
(1968) 01 J&K CK 0001
In the Jammu And Kashmir High Court

Z.U.Ahmed

APPELLANT

Vs

G.M.Sadiq and Others

RESPONDENT

Date of Decision : 04-01-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 367(1), 372
Constitution of Jammu and Kashmir, 1956 — Section 103
General Clauses Act, 1897 — Section 3(39)
Jammu and Kashmir Specific Relief Act, 1977 — Section 45

Citation : (1968) KashLJ 271

Hon'ble Judges : S.M.F.Ali, C.J and J.N.Bhat, J

Bench : Division Bench

Advocate : Ishwar Singh, I.D.Grover, H.N.Dhar, D.N.Mahajan, Advocates
appearing for the Parties

Judgement

(1) This is a writ petition by Dr. Z U. Ahmed against the Board of Governors of the Regional Engg. College, Srinagar who are 12 in number.

There are two more respondents who are the Agent, State Bank of India Srinagar and the Manager National and Grindlays Bank, Srinagar. The

petitioner was appointed as first Principal of the College in the year 1959 by order of the Government of Jammu and Kashmir vide order No.

565C of 1959 dated 23rd Nov. 1959 The term of appointment of the Principal was five years initially hue if found physically fit at the end of the

five years he had to continue as Principal till he attained the age of 60 years. The Regional Engineering College was registered under the Societies

Registration Act on 141960 vide certificate No. 44 issued by the Registrar Joint Stock Companies. The petitioner continued as its Principal till the

year 1966 when some charges of corruption, as defined in the Prevention of Corruption Commission Act of 1962, were brought against him and

he was charge sheeted by the AntiCorruption Commission of the State, and placed under suspension by the Government of Jammu and Kashmir

on 331966. The petitioner filed a writ petition in the High Court challenging the jurisdiction of the AntiCorruption Commission to hear the case

against him and at the same time challenging the order of suspension passed by the State Government. This writ petition was accepted by a

Division Bench of this Court by its order dated 35th May 1967 the proceedings against the petitioner before the AntiCorruption Commission were

quashed and the order of suspension passed against the petitioner by the State Government also was quashed. In pursuance of that order the

petitioner straight went to the Regional Engineering College and there assumed the charge of the Principal which he was holding before the

proceeding against him had started, relieving Mr. Moonis Raza who was working as the Principal then The petitioner sent letters of the resumption

of his charge to the respondent No. 1 who is the Chairman of the Board of Governors of the Reginoal Engineering College and other authorities

and began to function as the defacto Principal of the institution. On 18th of May 1967 the respondent No. 1, G. M. Sadiq the Chairman of the

Board of Governors sent a letter to the petitioner which is Annexure A to Mr. Sadfq's affidavit informing the petitioner that it was not possible for

the Chairman to disturb the present arrangement i.e. the continuance of Mr. Moonis Raza as the Principal of the College and the case of the

petitioner would be placed in the meeting of the Board of Governors which was scheduled to be held on 2551967. This letter is No. 5375. The

petitioner therefore moved the present writ petition on 23rd of May 1967 but after the respondents put in their objections, the petitioner put in a

detailed petition on 3101967. The contents of the petition as amended are that he was lawfully appointed as the Principal of the College and after

the acceptance of his earlier writ petition by the High Court, he was relegated to his previous petition i.e. Principal ship of the College. He actually

worked as Principal for four days from 15th of May 1967 to 18th of May 1967. On his rejoining Mr. Moonis Raza, who was working as the

Principal, handed over the charge of the Principal ship to the petitioner in pursuance of the judgment of the High Court. The Chairman had no

power to issue the letter of 18th May 1967 which was received by the petitioner on the 19th of May 1967. He could exercise only such powers as

were delegated to him by the Board of Governors. The petitioner was the rightful Principal as also ExOfficio membercumSecretary of Board of

Convenors. No meeting could be held without notice to him and without permitting him to work as member Secretary of the same. The Board of

Governors had no power to suspend the petitioner because there was no power in the Board to suspend the petitioner. It was not a term of his

service and there was no other post equivalent to the post of the Principal in the College. The Bye laws adopted by the Board of Governors were

of doubtful legal consequence. Mr. Moonis Raza had relinquished his Principalship in favour of the petitioner and therefore once the petitioner had

assumed his charge, as the Principal of the College, Mr. Moonis Raza could not continue as its Principal. The presence and participation of Mr.

Moonis Raza in the meeting of 25th May 1967 was unauthorised, the whole meeting was unconstitutional and illegal. About the proceeding that

took place on 25th of May 1967 three different versions were conveyed to the petitioner. The Chief Secretary Mr. Dave had made certain

suggestions but they were ultimately not adopted. Even in the meeting Mr. G.H. Khan had dissented from the decision which was intended to be

taken and ultimately taken by the Board of Governors. Out of 12 members only 6 were present of whom some were officials of the Government of

Jammu and Kashmir of which respondent No. 1 was the Chief Minister. The order of suspension of the petitioner besides being illegal on other

grounds was no proper because the petitioner was given no hearing before the order was passed. The Chairman had not been given any powers to

take any such action against the petitioner as proposed by him. The action of the Board of Governors taken in its meeting of 25th of May 1967

visavis the petitioner was a direct disregard of the order passed by the High Court and even amounted to gross contempt of the same. The

petitioner therefore sought the following relief's by means of this present petition :

(1) A declaration that the letter of the Chairman of Board of Governors, respondent No. 1 dated 18th May 1967 addressed to the petitioner be

declared null and void.

