

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.04.2017

Delivered on : 01.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

WP.No.22489/2013 & WMP.No.14988/2016

Dr.E.Muralidharan

.. Petitioner

Versus

1. The Secretary
Union of India
Higher Education,
Ministry of Human Resources
Development, Government
of India, New Delhi 110001.

2. Dr.Bhaskar Ramamurthi
Director IIT, Madras,
Chennai 600036.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a writ of Quo Warranto to the 1st respondent to show on what authority the 2nd respondent can hold the post of Director of the Indian Institute of Technology, Madras.

For Petitioner : Dr.E.Muralidharan
Party-in-Person

For R1 : Mr.S.Namonarayan
Central Government Standing Panel
Counsel

For R2 : Mr.Vijay Narayanan
Senior Counsel assisted by
Mr.Karthick Mukundan

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ORDER

The petitioner / Party-in-person has filed this writ petition questioning the authority under which, the 2nd respondent is holding the post of the Director of Indian Institute of Technology, Madras [IIT-M].

2 [a] The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that he received Bachelor of Technology in Chemical Engineering from the University of Madras and M.S., Ph.D., Degrees from IIT-M and during his studies in the said Institute between 1982 and 1990, he served as the Research Affairs Secretary of the students Union for three years and also served as the Member of IIT Senate Sub Committees-Board of Academic Research and Library Advisory Committee.

2 [b] The petitioner would further aver that he was the recipient of "Institute Blues" - Outstanding Role Model Student awarded by the said Institution and he has also received Post Doctoral Research Fellowship from Georgia Institute of Technology, Atlanta, USA and the prestigious "Inoue" Foundation for Science International Fellowship, Japan. The petitioner had also served as the visiting Research Professor at Ehime University Medical School, Japan and he was the third Indian to receive the said prestigious honour. The petitioner would also claim that he is having Memberships in about ten Professional Societies in India and abroad and published and presented more than fifty research papers in National and International Journals and Conferences and based on the research contributions, his profile was listed in Marquis, Who's Who in the World, USA, 1997.

2 [c] The petitioner, after returning from abroad, served as the Executive Committee Member of IIT-M Alumni Association for three years and he have been a designated speaker on the Global Warming and Climatic Change by the Institution of Engineers and the Institution of Indian Chemical Engineers.

2 [d] The petitioner would further claim that he delivered more than fifteen talks in various Forums - Universities, Social Organization etc., and also delivered a talk in the India Science Congress Association's Centenary Year Special Planary Session held in Chennai. The petitioner was also conferred with Lifetime Achievement Award by Dr.M.G.R. Medical University and he has also served as the Member of Hi Power Committee on Academic Development, Anna University, Chennai, and also served as the Appointed Trustee of P.T.Lee

Chengalvaraya Naicker Trust, Chennai, in pursuant to the appointment made by this Court.

2 [e] The petitioner would state that he is hailing from a family of Freedom Fighters and his grandfather was a prominent leader of Indian National Congress and he has also involved himself in various social services and social justice activities mainly for the downtrodden communities, environmental and climatic changes related activities.

2 [f] The petitioner has traced out the establishment of the Indian Institute of Technology in Madras and would state that the Indian Institute of Technology [IIT] is an Institute established by the Act of Parliament called "The Institutes of Technology Act, 1961" [Central Act 59 of 1961] [hereinafter referred to as "the Act"]. There are fifteen IITs in India regarded as the Institutions of National importance and all IITs have a common Act and Statutes, derived from the above said Act. According to the Act and Statutes, His Excellency, the President of India, shall be the Visitor of all IITs and each IIT is governed by the Board of Governors with a Chairman and 11 other members. There is a Council of 32 members to govern all IITs and the Membership include three members of Parliament and the Hon'ble Minister for Education, Union of India and now called "the Ministry of Human Resources Development", is the Chairman of the IIT Council.

