
(2023) 10 GAU CK 0050

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1955 Of 2023

Prof. Sashindra Kumar Kakoty

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 26-10-2023

Acts Referred:

Code of Civil Procedure, 1908 — Order 3 Rule 4

Institutes of Technology Act, 1961 — Section 10, 11, 13, 16, 27(2)

Citation : (2023) 10 GAU CK 0050

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : P.K. Goswami, B.D. Goswami, R.P. Kakoti, P.S. Bhattacharyya, K.N. Choudhury

Final Decision : Allowed

Judgement

1. The principal issue involved in this writ petition is the appointment of the Director In-charge of the IIT Guwahati. The consequential issue is also with regard to the process of regular appointment to the said post of Director. The process adopted in the aforesaid recruitment has been assailed both on the ground of violation of the established norms as well as on the element of bias and favouritism.

2. The facts projected in the petition are that the petitioner is a Professor of the IIT Guwahati and at the relevant time was serving as the Deputy Director of the same. The post of Director had fallen vacant as the earlier Director was appointed elsewhere and there was a requirement to fill up the said post of Director on In-charge basis. The statutory rules holding the field do not contain any provision for appointment of In-charge Director. However, such procedure can be traced back to the First Meeting of the Council of the four numbers of IITs (as it was then) held on 25.05.1962. As per Item No. 7, the Chairman of the Council, which is the parent body, in consultation with the Chairman of the concerned Board of Governors, was to make such appointments. It may be

mentioned that each of the IITs has got a Board of Governors.

3. It is contended that to make such appointments, three options are available, namely,

(i) to ask the Deputy Director (if in position) to take charge;

(ii) from the senior most Professor or;

(iii) Director of any other IIT to take additional responsibility.

It is the case of the petitioner that in violation of all the procedures laid down, the respondent no. 3/4 vide order dated 20.11.2022 had appointed the respondent no. 5 as In-charge Director with effect from 09.12.2022. Pursuant thereto, there were some communications and subsequently, vide an order dated 20.12.2022, a formal letter of appointment was issued in favour of the respondent no. 5 and he had joined on the same date. It is the aforesaid process of the appointment of the respondent no. 5 as In-charge Director which is the primary challenge in this writ petition. The petitioner has also challenged the process of regular appointment of Director.

4. Though this writ petition was filed on 01.04.2023, in the meantime, there were further developments for appointment of the regular post of Director and the said developments were also brought to the notice of this Court.

5. I have heard Shri P.K. Goswami, learned Senior Counsel for the petitioner assisted by Shri B.D. Goswami, learned counsel. Shri P.S. Bhattacharya, learned C.G.C. appears for the respondent nos. 1, 2 & 6. I have also heard Shri R.P. Kakoti, learned Senior Counsel for the IIT Guwahati assisted by Shri S. Sutradhar, learned counsel. Shri K.N. Choudhury, learned Senior Counsel has appeared for the respondent nos. 3/4.

6. Shri Bhattacharya, the learned CGC has also produced certain information regarding the developments which have taken place during the pendency of the writ petition and such developments were also incorporated in an additional-affidavit which filed on 10.10.2023.

7. Shri Goswami, the learned Senior Counsel has referred to the First Meeting of the Council of the four IITs held on 25.05.1962. By drawing the attention of this Court to Item No.7 of the said minutes of meeting which was in connection with the procedure to be laid down for appointment to the post of Director, a situation of the present nature has also been contemplated and a procedure has been laid down that such appointment is to be made by the Chairman of the Council in consultation with the Chairman of the concerned Board of Governors.

8. For ready reference, the relevant minute in Item No. 7 is extracted here in below:

" Item No. 7- To consider the question whether any procedure should be laid down for appointment to the post of Director [Section 17 (1)].

The Council decided that for regular appointments to the post, it should be advised by a Selection Committee consisting of the Chairman of the Council as Chairman, and Chairman of the concerned Board of Governors, Chairman of the University Grants Commission, and one expert to be nominate by the Chairman of the Council as members.

