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DR. L.M. NATH

v.

DR. S.K. KACKER AND ORS.

NOVEMBER 8, 1995

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[K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.]

Service Law :

All India Institute of Medical Sciences Rules, 1958 :

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Rules 7(3), 7(4)—Director of All India Institute of Medical Sciences—Appointment—Term of respondent having expired, President of Institute appointing seniormost Professor as interim Director—High Court restraining authorities from implementing the order and directing the respondent to continue—High Court not justified in its interference—President is empowered to appoint interim Director for six months or till regular appointment is made, whichever is earlier.

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Respondent No. 1 was appointed as Director of the All India Institute of Medical Sciences, on October 15, 1990 for a term of 5 years. His term was to expire on October 14, 1995. On June 5, 1995 the Institute Body, which is the apex body of the Institute, appointed a Select Committee to set in motion the process for selection of the Director. Though respondent No. 1 applied for re-appointment, it was decided that no extension could be given to him and instead his case would also be considered along with others for fresh appointment as Director. Meanwhile as a result of a writ petition filed before the High Court, the Committee could not go through the process of selecting the Director before the term of respondent No. 1 expired on October 14, 1995. On 15.10.1995, the President of the Institute, exercising the power under Rule 7(4) of the All India Institute of Medical Sciences Rules, 1958, appointed the appellant to look after the functions of the Director of the Institute with effect from the forenoon of 15th October, 1995 for a period not exceeding six months or till such time a new Director was appointed. The appellant continued to function till October 19, 1995, when the High Court, in the writ petition filed by Respondent No. 1, passed an interim order restraining the Institute to implement the order dated October 15, 1995 and directed that respondent No. 1 would continue to hold the office of the Director of the Institute and function as such till

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further orders from the Court. Aggrieved, the appellant filed the appeal by special leave. A

Allowing the appeal and setting aside the order of the High Court, this Court

HELD : 1. The High Court was not at all justified in its interference. The post of Director of All India Institute of Medical Sciences is a tenure post. The order of appointment of respondent-1 as the Director came to an end in the afternoon of October 14, 1995. Unless there is an order expressly extending his tenure under Rule 7(4) of the All India Institute of Medical Sciences Rules 1958, he has no right to continue after 14.10.1995. The Court cannot exercise the power of the authorities under Rule 7(4) except when it deems legal to consider them to be so exercised for the reasons to be given in the order. [837-H, 838-A] B C

2. The President of the Institute passed the order under main part of Rule 7(4), which empowers him to appoint the seniormost Professor. In the 1974 seniority list, produced by respondent No. 1, he is the seniormost and the appellant is the second seniormost. Since respondent No. 1 has already held the office of the Director and the Institute Body has decided not to reappoint him except through the process of selection, by necessary implication, he would not be considered to be appointed even as interim Director pending regular appointment under Rule 7(3) of the Rules. The consequence would be that the appellant being the next seniormost in order, the President of the Institute was justified in appointing him as the interim Director pending appointment of the Director or for six months whichever may be earlier. Any other interpretation would be a negation of the conscious action of the Institute body. [838-D-F] D E F

L.P. Aggarwal v. Union of India, AIR (1992) SC 1872, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10205 of 1995. G

From the Judgment and Order dated 19.10.95 of the Delhi High Court in C.M. No. 6473/95 arising out of C.W.P. No. 3865 of 1995.

D.D. Thakur and G. Ramaswamy, Brijesh Garg and Mukul Gupta for the Appellant. H

A Harish Salve, Maninder Singh, Ms. Bharati Anand, G.K. Bansal, Ms. Mukta Gupta Sanjay Bansal, Ajay Jain for the Respondents.

The following Order of the Court was delivered :

Leave granted.

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We are conscious of the fact that the impugned order is only an *ad interim* one passed by the Division Bench of the Delhi High Court on October 19, 1995. But, keeping in view the importance of administration of All India Institute of Medical Sciences which is a premier and prestigious institution in the country, its smooth functioning and efficient management would be the primary and sole concern of every one including Judiciary when its intervention is deemed expedient. The Director remains in day-to-day management of the institute and must and ought to be a dynamic person, efficient and of sterling character capable to carry with him all concerned in not only proper, efficient and prompt manner to the needy patients thronging in thousands daily for treatment but also capable to mobilise needed resources to fruition, the objectives of the institute. Bearing this pragmatic consideration and not pedantic nor legalistic orientation, this court in *L.P. Aggarwal v. Union of India*, AIR (1992) SC 1872 held that even outsiders are eligible to be considered for selection as Director. We think that instead of prolonging the uncertainty in its administration, instead of relegating the authorities to go to the High Court to have the matter decided, it would be better to dispose of the interlocutory application C.M. No. 6473/95 in Civil Writ Petition No. 3865/95 dated October 19, 1995 at this stage itself. We have heard counsel on both the sides *in extenso*.

