

A INDIAN INSTITUTE OF TECHNOLOGY, KANPUR

v.

RAJA RAM VERMA AND ORS.

(Civil Appeal No. 5341 of 2003)

NOVEMBER 24, 2010

B

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

Administrative law: Judicial review – Prescribing or extending age of retirement – Held: Is a managerial function – Such decision taken by the management of the institutions like I.I.T. and I.I.M. are on consideration of various aspects – Most predominant consideration is the need of the institute, its functional requirements and efficient management of its manpower – These are the areas where the court should not normally venture and judgment in this area should be best left with the authorities who are in-charge of running or managing such institutes – However, if court finds that the policy in fixing the age of retirement was not based on any intelligible criterion or is founded on such a basis which are patently unreasonable and perverse, the court has a bounden duty to interfere and direct the concerned management to proceed on a reasonable basis – Constitution of India, 1950 – Article 14 – Institutes of Technology Act, 1961.

Constitution of India, 1950: Article 14 – Extension of age of retirement – Intelligible differentia – I.I.T., Kanpur confined the benefit of service upto 62 years to teachers and to employees on par with teachers – Held: There is a valid rationale in allowing teachers and persons holding posts which are at par with teachers to work beyond 60 years – Good faculty of academicians for doing the job of teachers is difficult to find – In any discipline and especially in a discipline in an institute like I.I.T., it is very difficult to replace an experienced teacher with years of learning, maturity and experience – Institutes of Technology Act, 1961.

H

INDIAN INSTITUTE OF TECHNOLOGY, KANPUR v. 631
RAJA RAM VERMA

Institutes of Technology Act, 1961: ss.2, 4, 11, 13, 31, 33 A
– Autonomy of the Institution – I.I.T Kanpur is an Institution
of National Importance – The decision making exercise is with
the council composed of academicians – Therefore, it cannot
be said that the independence of the institutions is controlled
or diluted by Government – Education/Educational B
institutions.

The first respondent was appointed on 11.11.1983 to
the post of Assistant Registrar at appellant-institute. He
was to retire on 31.8.2000 on attaining the age of 60 years. C
Initially the statute of I.I.T. provided for 60 years as the age
of superannuation for all the staff members. The first
respondent claimed his entitlement to continue till 62
years of age on the basis of communications of the
Ministry of Human Resource Development whereby the D
age of superannuation of University and College teachers
was increased to 62 years. The appellant-institute sought
for clarification as regards the applicability of the
communications to the Assistant Registrars. One Mr.
Bakre was allowed to continue in the absence of proper
clarification from the Central Government. Subsequently E
clarification was received and it was clear that the
increase in the age of retirement was only in case of
those categories of employees who could be treated at
par with the teachers. The appellant-institute passed an
order to that effect. A writ petition was filed by the first F
respondent before the High Court challenging the said
order. The High Court allowed the writ petition.

The questions which arose for consideration in the
instant appeal were whether the decision of the appellant
that the benefit of service upto 62 years was confined to G
teachers and employees at par with teachers was
justified; and whether Grant-in-aid and loan rules could
be made applicable to I.I.T. and I.I.M. and by applying said
rules, the independence of institutions like I.I.T. and I.I.M. H

A in matter of employment of the teachers is sought to be diluted.

Allowing the appeal, the Court

B HELD: 1.1. Prescribing the age of retirement is a managerial function and such decisions are taken by the management of the concerned institute on consideration of various aspects. One of the most predominant consideration is the need of the institute, its functional requirements and efficient management of its manpower.

C These are the areas where the court should not normally venture and judgment in this area should be best left with the authorities who are in-charge of running or managing such institutes. However, if the court finds that the policy in fixing the age of retirement was not based on any

D intelligible criterion or is founded on such a basis which are patently unreasonable and perverse, the court has a bounden duty to interfere and direct the concerned management to proceed on a reasonable basis. In the segment of white collared employees, opportunities are quite few and there is a burning unemployment problem.

E Therefore, if considering the ground realities the Government fixes 60 years as the age of retirement for certain categories of employees, the court should be very slow and circumspect before interfering with such

F decisions. [Paras 28, 31] [643-C-E; 644-F]

B. Bharat Kumar and Ors. v. Osmania University and Ors. (2007) 11 SCC 58; Nagaland Senior Govt. Employees Welfare Association and Ors. v. The State of Nagaland and Ors. 2010(7) SCR 630 – relied on.

G 1.2. There is a valid rationale in allowing teachers and persons holding posts which are at par with teachers to work beyond 60 years. The reason for this is that it is very difficult to find a good faculty of academicians for doing

H

the job of teachers. In any discipline and especially in a discipline in an institute like I.I.T., it is very difficult to replace an experienced teacher with years of learning, maturity and experience. This explains why in many cases even teachers are retained beyond their extended period of retirement by way of extension or their services are continued on the basis of re-employment. This is done to preserve the intrinsic value and quality of teaching imparted in these institutions. Therefore, there is no error in the decision of the appellant whereby the benefit of service upto 62 years is confined to teachers and to those employees who are on a par with teachers. The first respondent was not able to establish that he was a member of teaching staff or he was to be treated at par with the teachers. In that view of the matter, his claim to continue in service after 60 years of age was not sustainable. Whether a particular employee has to be treated at par with the teaching staff is by and large a decision of the management of the appellant institute and it is difficult for this Court to interfere with the said decision unless it is ex facie perverse. Here, no such case was made out by the first respondent. Mr. Bakre was allowed to continue only under fortuitous circumstances and in the absence of any proper clarifications by the Central Government. The respondent cannot claim the same right. In the case of Mr. Bakre, no legal right was extended to him. He was allowed to continue in the absence of any clarification about when retirement fell due. Thus, in passing the impugned order of retirement of the first respondent on his attaining the age of 60 years, the appellant has not committed any illegality. [Paras 25, 26, 27, 32, 33] [644-G-H; 645-A-C; 642-G-H; 643-A-B]