(2) The meeting of the Board of Governors held on 25th May 1967 be declared null and void.

(3) The suspension of the petitioner as contained in item No. 34 of the minutes of that meeting be quashed.

(4) A writ in the nature of mandamus or any other appropriate writ to the majority members of the Board of Governors to allow the petitioner to

discharge his functions as the Principal of the college without any let or hindrance, be issued and further a direction to the Board to pay the

petitioner the emoluments from the date of his suspension in March 1966.

(2) In this writ petition respondent No. 1 Mr. G.M. Sadiq, the Chairman of the Board of Governors has put in two affidavits, one in reply to the

original petition and the other in reply to the amended petition of the petitioner. The first affidavit of respondent No. 1 is dated 23/9/1967 and the

second 19/11/1957. This affidavit was adopted by Mr. Moonis Raza respondent No. 12, Mr. G.K. Chandiramani, Addl. Educational Secretary

Government of India, respondent No. 3 by means of their affidavits dated 19/11/1957 and 30/10/1967 respectively. Messrs G.H. Khan respondent

No. 11 and Mr. D. Swarup respondent No. 8 by means of their affidavits dated 23/9/1967 and 19/7/1967 respectively supported the petition of the

petitioner. The petition is opposed by the majority of the Board of Governors. The main objections to the petition of the petitioner by the

contending respondents are contained in the affidavits of Mr. G.M. Sadiq respondent No. 1. The substance of the objections raised is that the

Board of Governors is a nonstatutory autonomous body and therefore not amenable to the writ jurisdiction of the High Court. The petitioner was

not validly appointed. The appointment of the petitioner was contractual and therefore no writ can lie for any alleged breach of the contract on the

part of the Board of Governors. The Board of Governors is a registered society registered under the Societies Registration Act. The Principal is

the exofficio/member Secretary but his absence from a meeting cannot make the proceedings of that meeting illegal. The Board of Governors was

no party to the previous writ petition of the petitioner and therefore the judgment passed in that petition is not binding on them. The employment of

the petitioner was of a private nature which was to remain in existence for five years and after that there were other conditions contained in the

original order of appointment of 1950 vide Govt. Order 565C. He had to be physically fit and if there was to be nothing seriously wrong, the

petitioner could be retained in service till he attained the age of 60 years. The petitioner did not even produce any certificate of his fitness as the

initial term of five years had already expired on the date of the order of the High Court in the previous writ petition. Even if the proceedings before

the Anticorruption Commission had been quashed by the High Court and his order of suspension by the State Government was quashed, the

petitioner could not of his own resume the charge of the Principal of the College. He had to report to the Board of Governors. During the

suspension of the petitioner, the Board of the Governors had appointed Mr. Moonis Raza as the principal by means of Resolution No. 10 dated

24.6.1966. The Chairman had received a letter of Mr. Moonis Raza intimating to him of the assumption of charge by the petitioner on 17.5.1967 but

the respondent No. 1 had by his letter already referred to, dated 18th of May 1967 intimated to the petitioner that the existing agreement of Mr.

Moonis Raza to continue as the Principal could not be disturbed. The petitioner had gone on leave from 5th of March 1966 to 10th March 1966

but he had remained away without any extension in leave. There was nothing wrong in convening the meeting on 25.5.1967. The petitioner knew of

the said meeting, He did not attend the meeting. The Chairman had been authorised by the Board to issue the letter dated 18th May 1967

Byelaws under the Memorandum of Association and Rules had been passed by the Board of Governors after getting the same duly vetted by the

Government of India, on 8.4.1967. In pursuance of these byelaws, the petitioner was placed under suspension and an enquiry into the allegations

against, him was directed to be held by Mr. W.V. Onk Joint Secretary, Ministry of Home Affairs Government of India. The petitioner could not

assume the charge of the Principalship without reference to the Board of Governors. There was no contempt of the order of this Court dated 15th

of May 1967 committed or intended to be committed by the Board of Governors: It was repeated a number of times in the objections that the

Board of Governors was not a party to the previous writ petition and hence any judgement passed in that case was not binding on them.

(3) We have heard arguments of the learned counsel for the parties in this case and have given our careful consideration to the various arguments

addressed and the law cited by the learned counsel for the petitioner. A preliminary objection has been raised on behalf of the contending

respondents that this writ petition does not lie. This argument is biased on the following premises that the Board of Governors is an autonomous

body governed by its own Memorandum of Association, Rules and Byelaws, it is not as such amenable to the writ jurisdiction of the High Court.

