

B. S. MINHAS

v.

INDIAN STATISTICAL INSTITUTE & ORS.

October 19, 1983

[P.N. BHAGWATI, AND R.B. MISRA JJ]

Constitution of India. Articles 12 and 32.

Indian Statistical Institute—A society registered under the Societies Registration Act—Financed and controlled by Central Government—Whether 'other authority' within meaning of Article 12—Whether amenable to writ jurisdiction under Article 32.

Civil Service

Indian Statistical Institute—Director—Vacancy of—Bye law No. 2 of Institute require vacancy to be publicised before recruitment—Whether obligatory for institute to follow the bye-law—No minutes of selection committee maintained or circulated amongst members—Selection whether valid.

Indian Statistical Institute Act 1959 Ss 4, 5, 6, 7, 9 and 12.

Indian Statistical Institute—Institute of National Importance—Whether 'other authority' within the meaning of Article 12 of the Constitution.

The Indian Statistical Institute was registered under the Societies Registration Act, and governed by the Indian Statistical Institute Act, 1959. Its control completely vested in the Union of India, respondent no. 5 in the appeal. The Institute had been declared as an 'Institute of National Importance.

The chief executive body of the Institute was the Council, respondent no. 2 which consisted of 25 members of whom three were representatives of the Central Government. The Council was headed by a chairman who was elected. In order to discharge the administrative and academic responsibility of the Institute a Director was appointed by the Council. Respondent no. 4 was appointed as a Director.

The petitioner in his Writ Petition challenged the appointment of respondent no. 4 on the ground that he was a person of much higher academic and other accomplishments and far superior to the said respondent.

A In the Writ Petition it was contended : (i) Bye-law 2 expressly requires that the vacancy of Directorship should be suitably publicised but in the present case no publicity whatsoever was given to the vacancy of Directorship. Publicity was necessary if the appointment was to be fair and free from partiality and that many were not aware of the vacancy of the post of Director till the actual order of appointment was made. (ii) He was eminently suitable for being appointed to the post in view of the various contributions in the field of his work and the active part played by him in resolving the administrative problems of the Institute, and (iii) no bio-data or information was placed before the Council which under the bye-laws was the appointing authority to enable the members to gauge the comparative suitability of various candidates.

C The petition was resisted on behalf of respondent Nos. 1 and 2 by contending : (i) the petition is not maintainable under Article 32 of the Constitution as respondents Nos. 1 and 2 are not 'state' or 'other authority' within the meaning of Art. 12 of the Constitution. (ii) Even assuming that there has been a violation of bye-law 2 no writ can lie to correct the same as the alleged bye-law has no statutory basis inasmuch as the Institute has been declared as an 'Institution of National Importance', the bye-laws not being statutory the respondents are under no obligation to observe the procedure laid down therein, and (iii) the petitioner was duly and properly considered for selection to the post.

D Allowing the writ petition,

E HELD : (i) The order of appointment dated August 3, 1979 of Respondent No. 4 as the Director of Respondent No. 1 is quashed and set aside. Before Respondent No. 1 proceeds to select a new Director, it will comply with the requirement of bye-law 2 by giving suitable publicity to the vacancy in the office of Director. [413 F]

F (ii) There can be no doubt that respondent No. 2 is an 'authority' within the meaning of Article 12 of the Constitution and, therefore, the writ petition filed by the petitioner is competent and maintainable. [409 G]

G In the instant case, the money required for funding the Institute is provided entirely by the Central Government and even if any other moneys are to be received by the Institute it can be done only with the approval of the Central Government, and the accounts of the Institute have also to be submitted to the Central Government for its scrutiny and satisfaction. The Society has to comply with all directions as may be issued by the Central Government. The control of the Central Government is deep and pervasive and, therefore, it is an instrumentality of the Central Government and as such is an 'authority' within the meaning of Article 12 of the Constitution. It is, therefore, subject to the constitutional obligations under Articles 14 and 16 of the Constitution.