2. The Preamble of the Institutes of Technology Act, 1961, which is an Act of Parliament, shows that the same has been enacted to declare certain institutions of

A technology to be institutions of national importance. Section 2 of the said Act makes it clear that I.I.T Kanpur (the appellant) is an Institution of National Importance. Under Section 31 of the Act, the Central Government may by a notification in the official gazette establish a Central Board to be called the Council and in the Council the Minister in-charge of technical education of the Central Government shall be the ex-officio Chairman. From the list of the re-constituted Council of I.I.Ts, it appears that Chairman of all the I.I.Ts, namely, I.I.T Bombay, I.I.T Delhi, I.I.T Guwahati, I.I.T Kanpur, I.I.T Kharagpur, I.I.T Madras, I.I.T Roorkee are members of the said Council. Most of them are professors or academicians. Under Section 33 of the Act it is the duty of the council to coordinate the activities of all the institutes and to perform all the functions which are specified under Section 33(2) of the Act. All major decision making exercise has been left in the hands of the re-constituted Council which is predominantly composed of academicians. The Council in its 40th meeting held on 09.10.2009 has constituted a committee under the Chairmanship of Dr. Anil Kakodkar, Chairman, Board of Governors, I.I.T Bombay “for suggesting a roadmap for the autonomy and the future of the I.I.Ts as world class institutions for research and higher learning”. Pursuant to the said resolution in the 40th meeting of the Council, a Committee has been constituted. The materials and the affidavit of the Government disclosed that autonomy of these institutes is not being diluted. Rather, an attempt is made by the Government of India to improve the academic ambience of these institutes by recommending extension of age of retirement of the Director of the Institute and of members of the academic faculty. Attempt has also been made to attract the best talent by a progressive revision of the pay scale. [Para 38, 39, 43, 44, 45, 46, 47, 52] [646-F-G; 647-B; 648-E-H; 649-E-G; 652-C-G; 657-B-E]

H

INDIAN INSTITUTE OF TECHNOLOGY, KANPUR v. 635
RAJA RAM VERMA

Case Law Reference:

(2007) 11 SCC 58 relied on Para 29

2010(7) SCR 630 relied on Para 30

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5341 of 2003.

From the Judgment & Order dated 10.07.2002 of the High Court of Judicature at Allahabad, in Civil Misc. Writ Petition No. 54346 of 2000.

Nikhil Nayyar, T.V.S.R. Sreyas, Sunil Goyal for the Appellant.

Gopal Subramaniam, S.G., Raja Verma, Anubhav Kumar (for D.S. Mahra) for the Respondents.

The Judgment of the Court was delivered by

GANGULY, J. 1. The Respondent No. 1 Shri Raja Ram Verma was appointed to the post of Assistant Registrar at Indian Institute of Technology, Kanpur (hereinafter I.I.T.) on 11.11.1983. As per Statute 13 of I.I.T., the respondent was due to retire on 31.08.2000 on attaining the age of 60 years. His case before us is that he should have been allowed to continue upto the age of 62 years.

2. I.I.T. Kanpur is a body incorporated under the Institutes of Technology Act, 1961 (hereinafter 'the Act'). Section 27 of the Act provides for framing of first Statutes by the I.I.T. Such statutes are to deal with matters mentioned in Section 26. Section 26 (g) provides for framing of statutes relating to terms and conditions of service of teachers and other staff of the I.I.T. Section 31 of the Act provides for the establishment of Council which is a central body. Under Section 33 of the Act the general duty of the Council is to coordinate the activities of the Institute and under Section 33(2)(b) one of the general duties of the Council is to lay down the policies regarding cadres, method

A of recruitment and conditions of service of employees amongst other things of common interest.

B 3. Statute 11 classifies the employees under three categories. They are (a) academic, (b) technical and (c) administrative. Respondent No. 1 who was appointed as an Assistant Registrar falls under the third category.

C 4. Generally, the statute 13 (2) framed under the Act prescribes the age of superannuation of a confirmed appointee. Initially the statute provided for 60 years as the age of superannuation for all the staff members. By an amendment on 23.06.1989 however, a sub-statute 3 was added making some changes. The said amendment runs as follows:

D “(3)Subject to the provisions of the Act and the Statutes, all the new appointments to posts on revised salary scales adopted with effect from 1st January 1986 under the Institute shall ordinarily be made on probation for a period of one year after which period the appointee, if confirmed, shall continue to hold office, subject to the provisions of the Act and the Statutes as follows:

E (a) Teaching Staff (faculty and Group ‘D’ Staff): Till the end of the month in which he attains the age of 60 years

F (b) Group A, B and C staff (non faculty): Till the end of the month in which he attains the age of 58 years.

G 5. This amendment did not affect the Respondent No. 1 as it was applicable for those who were appointed w.e.f. 01.01.1986.