2 [g] The petitioner would further state that the Director of IIT is appointed by the Council with the prior approval of the Visitor under Clause 17[1] of the Act and he shall be the Principal Academic and Executive Officer of the Institute and shall be responsible for the proper administration of the Institute and for imparting of instructions and maintenance of discipline. It is also stated by the petitioner that IITs function by the fund allocation provided by the Central Government. The grievance expressed by the petitioner is that as per the news item

\published in "The Hindu" News Daily dated 23.09.2011, the 2nd respondent was appointed as the Director of IIT-M and he took charge on 24.11.2011 for a period of five years on contractual basis. The petitioner invoked the provisions of the Right to Information Act, 2005, to ascertain the details as to the selection and appointment of the 2nd respondent and he was furnished with the information that the 2nd respondent was recommended by the Search-cum-Selection Committee for the said post and His Excellency the President of India, in the capacity of the Visitor of IITs, had approved the appointment of the 2nd respondent. The petitioner would state that the Hon'ble Minister for Human Resources Development [Mr.Kapil Sibal] in his

capacity as the Chairman of IIT Council, took an unilateral decision and appointed the 2nd respondent without the knowledge and approval of the Council and the same is in clear contravention of section 17[1] of the Act. The petitioner would further state that the Council means the Full Council and not Chairman of the Council alone and as such, the decision taken by the Chairman of the Council to appoint of the 2nd respondent as the Director, is per se unsustainable in law and also against the principles of natural justice.

2[h] The appointment of the 2nd respondent was ratified nearly after one year and in the Meeting held to ratify his appointment, the 2nd respondent was also one of the participants. The petitioner also sought information as to whether the appointment of the 2nd respondent has been made with the approval of the Appointment Committee of Cabinet [ACC] and the Central Public Information Officer, Department of Personnel and Training, has furnished information that the said appointment has not been made with the approval of ACC and on that ground also, he is also not competent to hold the post.

2[i] It is also the stand of the petitioner that as per the Transaction of Business Rules, the approval of the 2nd respondent as the Director of IIT-M, which is equivalent of the post of Additional Secretary in Government of India, requires mandatory approval of ACC and admittedly, the said procedure has not been followed. In similar facts and circumstances, the petitioner had filed WP.No.37252/2007 for issuance of a Writ of Quo Warranto, questioning the appointment of Dr.M.S.Ananth as the Director of IIT-M and it was admitted and was allowed and on appeal, stay was granted and pendency of the same, Dr.M.S.Ananth submitted his resignation during May 2011. The petitioner also questioned the fairness of the 2nd respondent in holding the post of Director of IIT-M on the ground that he was the Director of Midas Communications during the period when a scam surfaced and he himself was under the cloud and he is yet to clear his name from that and he has also been involved in serious scam and practices discrimination of Scheduled Caste and Scheduled Tribe in Faculty appointments and the petitioner has also submitted complaints to the National Commission for Scheduled Caste alleging violation of Reservation Policy in the matter of appointment and the Chennai Office of the said Commissionerate conducted enquiry and the 2nd respondent did not cooperate and therefore, communication was also sent to the said Commission at New Delhi, for the purpose of taking action the 2nd respondent by invoking the Civil Court Powers. The petitioner would also allege that his applications for Faculty positions were unjustly rejected solely for the reason that he belongs to Other Backward Class Community and in fact, the 2nd respondent himself has rejected his application for the post of Professor twice in the

year 2012 and 2013 and therefore, continuation of the 2nd respondent in office with anti SC, ST and OBC sentiments may be detrimental to the investigation process. In short, it is the case of the petitioner that the appointment of the 2nd respondent as the Director of IIT-M is against the Institute of Technology Act, 1961, Rules and Statutes framed thereunder as well as against the Constitution and he is a usurper and should not be allowed to continue even for a day in the office and therefore, came forward to file the present writ petition, praying for issuance of a Writ of Quo Warranto and praying for appropriate direction to the 1st respondent to show on what authority the 2nd respondent can hold the post of Director of IIT-M.

3 The writ petition was admitted on 16.08.2013 and notices were ordered.

4 The petitioner, pending disposal of the writ petition, filed WMP.No.14988/2016, praying for grant of stay of Faculty interviews to be conducted by the 2nd respondent without proper post based roster in the advertisement and in gross violation of Reservation Policy of SC/ST and OBC and in the said Miscellaneous Petition, on behalf of the 1st respondent, counter affidavit has been filed.

5 The Under Secretary in the Department of Higher Education, Ministry of Human Resources Development, Government of India, has filed the counter affidavit. It is stated by the 1st respondent that Section 17[1] of the Institute of Technology Act, 1961, provides that the Director of each IIT, shall be appointed by the Council of IITs with the prior approval of the Visitor. Clause 15[3] of the Statutes of IIT-M provides that the Council may appoint the eminent person as Director on contract basis for a period not exceeding five years. With the provision of renewal for further period provided that every such appointment and terms thereof, shall be subject to the prior approval of the Visitor.

