

(1995) 09 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Petition No. 3887 of 1991

N.K. Garg and Others

APPELLANT

Vs

I.I.T., Delhi and Others

RESPONDENT

Date of Decision : 01-09-1995

Acts Referred:

Institutes of Technology Act, 1961 — Section 21

Citation : (1995) 60 DLT 214 : (1995) 35 DRJ 218

Hon'ble Judges : P.K. Bahri, J;J.B. Goel, J

Bench : Division Bench

Advocate : S.C. Gupta, P.K. Jaitely, N. Verma, Arun Jaitley, A. Mariaputham, V.D. Makhija, A.N. Kapoor, P.K. Behl and Maninder Singh, for the Appellant;

Judgement

P.K. Bahri, J.

(1) The petitioners, who are working as Assistant Professors in I.I.T, Hauz Khas, New Delhi, have filed this writ petition seeking writ, order or direction in the nature of certiorari for quashing the pay revision order dated the 19th April 1990 as communicated by the Department of Education, Ministry of Human Resource Development, Government of India and the resolution of the Board of Governors dated the 17th May 1990 and for requiring the respondents to reframe the Cadre structure of the teaching staff of the I.I.T. and to remove the discrimination which the impugned order has created against the petitioners. A writ of mandamus is also prayed for an order for placing the petitioners, who were earlier in the middle rung as Assistant Professors, in the old Cadre and they be considered to be Associate Professors in the new scheme with effect from January 1, 1986 or from the date of joining after January 1986. Another writ is sought for quashing the selections made to the post of Associate Professors under the new schemes on various grounds.

(2) The facts relevant for the disposal of this writ petition, in brief, are that prior to issuance of the impugned orders, there existed a Cadre structure in the manner that at the bottom of the Cadre, there were posts of Lecturers and in

between there were posts of Assistant Professors and at the top there were posts of Professors having different and varied pay-scales. Initially, the pay-scale of Lecturer was Rs.400.00-950.00 which was later on revised to Rs.700.00-1600.00 and pay-scale of Assistant Professors was Rs.700.00-1250.00 which was revised to Rs.1200.00-1900.00 and the scale of Professor was earlier Rs.1100.00-1600.00 and it was revised to Rs.1500.00-2500.00.

(3) By the impugned orders, the Cadre structure has been changed. The post of Lecturers has been abolished. Now, at the bottom of the Cadre, the post of Assistant Professor has been retained in the scale of Rs.3700.00-5700.00. A new post of Associate Professor has been created in the scale of Rs.4500.00-6300.00 and the pay-scale of Professor has been revised to Rs.5100.00-7300.00 and a post of Director has been created in the scale of Rs.7600.00 fixed.

(4) The grievance of the petitioners, in brief, is that these structural changes in the Cadre have not been brought into existence by any competent authority inasmuch as it was the Board of Governors of the I.I.T, as provided by the I.I.T. Act which was competent to lay the policy for creating the Cadre but in fact the new Cadre structure has been brought about by the Government of India whereas the Board of Governors had not applied its independent mind in ordering the restructuring of the Cadres. So, on this short ground, the petitioners pray for quashment of the new Cadre structure and restoration of the old Cadre structure as mentioned above.

(5) The contention raised by the respondents, on the other hand, is that it was the Government of India which was to provide the funds as is evident from Section 21 of the Act and the Government had proposed some restructuring of the Cadre which was duly considered by the Council for the I.I.T. in its meeting and it had constituted a three member Committee to negotiate with the Government for enforcing new Cadre structure after such modifications, as have been discussed by the Council and thereafter such delegates of the Council had entered into negotiations with the Government and new Cadre structure was formulated, it was brought to the notice of the Council and which had been noted by the Council in its meeting and was thus implemented and it is urged that the competent authority has brought about this new Cadre structure which is binding.

(6) Section 21 of the Institute of Technology Act 1961 lays down as follows:-

"21. For the purpose of enabling the Institute to discharge their functions efficiently under this Act, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to each institute in each financial year such sums of money and in such manner as it may think fit."

(7) A perusal of this Section clearly shows that the funds for running this Institute had to come from the Government. So, it is evident that that no scales of pay of the staff and employees of the Institute could be revised by the Institute without there being funds made available by the Central Government. So, for restructuring the Cadres involving financial implications, the Institute has

to coordinate with the Government, the same goes without saying.