H 6. Thereafter, by an office order issued by the Registrar’s office, I.I.T. Kanpur, dated 14.07.1998, the age of retirement was increased from 58 to 60 years with effect from 30.05.1998. This was done in respect of members of Groups A, B and C (non faculty) who had been appointed on or after 23.06.1989.

INDIAN INSTITUTE OF TECHNOLOGY, KANPUR v. 637
RAJA RAM VERMA [ASOK KUMAR GANGULY, J.]

7. On 27.07.1998, the Ministry of Human Resource Development addressed to the Secretary, University Grants Commission, and forwarded to the Vice Chancellors of all Central Universities, Member Secretary, All India Council for Technical Education and Secretary of the Indian Council for Agricultural Research, providing therein that the age of superannuation of University and College teachers would be 62 years with the liberty reserved to the Universities and Colleges to re-employ superannuated teachers within the existing guidelines framed by the U.G.C.

8. The respondent No.1 claims his entitlement to continue till 62 years of age on the basis of this communication.

9. Another communication was issued on 31st August, 1998 by the Department of Education, Ministry of H.R.D. to the Director of the I.I.T. with regard to increase in the age of superannuation of academic staff including personnel of Registry, Library and Physical Education. Thereupon, the appellatant sought clarification from the Ministry about the term "Personnel of Registry, Library and Physical Education Staff."

10. The case of the appellatant is that it got a telephonic communication from the Ministry on or about 14th October 1998 that the increase in the age of superannuation from 60 to 62 years is confined to the case of Assistant Registrar level and the officers above. Thereupon, the appellatant allowed one Shri. S.H. Bakre, Assistant Registrar to continue in service, who was due to retire on 31st August 1998. Thereafter, the Chairman of the Board of Governors approved the proposal of the Director, wherein it was proposed that the staff, whose age of retirement was 58 years, would superannuate on attaining 60 years and the members of the staff whose age of retirement at the time of appointment was 60 years, would superannuate on attaining 62 years. However, the said proposal of the Director even though approved by the Chairman, was not put up before the Board of Governors for ratification, hence no effect was

A given to the same as required under statute 7(4) of the first statute.

B 11. In Statute 7(4) of the statutes of I.I.T., all orders of the Chairman have to be approved by the Board. The relevant provision of Statute 7(4) is in the following terms:

“7(4) In emergent cases the Chairman may exercise the powers of the Board and inform the Board of the action taken by him for its approval.”

C 12. It has been urged on behalf of the appellant that as
D respondent No.1 was admittedly appointed on 11.11.1983, he was due for superannuation on 31.12.2000 on attaining the age of superannuation of 60 years in terms of statute 13(2). The exact provision of Statute 13(2) in this connection is set out below:

E “(2) Subject to the provisions of the Act and the statutes, all appointments to posts under the Institute shall ordinarily be made on probation for a period of one year after which period the appointee, if confirmed, shall continue to hold his office subject to the provisions of the Act and the Statutes, till the end of the month in which he attains the age of 60 years. Provided that where the Board considers that in the interests of students and for the purposes of teaching and guiding the research scholars any member of the academic staff should be reemployed, it may re-employ such a member till the end of the semester or the academic session as may be considered appropriate in the circumstances of each case.

G Provided further that where it becomes necessary to re-employ any such member beyond the end of the semester or academic session as the case may be, the Board may with the previous approval of the visitor, re-employ any such member for a period upto three years in the first instance and upto two years thereafter and in no
H

**INDIAN INSTITUTE OF TECHNOLOGY, KANPUR v. 639
RAJA RAM VERMA [ASOK KUMAR GANGULY, J.]**

case exceeding the end of the academic session in which he attains the age of 65 years. A

Provided also that in no circumstances such member shall be reemployed for any purposes other than those of teaching and guiding the research scholars." B

13. Then by a communication dated 6.11.1998 the Government of India, the second respondent, clarified the scheme notified in its earlier communication dated 27.7.1998 to the extent that the age of superannuation at 62 will be applicable only to those Registrars, Librarians, Physical Education personnel who are treated at par with teachers and whose age of superannuation was 60 years. C

14. Thereafter, the I.I.T. council met on 20.2.1999 and decided that the age of superannuation of staff members of I.I.Ts (except faculty and scientific/design staff in Group A category) would continue to be 60 years, as in the case of the Central Government employees. D

15. In the meantime, the case of another Assistant Registrar, namely Shri S.K. Gupta, who was to retire on 31.3.1999, came up for consideration and the then Director of I.I.T. sought clarification from the Ministry of Human Resource Development. In seeking such a clarification, the Director was informed by the Secretary, Ministry of Human Resource Development that a clarification would be sent shortly. In the absence of any clarification, the Director decided that till further clarification is received from the Ministry, Shri S.K. Gupta may continue. E F

16. However, on 30.3.1999 itself a communication was received from the Ministry of Human Resource Development giving the clarification and in paragraph (5) of the said clarification it was provided as under: G

"Attention of this Ministry has, however, been drawn to the fact that the position stated in para 4 above requires H

A clarification. Accordingly, it is clarified that the increase in
 the age of superannuation from 60 to 62 years indicated
 in this Ministry letter of even number dated 31st August,
 1998 as stated above would be applicable only to those
 categories of employees of IITs, IIMs and IISc who are
 B being treated at par with the teachers and whose age of
 superannuation was 60 years.”

17. On 16.2.2000 a further clarification was given by the
 second respondent to the Director of the appellant that the
 increase in the age of superannuation from 60 years to 62
 C years would be applicable only to those categories of
 employees of I.I.Ts, I.I.Ms and I.I.Sc who are being treated at
 par with the teachers and whose age of superannuation was
 60 years.