H [408 C-D]

2. (i) It is obligatory on the part of respondent No. 1 to follow the bye-laws for the bye-laws have been framed for the conduct of its affairs to avoid arbitrariness. [410 G]

(ii) Compliance with bye-law 2 seems to be necessary in the name of fair-play. If the vacancy in the post of Director had been publicised as contemplated by bye-law 2, all the persons eligible for the post may have applied and in that case, the field of consideration would have been enlarged and the selection committee or the Council would have had a much larger field from which to choose the best available person and that would have removed all doubt of arbitrariness from the mind of those eligible for the post. [411 B]

Ramāna Dayaram Shetty v. International Airport Authority of India (1979) 3 SCR 1014; *Viteralli v. Seton* 3 Law Fd. Second Series 1012; *A.S. Ahluwalia v. Punjab* [1975] 3 SCR 82; *Sukhdev v. Bhagatram* [1975] 3 SCR 619 referred to.

(iii) In the case of appointment of a Director, bye-law 2 clearly provides for publicity, the object being that all concerned may know about the vacancy and either applications or recommendations may be made for the post and the names of the eligible candidates may be brought before the selection committee for its consideration. [412 H-413 A]

(iv) It is not suggested that appointments to every post must be made only after advertising or publicising the vacancy. That would not be right, for there are quite a few posts at the top level as for example Commander of Armed Forces or the Chief Justice or the Judges of the Supreme Court or the High Court, which cannot be and should not be advertised or publicised, because they are posts for which there should be no lobbying nor should any applications be allowed to be entertained. [411 C-D]

(v) It is not for the Court to determine who is the superior of the two candidates and who should be selected. It is for the authorities concerned to select from amongst the available candidates. The members of the selection committee as also the members of the Council were eminent persons and they may be presumed to have taken into account all relevant considerations before coming to a conclusion. But in the absence of publicity as contemplated by bye-law 2, it cannot be said that all other qualified persons like the petitioner were also considered by the selection committee for appointment, in the absence of any application by them for the post or any recommendation of them by any other authority or individual. [412 C-E]

3. It is always desirable that in public bodies the minutes of the proceedings regarding selection should be properly maintained in order to obviate any suspicion or doubt and such minutes along with the relevant documents should be placed before the final authority entrusted with the task of selection for appointment. [412 A]

In the instant case, there is nothing on record to show that the Council was at any time informed as to what names had been considered by the selection committee or that the names of the petitioner had been considered, but respondent No. 4 was found superior. [411 H]

ORIGINAL JURISDICTION : Writ Petition No. 1519 of 1979.

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(Under-article 32 of the Constitution of India)

V.M. Tarkunde, P.H. Parekh and Miss Caprihan for the Petitioner

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R.K. Garg, L.R. Singh and Gopal Singh for Respondents 1 & 2.

D.P. Singh, L.R. Singh and Mr. Gopal Singh for Respondents 3 & 4.

C

Harbans Lal and G. S. Narain for Respondent No. 5.

Miss A. Subhashini, C.V. Subba Rao and R.N. Poddar for the Union of India.

The Judgment of the Court was delivered by

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MISRA J. : By the present petition under Article 32 of the Constitution the petitioner seeks to challenge the appointment of Shri B.P. Adhikari, respondent No. 4, as the Director of the Indian Statistical Institute, respondent No. 1.

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The Indian Statistical Institute is a Society registered under the Societies Registration Act. It is governed by the Indian Statistical Institute Act, 1959 (hereinafter referred to as 'the Act'). Its control completely vests in the Union of India, respondent No. 5. It is wholly financed by the Union of India. All the functions of the Institute are controlled by the Union of India, as is evident from the various provisions of the Act. Under s.8 of the Act the annual work programmes of the Institute and the general financial estimates in respect of such work are settled by committees appointed by the Central Government and the Institute obviously cannot undertake any research or training programmes without the approval of the Central Government. The Institute carries on an integrated programme of training, teaching and research in statistics and application of statistical techniques in other disciplines. The Institute has been declared as an 'Institution of National Importance' under 'the Act. Under s.4 of the Act the Institute has been empowered to grant such degrees and diplomas in statistics as may be determined by the Institute from time to time. In accordance with the provisions of s.5 of the Act the Central Government pays to the Institute in each financial year such sums of money as the Government considers