(8) u/s 33, the council of the Institute which comprised of a large number of Members has been empowered in Section 33(2)(b) *inter alia* to lay down the policy regarding cadres, methods of recruitment and conditions of service of employees, institution of scholarships and free ships, levying of fees and other matters of common interest. So, it is urged that a duty is enshrined on the Council for laying down policy with regard to the cadres and no other authority except the Council under the statute could perform this particular duty.

(9) The learned counsel for the petitioner has placed reliance on Commissioner of Police, Bombay Vs. Gordhandas Bhanji, 1952 Supreme Court Reports 135. In this case, the provisions of Bombay Police Act came up for consideration. The question was whether the Commissioner, who was authorised for passing the cancellation of a license, had himself exercised the discretion in cancelling the license or not. It appears that an order had been communicated to him by the Government which the Commissioner had in turn communicated to the affected party. It was held by the Supreme Court that an attempt was made, by referring to the Commissioner's affidavit, to show that this was really an order of cancellation made by him and order was his and not that of Government. But it was clear that public orders publicly made in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order as to what he meant or what was in his mind, or what he intended to say. The Supreme Court held that as the order has not been passed by the Commissioner himself, the same was invalid as the power to cancel the license is vested in the Commissioner and not in the State Government and can only be exercised by him at his discretion and no other person or authority can do it. The Supreme Court held that merely forwarding the order made by another authority would not mean that the Commissioner himself had passed the order.

(10) Then reference is made to Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, where the rule of interpretation has been reiterated by the Supreme Court to the effect that if the strict grammatical interpretation gives rise to an absurdity or inconsistency, such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on the words, if necessary, even by modification of the language used. On page 588, the Supreme Court laid down that language used, if has only one meaning, the said meaning must have effect and Therefore, there would be no scope for applying in such a case the principles of interpretation which are applicable in case of ambiguity.

(11) Reliance is also placed on State of Punjab and Another Vs. Hari Krishan Sharma, . In the said case, the provisions of Punjab Cinemas (Regulation) Act 1952 came up for consideration. In Section 5(1) read with Section 5(2), the power to give licenses was vested in the licencing authority subject to the control of the Government. The Supreme Court held that however wide the power of the Government may be, but it cannot justify the ouster of the power of the licencing

authority and usurp the functions of that authority. It was held that to hold that the control of the Government contemplated by Section 5(2) would justify their taking away the entire jurisdiction and authority from the licencing authority, is to permit the Government by means of its executive power to change the statutory provision in a substantial manner and that position clearly is not sustainable.

(12) Some support was also sought by learned counsel for the petitioner in support of his contentions that Cadres could only be formulated by the Council of the I.I.T. and not by the Government, from judgment given in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, where the Supreme Court has laid down that the maxim "delegates non potest delegate" must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute on an authority is intended to be exercised by that authority and by no other. But the intention may be negated by any contrary indications in the language, scope or object of the statute.

(13) He has also relied on some observation made in *Bar Council of Delhi and Others Vs. Surjeet Singh and Others*, to the effect that mere approval of the Bar Council of India to a rule ultra virus the State Bar Council cannot make the rule valid.

(14) So, the contention raised is that in the present case the cadre structure ordered by the Government of India is not binding because the Government of India could not have assumed the powers of the Council of the I.I.T. given to it u/s 33(2)(b) of the Act.

(15) Another judgment to which reference has been made is *A.K. Roy and Another Vs. State of Punjab and Others*, where well-known principle of law has been reiterated by the Supreme Court that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

(16) He has also relied on *Marathwada University Vs. Seshrao Balwant Rao Chavan*, . In the said case a report had been submitted to the Executive Council which passed the resolution requiring the Vice Chancellor to take the decision on such report. It appears that such delegatee, Vice Chancellor, took no decision on the report and gave some other decision. It was held that by the power delegated under the resolution, the Vice Chancellor could either accept or reject the report with intimation to the Executive Council and he could not have taken any other action and indeed he was not authorised to take any other action.

(17) So, it is urged by learned counsel for the petitioner that it was the Council constituted under the Statute which has the sole authority to direct the restructure of the cadres which it has not done and the restructuring of the cadre carried out by the Government of India may be in consultation with the Special Committee constituted by the Council is not valid inasmuch as the Council could

act only in the manner provided in the statute and as it did not do so, the impugned restructuring of the cadre is without jurisdiction and is invalid.

(18) On the other hand, learned counsel for respondents has not disputed the legal propositions culled out from the various judgments quoted above but has argued that in the present case substantially it is the Council which has restructured the cadre and thus there is no merit in the writ petition.