D 18. In view of the aforesaid clarification by the second
 respondent, a grievance was raised about alleged
 discrimination between the members of faculty staff and those
 members of staff who are categorised as non-faculty staff. In the
 background of such a plea of discrimination, the second
 E respondent, by its further communication dated 24.4.2000,
 clarified that since the members of the staff of various I.I.Ts are
 classified into 3 categories namely, i) academic ii) technical
 and iii) administrative and others and since Librarians are falling
 in the categories of the academic staff, their age of retirement
 F would be 62 years.

19. Thereafter, the Board of Governors of the appellant in
 its meeting held on 22.5.2000, on consideration of the
 communication dated 24.4.2000 from the second respondent
 came to the following conclusion:

G “The Board was informed of the outcome of the
 discussions at the IITs Directors meeting held on 9th April,
 2000. The Board after a brief discussion decided as under:

H 1. Those Assistant Registrars who are in service beyond

INDIAN INSTITUTE OF TECHNOLOGY, KANPUR v. 641
RAJA RAM VERMA [ASOK KUMAR GANGULY, J.]

60 years will retire on December 31, 2000. However, if a person reaches 62 years before that date, he will retire at the end of the month in which he completes 62 years. A

2. Librarian and Deputy Librarian will retire on completing 62 years, in view of MHRD clarification. B

3. A decision with respect to Physical Education Instructors-Class-A will be taken once a clarification is received from the MHRD."

20. Thereupon, a memorandum was issued by the appellant on 17.7.2000 to the effect that the date of superannuation of all the Assistant Registrars, who figured in the said memorandum will be 31st December, 2000. However, Shri S.H. Bakre was not allowed to continue since his date of superannuation was 31.8.2000. C
D

21. Being aggrieved by the said memorandum dated 17.7.2000; respondent No.1 filed a writ petition before the Allahabad High Court.

22. The consistent case of the appellant before the High Court was that age of retirement of only those employees was enhanced who could be treated at par with the teachers. In the affidavit filed by the appellant before the High Court they have reiterated that they are bound by the communication from the Ministry of Human Resources, Government of India dated 30.3.1999 and also one dated 24.4.2000. The relevant part of the 30.3.1999 notification has been set out above and the subsequent clarification by the Ministry's communication dated 24.4.2000 also relies on para 5 of the Ministry's communication dated 30.3.1999. On a combined reading of the aforesaid two communications issued by the second respondent, it is more than clear that increase in the age of retirement has been made available only to those categories of employees who are treated at par with the teachers. E
F
G

23. However, the High Court on an erroneous basis H

A allowed the writ petition and quashed the order of the appellant dated 17.7.2000. It may be mentioned in this connection that subsequently the Full Bench of the Allahabad High Court by a judgment and order dated 14.10.2004 disagreed with the decision rendered by the Allahabad High Court in favour of the
B respondent No.1 and held that "Hence in our opinion the age of retirement of an employee of the Indian Institute of Technology is 60 years and not 62 years vide Section 13(2). We, therefore, respectfully disagree with the decision in Raja Ram Verma's case. The judgment in *Raja Ram Verma's* case (supra) is
C hereby overruled".

24. It may be noted in this connection that an affidavit has been filed by the appellant before this Court explaining the conditions under which Mr. Bakre was allowed to continue beyond 60 years. Since Mr. Bakre was an Assistant Registrar and was due to retire on 31.8.1998 the benefit of increased
D age was extended to him, pending clarification about the age of retirement from the second respondent. The issuance of clarification was by the second respondent, the Central Government. The Board of the appellant decided that six of its
E Assistant Registrars would have to be superannuated based on the office memo dated 16.2.2000 issued by the Government of India and thereupon the Board of Governors decided that all the six Assistant Registrars except Mr. Bakre would be allowed to continue till 31.12.2000. Therefore, Mr. Bakre was allowed
F to continue only under fortuitous circumstances and in the absence of any proper clarifications by the Central Government.

25. This Court is of the opinion that the respondent cannot claim the same right. In the case of Mr. Bakre no legal right was extended to him. He was allowed to continue in the absence
G of any clarification about when retirement fell due.

26. The first respondent, who is appearing in person, has not been able to establish before us that he is a member of teaching staff or he was treated at par with the teachers. In that
H view of the matter his claim to continue in service after 60 years

of age cannot be sustained and the High Court came to an erroneous finding in taking a contrary view. A

27. Whether a particular employee has to be treated at par with the teaching staff is by and large a decision of the management of the appellant institute and it is difficult for this Court to interfere with the said decision unless it is ex facie perverse. Here, no such case has been made out by the first respondent. B

28. It has been held by this Court, more than once, that prescribing the age of retirement is a managerial function and such decisions are taken by the management of the concerned institute on consideration of various aspects. One of the most predominant consideration is the need of the institute, its functional requirements and efficient management of its manpower. These are the areas where the Court should not normally venture and judgment in this area should be best left with the authorities who are in-charge of running or managing such institutes. However, if the Court finds that the policy in fixing the age of retirement was not based on any intelligible criterion or is founded on such a basis which are patently unreasonable and perverse, the Court has a bounden duty to interfere and direct the concerned management to proceed on a reasonable basis. C
D
E

29. In *B. Bharat Kumar and Ors. Vs. Osmania University and Ors.* - (2007) 11 SCC 58, this Court expressed such a view in paragraph 19 at page 73 of the judgment and which is quoted below: F

“Learned counsel also argued, to a great extent, the desirability of the age of superannuation being raised to 60 or 62, as the case may be. We again reiterate that it is not for this Court to formulate a policy as to what the age of retirement should be as by doing so we would be trailing into the dangerous area of the wisdom of the legislation. If the State Government in its discretion, which is H

A permissible to it under the scheme, decides to restrict the age and not increase it to 60, or as the case may be, 62, it was perfectly justified in doing so.”

