

B. Shankaranand

Vs

Common Cause and Others

Civil Appeal No. 4662 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

11.03.1996

ORDER

1. We have heard learned counsel on all sides even at the admission stage.
2. Leave granted. Intervention application ordered.
3. This appeal by special leave arises from the order made on 29-2-1996 in Writ Petition No. 2453 of 1995 by the third learned Judge of the High Court of Delhi to whom matter was referred pursuant to the difference of opinion expressed by a Division Bench of the High Court in the orders dated 6-12-1995. The learned Judge agreed with one of the two learned Judges and held that the appellant, nominated under Section 4(e) of the All India Institute of Medical Sciences (AIIMS) Act (25 of 1956) (for short 'the Act'), not being a scientist - either medical or non-medical - representing the Indian Science Congress Association, is not a person within the meaning of that section; he thus being not entitled to be nominated, his nomination is bad in law. The question that arises is whether in the composition of members indicated in Section 4 of the Act comprising different interests (of which category of five persons enumerated in clause (e) thereof), all the five persons should be scientists, either medical or non-medical, representing the Indian Science Congress Association or only one among them should be a non-medical scientist representing the Indian Science Congress Association and the rest four be other than the medical or non-medical scientists' category ? Section 4 deals thus :

"Composition of the Institute. - The Institute shall consist of the following members, namely :

- (a) the Vice-Chancellor of the Delhi University, ex officio;
- (b) the Director General of Health Services, Government of India, ex officio;
- (c) the Director of the Institute, ex officio;
- (d) two representatives of the Central Government, to be nominated by that Government, one from the Ministry of Finance and one from the Ministry of Education;
- (e) five persons of whom one shall be a non-medical scientist representing the Indian Science Congress Association, to be nominated by the Central Government;
- (f) four representatives of the medical faculties of Indian Universities to be

nominated by the Central Government in the manner prescribed by rules; and

(g) three members of Parliament of whom two shall be elected from among themselves by the members of the House of the People and one from among themselves by the members of the Council of States."

4. Each interest mentioned in Section 4 appears to be distinct and separate interest to represent the AIIMS as an institute body. Clause (e), if read as a whole, is susceptible of two interpretations. One interpretation which found favour with the two learned Judges of the Division Bench is that all the five persons - one non-medical and four medical scientists - would be nominated to represent the Indian Science Congress Association. The other interpretation is that one among the five persons would be a non-medical scientist representing the Indian Science Congress Association and the other four would be other than scientists. If the working of the Act from 1956 is kept in view, it would appear that they intended to give representation to four persons other than the scientists neither medical nor non-medical. But in actuality the Central Government appears to have intended to have a representation from the Ministry of Health and Family Welfare and other official persons who are intimately connected or associated with the working of the AIIMS. It is needless to mention that AIIMS is one of the premier institutions in the country which maintains high standard required to be maintained for catering to the medical facilities to all teeming patients from all over the country, who seek expert treatment from doctors having profound and specialised knowledge in the respective faculties and specialities. In the management of the supreme body, the Government also seems to evince interest in its proper, efficient, effective and orderly management. Obviously, therefore, the Government exercising the power on 9-3-1994 nominated the appellant, who was then holding the portfolio as Minister of Health and Family Welfare, the second member Mr M.S. Dayal holding the office, at that time as the Secretary, Department of Health, Professor J.S. Bajaj, Member, Planning Commission and Professor P. Chandra, former Dean, AIIMS.

5. It is true, as contended by Shri G. Ramaswamy, learned Senior Counsel, that the word 'person' has to be understood in the context in which the language was couched and the person mentioned in clause (e) would be other than those scientists either medical or non-medical. It is also true, as contended by Shri D.D. Thakur, learned Senior Counsel, that when Section 6 contemplates ex officio members, their term is coterminous with their cessation of office. Section 4(e) does not seemingly intend to refer to nomination associated with the office, but to the individual members other than non-medical scientists representing Indian Science Congress Association. But on a harmonious and conjoint interpretation, we are of the opinion that the Government, while enacting the Act, appears to have intended to preserve the autonomy of the AIIMS, and also to have a say in its management. Under those circumstances, the Government appears to have nominated the Minister of Health and Family Welfare and the Secretary of Department of Health as Chairman and member respectively so that in the ultimate management of the supreme body constituted under the Act, the Government also will protect the interests of the institution. Otherwise, it would appear that the Government does not seem to have any say or control in the management of the AIIMS. Considered from this pragmatic background and from the point of view of the importance of the institution and public interest, we are of the considered view that the Central Government is justified to nominate four persons, other than scientists and the fifth being the non-medical scientist representing the Indian Science Congress Association. However four members may be integrally connected with the management and associated also with the working of the AIIMS. If this interpretation is given, we are of the view that it would subserve the greater public interest in the proper, effective, efficient and orderly management of AIIMS and the purpose of establishing the institution to maintain high standards, discipline and order in its management would be best

subervised. However, there should be no undue interference by the Government of India in the autonomous management of the AIIMS and it should not be treated as any other Department of the Government, since the object of the Act is to improve excellence and high standards in all faculties of medical specialities and of treatment.

6. Accordingly, we hold that the appellant was nominated by virtue of his office as the Minister of Health and Family Welfare and he would be entitled to continue in that office as long as he held that office. Thereafter, he cease to be a member of the supreme body and consequently to be the Chairman of the body as nominated by the Government in the same order dated 9-3-1994. In his place the incumbent succeeding to the office of Minister of Health and Family Welfare would be entitled to be nominated by the Central Government and he would hold the office for the residue period. This will be consistent with sub-section (2) of Section 6 also.

7. Accordingly, we hold that the Central Government is empowered to nominate five persons under Section 4(e), as indicated above and the persons would be members of the supreme body of the AIIMS. Consequently, the Central Government is also empowered to nominate the Minister as Chairman as was done earlier.

8. The appeal is accordingly disposed of. Whatever actions have been taken pursuant to the nomination are saved by Section 22 of the Act. If any other legal issue relating to inter se claims of competing candidates is involved, it would be open to the aggrieved persons to agitate their rights according to law. No costs.