6 The IIT Council in its First Meeting held on 25.05.1962, has laid down the procedure for appointment to the post of Director and a decision has been taken that for the regular appointment to the post, it should be advised by the Selection Committee consisting of the Chairman of the Council as the Chairman and the Chairman of the concerned Board of Governors, Chairman of the University Grants Commission [UGC] and one Expert to be nominated by the Chairman of the Council as Members. The 1st respondent would further aver that the Meeting of the said Council are normally held once or twice in a year and in order to ensure timely appointment of the Director, the appointment order of the Director is issued by the Secretary, Council of IITs, after seeking prior approval of the

Visitor through Chairman, Council of IITs and the appointment so made, is placed before the IIT Council in its following Meeting for Ratification.

7 Insofar as the stand taken by the petitioner that the appointment of the 2nd respondent has not been approved by the Appointment Committee of Cabinet [ACC], it is the stand of the 1st respondent that such appointment is not referred to the said Committee as the Statute, namely, the Institute of Technology Act, 1961 and the Statute of IIT-M, govern the field by laying down the procedure for appointment of Director to IIT. The 1st respondent has also invited the attention of this Court to Section 27 of the Act and would state that as per the said section, the first Statutes of each Institute, shall be framed by the Council with the previous approval of the Visitor and the Board may, from time to time, make new of additional Statutes or may amend or repeal the Statutes with previous approval of the Visitor and as per Section 16[1], the Chairman shall ordinarily preside over the Meetings of the Board and Convocations of the Institute.

8 The 1st respondent would further state that with regard to the appointment of the Director of IIT-M, the Search-cum-Selection Committee comprised of Mr.Kapil Sibal - Chairman of IIT, Council, Professor M.M.Sharma, Chairman of BoG, IIT-M, Mr.S.S.Mantha, Acting Chairman, All India Council for Technical Education [AICTE], New Delhi, Professor Ved Prakash, Acting Chairman, University Grants Commission [UGC], New Delhi and Mr.Hari S.Bhartia, Co-Chairman and Managing Director of Jubilant Organosys Limited, New Delhi, in its Meeting held on 29.07.2011, shortlisted the following candidates, viz.,

[1] Prof.R.Krishnakumar, Department of Engineering, Design, IIT-M ;

[2] Prof.Ethirajan Radhakrishnan, Department of Aerospace Engineering, IIT-Kanpur ;

[3] Prof.Bhaskar Ramamurthi, Department of Electrical Engineering, IIT-M [2nd respondent herein] ;

[4] Prof.Ashwani Kumar Gosain, Head of the Department, Civil Engineering, IIT-Delhi ; and

[5] Prof.Krishnamurthy Muralidhar, Department of Mechanical Engineering, IIT-Kanpur.

and the Selection Committee met on 20.08.2011 to consider the claim of the above said eligible candidates. Prof.Ethirajan Radhakrishnan could not attend the discussion as he was in Japan and was also considered in absentia and having personal discussion with the remaining candidates, an unanimous decision has been taken to recommend the name of the 2nd respondent to be

appointed as the Director of IIT-M and His Excellency, the President of India, in the capacity as the Visitor, had also approved the said appointment for a period of five years contract on usual terms and conditions and he took over charge for a period of five years with effect from 23.09.2011. The 1st respondent also dealt with the procedure adopted by the Search-cum-Selection Committee and would state that the said Committee in its First Meeting held on 29.07.2011, scrutinised 64 applications/nominations received for the post of Director, IIT-M and one of the members of the Committee was not able to come and however, sent the shortlisted candidates by E-Mail and the candidates were considered by the Committee and following norms has been prescribed:-

"[a] Candidates above 60 years were not considered.

[b] Short-listing was done on the basis of outstanding academia record [Bhatnagar Awardees and members of various academies], administrative experience at higher level and fulfilling the requirements as indicated in the advertisement."

9 The five candidates mentioned above were shortlisted after following the above said procedure and therefore, it cannot be faulted with. The 1st respondent further averred that with regard to the challenge made to the appointment of Dr.M.S.Ananth - the previous Director of IIT-M, the order passed in the writ petition in favour of the petitioner, was set aside by a Division Bench of this Court, wherein it has been held that the delegation of power by the Council to the Chairman of the Councils, to act on his behalf of the recommendation of the Selection Committee, is permissible and valid and in respect of yet another writ petition filed by the petitioner questioning the appointment of Dr.R.Natarajan, it has been held that once the Council has approved the appointment by accepting the changes in the Council, a Quo Warranto need not be issued. Thus, it is the stand of the 1st respondent that the selection and appointment of the 2nd respondent as the Director of IIT-M, is strictly in accordance with the Act and Statutes and therefore, prayed for the dismissal of the writ petition with cost.