B 30. Similar views have been expressed recently by another Bench of this Court in *Nagaland Senior Govt. Employees Welfare Association and Ors. Vs. The State of Nagaland and Ors.* - Civil appeal No. 4955 of 2010 decided on 6.7.2010. In paragraph 40 of the judgment this Court opined as follows:

C “...The rule of retirement on completion of 35 years of service has relevance to employees who have joined service at an age below 25 years and the prescription with regard to retirement at the age of 60 years is in respect of the persons joining service at the age of 25 and thereafter. The above two categories of employees, though performing similar duties and may be identically placed otherwise can still be reasonably understood to form two different classes to whom application of two rules of retirement will not violate Article 14....”

E 31. This Court must remember that in the segment of white collared employees, opportunities are quite few and there is a burning unemployment problem. Therefore, if considering the ground realities the Government fixes 60 years as the age of retirement for certain categories of employees, the Court should be very slow and circumspect before interfering with such decisions.

G 32. This Court finds that there is a valid rationale in allowing teachers and persons holding posts which are at par with teachers to work beyond 60 years. The reason for this is that it is very difficult to find a good faculty of academicians for doing the job of teachers. In any discipline and especially in a discipline in an institute like I.I.T., it is very difficult to replace an experienced teacher with years of learning, maturity and experience. This explains why in many cases even teachers are

retained beyond their extended period of retirement by way of extension or their services are continued on the basis of re-employment. This is done to preserve the intrinsic value and quality of teaching imparted in these institutions.

33. Therefore, this Court does not find any error in the decision of the appellant whereby the benefit of service upto 62 years is confined to teachers and to those employees who are on a par with teachers. Thus, in passing the impugned order of retirement of the first respondent on his attaining the age of 60 years, the appellant has not committed any illegality.

34. In this matter a somewhat larger question cropped up in view of submissions made by learned Solicitor General, who appeared on behalf of the Union of India, the second respondent. The learned Solicitor drew our attention to Rule 209(6)(iv)(a) of Grants-in-aid and loan rules. Relying on the said rules, the learned Solicitor submitted that the age of retirement of teachers and others employed in I.I.Ts and I.I.Ms has been fixed at par with Central Government employees. The said rule is set out below:-

"All grantee institutions or organizations which receive more than fifty percent of their recurring expenditure in form of grant-in-aid, should ordinarily formulate terms and conditions of service of their employees which are by and large not higher than those applicable to similar categories of employees in central government. In exceptional cases relaxation may be made in consultation with the Ministry of Finance."

35. Considering the aforesaid stand of the second respondent, a question of public importance which arises is whether the aforesaid rules can be made applicable to I.I.Ts and I.I.Ms which are Institutes of National importance. This Court pointedly asked this question to the learned Solicitor whether by applying the said rules independence of institutions like I.I.Ts and I.I.Ms in matter of employment of the teachers is sought to

A be controlled. Matter of concern for this Court is whether in the process, the autonomy of these institutions is diluted by a mindless bureaucratization of educational institutions which are to function as centres of excellence and are Institutions of National Importance.

B 36. On such query being raised by this Court, the learned Solicitor wanted some time for taking instructions and ultimately filed an additional affidavit on behalf of Union of India, the second respondent.

C 37. Reference in this connection may be made to Entry 63 and 64 of List I of the Seventh Schedule of the Constitution. Those two entries are set out:-

D "63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of Article 371-E any other institution declared by Parliament by law to be an institution of national importance.

E 64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance."

F 38. It may be mentioned that the Preamble of the Institutes of Technology Act, 1961 (the said Act), which is an Act of Parliament, shows that the same has been enacted to declare certain institutions of technology to be institutions of National Importance. Section 2 of the said Act runs as under:-

G "2. Whereas the objects of the institutions known as the Indian Institute of Technology, Bombay, the College of Engineering and Technology, Delhi, the Indian Institute of Technology, Kanpur and the Indian Institute of Technology, Madras are such as to make them institutions of national

H

INDIAN INSTITUTE OF TECHNOLOGY, KANPUR v. 647
RAJA RAM VERMA [ASOK KUMAR GANGULY, JJ]

importance, it is hereby declared that each such institution is an institution of national importance.” A

39. It is clear from Section 2 of the aforesaid Act that I.I.T Kanpur is an Institution of National Importance. Section 4 of the Act makes it clear that each of the institutions mentioned in Section 2 shall be a body corporate having a perpetual succession and a common seal. B

40. Learned Solicitor submitted that the Union of India is committed to ensure that these Institutions of National Importance retain their autonomy and also continue as centres of excellence and ultimately become a world class centre of academic pursuit and research. C