In the case of short-term vacancies or appointment on an officiating basis pending selection as per above procedure, the Chairman of the Council should make the appointment in consultation with the Chairman of the concerned Board of Governors."

9. It is contended by Shri Goswami, the learned Senior Counsel that from the information gathered, such In-charge Director can be appointed from three options, namely, the Deputy Director; senior most Professor or through the Director from another IIT as additional responsibility and in the instant case, the petitioner was a Deputy Director of the IIT Guwahati at the relevant point of time.

10. In support of his submission on the challenge made regarding the procedure adopted, the learned Senior Counsel for the petitioner has referred to the affidavit-in-opposition filed by the respondent nos. 1, 2 and 6. By referring to Annexure-C which is an e-mail dated 20.11.2022 from the Chairman of the Board of Governors of the IIT Guwahati, the respondent no. 5 was appointed as the In-charge Director with effect from 09.12.2022. The said e-mail was issued to the Secretary, Department of Higher Education, Government of India and copy marked to the Ministry of Human Resource Development.

11. Shri Goswami, the learned Senior Counsel for the petitioner has submitted that in the seniority list of Professors of IIT Guwahati, the position of the petitioner is 22 whereas that of the respondent no. 5 is 59.

12. The aforesaid e-mail dated 20.11.2022 was replied to by the concerned officer of the Ministry of Human Resource Development on 21.11.2022 (09:31 hrs.). In the said e-mail, three questions were raised regarding the decision to appoint the respondent no. 5 as the Director In-charge. The said three questions are extracted here in below.

"1. Is Prof. Iyer the senior most? If not, any reason for not recommending the names of any of those who are senior to him;

2. Seniority list of faculty members in IIT Guwahati; and

3. Details of faculty members holding senior administrative position, e.g., Deans and Dy Director."

13. As a response, the respondent no. 3/4 issued an e-mail on the same date 21.11.2022 (3.11 pm) by citing that the respondent no. 5 was younger, energetic and has many accomplishments to his credit which were sent as attachment in the earlier e-mails. The e-mail further states that the other Seniors had been reviewed and in his judgment, they would not be able to carry on with the

momentum of upgradation. It has also been stated that the respondent no. 5 was involved with the development of the IIT Guwahati during the time of the previous Director.

14. For ready reference, the contents of the email by the respondent no. 6 are extracted here in below.

"He is younger, energetic and has many accomplishments to his credit as sent as attachment in my earlier email message to you all.

The other seniors had been reviewed by me and in my judgment they would not be able to carry on with the "momentum of upgradation" that we have had at IIT Guwahati in the past years.

Professor Iyer has been involved in many ways in the development of IIT Guwahati during the time of previous director as well as during tenure of Professor Sitharam...so he will enable smooth transition.

Thank you for your understanding."

15. Shri Goswami, the learned Senior Counsel has again referred to the affidavit-in-opposition of the respondent no. 7, more particularly, the averments made in paragraph 7 wherein it has been stated that the respondent no. 7 has been serving as the Dean of Public Relations, Branding and Ranking. References have also been made to the advertisement for appointment of a regular Director, the last date of which was fixed on 28.02.2023.

16. In the meantime, vide communication dated 20.12.2022, the approval of the Minister of Education in his capacity as the Chairperson of the IIT Council was conveyed for the appointment of the respondent no. 5 as the In-charge Director of the IIT Guwahati. Pursuant to the said communication, the respondent no. 5 had joined the said post on the same date.

17. The learned Senior Counsel for the petitioner has also made a reference to a communication by the outgoing Director on 21.11.2022 by which a list of Professors was forwarded. Further, the resume of two Faculty Members were also forwarded out of which, one was that of the petitioner who was holding the post of Deputy Director.