10 The 2nd respondent has filed the counter affidavit denying the allegations / averments made in the affidavit filed in support of the writ petition and would submit that he has participated in the interview conducted by the Search-cum-Selection Committee which met on 20.08.2011 and presented his academic, research and administrative expertise before the Selection Committee and being satisfied with the same, his name

was recommended and it is also approved by the Visitor and as such, his appointment cannot be faulted with and prays for dismissal of the writ petition.

11 The petitioner has filed his reply affidavits to the counter affidavits filed by the respondents 1 and 2 reiterating the stand by him in the writ petition and reiterated his claim that the appointment of the 2nd respondent should have been made prior approval of ACC and admittedly, it has not been done so and also took a stand that the ratification of the 2nd respondent after a lapse of some time is also wholly unsustainable. The petitioner also took a stand that the 2nd respondent has published only about 35 research papers and guided only one Ph.D., student and therefore, he cannot claim to be a person of academic eminence and in fact, the petitioner is having highest academic qualifications in holding the Multi-disciplinary branch of Bio Medical Engineering in the country and while working as the Professor of IIT-M, parallelly served as the Director of a private company, namely, MIDAS Communications, which got involved in huge financial scam, cheating Banks and therefore, prays for allowing of the writ petition.

12 The petitioner / Party-in-person, apart from reiterating his submissions based on the averments made in the writ petition as well as the reply affidavits filed to the counter affidavits of the respondents 1 and 2, would vehemently contend that the appointment of the 2nd respondent should have been done by the Council and though the Hon'ble Minister for Human Resources Development, is the Chairman of the Council, he cannot act unilaterally and in any event, the ratification of the appointment of the 2nd respondent came into being nearly more than one year after the selection and therefore, the procedure contemplated has been given a complete go-by. It is the further submission of the petitioner / Party-in-person that while shortlisting the candidates, one of the members did not participate. Though it is the stand of the 2nd respondent that he has sent his opinion through E-Mail, still it would not satisfy the requirement for the reason that the personal participation and deliberation is important for the reason that a person of eminence alone should hold the office of the Director of IIT-M and the 2nd respondent totally lacks qualification and eminence to be considered for the said post. The petitioner / Party-in-person has drawn the attention of this Court to section 35[1] of the Institute of Technology Act, 1961, and would submit that the said Rule is having application relating to Chapter No.III ; whereas the appointment of the Director would come under Chapter No.II and further invited the attention of this Court to the Government of India [Transaction of Business] Rules and would submit that as per Rule No.6[1],

the Standing Committees of the Cabinet came to be appointed and as per the functions of Appointments of Committees of Cabinet, the Secretariat appointments and above the rank of Joint Secretary in the Central Government, shall require the approval of ACC and admittedly, the Director of IIT-M is equivalent to the post of Additional Secretary, Union of India, and as such, the prior approval ought to have been obtained and admittedly, the said approval has not been obtained prior to the appointment of the 2nd respondent as the Director and that apart, the proposal seeking approval of ACC should be sent only after obtaining Intelligence Bureau and CBC Clearances and in this regard, the petitioner / Party-in-person has invited the attention of this Court to the Letter of the Cabinet Secretary and would submit that while appointing the 2nd respondent as the Director, the Statutory and other requirements have been given a complete go-by, due to mala fide reasons and demotive against the petitioner and would further add that for the reasons best know, the reservation policy has not been followed in letter and spirit while making appointments and apart from raising as a ground in the writ petition, a miscellaneous petition has also been filed praying for stay of the further selection and appointment without following reservation policy.

13 The petitioner / Party-in-person, in support of submissions, placed reliance upon the following unreported judgments of the Hon'ble Supreme Court of India:-

[1] In the case of Shri Mohan Singh and Others Vs. International Airport Authority vide judgment dated 07.11.1996 made in Civil Writ Petition Nos.133 and 2440/1987 ;

[2] In the case of N.Kannadasan Vs. Ajoy Khose and Others vide judgment dated 06.05.2009 made in Civil Appeal Nos.7360, 7368, 7371 & 7372/2008 ;

[3] In the case of State of Bihar and others Vs. Chadreshwar Pathak vide judgment dated 07.08.2014 made in Civil Appeal No.7392/2014 ;

[4] In the case of Dr.Suresh Chandra Verma and Others Vs. The Chancellor, Nagpur University and Others vide judgment dated 21.08.1990 made in Civil Appeal No.1451/1988 ; and

[5] In the case of R.Palaninathan Vs. The Registrar, Indian Institute of Technology, Madras-36, vide order dated 24.04.1990 made in WP.No.12354/1989.