The service of petitioner in the Regional Engineering is of a contractual nature and therefore even if a breach is committed by the Board of

Governors, about any term in the contract with the petitioner, that can not give the petitioner a locus standi to move the present writ petition. This

proposition of law is a very important one and has come for consideration before courts of law in India in a number of cases. It can be very easily

stated that the dicta of different courts are not unanimous on this point but certain general principles can safely be deduced from the various

authorities even if apparently some of them are conflicting in nature. The petitioner has cited a number of cases in which it has been held that writs

can be issued against corporation, registered bodies and even individual persons Some of the authorities relied upon by the petitioner may be

mentioned as under :

AIR 1953 Calcutta 289, AIR 1959 M. Pradesh 218, AIR 1940 Madras 949, AIR 1946 Bombay 516, 40 ILR 125 (XL), AIR 1964 Supreme

Court 1680.

(4) Some of these authorities interpret the word 'person' in Article 226 of the Constitution of India (Section 103 of the State Constitution) as

defined in the General Clauses Act Section 3(39). Under Article 367 (1) of the Constitution of India unless the context otherwise requires, the

General Clauses Act, 1897 shall subject to any adaptations and modifications that may be made therein under Article 372, apply for the

interpretation of this Constitution as it applies for the interpretation of an Act of the Legislatures of Dominion of India. Section 3(39) of the General

Clauses Act, 1897 defines a person as including any company or association or body of individuals whether incorporated or not. On the basis of

this definition it has been held that writs can be issued against corporations and even against private individuals. In 1953 Calcutta 239 a writ was

issued to the State Medical Faculty. In 1959 M. Pradesh 213 it was held that a writ can be issued against the Government or other authorities of

public importance; and corporations created under the statute should be deemed

to be State under Article 12 of the Constitution. A writ could issue against them but at the same time it was held that an employee under a contract cannot invoke the writ jurisdiction of a High Court against the corporation not being a State. In 1940 Madras 949 and 1945 Bombay 516 it was held that a Society registered under the Registration of Societies Act is a corporation and can sue and be sued. In 1960 Madras 333 it was held that an employee of LIC could move the High Court by means of writ petition against his dismissal. In XL ILR 125 It was held that the Senate of the Madras University was the Legislative and the syndicate the executive Government of the University. A regulation for the appointment of University professors and lecturer had to be forwarded by the Senate to the Government on being moved by the Syndicate and if a fellow of the University wished a protest to be lodged to the Government the Syndicate as well as the Senate was bound to send the protest to the Government. It was held that the Syndicate was the statutory body holding a public office and mandamus could issue to it under section 45 of the Specific Relief Act. In 1964 Supreme Court 1680 it was held that powers of a statutory body are always subject to the statute which has constituted it and must be exercised consistently with the statute and the Courts have in appropriate cases, the power to declare an action of the body illegal or ultra vires even if the action relates to determination of employment of a servant. The other authorities relevant on this point are :

AIR 1962 Madras 169, AIR 1954 Travancore Cochin 152, AIR 1957 Travancore Cochin 46, AIR 1960 Andhra Pradesh 518. AIR 1957 Madras 309.

(5) In addition to these reported cases, the petitioners has presented a certificate copy of a recent judgment of a Division Bench of the Allahabad High Court in Special Appeal No. 14 of 1967 (M/s. Synthetics and Chemicals Ltd, Vs. Shri G. C. Kumar and ors.,) where the power of courts to entertain a writ against corporations and societies registered under the Societies Registration Act has been considered. It was held in 1962 Madras 169 that no writ against nonstatutory bodies can be issued. No writ could therefore be issued against the Directors of a Cooperative Society, registered under the Cooperative Societies Act. The Travancore Chochine

authorities (1954 TCC 152 and 1957 TCC 46) lay down that it is well settled that no writ can be issued to a private individual except in the case of Habeas Corpus. The expression 'any person' in Article 226 was interpreted to mean only a person to whom according to well established principles a writ would lie, and a writ could be issued to Tribunals, set up to determine public rights or to a person holding a public office. In the former case the Management of a private college was not held amenable to the writ jurisdiction of the High Court even if it was affiliated to a University. In the latter case writ was refused when services of a professor in the Fatima Mata National College, Quilon were terminated by the Management of the college. In 1960 Andhra Pradesh 518 a writ was refused against a Public Limited Company registered under the Companies Act. In 1057 Madras 309 it was held that a writ can issue when the duty cast upon the respondent is imposed by a statute or law and not for the enforcement of contractual obligations. When the Managing Agency contract was terminated it was held that no writ did lie. The Allahabad authority discussing various Indian and English authorities ultimately held that: Mandamus may issue to a trading corporation to compel it to do its duty which is of a public nature. A duty is of a public nature. A duty is of a public nature if it is imposed by Charter, common law or statute Mandamus may issue to restore a person to a corporate office if the office is of a public nature, The office is of a public nature if it is created by a statute and the duties of the office affect the general public or a section thereof".

(6) The writ jurisdiction of Indian High Courts is borrowed from the English law. In Halsbury's Laws of England mandamus can issue to any person or corporation to do what appertains to his or their office and is in the nature of a public duty. Halsbury's laws of England, 3rd Ed. Vol. 11 page 84. In Rex v. Electricity Commissioners 19241 KB 171 at page 205. it was laid down :

Wherever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in their writs.

(7) In another authority R, v. Disputed Comm. of Dental Tech. 19531 AEIR 327, Lord Goddard, C. J. observed .

The bodies to which in modern times the remedies of these prerogative writs have been applied are all statutory bodies on whom parliament has

conferred statutory powers and duties the exercise of which may lead to the detriment of subject.