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necessary by way of grant, loan or otherwise to enable the Institute to discharge efficiently its functions including research, education, training, project activities and statistical work relating to planning for national development. Section 6 of the Act deals with audit of accounts of the Institute by auditors duly qualified to act as auditors of companies under the Companies Act, 1956 and selected by the Central Government after consultation with the Comptroller and Auditor-General of India. Section 7 of the Act restricts the powers of the Institute to alter, extend or abridge its memorandum or rules and regulations and to sell or otherwise dispose of its property acquired with the money specifically provided for such acquisition by the Central Government except with the previous approval of the Central Government. Section 9 empowers the Central Government to constitute a committee, *inter alia*, for reviewing and evaluating the work done by the Institute and the progress made by it as also advising Government generally on any matter which in the opinion of the Central Government is of importance in connection with the work of the Institute. Section 11 of the Act empowers the Central Government to issue directions to the Institute. Section 12 authorises the Central Government to assume control over the Institute under certain extreme circumstances.

The Institute receives grants from the Central Government to meet almost the entire expenditure on its plan and non-plan activities. The chief executive body of the Institute is the Council, respondent No. 2, consisting of 25 members including three representatives of the Central Government. The Council is headed by the Chairman elected to that position by the Council by a simple majority from amongst the names proposed by the President or members of the Council. The election of the Chairman of the Council is governed by bye-laws of the Institute.

The initial appointment to carry out research and teaching work is to the post of professor. The next post in the hierarchy is of Research professor and the highest in the hierarchy is the post of Distinguished scientist. In order to discharge the administrative and academic responsibilities of the Institute, a Director, with distinctive administrative and academic acumen, is appointed by the Council, respondent No. 2. Shri B. P. Adhikari, respondent No. 4, was appointed as the Director of the Institute by an order dated 3rd August, 1979. This order of appointment has been challenged by the petitioner on various grounds.

A According to the petitioner he was a Distinguished Scientist
of the Institute at the relevant time. To start with, he was appointed
to the post of Economist in the Indian Statistical Institute on 1st
B October, 1962 on a monthly pay of Rs. 1000/- in the time scale of
Rs. 750-50-1250 plus special pay of Rs. 350/- per month.
Within a year he was promoted as Professor in the time scale of
C Rs. 1000-50-1500 with a starting pay of Rs. 1400/- per month, and
from 1st October, 1967 he had been holding the post of Research
D Professor in the time scale of Rs. 1600-100-1900. On 1st January 1968
he was made Officer-in-Charge and entrusted with all technical
matters, administration and developmental plans relating to planning
and regional survey units special training in Delhi. He was given a
E allowance of Rs. 200/- per month over and above the pay in the
time scale of Research Professorship. The petitioner has been respon-
sible during the period 1962-1974 for the creation and promotion of
several new activities of respondent No. 1 in Delhi. Specialised
F training in National Planning and Econometrics for M. Stat. (2nd
Year) trainees of respondent No. 1 was started in Delhi under the
direction of the petitioner. In August 1974 the petitioner was designa-
ted as Head of the Delhi Centre and was also appointed to the Insti-
tute's Committee of Administration. On 12th March 1976 he was
elevated to the position of 'Distinguished Scientist' with pay of Rs.
3000/- per month plus allowances. The petitioner has held responsible
G positions as Visiting Professor, Fellow, Chairman, Consultant,
Research Associate, Lecturer etc. in various Universities in India
and in the United States of America and England. He has been a
member of the planning Commission, Government of India from
January 1971 to December, 1973 and he has also been a member
of the Sixth Finance Commission from July 1972 to October 1973.
The petitioner's work has been acclaimed in the international as well
as national spheres. His work is rated high as evidenced by the
award of Dadabhai Nauroji Memorial Prize for Economics in 1974
and the Jawaharlal Nehru Memorial Fellowship in 1975. In 1976
the petitioner had the distinction of presiding over the annual con-
ference of the Indian Society of agricultural Economics. People
abroad have also conferred recognition on the petitioner.

H The petitioner's scientific output has been substantial. He has
been active in research and he has published books of importance on
Theory of International Trade, Scheduling the Operations of Multi-
purpose Reservoirs, Indian Planning, Planning and the Poor etc.
His contributions in the form of articles in collaboration with Indian

and foreign economists have been published in several journals in India and abroad. One of his co authors, Prof. Arrow is a Nobel Laureate. At present the petitioner is engaged in research on the following subjects :

1. Growth, Poverty and Basic Need, Development Policy in Sri Lanka, Kerala and Punjab.
2. Inter-Regional Comparisons of Agricultural Growth and Development in South Asia in the post-colonial period.