18. The learned Senior Counsel for the petitioner has submitted that the subsequent communication dated 20.12.2022 will not cure the gross illegality committed in the decision making process as would be evident from the e-mail dated 20.11.2022 whereby a decision was already taken by a person not vested with such authority to make the appointment of the respondent No. 5 as In-charge Director w.e.f. 09.12.2022. It is submitted that all laid down procedures have been ignored and overlooked to favour the respondent no. 5.

19. On the issue of regular appointment, the learned Senior Counsel for the petitioner has referred to the advertisement for filling up of the post of Director on regular basis. As per the said advertisement, the last date for submission of

application was fixed on 28.02.2023. It is submitted that as per the eligibility criteria, minimum five years administrative experience and leadership qualities would be necessary. The candidate should have a Ph.D with 1st Class or equivalent at the preceding degree, preferably in the branch of Engineering and only in exceptional cases, candidates with Science, Mathematics or Management Degrees may be considered. The candidate should have an outstanding academic record throughout and a minimum of 10 years teaching experience as a Professor in a reputed Engineering or Technology Institute or University and should have guided Ph.D students.

20. It is the categorical case of the petitioner that the respondent no. 5 does not have any Engineering background and therefore, not eligible to be considered for appointment. It is further contended that the respondent no. 5 was otherwise not eligible for consideration for not meeting the eligibility criteria.

21. Shri Goswami, the learned Senior Counsel for the petitioner has submitted that the materials on record and sequence of events would establish a clear case of bias and favouritism of the respondent no. 3/4 to favour the respondent no. 5. By reverting back to the e-mail dated 20.11.2022 from the Chairman of the Board of Governors, who is the respondent no. 3/4, it is submitted that not only the respondent no. 5 has been favoured, in the assessment of the said respondent no. 3/4, all other candidates of the IIT Guwahati were evaluated and found not suitable even for holding the post of Director on In-charge basis. It is submitted that irrelevant and extraneous considerations have guided the decision to appoint the respondent no. 5 as the In-charge Director.

22. The learned Senior Counsel for the petitioner by referring to de Smith's "Judicial Review of Administrative Action" 4th Edition has submitted that in exercise of discretion, the same should be done by taking into consideration the relevant materials and not on the basis of irrelevant or extraneous materials. It is further submitted that while exercising such discretion, the mind of the decision maker should not get foreclosed.

23. In support of his submissions, the learned Senior Counsel for the petitioner has placed reliance upon the following case laws:

1. Khudiram Das vs. State of W.B. & Ors. reported in AIR 1975 SC 550;
2. State of W.B. & Ors. vs. Shivananda Pathak & Ors. reported in (1998) 5 SSC 513;
3. Union of India & Ors. Vs. Sanjay Jethi & Anr. reported in (2013) 16 SCC 116.

24. In the celebrated case of Khudiram Das (supra), the Hon'ble Supreme Court has laid down various facets to be taken into consideration while examining a matter involving subjective satisfaction. While holding that subjective satisfaction would not mean an immunity from the judicial reviewability, it has been laid down that for exercise of such subjective satisfaction, the Court can examine as to whether the conditions precedent were taken into consideration; whether the

authority had applied its mind; whether the power was exercised dishonestly or for an improper purpose; whether the authority had disabled itself from applying its mind to the facts of each case; whether there was an application of a wrong test or the misconstruction of a statute; whether the satisfaction was grounded on materials which are of rationally probative value; whether the materials considered were relevant to the subject matter; whether such materials were extraneous to the scope and purpose. It has further been held that even if the authority with the best of intention had taken a decision on a factor which is not relevant, such exercise of powers would still be bad.

25. In the case of Shivananda Pathak (supra), the universal principle that justice not only has to be done but manifestly seen to be done has been reiterated. For ready reference, the relevant paragraphs which include the aspect of bias is extracted herein below.