(8) If the extreme view that a writ can be issued against an individual on the definition of a person under the General Clauses Act were to be

accepted it would enable any person aggrieved to obtain any relief by an application under article 226. Even a claim for money due on an ordinary

bond or bill of exchange could be enforced by means of writ under the said Article which would practically abrogate the entire judicial system and

the machinery set up for the administration of justice. This article was never intended to be construed in this manner inspite of its apparently wide

language. The true construction to be placed in such cases is that a writ may lie against corporation or a registered body when the act complained

of affects the rights of the public as such or the grievance is against any action of an individual who has done the act while discharging the duties of

a public office. When a registered body or a corporation takes a decision which is enjoined upon it by statute or affects the public or some portion

thereof, a writ petition can be entertained against it. This is in short what should be the circumstance under which a writ can lie against a registered

body or a corporation. From a careful perusal of all the authorities above cited, it can very safely be inferred and consequently held that no writ

would lie when the breach is of contractual obligations. The petitioner 'n this case has admitted that he entered the service of the Regional

Engineering College under a contract and as he has said in his writ petition, though in a different context that his employment in the Regional

Engineering College is of a contractual nature, but his argument is that he was holding a public office and therefore if any injustice has been done to

him in the discharge of his duties, in that public office, his writ would lie. But as would be clear from this order later, the breach alleged by the

petitioner committed by the respondents 1 to 12 is purely a breach of contract and in our opinion this writ would not lie.

(9) Apart from this preliminary objection, we shall discuss the argument of the learned counsel for the petitioner on the merits of the case also. On

merits his grievance is that (1) by the order of this Court dated 1551967 he was relegated to the position of a Principal of the Institution which he

held before his suspension. (2) The respondent No. 1 had no authority to issue to him the letter dated 18th May 1967 as he was not authorised by the Board of Governors to do so and the Chairman could do only such things as he was authorised to do by the Board. (3) He was prevented from participating in the meeting of 25th May 1967. (4) Mr. Moonis Razi could not sit and act as the Secretary Member in the meeting of 25th May 1967. (5) The proceedings of the meeting of 25.5.1967 are null and void. (6) The order of suspension passed by the Board of Governors on that date against the petitioner is ultra vires. (7) The petitioner has not been paid his remuneration for the term that he was under suspension. (10) It is no doubt true that this court by its order dated 15th May 1967 quashed the order of suspension of the petitioner passed by the State Government. Prima facie the petitioner would be relegated to his position which he held before his suspension But it is in the affidavit of the contending respondents that during the suspension of the petitioner Mr. Moonis Raza was appointed as the Principal of this College on 24.6.1966, vide resolution No. 10 of that date. A copy of that resolution is filed as Annexure B to the affidavit of the Chairman dated 23.9.1967. All that this court held in its previous judgment was that the State Government has no power to suspend the petitioner as he was not a Government servant. But the petitioner was amenable to the jurisdiction of the Board of Governors of the Regional Engineering College. As soon as the order quashing the suspension of the petitioner was passed by this Court the normal and the natural course to adopt for the petitioner was to approach the Board of Governors and apprise them of the order of the court. They were the competent authority to deal with the petitioner. At one time in the previous petition the petitioner argued that the only authority competent to deal with him was the Board of Governors and not the State, Having succeeded in that plea, in his previous petition, he tried to by pass the Board of Governors even. The Board of Governors would have certainly taken into consideration the judgment of this court and taken such action with respect to the petitioner as they thought fit of course keeping in view the judgment passed by this court and not in any way flouting the judgment of this court. The main argument of the petitioner is that the Board of Governors had shown scant regard for the order of this court. On the other hand the contention of the respondents is that the Board of Governors

was not a party to the previous petition and therefore any judgment given by this court in the previous petition will not be binding on the Board of Governors. Both positions are extreme but the logical coolly of the order of this court dated 15th May 1967 was that the petitioner would report to the Board of Governors about the result of the previous petition and seek their direction. It has to be kept in view that one gentleman was already acting as the Principal of the College. The Board had to make proper orders with respect to him also if the Board thought of permitting the petitioner to continue as the Principal. The petitioner on the other hand according to his own allegations, straight went to the Regional Engineering College on the day the order was pronounced ousted the incumbent from the Principal ship and began acting as the defacto and demure Principal of the college. Naturally apart from what may have been stated in the affidavit it must have created a reaction in the Board of the Governors and the Chairman was compelled to write the letter of 18th May 1967 to the petitioner and therefore we do not find anything which can be held legally objectionable or a contempt of court as suggested by the petitioner in the action of the Board of Governors in allowing Mr. Moonis Raza to continue as the Principal This position is further strengthened by further facts which would emanate in the course of this judgment. The contention of the petitioner therefore fails.