It is claimed that a comparative evaluation of the achievements of the petitioner with those of respondent No. 4 clearly shows the superiority of the petitioner over respondent No. 4. Respondent No. 4 had joined the Institute as Professor in the pay scale of Rs. 750-1250. He was appointed in Delhi and was incharge of the evening course in Interoductory Statistics. He served in Delhi for about a year and then went to Calcutta and continued as professor from 1961 to 1974. In contrast, the petitioner had started at a higher salary of Rs.1000 p.m. plus a special pay of Rs.350 p.m. The petitioner had been promoted to the higher post of Research Professor on 1st October, 1967 in the time scale of Rs.1600-100-1900 while respondent No. 4 had been promoted to the post of Research Professor only in 1974. At that time respondent No.4's appointment as Research professor had been objected to as he had not published any technical paper since his joining the Institute in 1961. The petitioner was senior to respondent No.4 as he had been appointed to the higher post of Research Professor earlier than respondent No. 4. On 12th March 1976 the petitioner was promoted to the position of a Distinguished Scientist. The petitioner is senior to respondent No. 4 and all other scientists of the Institute. The petitioner's elevation to the position of Distinguished Scientists came much earlier than that of respondent No. 4. The petitioner has been holding the position of Distinguished Scientist since 12th March 1976 while respondent No. 4 was not a Distinguished Scientist till his impugned appointment as Director. Respondent No.4 has won no laurels in his sphere of work and his scientific output has been negligible. Thus, from all accounts the petitioner was more qualified and his achievements in all spheres were much higher than those of respondent No. 4 or for the matter of that, than those of any other scientist of the Institute.

A The Institute has an academic council consisting of the following members among others :

- “1. All Professors, Research Professors and Distinguished Scientists.
- B** 2.
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- C** 5.
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7. Director (as Chairman of the academic council).”

D The Institute is governed by its memorandum, regulations and bye-laws in the conduct of its affairs. Bye-law 2 provides the procedure for the appointment of a Director. It reads :

“The appointment of the Director shall be made by the Council on the recommendation made by a Selection Committee consisting of

- E** (i) Chairman of the Council (as Chairman),
- (ii) Two experts approved by the Council.

F Before recruitment the Vacancy for Directorship should be suitably publicised.”

G In the meeting of the Council, respondent No. 2, on 16th April, 1979, Shri P.N. Haksar, respondent No. 3, the Chairman, reported about the absence of the Director and other allied matters and invited the attention of the members to the fact that the Director of the Institute, Prof. G. Kallianpur is unable to devote full time to the Institute. The Council felt that since the Institute required full time attention it was desirable that Prof. Kallianpur should be requested to continue in the post of Director on a whole time basis. The Chairman was authorised to write to the Director conveying the views of the members and after getting a response from Prof. Kallianpur, to take further action. In case Prof. Kallianpur resigned,

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the Chairman was authorised to accept his resignation and then to set up a committee consisting of the following members to select a suitable person for the post of Director :

1. Shri P.N. Haksar, Chairman.
2. Prof. Bhabatosh Datta.
3. Prof. S.S. Shrikhande.
4. Prof. M.S. Narasimhan.
5. Dr. R. Ramanna.

Subsequently another meeting of respondent No. 2 was held on 3rd August, 1979 in which the Chairman reported that Prof. Kallianpur had resigned from the Directorship of the Institute with effect from 30th June, 1979 and regarding the appointment of the new Director of the Institute the Chairman reported that the selection committee, which had been constituted by the Council in its meeting on 16th of April, 1979 had unanimously recommended the appointment of respondent No. 4 as Director of the Institute. The Council approved the recommendation of the selection committee and it also approved the terms and conditions of appointment of respondent No. 4 as Director. One of the terms of appointment of respondent No. 4 was that he should be in the substantive position of a 'Distinguished Scientist' in the Institute on a monthly salary of Rs. 3000.