(19) Reference has been made by both the counsel to the Agenda Note meant for the meeting of the Council which was to take place on 28th July 1989. Item No.4 of the said Agenda (page 266) has the subject as follows:-

"TO consider revision of salary scales of I.I.T. Faculty".

(20) It is mentioned in this Agenda that Cabinet on May 5, 1989 approved the revision of salary scales, as recommended by the Ministry of Human Resources Development and the decision of the Government of India in that respect was placed at Annexure-IV. The Agenda item shows that there was dissatisfaction in respect of the announcement and some reservations have also been felt by academicians like Prof. Yash Pal, Chairman of the University Grants Commission, Prof. C.N.R.Rao, Director of Indian Institute of Science, Bangalore and some others. It was also indicated in the Agenda that Directors and representatives of I.I.T. Faculty had a meeting with Prof. Ashok Chandra, Educational Adviser and other officers of the Ministry on 5th June and 13th June 1989 and the demands of the Faculty were indicated. Then reference was made to meetings which took place between the Chairman and Director of I.I.T. with the Minister of Human Resources Development on different dates and it was decided that the Chairman/Directors would chalk out a workable solution within the framework of the decision already taken by the Cabinet.

(21) This Agenda came to be considered by the Council of the respondent in its meeting dated 28th July 1989 and the minutes of the said meeting appear at pages 199 to 208 of the file. On page 202 onward, this Agenda was considered. Different suggestions were mooted in respect of the said Cabinet decision and the discussions which had already taken place between the parties. A suggestion was mooted that it would not be proper to go to the Cabinet again for getting some changes made and it would be necessary to constitute a small committee which could sit down and sort out the problem within the overall framework of the Cabinet decision. The Council then proceeded to constitute a committee comprising of Dr.Gowariker, Dr.Kapur and Sh.Anil Bordia with directions to work out a proposal within the overall framework of the Cabinet decision which could later be discussed with the officers of the Finance Ministry and others before taking up with the Cabinet, if considered necessary.

(22) For the meeting which was to take place on 14th February 1991, Agenda was circulated in which at Item No.29.4 it was indicated in the Agenda that a Committee was constituted to work out a proposal within the overall framework of the Cabinet decision. The proposal of the Committee was considered by the

Government and the orders revising the pay-scales of the teachers in I.I.T. were issued on 19th April 1990. In the meeting, the Council took a decision as per minutes appearing at page 209. The Council took note of the action taken. Again, for the meeting scheduled for 15th July 1992, the Agenda at item was 5.1 which was to the effect that the Council had earlier decided to appoint a three Member Committee to work out a proposal for revision of salary scales of I.I.T. teachers within the overall framework of the Cabinet decision which could later be discussed with the Officers of the Ministry of Finance and others before checking up with the Cabinet, if necessary. Accordingly, on receipt of the report of the three Member committee, approval of the then Minister of Finance who was the Chairman of Council of I.I.T. was obtained and thereafter the approval of Cabinet was obtained with prior consultation of the Ministry of Finance and the final position on the revision of the pay-scales was communicated to IITs on 19th April 1990. A copy of the correspondence was attached as Appendix - XIV. In the minutes of the meeting at page 225, the Council used the expression "noted" and there the matter ended.

(23) Keeping in view all these facts which are undisputed, can it be said that the Council had not at all considered the matter or had not taken any decision on the same ? It is evident that this matter was to be sorted out with the Government of India which was to provide the funds. The Council had constituted a Committee to which it delegated the powers for negotiating with the Government the pay revision and the cadre restructuring within the overall framework of the Cabinet decision regarding revision of pay-scales and if some modifications were to be suggested, then they were also to be brought into existence in consultation and approval of the Government of India and after the Committee had negotiated the matter at all possible levels, a final decision was taken on the lines approved by the Committee which was the delegatee of the Council and the Government promulgated the cadre structure and the pay revisions which was noted by the Council in its meeting.

(24) We are of the view that the Council was associated with this decision making process at all relevant time and the Council had approved the restructuring and the revision of pay-scales in its meetings noticed above. A better terminology could be used by the Council in signifying its approval to the cadre restructuring but we have to keep in view that the Council was seriously seized of the matter and in its three meetings noted above, the matter was duly considered by the Council and its delegatee, the Special Committee, had worked out the cadre restructuring with pay revisions with the approval of the Government which was to provide the funds and the Council had approved the same by noting the decision taken on its behest by the Committee, its delegatee.

