

(2007) 09 DEL CK 0286

In the Delhi High Court

Case No : Writ Petition (C) No. 7084 of 2007

Lily Thomas

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

All India Institute of Medical Sciences Act, 1956 — Section 4
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Constitution of India, 1950 — Article 350

Citation : AIR 2008 Delhi 43

Hon'ble Judges : Dr. M.K. Sharma, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Party-in-Person, for the Appellant; P.P. Malhotra, ASG and Rajeev Mehra, (for No. 1), Mukul Gupta and Mithilesh Singh, (for No. 2) and Mukta Gupta and Akshai Malik, (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—The petitioner, who appears in person, submits that the Minister In-charge, Health and Family Welfare cannot act as the Chairman of the All India Institute of Medical Sciences. According to the petitioner, such nomination of the Minister as the Chairman of an autonomous institution is violative of Article 350 of the Constitution of India. The contention raised is that the Minister cannot act as the Chairman of the governing body; of AIIMS, for under Article 350 of the Constitution any grievance that any of the staff or employee of AIIMS may have, has to be considered by him as an appellate body.

2. The aforesaid contentions are refuted by the counsel appearing for the respondents on the ground that the provisions of Article 350 of the Constitution of India has no application at all to the facts and circumstances of the case and that the Minister in-charge, Health and Family Welfare acts as a Chairman of the All India Institute of Medical Sciences on the basis of statutory provisions.

3. We have considered the rival submissions in the light of the records placed

before us. In fact, the contention that Minister In-charge, Health and Family Welfare cannot act as the Chairman of the All India Institute of Medical Sciences stands already negated by a judgment and order of this Court in Centre for Public Interest Litigation Vs. Union of India (UOI) and Others, . While dealing with the aforesaid issue, the Division Bench of this Court referred to the provisions of the AIIMS Act and the Regulations and it was held that the Minister-In-charge of Health and Family Welfare could be nominated as the Chairman in terms of the provisions of Section 4(e) of the Act. It was held in explicit terms that the Minister could be nominated on the Institute Body by the government in exercise of its power vested u/s 4(e) of the Act as the Minister is involved in the policy making and functions of the Institute, even otherwise. In this connection, we may also refer to a Supreme Court decision in B. Shankaranand Vs. Common Cause and Others, . In the said decision, nomination of B. Shankaranand, who was then holding the portfolio of Health and Family Welfare, as the Chairman of AIIMS was considered and was in issue. In the context the Supreme Court In paragraphs 5 and 6 held as follows:

5...But on a harmonious and conjoint interpretation, we are of the opinion that the Government, while enacting the Act, appears to have intended to preserve the autonomy of the AIIMS, and also to have a say in its management. Under those circumstances, the Government appears to have nominated the Minister of Health and Family Welfare and the Secretary of Department of Health as Chairman and member respectively so that in the ultimate management of the supreme body constituted under the Act, the government also will protect the interests of the institution. Otherwise, it would appear that the Government does not seem to have any say or control in the management of the AIIMS. Considered from this pragmatic background and from the point of view of the importance of the institution and public interest, we are of the considered view that the Central Government is Justified to nominate four persons, other than scientists and the fifth being the non-medical scientist representing the Indian Science Congress Association. However four members may be integrally connected with the management and associated also with the working of the AIIMS. If this interpretation is given, we are of the view that it would subserve the greater public interest in the proper, effective, efficient and orderly management of AIIMS and the purpose of establishing the institution to maintain high standards, discipline and order in its management would be best subserved. However, there should be no undue interference by the Government of India in the autonomous management of the AIIMS and it should not" be treated as. any other Department of the Government, since the object of the Act is to improve excellence and high standards in all faculties of medical specialities and of treatment.

6. Accordingly, we hold that the appellant was nominated by virtue of his office as the Minister of Health and Family Welfare and he would be entitled to continue in that office as long as he held that office....

4. The aforesaid decisions of the Supreme Court and of the Division Bench of this Court are complete answer to the objection, which is raised before us by the petitioner.

5. The aforesaid ratio of the decision of the Division Bench of this Court negatives the very basis of the contention of the petitioner, who appears in person, that the aforesaid provision is vocative of the provisions of Article 350 of the Constitution of India. Even otherwise, in our considered opinion, Article 350 of the Constitution of India has no application and no relevance to the facts of the present case, as the said provision only empowers and entitles a person to submit a representation for redressal of his grievances in any of the recognised languages of the Union or of the State. It does not give a special right to make an application raising grievance but empowers and authorises a person to make representation in any recognised language.

6. In the light of the aforesaid ratio, there is no merit in this petition, which is dismissed.

7. It was also pointed out at one stage by the learned Additional Solicitor General that this writ petition is barred by the principles of res judicata as the petitioner had earlier filed a writ petition in the Supreme Court, which was subsequently withdrawn by her without obtaining any leave. In this connection, we may refer to the provisions of Order XXIII, Rule 1 of the Code of Civil Procedure, which states that unless a liberty is granted, no fresh petition or suit could be instituted, as there is no leave granted.

8. However, since we have dismissed the writ petition on merits, we need not examine the aforesaid issue in greater detail.