"32. The above maxim as also the other principle based on the most frequently quoted dictum of Lord Hewart C.J. in *R. v. Sussex, JJ. ex p. Mc. Carthy*⁷, that;

"It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done", constitute the well-recognised Rule Against Bias.

33. Bias, as pointed out earlier, is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias. But the courts, for this reason, cannot be said to be in a crippled state. There are many ways to discover bias; for example, by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias" or "reasonable suspicion of bias." de Smith in *Judicial Review of Administrative Action*, 1980 Edn., 262, 264, has explained that "reasonable suspicion" tests looks mainly to outward appearances while "real likelihood" test focuses on the court's own evaluation of the probabilities."

26. In the case of Sanjay Jethi (supra), the Hon'ble Supreme Court was dealing with the aspect of bias. By referring to the Halsbury's Laws of England, the following has been laid down.

"37. At this juncture, we may refer with profit to Halsbury's Laws of England, Fourth Edition, Volume 2, paragraph 551, where it has been observed:

'The test for bias is whether a reasonable intelligent man, fully appraised of all the circumstances, would feel a serious apprehension of bias [*R v. Moore, ex parte Brooks* [1969 (2) OR 677, 6 DLR (3d) 465]'. "

27. The Hon'ble Supreme Court has also taken into consideration the interpretation of the author De Smith in the book "Judicial Review of Administrative Action" which has already been referred. The celebrated author while dilating on the aspect of bias has laid down that while exercising discretion, in case of bias, the mind become foreclosed and no genuine consideration to the relevant factors are given. Regarding exercise of discretion, the following observations made would be relevant and are accordingly extracted herein below.

"Principles Governing the exercise of discretionary powers.

The relevant principles formulated by the Courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: It must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account; and where an authority hands over its discretion to another body it acts ultra vires. Nor, as will be shown, is it possible to differentiate with precision the grounds of invalidity contained within each category."

28. The learned Senior Counsel for the petitioner reiterates that in the affidavit filed by the Union of India, there is no submission/statement with regard to the recommendation made by the outgoing Director. It is further submitted that the communication made by the Ministry of Human Resource Development on 21.11.2022 would itself make it clear regarding the lack of legal sanction to the decision to appoint the respondent no. 5 as In-charge Director. This Court has also noted that there is an order passed in this proceeding on 26.06.2023 that the outcome of the selection process, if conducted with the respondent no. 3/4 as one of the members of the Board for the post of Director would be subject to further orders that may be passed in the case.

29. Shri K.N. Choudhury, learned Senior Counsel has appeared for the respondent nos. 3/4. It may be mentioned that the incumbent is the same and he has been made party by name as respondent no.4.

30. Shri Choudhury, learned Senior Counsel submits that the communication sent vide e-mail dated 20.11.2022 is not an appointment but only a recommendation. It is further submitted that the respondent no. 5 was the senior most Dean. This Court, however, on verification with the reply available on records does not find that the aforesaid fact was mentioned in the reply dated 21.11.2022 by the respondent no. 3/4.

31. On the aspect of bias, it is submitted by Shri Choudhury, the learned Senior

Counsel that such aspect cannot be of universal application and would depend on the facts and circumstances of each case. He submits that there are no materials to establish bias except for the recommendation for the In-charge appointment. By referring to the case of Cantonment Executive Officer & Anr. vs Vijay D. Wani & Ors., reported in (2008) 12 SCC 230, he submits that the apprehension should be of a real bias and not merely on the likelihood of bias. He further submits that the case laws relied upon by the petitioner are not applicable. It is further submitted that from the IIT Guwahati, eight persons have applied, including the petitioner and the respondent no. 5 and the Selection Committee consist of other members also and therefore, the respondent no. 3/4 would have hardly any role in such selection and appointment. It is also submitted that since the final selection was scheduled on 26th and 27th September, the present challenge has become infructuous and at this stage, it would be premature to act on the allegation of bias.