(25) We, hence, do not accept the contention of the learned counsel for the petitioner that Council had abdicated its power and duty imposed on it by the statute and had merely noted the decision already taken by the Government of India. Facts rather show otherwise that Cabinet decision sanctioning the pay-

scales initially was considered by the Council but as there were some dissatisfaction with such pay-scales, the Council constituted a Committee to which it delegated the power to work out the cadre restructuring and the pay revisions within the overall framework decided by the Government and thereafter the final decision was taken by the Committee on behalf of the Council which was also put up before the Council and the Council noted the same which would mean that Council approved the same.

(26) It is also significant that these petitioners would not have benefitted with the new pay-scales which had been enforced if the Council had not approved the proposal of restructuring of the cadre with revised pay-scales. Mere fact that petitioners have opted for the new scales without prejudice is neither here nor there. We are of the view that there has taken place no violation of any statutory provision in enforcing the new cadre structure with revised pay-scales.

(27) We may refer to *Sahni Silk Mills (P) Ltd. and Another Vs. Employees' State Insurance Corporation*, . It has been laid down by the Supreme Court in its judgment that the Courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set-up extreme judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory authorities, the maxim delegates non potest delegate is not being applied specially when there is question of exercise of administrative discretionary power.

(28) It is evident that unwieldy body like the Council would not have been able to negotiate the matter by having a meeting with the authorities to sort out the matter and it was in our view right exercise of discretion by the Council in Constituting a special committee which was delegated the power to bring about this cadre restructuring and revision of pay-scale after having negotiations with the authorities concerned. Thus, we negative this contention of the petitioners.

(29) Last contention raised by learned counsel for the petitioner before us is that the Selection Committee which made the selections for the post of Associate Professor was not duly constituted under Statute 12(3)(e). Statute 12 deals with the appointments and clause 3 of this Statute deals with the Selection Committee required to be constituted for promotion or selection on different posts. In case of post of Deputy Director and Professor, the Selection Committee is to comprise of Director as Chairman, one nominee of the Visitor, two nominees of the Board, one being an expert but other than a member of the Board and one expert nominated by the Senate other than a member of the Senate to be the Members. The post of Associate Professor did not exist earlier and thus Statute 12 obviously would not be dealing with such a post as this Statute 12 was enforced long back while the post of Associate Professor has come into existence

recently.

(30) The learned counsel for the petitioner referred to Clause 3(e) which lays down that in case of other posts not covered by categories (a), (b), (bb), (c) or (d) and carrying a scale of pay the maximum of which exceeds Rs.900.00 per mensem, the Selection Committee shall consist of Director or his nominee as Chairman, nominee of the Board, Head of the Department/Centre concerned or Registrar, as the case may be, and an expert from the staff of the Institute nominated by the Director as Members. It is not disputed that the Selection Committee for making promotion to the post of Associate Professor was not constituted in consonance with sub-clause (e).

(31) Learned counsel for the respondent has urged that this sub-clause (e) pertains to non- teaching staff having a salary of exceeding Rs.900.00 per mensem while all other categories given in sub-clauses (a), (b), (bb), (c) & (d) pertain to the appointments to the teaching posts like Professor, Assistant Professor, Senior Scientific Officer, Lecturer, Associate Lecturer, Librarian, Workshop Supdt., Registrar, Assistant Registrar and Accounts Officer. He has pointed out that in fact the Selection Committee which had made the appointments to the post of Associate Professors comprised of the Members meant for the post of Professor. These facts are not controverted before us.

(32) It is not possible to countenance the contention of the learned counsel for the petitioner that the post of Associate Professor should be considered to fall in sub-clause (e). We have to give interpretation to these provisions keeping in view the cadre structure existing at the time these provisions were brought into existence. The post of Associate Professor was not in existence earlier, so it is not possible to agree that this post would fall in the category of sub-clause (e). Sub-clause (e) would have applied to the unimportant posts which are essential for running the administration and not to the post of category of Associate Professor.

(33) Be as it may, the petitioners in the present case were duly considered by the Selection Committee and they had appeared in that selection process without any objection and after taking the chance of being selected and unfortunately being not selected, they cannot be allowed to now challenge the Constitution of the said Selection Committee. (See judgment dated August 31, 1995 given in Civil Writ Petition No.3364/90, R.C.Parti Vs. Indian Airlines Corporation & Others). Hence, we hold that petitioners are estopped from challenging the constitution of the said Selection Committee.

(34) No other point has been urged before us.

(35) We find no merit in this writ petition which we hereby dismiss but in view of the peculiar facts, we leave the parties to bear their own costs.