(11) The next contention of the petitioner is that the Chairman was not competent to send the letter of 18th May 1967 to the petitioner. Under Rule 17, the Chairman is to implement the decisions of the Board of Governors and has to exercise such other powers as are delegated to him from time to time. The respondent No. 1 has in his sworn affidavit stated that he was authorised by the Board of Governors to issue the letter of 18th May 1967. There is nothing to contradict this affidavit of the respondent No. 1. The other Governor excepting respondents 8 and 11 have not disputed this statement of fact. Respondent No. 8 admits in his affidavit that he had been out of India and therefore he cannot be in a position to know about the day to day happenings in this institution. His ordinary residence also is at Kanpore. Therefore his statement in this behalf cannot be relied upon and is purely sentimental. The other respondent namely Mr. G.H. Khan in his affidavit states that ""The Board noted that the

Chairman had ordered Professor Moonis Raza to perform the duties of the Principal and confirmed this action of the Chairman. The Board further

appointed Shri Raza with effect from March 1966"" The deponent further states that ""in the subsequent meetings also of the Board held on 20th of

September 1966 and 20th of December 1996 no power was delegated to the Chairman to continue the officiating appointment of Mr. Moonis

Raza even after the suspension order was quashed by the Hon'ble High Court"": This may be correct; when the action of the Chairman to appoint

Mr. Raza as the Principal was confirmed by necessary implication, the authority continued to be exercised by the Chairman unless it was revoked.

There is no revocation alleged by Mr. Khan of this authority. The question of permitting the Chairman to exercise this authority even after the order

of suspension of the petitioner was quashed by the High Court did not arise for consideration at all at any time because till the decision of the

previous writ petition nothing could be predicted as to what would be the fate of the petitioner and what future course would have to be adopted

by the Board of Governors. Therefore in our opinion the Chairman has not violated any rules or law governing this institution.

(12) The third grievance of the petitioner is that he was prevented from attending the meeting of 25th May 1967. This point is clearly met by the

respondent No. 1 in his supplementary affidavit in para 8 (a). It is not averred by the petitioner that he had no knowledge of the meeting of the

Board of Governors to be held on the 25th of May 1967. He had in his petition on 23rd of May 1967 definitely mentioned about this meeting and

prayed that an injunction should be issued to the Board of Governors Preventing them from holding this meeting. He was informed in due time

about the proposed meeting by the Chairman by means of his letter dated 18th May 1967. The petitioner did not himself, for reasons obvious and

well known to him, attended the meeting. Therefore this grievance of the petitioner is also unjustified.

(13) Although this point is completely answered in the above para yet a great deal of argument was attempted to be addressed on behalf of the

petitioner that under the law notice of a meeting was necessary to all the members and therefore any proceedings taken in a meeting without such

notice would be null and void. He relied on certain passages from the Halsbury's Laws of England Vol. (1909) pages 769 which says :

A corporate meeting is not duly constituted unless it has been convened by the proper authority and unless it is held upon notice which gives every member of the Corporation an opportunity of attending (Merchants of the Staple of England Vs. Bank of England) ""Where no specific day is fixed by the Constitution and the object for which the meeting is required may be carried out at a meeting held at any time, it is essential that notice of the meeting and of the business to be transacted should be given to all persons entitled to participate."" (R. Vs Hili, 4 B&C. 426 Per Bayley at page 441 J).

"If a member; whom it is reasonably possible to summon is omitted to be summoned, the meeting will not be duly convened"" (R. Vs. Shreusbury Corporation) even though the omission be accidental (R. Vs Tonghorn) "" or due to the fact that the member omitted has informed the officer, whose duty it is to serve notice, that he need not serve notice on him"" (R. Vs Longhorne Supya). ""But a member who is out of reach need not be served with notice." Where there is a usual method of giving notice it can not be dispensed with, nor can an act purported to be done at such meeting be good without complying with the usual requirements unless all the persons who have a right to notice are actually summoned and unanimously agree.

A meeting of directors is not duly convened unless due notice has been given to all the directors and the business put through at a meeting not only convened is invalid. If no special notice is required, the notice must be fair and reasonable."" ""Business can only be properly conducted by the majority of the directors at a meeting which is duly convened and held and at which there is a prescribed quorum"" (Page 331).

and on Vol. 5 (1910) pages 224Para 365, which says :

Directors cannot without special authority to do so, delegate their duties or powers, nor can they exclude a member or members of the Board and so form a Committee of themselves to the exclusion of one or more of their number. (Kyshe v. Alturas Gold Ltd., (1388) 4 T. L. R. 331).

(14) Further he has cited AIR 1954 Supreme Court 883. In this case it is clear that it is not the case of the petitioner that no notice of the meeting was sent to the Governors, nor is it the grievance of any of the Governors. Even the two Governors who support the petitioner namely Dr. D.

Swarupp and Mr. G.H. Khan admit having received a notice of the meeting of 25th May 1967. In the Supreme Court authority it is among other

things held that the High Court cannot constitute itself as an appellate authority of the University Syndicate. That want of due notice can be waived

in given circumstances. On page 883 of the report, their Lordships have said :

If its rules require such resolution to be moved and passed in a meeting called for purpose, then every member of the body entitled to take parts in

the meeting must be given notice so that he can attend and express his views. Individual assents given separately cannot be regarded as equivalent

to the assent of a meeting because the incorporated body is different from the persons of which it is composed. Hence, an omission to give proper

notice even to a single member in these circumstances would invalidate the meeting and that in turn would invalidate resolutions which purport to

have been passed at it. But this only when inflexible rigidity is imposed by the incorporating constitution. The position is different when, either by

custom, or by the nature of the body or by its constitution and rules greater latitude and flexibility are permissible. Each case must be governed by

its own facts and no universal rule can be laid down.