41. From the stand of the Union of India, the second respondent, it appears that under the said Act, every institute, under Section 4 of the said Act, shall have a Board of Governors and under Section 11 of it the Chairman is to be nominated by the Visitor. Under Section 9 of the Act the Visitor is the President of India. It appears that it is the Board of Governors constituted under Section 11, which is responsible for general superintendence, directions and control of the affairs of the institute. Under clause (d) of sub-section (2) of Section 13, the Board of Governors is authorized to appoint persons to act as academics and under this power the Board of Governors appoint other persons to various posts in the institute. The learned Solicitor further submitted that the actual composition of the Board of Governor of I.I.T, Kanpur consists mainly of academician and educationists. D E F

42. In the affidavit, disclosure about the composition of the Board of Governors, which has been made is as follows:- G

“(a) Chairman - Prof. M. Anandakrishnan

(b) Member, ex-officio - Director (Prof. Sanjay Dhande)

(c) Member - H

- A - Prof. R.S. Nirjhar, Vice-Chancellor, Gautam Buddha University *(UP Govt. nominee)
 - Shri Aman Kumar Singh, Secretary to Chief Minister (Chattisgarh nominee)

- B (d) Member (4 persons having special knowledge to be nominated by the Council):
 - Prof. D.V. Singh, Former Vice-chancellor, University of Roorkee.

- C - Prof. Rajan Harshe, Vice-Chancellor, Allahabad University.
 - Shri Ashok Thakur, Additional Sec. GOI
 - Shri N.K. Sinha, Joint Secretary, GOI

- D (e) Members nominated by Senate:
 - Prof. I.B. Dhariyal
 - Prof. Rajiv Shekhar”

E 43. Under Section 31 of the Act the Central Government may by a notification in the official gazette establish a Central Board to be called the Council and in the Council the Minister incharge of technical education of the Central Government shall be the ex-officio Chairman.

F 44. From the list of the re-constituted Council of I.I.Ts it appears that Chairman of all the I.I.Ts, namely, I.I.T Bombay, I.I.T Delhi, I.I.T Guwahati, I.I.T Kanpur, I.I.T Kharagpur, I.I.T Madras, I.I.T Roorkee are members of the said Council. Most of them are professors or academicians. The list of the
G aforesaid re-Council is set out below:-

 “List of Members of the re-constituted Council of Indian Institutes of Technology (IITs)

H

INDIAN INSTITUTE OF TECHNOLOGY, KANPUR v. 649
 RAJA RAM VERMA [ASOK KUMAR GANGULY, J.]

Name		Provision in the Act
Shri Kapil Sibal Hon'ble Minister (HRD)	Chairman of the Council of IITs	Ex-officio [Section 31(2)(a)]
Dr. Anil Kakodkar, Chairman, BoG, IIT Bombay	Member	Ex-officio [Section 31(2)(b)]
Shri R.P. Agrawal, Chairman, BoG, IIT Delhi	Member	- do -
Dr. R.P. Singh, Chairman, BoG, IIT Guwahati	Member	- do -
Prof. M. Anandkrishnan, Chairman, BoG, IIT Kanpur	Member	- do -
Shri B. Muthuraman, Chairman, BoG, IIT Kharagpur	Member	- do -
Dr. R. Chidambaram, Chairman, BoG, IIT Madras	Member	- do -
Shri Ashok Bhatnagar, Chairman, BoG, IIT Roorkee	Member	- do -
Prof. Devang V. Khakhar, Director, IIT Bombay	Member	Ex-officio (Section 31(2)(c))
Prof. Surendra Prasad, Director, IIT Delhi	Member	- do -
Prof. Gautam Barua, Director, IIT Guwahati	Member	- do -
Prof. S.G. Dhande, Director, IIT Kanpur	Member	- do -

A

B

C

D

E

F

G

H

A	Prof. Damodar Acharya, Director, IIT Kharagpur	Member	- do -
	Prof. M.S. Ananth, Director, IIT Madras	Member	- do -
B	Dr. S.C. Saxena, Director, IIT Roorkee	Member	- do -
	Prof. Sukhdev Thorat, Chairman, University Grants Commission	Member	Ex-officio (Section 31(2)(d))
C	Prof. Samir K. Brahmachari, Director General (DG), Council of Scientific and Industrial Research (CSIR)	Member	Ex-officio (Section 31(2)(e))
D	Dr. K. Kasturirangan, Chairman, Council of Indian Institute of Science (IISC), Bangalore	Member	Ex-officio (Section 31(2)(f))
E	Prof. P. Balaram, Director, Indian Institute of Science (IISc), Bangalore	Member	Ex-officio [Section 31(2)(g)]
F	Dr. S.S. Mantha, Chairman, All India Council for Technical Education (AICTE)	Member	[Section 31(2)(i)]
G	Prof. C.N.R.Rao, Chairman, Scientific Advisory Council to the Prime Minister	Member (term upto 5.9.2012)	[Section 31(2)(j)]
H	Prof. C.S. Seshadri, Director,	- do -	- do -

INDIAN INSTITUTE OF TECHNOLOGY, KANPUR v. 651
 RAJA RAM VERMA [ASOK KUMAR GANGULY, J.]