When the petitioner came to know about the appointment of respondent No.4 to the post of Director he felt aggrieved and met respondent No.3, the Chairman of the Council, Shri P.N. Haksar and expressed his deep unhappiness at the choice of the new Director of respondent No.1. On getting no favourable response from respondent No.3 the petitioner tried to approach the other members of the Council to indicate his resentment at the alleged illegality and arbitrariness in the appointment of respondent No.4. The petitioner addressed a letter to Shri N. Srinivasan, Secretary to respondent No.2, wherein he referred to the circular dated 4th August, 1979 which he had received intimating him about the appointment of respondent No.4 as Director of respondent No.1. By this letter the petitioner pointed out to the Secretary that the appointing authority had not observed the rules and regulations and bye-laws of the

A Institute as laid down in the memorandum of association and had also violated the provisions of Arts.14 and 16 of the Constitution. He also pointed out that the vacancy of the post of Director had not been publicised and he being the seniormost researcher working as Distinguished Scientist of the Institute was not given an opportunity to apply for the same. He also pointed out the arbitrary manner in which the appointment of respondent No.4 had been made, and he urged the Institute to rectify the error failing which he might be obliged to take legal action. The petitioner likewise addressed a letter to another member of the Council, Prof. R.P. Bambah, who was a Professor of Mathematic in the Centre for advanced Studies, Punjab University and was one of the two Scientists co-opted by the Council. The petitioner in his letter to Prof. Bambah complained that with the appointment of respondent No. 4 the Directorship and his simultaneous designation to the post of Distinguished Scientist, the council had subverted the academic standards of the Institute and violated the rules and regulations as contained in the memorandum of association as also the various provisions of the Constitution. Further, the appointment was arbitrary inasmuch as it was without any regard to the claims of senior and better known professional persons. He appealed to Prof. Bambah to uphold the academic integrity of the Institute and initiate corrective action to rectify the wrong and rescue the Institute from manipulations of unprincipled people. A similar letter was addressed by the petitioner to Shri S.C. Bhattacharya, Director, Bose Institute, Calcutta, on 31st August, 1979, another member of the Governing Council of respondent No.1, who was one of the four representatives of the Indian National Science Academy. He also wrote to Prof. P.V. Sukhatme, Professor of Biometry in Pune, who was also a distinguished member of the Council. He was awarded the Padma Bhushan and also held the post of Director of Statistics Division of Food and Agriculture Organisation. A Similar letter was addressed by him to Shri Subimal Dutt, President of respondent No. 1, reiterating the same grievances. Similar letters dated 30th and 31st August, 1979 were addressed to Dr. K.C. Seal, Director, Central Statistical Organisation Government of India and to Shri Kirpa Narain, Secretary, Department of Statistics' Government of India.

H It may be pointed out that the members of the selection Committee and the members of the Council are all men of eminence and highly qualified persons.

Prof. S.C. Bhattacharya by his letter dated 5th of September, 1979 replied that the contents of the petitioner's letter were disquieting. He also stated that respondent No.4 had been identified as a suitable person by a group of eminent people and on the basis of advice received from them the Council, respondent No.2, had approved the appointment of respondent No.4. He further stated that he was not making any further comments in the matter at this stage. He was unaware of respondent No.4 having been designated as Distinguished Scientist by the Council in the meeting of 3rd August, 1979. Regarding appointment he further said that no report of the selection committee had been circulated to the members of the Council but the announcement was made orally by the Chairman. Since it was difficult to hear every word of the Chairman at the meeting he had assumed that the terms of appointment would be those ordinarily prescribed for the post of Director.

Prof. Sukhatme in his reply said that he had not realised the grave issues which such an appointment could raise. He wanted, however, to assure that there was no intention on their part to subvert the academic standards of the Institute. He assured the petitioner that he would be writing to the Secretary of the Council to know what was the procedure for appointing a person to the post of Distinguished Scientist and whether the same should have been explained to the Council before adopting the resolution.

Prof. R.P. Bambah on 22nd September, 1979 wrote a letter to Shri P.N. Haksar submitting his resignation presumably in protest against what had happened in regard to the appointment of respondent No. 4 as the Director of the Institute. In his letter he stated that he had not received any official bio-data or information regarding the scientific contribution of respondent No. 4 and other available candidates for the post of Director to enable him to form his own judgment. He said that he presumed that the scientific contribution of respondent No. 4 must have been high enough to warrant his holding the post of Distinguished Scientist. He also expressed the view that since the committee consisted of eminent scientists working under his guidance, he had presumed that all relevant factors had been taken into consideration regarding the appointment to the post of Director, including the quality of candidate's scientific contribution, in coming to a decision. In the circumstances he has constrained to resign from the Council since he had not displayed due diligence in the performance of his function as member of the Council.