(15) Therefore the English authorities as well as the Supreme Court authority relied upon by the petitioner do not help him at all. He cannot make a

grievance that he was not given a notice of the meeting or was not permitted to attend the meeting. It is nowhere stated by the petitioner that he

tried to attend the meeting but was prevented from doing so by any one of the respondents. Under rule 14 (iii) of the Memorandum of Association; the

quorum is to be five members and even according to the petitioner six members were present in the meeting.

(16) About the grievance that Mr. Moonis Raza could not sit in the meeting and act as Member Secretary we have in the affidavit of the respondent

No. 1 that Mr. Moonis Raza did not sit in the said meeting when the question of his continuance as the Principal or that of the petitioner being

permitted to act as the Principal was discussed. Therefore this grievance of the petitioner also fails.

(17) The next contention of the petitioner is that the proceedings of the meeting of 25th of May 1967 be declared null and void. There seem to

have been a large number of items on the agenda for that day's meeting Neither

party has taken the court into confidence what the other items of the agenda were. In fact the petitioner also was not concerned with the other items, his main grievance was with item No. 34 which pertains to him and his object is achieved if the decision on that item was set aside. He is not concerned with other items nor does he mention any of the other items which were discussed in that meeting on that date. Therefore the entire proceedings of the meeting of 25th May 1967 need not be quashed and in view of our finding on the previous points namely notice and proper convening of the meeting nothing has been shown why the proceedings of the meeting of 25th May 1967 should be declared as null and void. In fact under this garb the petitioner wants the cancellation of the decision taken by the Board of Governors on that day so far as item No. 34 is concerned which pertains to the petitioner. Therefore it would be proper to take up that point because that is the crux and the main object of the writ petition. In this behalf the argument of the petitioner is that he could not be suspended. Further an enquiry could not be instituted into his conduct. He has further argued that before suspending him he was not given an opportunity to explain his position and the so called enquiry order by the Board of Governors is without the Board of Governor's knowing any allegation against the petitioner much less their applying their mind to the fact whether any enquiry was necessary or not. The action of the Board of Governors is only adopted by its Chairman who had mala fides against the petitioner that the action of the State of Jammu and Kashmir, of which the respondent No. 1 is the head, in suspending the petitioner had been set aside by the High Court. In this connection the petitioner has relied on the proposition of law that suspension of a servant cannot be ordered by any employee unless that power is given to it by the contract of service or by statute. In this case according to the petitioner there is no such authority given to the Board of Governors by the contract nor is there anything in the statute to empower them to do so. In our opinion this contention of the petitioner is as hollow as other contentions of his are we shall discuss the concrete facts and the regulations pertinent to this case before we discuss the abstract proportions of law relied upon by the petitioner. In this case under Rule (XVI) the Board is empowered to make, adopt and vary from time to time byelaws for any purpose connected with the

management and administration of the routine affairs of the College and for the furtherance of its objects. Under this rule the Board has framed the

byelaws which are Order No. 1BGof 1957 dated 841967. Under Byelaw 23 (1) ""The competent authority may place an employee under

suspension where (a) an enquiry into his conduct is contemplated or is pending..." In this case the minutes of the meeting of 25th May 1967 so far

as this item is concerned, the decisions taken by the Board are contained in detailed resolutions which are Annexure C to the respondent No. 1'S

original affidavit. The decisions therein are summarized on the last page of the said Annexure and are reproduced below:

(1) that subject to the directions of the Board hereinafter specified, Dr. Z. U. Ahmed to serve as Principal. Regional Engineering College,

Srinagar, on the same terms and conditions on which he held that post prior to the issue of his order of suspension by the State Govt.

(2) That an inquiry be made by Mr. W. V. Oak Joint Secretary, Minister of Home Affairs. Government of India. New Delhi in accordance with

the Regional Engineering College Society Byelaws issued under Order No. IBG of 1967 dated 841967, into the allegations of corruption against

Dr. Z. U. Ahmed, which were the subject of proceedings before the State AntiCorruption Commission.

(3) That pending such inquiry as aforesaid Dr. Z. U. Ahmed be placed under suspension with immediate effect under Byelaws 33 (i)(a) of the said

Byelaws.

(4) That Dr. Z U. Ahmed be paid subsistence allowance during the period of his aforesaid suspension at the rate admissible under the said

Byelaws.

(5) That the existing arrangements for the Principal be continued till further orders"".

(18) Therefore it is quite obvious that an enquiry was not only contemplated but actually startedagainst petitioner. Therefore his suspension under

the Byelaws was perfectly justified. The petitioner's argument however that these Byelaws are mala fide, they were simply brought into existence to

fit into the case of the petitioner. This argument is far fetched. It is said in the affidavit of the respondent No. 1 that these Byelaws were made long

before the decision in the previous writ petition, of the petitioner by the High

Court. They were got examined by the different institutions of like nature and they were got voted by the Ministry of Education, Government of India and ultimately adopted on 841967. The previous writ petition was decided on 15th of May 1967. Therefore this argument of the petitioner is not at all tenable.