Chennai Mathematical Institute			A
Prof. Sabyasachi Bhattacharya, Ex-Director, Tata Institute of Fundamental Research (TIFR), Mumbai	- do -	- do -	B
Dr. Kota Harinarayan, Chairman, Research Council of Central Scientific Instruments Organization (CSIO), National Aerospace Laboratories, Bangalore	- do -	- do -	C
Shri Tarun Das, Chief Mentor, Confederation of Indian Industry, Gurgaon	- do -	- do -	D
Smt. Vasanthi Stanley, MP, Rajya Sabha	Member (co-terminus)	[Section 31(2)(k)]	E
Shri Deepender Singh Hooda, MP, Lok Sabha	- do -	- do -	
Shri Janardhana Swamy, MP, Lok Sabha	- do -	- do -	F
Smt. Vibha Puri Das, Secretary, Deptt. of Higher Education	Representative of the Ministry of Human Resource Development	[Section 31(2)(h)]	G
Ms. Sushma Nath, Secretary, Department of Expenditure, Ministry of Finance	Representative of the Ministry of Finance	- do -	H

A	Shri R. Chandrasekhar, Secretary, Department of Information Technology	Representative of any other Central Government Ministry	- do -
B	Shri Ashok Thakur, Additional Secretary (HE), Ministry of Human Resource Development, Deptt. of Higher Education	Secretary, IIT Council	[Section 31(3)]
C			

45. Under Section 33 of the Act it is the duty of the council to coordinate the activities of all the institutes and to perform all the functions which are specified under Section 33(2) of the Act.

46. Relying on the aforesaid provision of the Act and the re-constituted Council of the I.I.Ts, the learned Solicitor submitted, and in our view rightly, that all major decision making exercise has been left in the hands of the re-constituted Council which is predominantly composed of academicians.

47. It appears from the disclosures made before us that the Council in its 40th meeting held on 19.10.2009 has constituted a committee under the Chairmanship of Dr. Anil Kakodkar, Chairman, Board of Governors, I.I.T Bombay "for suggesting a roadmap for the autonomy and the future of the I.I.Ts as world class institutions for research and higher learning". Pursuant to the said resolution in the 40th meeting of the Council, a Committee has been constituted by the Ministry of Human Resource Development, Government of India by a notification dated 3.2.2010. The prefatory part of the said notification is as follows:-

"In the 40th meeting of Council of IITs held under the Chairmanship of Hon'ble HRM on 19th October, 2009

INDIAN INSTITUTE OF TECHNOLOGY, KANPUR v. 653
RAJA RAM VERMA [ASOK KUMAR GANGULY, J.]

(refer minutes issued vide F. No. 19-3/2009- TS. 1 dated 24th November, 2009), it was decided that a Committee, comprising Dr. Anil Kakodkar, Chairman, BoG, IIT Bombay and four other members to be nominated by him, may be constituted for suggesting a roadmap for the autonomy and the future of the IITs as world class institutions for research and higher learning.

2. Accordingly, it has been decided to constitute a Committee under the Chairmanship of Dr. Anil Kakodkar, Chairman, BoG, IIT Bombay to suggest a roadmap for the autonomy and future of the IITs. Composition of the Committee will be as under:"

48. And the terms of reference of the Committee are as under:-

"The Terms of Reference of the Committee are as follows:

1. To suggest a road-map for strengthening Financial, Administrative and Academic autonomy of the IITs;
2. The issue of autonomy is closely linked with the capacity of institutions to raise their own resources including through increase in fees in the IITs albeit in a gradual manner. While doing so interest of the weaker sections of the society could be taken care of. The committee is to suggest a "means-blind system" wherein scholarships are provided to the deserving, and a system of education loans dovetailed into it. For the students who continue to research and take up teaching assignments as a career, a system of interest, loan scheme could be explored;
3. The Committee to suggest ways and means to retain/attract top B.Tech students within the IIT system and outside to Post Graduate and Ph. D programmes. Institutes should be incentivised by

way of higher funding based upon the number of Post Graduate student enrolled and number of Ph. Ds awarded each year;

- B
4. The Committee could consider the issue of faculty induction and development. Measures to improve the strength of IIT faculty may be suggested for adoption and implementation;
- C
5. To suggest a self primed system within the IITs to achieve the optimal level of intake of students each year (UG and PG), which but for the MHRD initiated OSC expansion programme has remained stagnant. The Committee could explore the possibility of releasing funds to the Institute on per student basis to incentivise growth;
- D
6. To suggest means to raise the resources/corpus of the IITs through research project from the Government, Industry, Consultancy, Donations from alumni, etc., and to explore the possibility of matching grants from the Ministry;
- E
7. During the XI Plan period, the IITs have been in an expansive mode in that it doubled its numbers from 7 to 15. The Committee to take stock of the present expansion programme and also suggest the future course of action in terms of inclusion, expansion and excellence in the XII Plan period and beyond;
- F
8. The Committee will also look into possible synergies that could be developed from not only interaction and collaboration amongst the IITs, e.g., consortium of IITs to take up research projects etc., but also linking up with other national Institutes like IIMs, IISERs, IISc., IITs, NITs, etc. The Committee will also look into the role that IITs have been playing and could play in the future to increase its role as a
- G
- H

human resource and technology provider in support of inclusive national development in a rapidly developing/growing economy; and

A

9. The Committee would also review a few similar exercises that have taken place elsewhere in the world to understand the process involved to arrive at credible recommendations. For this purpose, the Committee could invite a few eminent leaders from some of the successful institutions for discussions and advice. The Committee would also consult different stakeholders, e.g., IIT Management, Faculty, Alumni, Industry, S&T agencies, Technical Education experts, etc. The Committee may also take into account Prof. P. Rama Rao Committee recommendations and others while working out a road-map for IITs to scale new heights.”