A The petitioner likewise received a letter from the Chairman in which he did not deny the allegation contained in the petitioner's letter dated 13th August, 1979 that the vacancy in the post of Director of respondent No. 1 had not been publicised.

B Another meeting of the Council was held on 19th October, 1979 and in this meeting Prof. Raja Ramanna, Dr. S.C. Bhattacharya and Dr. P.V. Sukhatme were not present and Dr. Bambah had resigned on 22nd September, 1979. Nonetheless, the proceedings of the meeting of 19th October, 1979 do not allude to Dr. Bambah's resignation. In this meeting the letter of the petitioner was considered, copies of which had been circulated to the members earlier and the Council decided that no action was necessary in the matter.

C Shri V.M. Tarkunde appearing for the petitioner challenges the appointment of respondent No. 4 on various grounds :

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1. (a) Bye-law 2 expressly requires that the vacancy of the Directorship should be suitably publicised but in the present case no publicity whatsoever was given to the vacancy of Directorship.
 - E (b) Even apart from the bye-law, publicity was necessary if the appointment was to be fair and free from partiality.
 - F (c) The petitioner and many others like him were not aware of the vacancy of the post of Director, till the actual order of appointment of respondent No. 4 was made.
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2. The petitioner was eminently suitable for being appointed to the post of Director keeping in view his various contributions in the field of his work and the active part played by him in resolving the administrative problems of the Institute.
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3. No bio-data or information was placed before the Council which under the bye-laws was the appointing authority of the Director to enable the members to gauge the comparative suitability of various candidates for the post of Director. No facts relating to the other candidates were presented before the

selection committee by the Chairman. As such there was no application of mind by the members of the Council, since no report was circulated regarding the recommendation of the selection committee, and the members of the Council took it for granted that all was well.

Shri R.K. Garg appearing for respondents Nos. 1 and 2 resisted the petition on the following grounds :

- (i) that the petition is not maintainable under Art. 32 of the Constitution as respondent Nos. 1 and 2 are not 'state or other authority' within the meaning of Art. 12 of the Constitution.
- (ii) (a) Even assuming, though not conceding, that there has been a violation of bye-law 2 no writ can lie to correct the same as the alleged bye-law has no statutory basis inasmuch as by the Indian Statistical Institute Act, 1959 Parliament only declared the Indian Statistical Institute, respondent No. 1 as an institution of national importance and if it has made bye-law 2 for its guidance, such bye-law cannot be said to have any statutory force.

(b) The bye-laws not being statutory the respondents are under no obligation to observe the procedure laid down in the bye-laws:
- (iii) In any case the petitioner was duly and properly considered for selection to the post of Director and, therefore, he could not possibly make any grievance about violation of bye-law 2.

In view of the contentions raised by the counsel for the parties the first question that falls to be considered is whether the writ petition is maintainable.

Article 12 of the Constitution defines 'State' for the purposes of Part III of the Constitution. It reads :

A "12. In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

B The learned counsel for the petitioner, Shri Tarkunde
C has contended that having regard to the provisions of the Act and
D the memorandum of association, the composition of respondent
E No. 1 is dominated by the representatives appointed by the Central
F Government. The money required for running the Institute is provided
G entirely by the Central Government and even if any other moneys are to be received by the Institute it can be done only with the approval of the Central Government, and the accounts of the Institute have also to be submitted to the Central Government for its scrutiny and satisfaction. The Society has to comply with all such directions as may be issued by the Central Government. The control of the Central Government is deep and pervasive and, therefore, to all intents and purposes, it is an instrumentality of the Central Government and as such is an 'authority' within the meaning of Art. 12 of the Constitution. It is, therefore, subject to the constitutional obligations under Arts. 14 and 16 of the Constitution. Reliance was placed upon *Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc.*⁽¹⁾ The Constitution Bench in that case took the view that the expression 'other authorities' in Art. 12 must be given a broad and liberal interpretation, where constitutional fundamentals vital to the maintenance of human rights are at stake and functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. The Court pointed out the Government may act through the instrumentality or agency of juridical persons to carry out its functions, since, with the advent of the welfare State, its new tasks have increased manifold and such juridical persons acting as the instrumentality or agency of the Government must therefore be subject to the same discipline of fundamental rights as the State. Proceeding further the Court observed :