(19) The next argument in this behalf of the petitioner is that these Byelaws are doubtful legal validity. Nothing has been shown to us on the basis of which we should doubt the legality of these Byelaws. The Board was perfectly competent to frame the Byelaws. The Byelaws have not only been framed about the matter of suspension but on other matters connected with the running of the institution. They have been properly framed and we see nothing unreasonable or wrong about these Byelaws.

(20) The further argument of the petitioner that the Board was not informed about the allegations against the petitioner is equally incorrect. The Board had before it the entire case of the petitioner right from the time the proceedings against him were started by the AntiCorruption Commission. The proceedings of the meeting relating to this item No. 34 thereof clearly indicate that the charges against the petitioner were very much before the Board.

(21) At the stage of suspension there was no legal duty cast upon the Board to hear the petitioner. A high powered Tribunal like the AntiCorruption Commission had already prima facia at least come to the finding that a case for proceeding against the petitioner had been made out. The petitioner would have had ample opportunity to present his case before Mr. Oak who had to conduct the enquiry. As such no further comment on this part of the case was necessary but it has been strongly argued on behalf of the petitioner that the terms of the contract should clearly empower the Board to suspend the petitioner. In our opinion that test also is fulfilled because the conduct with the petitioner will be based on the Memorandum of Association of the Society and its Rules and the Byelaws framed, in pursuance of the provisions of the rules. The power of suspension under the Byelaws has already been given to the Board when an enquiry is intended to be started or is actually pending against an employee. In this case the resolution itself contemplates an enquiry against the petitioner by Mr. Oak. The petitioner has relied on certain passages

in Halsbury's Law of England, which are contained in Vol. 25. Third Edition page 518 under para 989. This reads :

Whether or not the matter has power to suspend a servant during the duration of the contract of service depends upon the construction of the

particular contract. In the absence of any express or implied term to the contrary, the matter cannot punish a servant for alleged misconduct by

suspending him from employment and stopping his wages for the period of the suspension. Where, however, such a term is included in the

contract, it is not rendered void by the statutory provision restricting deduction from workmen's wages for or in respect of fines for the intention of

the parties is taken to have been that for the period of suspension mutual duties and rights, including the right of wages, would be suspended"".

(22) These observations are based on Warburton v. Taff Vale Rail Co. (1992) 18 T. L. R. 420; Marshall v. English Electric Co., Ltd. (1945) I

ALL E R. 653, C.A. Hanley v. Peas and Partners Ltd., (1915) I K. B. 698 D.C.

(23) He has further relied on AIR 1969 Supreme Court 1342 which says that :

The power of the employer to suspend an employee under the ordinary law of master and servant in the sense of right to forbid a servant to work

is not an implied term in an ordinary contract between master and servant and as such a power can only be the creature either of a statute

governing the contract or of an express term in the contract itself. Ordinarily, therefore the absence of such power either as an express term in the

contract or in the rules framed under some statute would mean that the master would have not power to suspend a workman and even if he does

so, he will have to pay wages during the so called period of suspension. Where, however there is power to suspend either in the contract of

employment or in the statute or the rules framed there under, the suspension has the effect of temporarily suspending the relation of master and

servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

(24) In this case the contention was whether during the so called period of suspension a suspended workman would be entitled to wages. This was

a case under the Industrial Disputes Act and their Lordships further held that under section 33 of the Industrial Disputes Act, an employer was

competent to suspend the workman in terms of section 33 of the Act. On page

1348 of the report, it was however observed that :

The undisputed common law right of the master to dismiss his servant for proper cause has been subjected by Sec. 33 to a ban.....

(25) Under the common Law a master is empowered to dismiss his servant without notice in certain cases and it has been held whether facts

justified the master summarily dismissing his servant is ultimately a question of fact and there are a number of contingences under which a master

can dismiss his servant summarily. These are disobedience, neglect, misconduct, misconduct outside service, incompetence, sore forms of illness

justifying dismissal so on and so forth, The law on the subject is disuse in detail in the book entitled "The law of Master and Servant by Francis

Releigh Batt (4th Ed.) Chapter 4. It has been further remarked that:

"Master dismissing his servant summarily for a good cause need not state the grounds of his dismissal. It is sufficient when the servant sues him he

satisfies the court that he was justified in terminating the service and indeed although one reason was given at the time of dismissal which was

unjustifiable thereof, another reason even unknown to the employer at the time of dismissal may be pleaded in a subsequent action for wrongful

dismissal".

Page 76 relying on *Ridgway v. Hungerford Market* (1835) 3 Aid & El 171; *Sportwood v. Barrow* (1850), 5 Exch. 110, *Bailie v. Keli* (1838) 4

Bing N.C. 638. So on an examination to both the English and Indian Law on the subject the power to suspend in the case of the petitioner is

guaranteed to the Board under the statute governing the contract which are the Memorandum of Association, Rules and Byelaws. The contract

itself which as to be read subject to the Byelaws which are properly passed under the rules by the Board, authorities the Board to suspend the

petitioner as an enquiry was ordered against him. Therefore these authorities, very much relied upon by the petitioner cannot help him His

suspension has been properly passed under the power vested in the Board under the Constitution of the Board.

