respondent No. 3 is also without prejudice to the rights and contentions of the parties which include the rights and contentions of the petitioner and consequently whatsoever rights accrued to the petitioner pursuant to the interim order dated 7th July, 2006 do not get extinguished and any submission to the contrary is erroneous and not acceptable.

33. In the present case one is also concerned with the order of the Division Bench which is propounded differently by the parties. By the said order the appeal filed by the respondent No. 3 was dismissed as withdrawn but as the respondent No. 3 wanted to have a fresh look into the whole matter which was not seen with disfavor and so the statement of the counsel was recorded to that effect but at the same time the rights of the petitioner which accrued to him by interim order dated 7th July, 2006 were not curtailed or affected in any manner as the said order was sustained. This Court on the basis of prima facie case, balance of convenience and irreparable loss to the petitioner had restrained the decision by the respondents to terminate the tenure appointment of the petitioner. The emphasis of the learned Counsel for respondents on the words "let them do so" without considering the other portion of the order whereby the

respondents had stated that they will have a fresh look at the matter without prejudice to the rights and contentions of the parties is erroneous and contrary to the proposition in various judgments relied by the respondents. The order dated 7th July, 2006 has not been interfered nor has been modified and has been sustained. If the order has been sustained and the fresh look which the respondents wants to give to the whole matter without the rights and contentions of the parties, then the observation of the Division Bench that "let them (respondent No. 3) do so" does not negate or modify the tenor of the order dated 7th July, 2006 in any manner. The order dated 7th July, 2006 was passed on prima facie view and the writ petition is already listed for consideration and in the circumstances no such rights either accrued to respondents nor has been created in favor of respondents pursuant to the observation of the Division Bench "let them do so", so as to completely or partially negate or modify the tenor of the order dated 7th July, 2006 which acknowledges the rights of the petitioner for consideration of his plea of bias and other allegation regarding wrongful and illegal termination of his tenure post.

34. Learned Counsel for respondent has also contended that nothing has been shown by the petitioner that the actions of the respondents are ill- conceived, concocted, false and based on baseless allegations as no material has been produced by the petitioner in support of his allegations. According to him, it is the Institute Body who has to decide the matter pertaining to the Director as in terms of Schedule 2 of the All India Institute of Medical Sciences Regulations, the authority competent to impose penalty on a Director, which is a Group "A" post, which is the Institute Body and consequently the court cannot create any other body for consideration of the matter pertaining to the Director nor can legislate on it. It was thus stated that the prayer of the petitioner that the Institute Body should not consider the case of the petitioner in the meeting scheduled for 10th October, 2006 or in any subsequent meeting can not be sustained. Learned Counsel relied on J. Mohapatra and Co. and Another Vs. State of Orissa and Another, to contend that though a man cannot be a judge in his own cause or cannot be a judge in a matter where he is interested himself or in the outcome of something in which he is interested, however, even this rule has an exception. The Apex Court had held that if an adjudicator is required to adjudicate and if there is no other person who is competent or authorized to adjudicate or if a quorum cannot be made without him or if no other competent tribunal can be constituted, then in such cases the principle of natural justice would have to give way to necessity for otherwise there would be no means of deciding the matter and administration would breakdown.

35 This argument is based on erroneous perception of the disputes between the parties. What is being contended on behalf of the petitioner is that a decision has already been taken against the petitioner for the termination of his tenure post which has already been stayed by this Court and Therefore by just reiterating the same decision by another meeting of the Institute body, the rights which have already been accrued to the petitioner cannot be negated and such a

reconsideration cannot be claimed as the jurisdiction of the Institute body. It is in these circumstances, the petitioner has prayed that the decision which has already been taken is liable for judicial review by this Court and consequently the Institute body should not reconsider it so as to defeat the rights of the petitioner on account of the interim order dated 7th July, 2006 which has not been set aside or modified.

36. Another plea of the respondents is that non compliance with the time schedule for the agenda as contemplated under the regulations will not make the ordinary or extraordinary meeting of the Institute body illegal. It was asserted that if a right is conferred on the members of the institute body and if no member has protested about the non receipt of agenda within time, then not sending the agenda will not infuse any illegality in the outcome of the meeting. According to the respondents 16 other members of the Institute body, as the institute body comprises of 17 members, have not protested regarding non receipt of agenda or not receiving the agenda within time.

37. This submission of the respondent is based on their assumption that no member has protested. Learned Counsel, Mr.Maninder Singh during the course of the arguments has produced the copies of two letters dated 5.10.2006 from Professor Deepak Paintal addressed to the Director regarding non receipt of agenda and request to him that if the meeting is on 10.10.2006 as intimated, he will be most grateful if the agenda is provided at the earliest to him. Similar is the communication dated 6.10.2006 from Professor Dr.B.P.Chatterjee of Indian Association of Cultivation of Science enquiring about the agenda as he had not received the same till 6.10.2006 and requested to send the agenda by fax or by email.

38. The learned Counsel for the respondents despite these letters had submitted that no member had protested. No such plea had been taken in reply to the application filed on behalf of the respondent No. 3. On being confronted with the protest of the two of the Institute Body members, the respondents have contended that these letters are for the meeting which was slated for 10.10.2006 at 11 AM and the copies of these letters have been faxed to the institute at about 2.46 on 17.10.2006 whereas the present meeting is now fixed for 18.10.2006 and there is no protest about non receipt of agenda for the meeting fixed for 18th October, 2006.