H "It is undoubtedly true that the corporation is a distinct juristic entity with a corporate structure of its own and it carries on its functions on business principles

(1) [1981] 2 S.C.R. 79.

with a certain amount of autonomy which is necessary as well as useful from the point of view of effective business management, but behind the formal ownership which is cast in the corporate mould, the reality is very much the deeply pervasive presence of the Government. It is really the Government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the Government. Now it is obvious that if a corporation is an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. If the Government acting through its officers is subject to certain constitutional limitations, it must follow *a fortiori* that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations. If such a corporation were to be free from the basic obligation to obey the Fundamental Rights, it would lead to considerable erosion of the efficiency of the fundamental Rights, for in that event the government would be enabled to over-ride the Fundamental Rights by adopting the stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it."

Having regard to this decision and in view of the facts and circumstances in the present case there can be no doubt that respondent No.2 is an 'authority' within the meaning of Art. 12 of the Constitution and, therefore, the writ petition filed by the petitioner is competent and maintainable and the objection raised by Shri Garg cannot be accepted.

The next question that arises for consideration is whether the appointment of respondent No.4 as Director of respondent No.1 is illegal because of non-compliance with bye-law 2. Bye-law 2 does require that before appointment, the vacancy in the post of Director should be suitably publicised. In the instant case, it is admitted on both sides that no publicity whatsoever was given in respect of the

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vacancy. The contention of Shri Garg, however, is that the bye-law having no force of statute, non-compliance with its requirement cannot in any way affect the appointment of respondent No. 4 as Director of respondent No. 1. Shri Tarkunde, however, contended that assuming that the bye-law is not statutory, even so respondent No. 1 was bound to comply with it. In support of his contention he strongly relied upon *Ramana Dayaram Shetty v. International Airport Authority of India*.⁽¹⁾ The Court in that case held :

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“It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Viteralli v. Seton*⁽²⁾ where the learned Judge said :

“An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.”

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The aforesaid principle laid down by Mr. Justice Frankfurter in *Viteralli v. Seton*⁽²⁾ has been accepted as applicable in India by this Court in *A. S. Ahluwalia v. Punjab*⁽³⁾ and in subsequent decision given in *Sukhdev v. Bhagatram*.⁽⁴⁾ Mathew, J. quoted the above-referred observation of Mr. Justice Frankfurter with approval.

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In view of the pronouncement of this Court on the point it must be held to be obligatory on the part of respondent No. 1 to follow the bye-laws, if the bye-laws have been framed for the conduct of its affairs to avoid arbitrariness. Respondent No. 1 cannot,

(1) [1979] 3 S.C.R. 1014.

(2) 3 Law Ed. Second Series 1012.

(3) [1975] 3 S.C.R. 82.

(4) [1975] 3 S.C.R. 619.

therefore, escape the liability for not following the procedure prescribed by bye-law 2. A