32. Shri R.P. Kakati, learned Senior Counsel has appeared for the respondent no. 7. He submits that Section 10 of the IIT Act of 1961 lays down the authorities of the Institutes. Reference is also made to Sections 11, 13, 16 and 27 (2) and submits that it is the Chairman of the Board of Governors who is the supreme authority to take decision. To buttress the said submissions, reference is also made to the IIT Guwahati Statutes, more specifically, Clause 2(5), 2(11) and 7(4). He clarifies that IIT Guwahati as such does not have any role in the decision making process and the IIT Guwahati cannot take any responsibility of any decision taken by the Chairman.

33. Shri P.S. Bhattacharya, learned CGC appearing for the respondent Nos. 1, 2 & 6 submits upon instructions that 53 numbers of applications were received out of which, there were 11 numbers of shortlisted candidates. It may be mentioned that the aforesaid information was revealed by the learned C.G.C. who has placed the same in a sealed cover. This Court, however, vide order dated 27.09.2023 while opening the sealed cover had directed filing of an affidavit on the aspect of participation of the respondent no. 4 in the process of both shortlisting of the candidates as well as in the final selection to be held. Pursuant to the direction of this Court, an additional-affidavit has been filed on 10.10.2023 by the said respondent nos. 1, 2 and 6.

34. In paragraph 5 of the said additional-affidavit, it has been stated that the respondent no. 3/4 participated in the first meetings held on 15.06.2023 and 16.08.2023 for shortlisting the candidates. After such shortlisting, it was found that while the name of the petitioner was not amongst them, the name of the respondent no. 5 is present. In paragraph 7, it has further been stated that the interview was scheduled on 26th and 27th September, 2023. However, the respondent no. 3/4 could not attend the meeting of such Committee due to his pre-scheduled travel plan. The affidavit, however, is silent as to whether the selection was gone ahead on the said two dates in absence of the respondent no. 3/4. The affidavit has also annexed an order dated 23.03.2023 of the

constitution of the Selection Committee which contains the respondent no. 3/4 as a member.

35. Rival contentions advanced on behalf of the parties have been duly considered and the materials placed have been carefully examined.

36. The challenge made in this petition and the relief prayed for are twofold. Firstly, the appointment of the respondent no.5 as Director In-Charge of the IIT Guwahati has been challenged and secondly, to issue a direction that in the selection process for filling up of the post of Director on regular basis, the respondent no. 3/4 should not be allowed to participate as a member of the Selection Committee.

37. The appointment of the respondent no. 5 as In-charge Director was done on 20.12.2022 and in the meantime, much progress has been made in the process of selection and appointment of the Director on regular basis. Though from a view point, the first leg of challenge may appear to be infructuous, however, in view of the other relief prayed for, it would be necessary to go to the aspect of examining the decision making process culminating in the decision to appoint the respondent no. 5 as the Director In-charge of the IIT Guwahati. This Court has also taken note of the fact that one of the primary grounds of challenge is bias on the part of the respondent no. 3/4 in the selection and therefore, it is not only his action in appointing the respondent no. 5 as In-charge Director but also his participation in the selection process for appointing the Director on regular basis which would be necessary to be examined.

38. From the materials on record, including an examination of the Act and Statute, this Court has come to the conclusion that except for the minutes of the meeting of the Council for the four IITs for the first time on 25.05.1962, more particularly, against Item No. 7, there are no other guidelines laid down to be followed for appointment of In-charge Director. The aforesaid proposition is also not a matter of dispute that it is the first meeting held on 25.05.1962 which lays down the guidelines. As per Item No. 7, such appointment of In-charge Director is to be made by the Chairman of the Council in consultation with the Chairman of the concerned Board of Governors. From the materials on record, it is clear that such appointments are to be made from three options namely, i) from the Deputy Director ii) the senior most Professor and iii) by giving the responsibility to the Director of another IIT. In the instant case, while the petitioner, at the relevant point of time, was the Deputy Director and was amongst the incumbents who could be considered for such appointment on In-charge basis, the respondent no. 5 was not even amongst the eligible candidates. The records of the case also make a startling revelation. The respondent no. 3/4, who is the Chairman of the Board of Governors, by his e-mail dated 20.11.2022, had appointed the respondent no. 5 as the Director In-Charge and had also entrusted the responsibility w.e.f. 09.12.2022. When the guidelines holding the field had given such powers of appointment only to the Chairman of the Council, such course of action adopted by the respondent no.3/4 is wholly without jurisdiction.