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It is not in dispute that Prof. S.K. Kacker was appointed by selection as Director on October 15, 1990 for a term of 5 years on the even date he had assumed the charge. His term as Director stood expired on October 14, 1995. It is also not in dispute that on June 5, 1995 the Institute Body which is the apex body of the Institution decided to select a Director as per the procedure contemplated under its Rules and appointed a Select Committee to set in motion the process for selection of the Director. At that point of time, the request for reappointment by Dr. Kacker also came up for consideration. It was decided that no extension as Director could be made. Instead, his case may also be considered along with others for fresh appointment as Director. Since its confirmation is now stayed by the

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High Court in another pending writ petition, except with leave of the Court, they did not go through the process of selecting the Director before the term of Dr. Kacker expired on October 14, 1995. A

The President of the Institution exercising the power under Rule 7 (4) of the All India Institute of Medical Sciences Rules, 1958 (for short 'Rules') holding that "the appellant Dr. L.M. Nath, the Dean of the Institute, Head, Centre for Community Medicine who had always been looking after the functions of the Director in absence, and as the senior most Professor of the Institute kept in mind the best interest of the AIIMS, passed the following order" . In exercise of the powers conferred on me by Rule 7(4) of the All India Institute of Medical Sciences Rules, 1958, I hereby appoint Prof. Lalit Mohan Nath, Head, Centre for Community Medicine and Dean, AIIMS to look after the functions of the Director of AIIMS with effect from the forenoon of 15th October, 1995 for a period not exceeding six months or till such time a new Director is appointed." B C

It would appear, as asserted by the appellant, that he assumed the charge on October 15, 1995 and continued to function till October 19, 1995. Prof. Kacker filed a writ petition in the High Court being Civil Writ Petition No. 3865 on October 16, 1995 claiming certain reliefs and the interim relief he sought was for a direction to stay operation of the letter dated October 15, 1995, the resolution dated June 5, 1995 and "to appoint him as the officiating Director in terms of Rule 7(4)," which came up before the Bench on October 19, 1995. The Division Bench of the High Court in the impugned order restrained the respondents therein from giving effect to or implementing the order dated October 15, 1995 by which the appellant (the Respondent No. 4 in the High Court) has been asked to look after functions of the Director and Dr. Kacker "shall continue to hold the office of the Director, AIIMS and function as such till further orders from the Court....." D E F

We heard elaborate arguments on merits addressed by the learned counsel for the appellant as well as the contesting Ist respondent, only to satisfy our conscience, whether Division Bench of the High Court was justified at that stage, to interfere with the order. Giving our anxious consideration to the contentions, we think that the High Court was not at all justified in its interference. It is seen that the order of appointment of Dr. Kacker as the Director, came to an end in the afternoon of October G H

A 14, 1995 since admittedly it is a tenure post. Unless there is an order expressly extending his tenure, he has no right to continue thereafter. The Court cannot exercise the power of the authorities under Rule 7(4) except when it deems legal to consider then to be so exercised for the reasons given in the order. After October 14, 1995 the 1st respondent cannot continue as Director unless he is appointed under Rule 7 (4) which empowers the President or Institute Body to make an interim arrangement till regular Director is appointed or for six months.

The main part of the Rule gives power to the President to appoint the senior most Professor. The proviso empowers the Institute Body to appoint any Professor irrespective of seniority. The only condition is that the Institute should record reasons to justify the exercise of the power vested in it. Admittedly, the Institute Body had not passed any orders under the proviso. It had already rejected the claim of Dr. Kacker for reappointment. Since the President passed the order under main part of Rule 7(4) the question would be whether the President would be justified to pass the order under these circumstances. It is seen that in 1974 seniority list, produced by Dr. Kacker, he is the senior most and the appellant is the second senior most. In our considered view that since Dr. Kacker has already held the office of the Director and the Institute Body had already decided not to reappoint him except through the process of selection, by necessary implication, he would not be considered to be appointed even as interim Director pending regular appointment under Rule 7 (3) of the Rules. The consequence would be that the appellant being the next senior most in order, it would appear, that the President was justified in appointing him as the interim Director pending appointment of the Director or for six months whichever may be earlier. It is reasonable to hold that any other interpretation would be a negation of the conscious action of the Institute Body.

In view of the stalemate created in the selection of Director, since we are informed that the writ petition filed by common cause has already been heard and judgment was reserved, we think that we have to make a special request to the Division Bench of the High Court, which heard it, to consider whether it would not be desirable to deliver the judgment as expeditiously as possible so that the stalemate in the appointment of Director may be put an end to and the appropriate authority may take a decision to make the regular selection and appointment of the Director.

We have ventured to give this suggestion keeping the paramount interest of the smooth administration of the premier institution of the nation and not of any *inter se* claim of any person entitled to these claims. A

With regard to any other relief to which the respondent No. 1 may be entitled to seek for consideration, it will be open to the High Court to consider, if he is entitled according to Rules and to pass such orders as may be warranted according to law. B

The appeal is accordingly allowed and the impugned order of the High Court is set aside. But in the peculiar facts and circumstances of the case, no costs. C

R.P.

Appeal allowed.