Compliance with this bye-law also seems to be necessary in the name of fair-play. If the vacancy in the post of Director had been publicised as contemplated by bye-law 2, all the persons eligible for the post may have applied and in that case, the field of consideration would have been enlarged and the selection committee or the Council would have had a much larger field from which to choose the best available person and that would have removed all doubt, of arbitrariness from the mind of those eligible for the post. Of course, we do not wish to suggest for a moment that appointment to every post must be made only after advertising or publicising the vacancy. That would not be right, for there are quite a few posts at the top level which cannot be and should not be advertised or publicised, because they are posts for which there should be no lobbying nor should any applications be allowed to be entertained. Examples of such posts may be found in the post of Commander of Armed Forces or the Chief Justice or the Judges of the Supreme Court or the High Court. But here bye-law 2 requires that vacancy in the post of Director should be publicised and hence we are making the above observation in this paragraph. B
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The grievance of the petitioner is that he has not been considered for appointment to the post of Director although he is far superior to respondent No. 4. If there had been due publicity as required by bye-law 2, he and many others like him would have applied for the post. Shri Garg, however, contends for respondent No. 1 that the petitioner can have no grievance as his case was duly considered as stated clearly in the affidavit of respondent No. 3, Shri P.N. Haksar, Chairman of the Council. We accept the statement of respondent No. 3 that the case of the petitioner was considered by the selection committee but it is a little unfortunate that there is no written report by the selection committee for consideration by the Council. No minutes of the proceedings before the selection committee have been maintained and none were circulated amongst the members of the Council along with the agenda of the meeting nor were any such minutes placed before the Council meeting when the name of respondent No. 4 was approved by the Council. There is also nothing on record to show that the Council was at any time informed as to what names had been considered by the selection committee or that the name of the petitioner had been considered but respondent No. 4 was found superior. It is always desirable that in E
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A public bodies the minutes of the proceedings regarding selection should be properly maintained in order to obviate any suspicion or doubt and such minutes along with the relevant documents should be placed before the final authority entrusted with the task of selection for appointment.

B A lot of argument has been advanced by Shri Tarkunde that the achievements and accomplishments of the petitioner were much higher than those of respondent No. 4. His contribution in the matter of research had won him high praise. He had written articles and books of great merit. On the other hand the achievements or accomplishments of respondent No. 4 were much lower when compared to those of the petitioner. Be that as it may, it is not for the C Court to determine who is the superior of the two candidates and who should be selected. It is for the authorities concerned to select from amongst the available candidates. The members of the selection committee as also the members of the Council were eminent persons and they may be presumed to have taken into account all D relevant considerations before coming to a conclusion. But the real difficulty is that in the absence of publicity as contemplated by bye-law 2, it cannot be said that all other qualified persons like the petitioner were also considered by the selection committee for E appointment, in the absence of any application by them for the post or any recommendation of them by any other authority or individual.

F Shri Garg, however, contends that the office of the Director is a very high office and this honour is conferred and not demanded and an application for this office from the candidates was not at all necessary as in the case of Judges of the Supreme Court, High Court and other constitutional posts of Comptroller and Auditor General of India etc. The selection committee composed of eminent scientists of high reputation must be knowing about the reputed men in the field of statistics and it is expected that they must have considered the G case of those persons also.

H For reasons we have already indicated, we find no force in this contention. There is no provision for publicity in case of the constitutional posts of the Judges of the Supreme Court and High Courts and Comptroller and Auditor General of India. Rather in the very nature of things, they cannot be and are not publicised. But in the case of appointment of a Director, bye-law 2 clearly provides for publicity and it can only be with the object that all concerned may

know about the vacancy and either applications or recommendations may be made for the post and the names of the eligible candidates may be brought before the selection committee for its consideration. In the state of the record before us it is not possible to say that the members of the Council considered the case of the petitioner and other candidates like him before approving the appointment of respondent No. 4. It is true that the members of the selection committee and those of the Council were experts in their respective subjects and were eminent scientists and we must proceed on the basis that they acted in all fairness and no oblique motive can be attributed to them. Indeed Shri Tarkunde did not allege any *mala fides* against the members of the selection committee or the members of the Council.

On the admitted position, no publicity in regard to the vacancy was done at all. No information about it was published even on the notice board kept in the various branches of respondent No. 1 at Calcutta and other places. Nor was the information published in the journal of respondent No. 1. There was clearly a breach of bye-law 2 in making appointment of respondent No. 4 and there was no adequate material before the Council on the basis of which the members could apply their mind for determining as to whether they should approve the recommendation of the selection committee in regard to appointment of respondent No. 4.

For the foregoing reasons the writ petition must succeed. It is accordingly allowed. The order of appointment dated 3rd August, 1979 of respondent No. 4 as the Director of respondent No. 1 is quashed and set aside. This will however not in any way affect the validity of any action already taken by respondent No. 4 as Director nor will it involve him in any liability to refund any excess remuneration received by him in his capacity as Director. Before respondent No. 1 proceeds to select a new Director, it will comply with the requirement of bye-law 2 by giving suitable publicity to the vacancy in the office of Director. In the circumstances of the case the parties will bear their own costs.

N.V.K.

Petition allowed.