The subsequent exchange of communications would reveal something more astonishing. The Ministry of Human Resource Development vide email dated 21.11.2022 had raised three queries in respect of the action of the respondent no. 3/4 by which the respondent no. 5 was appointed. These three queries have already been recorded above in this judgment.

39. The reply given by the respondent no. 3/4 on the same day is even more surprising. While justifying the action, the respondent no. 3/4 has stated that the respondent no. 5 is younger, energetic and has many accomplishments to his credit. The reply does not end there. It is further stated that the other seniors had been reviewed by him and in his judgment, they would not be able to carry on with the momentum of up-gradation that was present at the IIT Guwahati in the past years.

40. What is astonishing to note is that while justifying his action to appoint the respondent no. 5, the respondent no. 3/4 has also put it on record that the other seniors were already reviewed and would not be fit for the job.

41. It is on record that in the list of the Professors of IIT Guwahati while the petitioner is at Sl. No. 22, the respondent no. 5 is at Sl. No. 59 and therefore, the petitioner is much senior to the respondent no. 5 and was also holding the post of Deputy Director which was one of the three available options for considering for appointment as In-Charge Director.

42. Shri Choudhury, the learned Senior Counsel for the respondent no. 3/4 has submitted that the email dated 20.11.2022 issued by his client, though has used the expression 'appointment', that has to be construed to be a mere recommendation. He further submits that the actual letter of appointment is dated 20.12.2022 which is issued by the appropriate authority and therefore there is no reason for even examining the legality of the email dated 20.11.2022.

43. The aforesaid submission of Shri Choudhury cannot be accepted for more than one reason. The e-mail dated 20.11.2022 has been issued by none other than the Chairman of the Board of Governors of IIT Guwahati and not by a layman. The clear intention of the respondent no. 3/4 to appoint the respondent no. 5 was apparent.

44. Apart from the issue of jurisdiction and authority of the respondent no. 3/4 to make such appointment, such selection has been done in gross violation of the established procedure. It is not in dispute that the post in question can be filled up either from the Deputy Director or from the senior most Professor or by giving the responsibility to the Director of another IIT. The respondent no. 5 was not amongst the three categories and therefore, not even eligible for consideration, in spite of which, a decision was taken to appoint him as the In-charge Director.

45. Even in the seniority list of Professors of IIT Guwahati, while the petitioner is against Sl. No. 22, the respondent no. 5 is at Sl. No. 59. The justification given by the respondent no. 3/4 for his decision is that the respondent no. 5 is

younger, energetic and has many accomplishments to his credit. While such factors may look to be attractive, those are not amongst the relevant factors which are to be taken into consideration. When the respondent no. 5 was not even eligible for such appointment, the aforesaid factors would be extraneous. Further, all such factors are subjective in nature in which the element of bias and favouritism cannot be ruled out.

46. What further intrigues this Court is that the respondent no. 3/4 in his e-mail dated 21.11.2022 has also expressed that all other seniors have been reviewed by him and they have been held to be unfit for the job. There are no materials on record as to how such a conclusion could be arrived at, that too, by the respondent no. 3/4, who does not have the authority or jurisdiction to make such assessment.