B

C

D

49. The learned Solicitor further argued relying on a communication dated 22.7.2010 that in order to minimize the Government's interference in the functioning of the I.I.Ts, it has been decided that the employees of the I.I.Ts instead of addressing their grievance directly to the Ministry or directly to the Visitor should refer their grievances or representations within the institute and institute may evolve a procedure for redressing grievance and appeals of such employees so that the Ministry does not have to intervene. The purpose of issuing the said communication, which has been disclosed in para 3 thereof, is set out below:-

E

F

“I shall be grateful if all references to the Ministry are sent in the rarest of cases. This will go a long way in helping the Division to discharge its responsibilities more efficiently and at the same time strengthen the autonomy issues of the institutes.”

G

50. The learned Solicitor also argued that the Council in its 39th meeting dated 28.1.2009 recommended that the age

H

A of superannuation of the Directors of I.I.T should be enhanced to 70 years and the age of superannuation for faculty members should be enhanced to 65 years. It has also been brought to our notice that the Visitor of the Institute, President of India, has approved the said proposal for making suitable amendment in the statutes of I.I.T. The approval of the Visitor for making suitable amendments in the statutes of I.I.T has also been disclosed before this Court and in the communication dated 20.7.2010 on behalf of the second respondent it has been made clear as follows:-

C "It has also been noticed that many of the provisions contained in the Statutes of IITs have become obsolete or are not updated. You are advised to initiate action to update the provisions of the Statutes. The Statutes of IIT Roorkee which are available on the website of IIT Roorkee could be used as a model for updating the Statutes."

E 51. The learned Solicitor also brought to our notice that the Government of India, Ministry of Human Resource Development has already set up on 29.8.2008 a Committee under the Chairmanship of Professor Goverdhan Mehta and five others to consider the revision of pay scales of the faculty and scientific staff of Central Technical Institutes and Professor Goverdhan Mehta Committee has on 7.02.2009 submitted its report regarding revision in pay and pursuant to such report of the Goverdhan Mehta Committee, the Government of India, Ministry of Human Resource Development has on 18.8.2009 and 16.9.2009 decided to revise the pay of teaching and members of other staff of centrally funded institutions. The attention of this Court has been drawn to the fact that the revision which has been approved by the Ministry is higher than the one recommended by the Goverdhan Mehta Committee. In the forwarding letter given by the said committee, the Chairman of the Pay Committee opined as follows:-

H "The Pay Committee is of the considered opinion that the

acceptance of the recommendations would attract and retain outstanding academic talent in the field of teaching in technical and professional institutions. It would also help in the emergence of India as a major player in the world of Science and Technology.”

52. From the materials which have been disclosed before this Court in the additional affidavit filed by the second respondent, this Court is of the view that autonomy of those institutes is not being diluted. On the other hand an attempt is made by the Government of India to improve the academic ambience of these institutes by recommending extension of age of retirement of the Director of the Institute and of members of the academic faculty. Attempt has also been made to attract the best talent by a progressive revision of the pay scale. From the report of Professor Mehta Committee some portions are excerpted below and which would show that relevant aspects of strengthening the autonomy of the institute coupled with improving the performance of the institute as a centre of excellence has been engaging the attention of the Government of India. Those key concerns addressed in the report are set out below:-

“1.5 The New Challenges

The key, therefore, lies in the expansion - more than ever before- of our higher education base, particularly of science and technology and a better societal context connect. We must, therefore, convert this potential of becoming a developed society and a leading player in World affair in the 21st Century into a reality - and do it real fast. We need many more quality institutions of global academic standing with the highest possible standards in Science, Technology and Management. And also, we need to expand the intake of the existing institutions, to provide opportunities and access to more students, especially from the socially challenged sections of the society.

- A Recent upheavals in the world economy have underscored once again and more urgently the need for investing large resources into quality higher education so as to provide a platform for accelerated innovations, developing cutting edge and sustainable technologies to take care of our emerging needs and also to play a more significant role in the recovery of the world economy.
- B

1.10 What needs to be done?

- C As is obvious from the above, teaching institutions like the IIT, IIM, NIT etc. need to offer, as a first step, better pay scales. And it is not just the scales of pay but a whole package of financial incentives, allowances and other benefits that needs to be offered to faculty members, more specifically to make it attractive at the entry level.

- D However, it may also be recognized that better 'pay package' though essential may not be sufficient for attracting competent persons to the realm of teaching and academia. Institutions may also have to offer better research support and facilities.
- E

- F Institutions also need to create and strengthen more research friendly environment and foster creativity in order to attract new entrants in to the portal of the academic world and also to retain the existing faculty. Additionally, institutions need to devise robust instruments of peer assessment to recognize and reward outstanding merit among the members of the faculty."

- G 53. In view of such disclosure of materials, this Court is satisfied that the autonomy of these institutes is preserved and they are structurally built up as centres of academic excellence and the concern of the Court has been answered and satisfied to a large extent.

- H 54. The appeal, therefore, succeeds. However, this Court

finds that the first respondent had to stay in the quarter for some time more than the scheduled period which is permissible under the Rules and the appellant has charged penal rent for the same. If the first respondent makes a suitable representation within six weeks, from the date of receiving a copy of this judgment, for reducing the amount which has been charged as penal rent from him, the appellant will consider and dispose of the same by a speaking order within two months thereafter in accordance with law but by taking a sympathetic view. A B

55. The appeal is allowed. The order of the High Court is set aside. However, there will be no order as to costs. C

D.G.

Appeal allowed.