39. As already observed hereinabove nothing has been produced by the respondents that the agenda for the meeting on 18.10.2006 has been sent in compliance with Regulation 4 (5) of the Regulations pertaining to the extraordinary meeting except the oral submission by the learned Counsel for the respondents. Rather again it is being contended that non circulation of agenda and material will not infuse any ramification on the legality and credibility of the meeting. The reply has been filed only on behalf of respondent No. 3 and there is also nothing to substantiate the submissions made before this Court nor any material has been produced during the course of the argument that the agenda

was supplied for the extraordinary meeting to be held on 18.10.2006 within time or that none of the members have protested the non receipt of agenda and it will not make the meeting illegal. The contention of the respondents that since the members of the Institute's body have not protested about the non-receipt of agenda, Therefore, agenda for the institute body's meeting is not *sina qua non* for a valid meeting, is based on their own assumptions. If the non receipt of agenda has not been protested, the respondents ought to have produced something to show about no protest being made by the members of the institute body. If the two members have protested regarding non receipt of agenda for 10.10.2006 the natural corollary is that they would protest for the non receipt of agenda for 18.10.2006 meeting also unless contrary is shown by the respondents. If that be so the respondents ought to have produced something to show that neither any protest from the members has been received or the agenda for the meeting of 18.10.2006 has been sent by post at least 5 days before the meeting in compliance of regulation of the respondent No. 3. There is completely nothing in this regard nor has been shown during the arguments and consequently the contention of the respondents that non sending of agenda will not have any ramification on the meeting cannot be accepted.

40. Perusal of Regulation 4(5) on the contrary reflects that the word used in the regulation is "shall" for the notices to be sent at least 7 days before the date of the meeting. The same regulation also mandates that agenda "shall" be sent at least 5 days before the meeting. If the law makes it obligatory on the respondents to do a particular thing in a particular manner, it cannot be waived on the presumptions and assumptions as has been contended by the respondents. Non compliance of such mandatory requirement of regulations will definitely have consequences on the business transacted in such meeting and on the validity of the decision taken during such a meeting.

41. In the facts and circumstances the inevitable *prima facie* inference is that the respondents were duty bound to send the notice in compliance with Regulation 4 (5) one week before the proposed extraordinary meeting and the agenda at least 5 days before the meeting and in absence of them the decision taken in such a meeting of the Institute body can be termed illegal and not valid. Consequently, the submission of the respondents that receipt of agenda by the members is such a right which can be waived by the members is not acceptable nor it can be held that the non compliance with the requirement of regulations will have no consequences on the resolution and decision passed during such a meeting.

42. The other contention on behalf of the respondents that it is the prerogative of the President of the institute body to call an ordinary meeting or an extraordinary meeting and cannot be faulted by the petitioner also needs consideration. The president had first asked the director who is the secretary of the institute body to call the ordinary meeting and on the alleged avoidance of the Director to send the notice, on this ground the director was asked to send the notice for extraordinary meeting. Can this be sufficient to call for an extra

ordinary meeting of the Institute body. Prima facie such a reason to call the extraordinary meeting does not seem to be in consonance with the tenor of the mandatory regulations of the respondent No. 3. Prerogative of the President to call the meeting is also circumscribed by the requirement of regulations. The President of the Institute does not have such prerogative which may not be in consonance with the mandatory requirement of the regulations. From perusal of Regulation 4(3) and (5), it is apparent that the extraordinary meeting is to be called to transact the urgent business of the institute. The respondents were conscious of the ordinary meeting to be called in the first instance and, Therefore, by communication dated 21.9.2006 the petitioner had been categorically asked to issue a notice as per Regulation 4(3) for the ordinary meeting. On petitioner's pointing out that under Regulation 4(3) of the AIIMS Regulations the agenda is to be made available and, Therefore, respondent No. 2 on the premise that the petitioner pointing out the requirement of Rule 4 (3) tantamount to avoidance of sending the notice and, Therefore, the extraordinary meeting be called for 10.10.2006 cannot be approved and sustained in the present facts and circumstances as the alleged avoidance by the petitioner though the petitioner had only pointed out that in terms of Regulation 4(3) that an agenda is also required to be circulated at least 10 days before the meeting, will not constitute or create such an eventuality which would require an extraordinary meeting to transact the urgent business of the institute. In the circumstances, the actions of the respondent to call an extraordinary meeting on account of alleged avoidance of sending of notice by the petitioner cannot be approved, prima facie, even though the subsequent agenda for the meeting of 18.10.2006 also include consideration of situation due to Dengue and the issue pertaining to repeated failure of patient care services and the discrimination, harassment of reserved category students and employees etc.

43. Despite all these pleas and contentions of the parties, the right of the Institute body to consider and transact the matters pertaining to the Institute should not be completely curtailed even in respect of appointment and termination of the tenure of the director, if permissible in law, more so on the hope that the alleged bias is not infinite and may be countered by the unbiased members of the body and even the alleged bias towards an individual may acquire a secondary characters on account of prevailing conditions in the institute and for the improvement of the Institute and for the service of the people for which the institute was established and is functioning. But at the same time, a director whose contributions to the institution and its functioning can not be doubted, can be left to bear the consequences of any action actuated by bias and based on violation of regulations and other rules on the premise that the Institute body has such absolute independent rights even to destroy itself. In order to meet the twin objectives it will be appropriate to allow the Institute's body to consider everything but not to allow the implementation of any adverse order, decision or resolution against the petitioner without judicial review and scrutiny of the Court in the present facts and circumstances. Such an action will

meet the ends of justice and will be within the competence of this Court. However, this order will not be construed to mean that the actions of the respondents regarding extraordinary meeting on 18th October, 2006 are in consonance with the regulations of the respondent No. 3, Institute.

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