47. Much emphasis has been laid on behalf of the said respondent no. 3/4 that it is the order dated 20.12.2022 by which the appointment of the respondent no. 5 was finally made and that appointment being issued by the appropriate authority, the question of jurisdictional error may not come in. In the opinion of the Court, the aforesaid submission is not tenable as the decision was already taken by the respondent no. 3/4 to appoint the respondent no. 5 as the Director In-charge vide the email dated 20.11.2022 and in a query raised by the Ministry, appropriate justification was also sought to be given. It becomes apparent that it is the decision taken by the respondent no. 3/4, which had prevailed upon the authorities leading to issuance of the appointment letter dated 20.12.2022. In the opinion of this Court, the said letter dated 20.12.2022 is only a formal manifestation of a decision taken by a person without any authority conferred by law.

48. Even if for argument's sake, the aforesaid contention is taken into consideration and the order dated 20.12.2022 issued by the Department of Higher Education is examined, the aspect of ineligibility of the respondent no. 5 will not get cured as he does not fall within the three categories from which a I/C Director can be appointed.

49. Shri Kakati, the learned Senior Counsel for the IIT, Guwahati had made a submission that the Chairman of the Board of Governors is the ultimate authority to take a decision. Such submission, apart from being legally untenable is also against the established principle that an individual holding any post in an Institution cannot be above the Institution. In any case, on a specific query raised by the Court, the learned Senior Counsel for the IIT has submitted that the Institution, as such would not take responsibility of any decision taken by the respondent no. 3/4.

50. There is another aspect of the matter touching upon the conduct of the respondents, even in this proceeding before the Court which would raise a serious doubt on the fairness of the action. In this writ petition, initially a set of counsel appeared for the respondent no. 5 by filing vakalatnama on 05.04.2023

followed by an affidavit-in-opposition filed on 03.05.2023. The IIT, Guwahati was impleaded as the respondent no. 7 on 05.04.2023 and both the respondent no. 5 who is the beneficiary of the impugned action which is the subject matter of challenge and the respondent no. 7- the IIT Guwahati were continued to be represented by the same set of counsel which is also reflected in the order of this Court on 03.05.2023. A submission was made that the set of advocates had withdrawn their vakalatnama for respondent no. 5. The records of this case would reveal that an application was filed by the counsel before the Joint Registrar (Judicial) of this Court on 23.06.2023 on which a note was given to place the application before the Court. Thereafter, though the application has been placed with the records, there is no order passed by this Court allowing such withdrawal of vakalatnama. Even if the provisions of Order 3 Rule 4 of the Code of Civil Procedure may not be applicable in a writ proceeding *stricto sensu*, unless a formal order is passed by this Court by granting leave, a vakalatnama cannot be held to be determined. In any case, at least till 23.06.2023, the same set of counsel was representing both the IIT Guwahati and the beneficiary respondent no. 5. Further, it is the same set of counsel which continued as counsel for the respondent no. 7- the IIT Guwahati and no new counsel was appointed. Under those circumstances, the stand of the IIT, Guwahati becomes doubtful and their fairness itself, in the dispute at hand, becomes questionable. It may further be noted that an affidavit-in-opposition was filed by the respondent no. 5 on 03.05.2023 by the counsel who appears for the IIT Guwahati and ironically, the said affidavit has not been withdrawn by the counsel. The respondent no. 5 did not engage any other counsel and in this regard, the observation of this Court in the order dated 26.06.2023 may be noted which reads as follows:

"...None has appeared for the respondent no. 5 although the said respondent was earlier represented by a counsel and he had also filed his counter affidavit in the matter."