(27) About the petitioner not being paid his remuneration we have again to refer to the resolution passed by the Board of Governor. It is settled

law that this Court does not act a Court of appeal over the decisions taken by the authorities who are legally invested with certain powers. If the

discretion exercised by the Board is not in conflict with any rule or law we cannot interfere however hard the case of the petitioner may be. We

therefore cannot interfere in this exercise of the discretion of the Board.

(28) In our opinion the petitioner has not shown any grounds upon which we can interfere with respect to the decision taken by the Board of

Governors, about the petitioner. Admittedly his case is not covered by Article 311 of the Constitution of India corresponding to Section 126 of the

State Constitution. His case is purely and simply a contractual relationship between him and the Board of Governors. Therefore in view of our

finding on the earlier points, we cannot grant any relief to the petitioner in this writ petition which is dismissed. But in view of the circumstances of

the case we leave the parties to bear their own costs.

(29) I agree with the learned and lucid judgment prepared by my brother Bhat J., but I would like to add a few lines of my own.

(30) The facts of the case have been elaborately set out by Bhat, J. in his judgment and it is not necessary for me to repeat them. On the merits of

the petition three main contentions were put forward by Mr. Mahajan, counsel for the petitioner.

(1) That the Board of Governors had no jurisdiction to order an inquiry against the petitioner in the absence of the petitioner who was a

member Secretary of the said Board.

(2) That there was no provision in the Articles of Association which empowered the Board or the Chairman to suspend the petitioner.

and (3) That the action taken against the petitioner was mala fide and was manipulated by respondent I who is the Chairman of the Board of

Governors.

(31) As regards the first contention it is true that the petitioner in his capacity as Principal was a member Secretary of the Board, but since the

Board in its meeting dated 25th May 1967 was contemplating an inquiry against the petitioner himself on allegations of corruption, the petitioner

could not have been allowed to participate in the deliberations of the meeting so as to be a judge in his own cause a phenomenon which was

directly against the fundamental principles of natural justice. The grievance of the petitioner on this score is stated only to be rejected.

(32) As pointed out by my learned brother Bhat, J., the byelaws were framed

under para 16 of the Articles of Association which are not only relied upon by the petitioner but from which the petitioner derives his present authority as the first Principal of the Regional Engineering College.

Furthermore it would appear from the resolution contained in Order No. IBG of 1967 dated 341967 by which the byelaws were framed that

notice of the byelaws was sent to every member of the Board. The petitioner has not averred in his petition that no notice of the byelaws was ever

given to him. In these circumstances, therefore, it must be presumed that the petitioner received notice of the byelaws and yet did not file his

objections to the same. Thus it is not open to the petitioner to challenge the validity of the byelaws framed under the Articles of Association by a

proper and competent authority. This therefore furnishes a complete answer to the first contention raised by the petitioner.

(33) The second contention, on our opinion, is equally devoid of any force. Once we hold that the byelaws were passed by a competent authority

validly authorized under para 16 of the Articles of Association, it is manifest (from a perusal of cl. 23 (1) of the Byelaws) that this provision clearly

empowers the Board to suspend the petitioner while an inquiry is contemplated. In the instant case not only was an inquiry against the petitioner

contemplated by the Board of Governors, but an inquiry was actually started against him by virtue of the resolution passed in the meeting held on

25th May 1967. Thus the order of suspension having been passed under the Byelaws validly framed, could not be impugned by the petitioner on

any ground whatsoever.

(34) It is true that this Court had quashed the previous order of suspension passed by respondent 1 in an earlier petition filed by the petitioner, but

the said order was passed by an authority which according to this court had no control over the petitioner and had no power to institute any

proceedings against him. In the present case, however, the order of suspension was passed by respondent No. 1 in suspending the petitioner was

fully confirmed by the Board of Governors in their meeting held on 25th May 1967. That the Board of Governors was a competent authority to

proceed against the petitioner, has been clearly held by us in the previous petition filed by us in the previous petition filed by the petitioner. For

these reasons, therefore, this contention was rightly overruled by my learned

brother Bhat, J.

(35) The last contention raises the question of mala fides. The petitioner has failed to prove or allege the necessary facts from which we can hold

that the action of respondent I was actuated by malice in law. The respondent I who is the executive head of the State and thereby holds a very

high and responsible office does not bear any particular animus against the petitioner. A genuine desire on the part on part of respondent No. 1 to

see that an inquiry is started against the petitioner in order to ascertain the correctness of the allegations of corruption made against the petitioner

with a view to giving the State a clean administration cannot be equated with an action motive by malicious intentions. This is exactly what the

respondent No. 1 appears to have done in the present case. Similarly the mere fact that one of the members of the Board did not share the views

of majority of the members would not taint the action of respondent 1 with malice in law. Even so, the significant fact that emerges from the

deliberations of the Board presided over by respondent No. 1, is that the inquiry was entrusted to a very senior officer of the Government of India

who is an independent agency and is totally unconnected with the Board of Governors. If not anything, this by itself shows the absolute fairness of

the attitude adopted by the Board against the petitioner, even while instituting an inquiry against him. Therefore the contention on this point also fails

and must be over ruled.

(36) Since in our opinion the petitioner fails on merits, I would personally refrain from expressing any opinion on the maintainability of the petition

on the ground that the Board of Governors is not amenable to the writ jurisdiction of this Court.