51. Coming to the issue of the process for appointment of the regular post of Director, a close look at the advertisement for such purpose would be necessary. Amongst the eligibility criteria, a candidate should be Ph.D with 1st Class or equivalent at the preceding degree, preferably in a branch of Engineering and only in exceptional cases, candidates with Science, Mathematics or Management Degrees may be considered. A candidate is also required to have a minimum 10 years teaching experience as a Professor in a reputed Engineering or Technology Institute or University. For ready reference, the relevant part of the advertisement is extracted here in below:

Invitation of Applications for the post of Director, IIT Guwahati

Applications are invited for appointment to the post of Director of Indian Institute of Technology (IIT) Guwahati. The Director of an IIT is the academic and administrative head of the Institution. He/She is expected to have a minimum of 5 years administrative experience and leadership qualities to head an Institute of

National importance. The candidate/person should be a Ph.D. with first class or equivalent at the preceding degree, preferably in a branch of Engineering, In exceptional cases, candidates with Science Mathematics or Management degrees may be considered. He/She should have an outstanding academic record throughout and a minimum of 10 years teaching experience as a Professor in a reputed Engineering or Technology Institute or University and should have guided Ph.D. students. The applicant should preferably be less than 60 years of age on the last date of receipt of the applications. The post carries a fixed pay of Rs. 2,25,000/- (Revised) per month, with allowances as per rules."

52. The last date of submission of application was fixed on 28.02.2023. The respondent no. 5 had joined as Professor on 28.01.2013 and does not have any Engineering background. As noted above, it is only candidates having a Ph.D or equivalent degree, preferably in the branch of Engineering who are to be considered and only in an exceptional case, other candidates would come into the picture. From the additional affidavit filed by the respondent nos. 1, 2 and 6 on 10.10.2023, it however appears that while the petitioner is not amongst the shortlisted candidates, the respondent no. 5 is among the shortlisted candidates. In the said affidavit in paragraph 5, it has also clearly admitted that the respondent no. 3/4 participated in the meetings dated 15.6.2023 and 16.08.2023 for shortlisting the candidates and therefore, was directly involved in the process. The action of the respondent no. 3/4 in making the appointment of the respondent no. 5 which has already been held to be illegal, his further participation in the shortlisting of candidates for regular appointment cannot be held to be a fair practice. The shortlisting of the respondent no. 5 who does not even meet the eligibility criteria of not having an Engineering background and no materials have been put on record that candidates with Engineering background were not even available, the shortlisting of the respondent no. 5 is not legally tenable. Though this Court was informed that the process of final selection was on and meetings were fixed on 26.09.2023 and 27.09.2023 in which the respondent no. 3/4 did not participate, such non-participation of the respondent no. 3/4 in the said meeting was only due to his inability for pre-scheduled travel plan. This Court is accordingly, left with no other option but to conclude that the said respondent no. 3/4, is fully involved with the process of selection for the post of Director. Though it is true that, as the Chairman of the Board of Directors, the respondent no. 3/4 would be the an ex officio member of the Selection Committee, in the instant case, when the action of the respondent no. 3/4 is apparently vitiated by bias and favouritism, interest of justice and fair play would require the said respondent no. 3/4 to be kept away from the selection process from the very inception of shortlisting of candidates till a final selection and appointment of Director of IIT Guwahati is made.

53. Consequently, the impugned order of appointment of the respondent no. 5, as In charge Director is set aside and the authorities are directed to make such appointment strictly in accordance with the norms by taking into consideration the guidelines laid down in the First Meeting of the Council of the IITs dated

25.05.1962 and from the three options available to make such appointment, namely, from the Deputy Director or from the senior most Professor or by entrusting the responsibility to the Director of another IIT.

54. A question may also arise that since the final selection of the post of Director, IIT Guwahati is yet to be made whether any directions can be passed. This Court is, however, of the opinion that since the decision making process in the shortlisting of candidates and further selection process is vitiated by bias and favouritism, the entire process of selection is held to be bad in law and accordingly, interfered with. The authorities are, accordingly directed to re-do the entire exercise of shortlisting of candidates for the post of Director from amongst only the eligible candidates strictly in terms of the advertisement and the laws governing such appointment. The eligibility, however, is to be determined as on the last date of filing of the applications which was fixed on 28.2.2023.

55. The writ petition accordingly stands allowed.

56. No order as to cost.