14 Per contra, Mr.Vijay Narayan, learned Senior Counsel assisted by Mr.Karthick Rajan, learned counsel appearing for the 2nd respondent has drawn the attention of this Court to the Institute of Technology Act, 1961, as well as the Statutes framed thereunder and would submit that as per section 8 of the Act, all teaching at each of the institutes shall be conducted by or in the name of the Institute in accordance with the Statutes and Ordinances made in this behalf and as per section 9 [1], the President of India shall the Visitor of every Institute. Section 10 speaks about the authorities of the Institutes and sub-section [c] says that, apart from the authorities of an Institute, viz., the Board of Governors and Senate, such other authorities shall be declared by the Statutes to be the authorities under the Statutes. The learned Senior Counsel, has laid stress upon sections 15 and 17 of the said Act and would submit that as per section 15, subject to the provisions of the Institute of Technology Act, 1961, Statutes and the Ordinance, the Senate of an Institute, shall have the control and general regulation and be responsible for the maintenance of standards of instructions, education and examination in the Institute and shall exercise such other powers and perform such other duties as may be conferred upon or imposed upon it by the Statutes. The selection of the 2nd respondent has been made on merits and his appointment is strictly in conformity with the Statutes and in terms of Section 17[1] of the said Act, his appointment was also had prior approval of the Visitor - His Excellency, the President of India and therefore, it cannot be faulted with. It is the further submission of the learned Senior Counsel that in identical situations, the appointment of Dr.M.S.Ananth, the previous Director of IIT-M, was put to challenge in the form of Quo Warranto filed by the very same petitioner / Party-in-person in WP.No.37252/2007 and it was allowed and challenging the same, Dr.M.S.Ananth and others made a challenge by filing WA.Nos.32 to 34 and 73 of 2009 reported in 2009 [6] MLJ 256 [Dr.M.S.Ananth and others Vs. Dr.E.Muralidharan and others].

15 The petitioner / Party-in-person in the above said writ petition, made a challenge on the same and similar grounds and it was reiterated by him as a respondent in the said writ appeals. A Division Bench of this Court, after taking into consideration various provisions of the Institute of Technology Act, 1961, and Statutes, held that, after full deliberation made by the competent Selection Committee, the Council and other authorities and the approval made from the Ministry of Human Resources Development through its Education Department, Dr.M.S.Ananth was appointed, there was no illegality in the appointment of Dr.M.S.Ananth as the Director of IIT-M and allowed the writ appeals and following the said judgment, the

present writ petition is liable to be dismissed with exemplary cost.

16 The learned Senior Counsel has also advanced the arguments with regard to the issuance of a writ of Quo Warranto and invited the attention of this Court to the judgments reported in :-

[1] 2014 [1] SCC 161 [Central Electricity Supply, Utility of Odisha Vs. Dhobei Sahoo and Others] ;

[2] 2005 -II-LLJ [J&K] 1059 [Mukhtar-ul-Aziz Vs. State of Jammu & Kashmir & others];

[3] 2006 [11] SCC 731 [II] [B.Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees Association and others].

and would submit that in the light of the ratio laid down in the above cited judgments, the present writ petition is not maintainable and prays for dismissal of the same with cost.

17 In response to the submissions made, the learned Standing Counsel appearing for the 1st respondent has also drawn the attention of this Court to the counter affidavit filed by the 1st respondent and would submit that due and proper procedure, strictly in accordance with the Act and Statutes, was followed while selecting the 2nd respondent as the Director of IIT-M and it was also approved by the Visitor and ratified by the Council and as such, it cannot be faulted with.

18 The petitioner / Party-in-person in response to the submissions made by the learned Standing Counsel appearing for the 1st respondent and the learned Senior Counsel appearing for the 2nd respondent, would submit that admittedly no advertisement has been issued and the petitioner was also one of the applicants and however, while shortlisting the candidates for deliberation / discussion, no transparent procedure has been followed and the earlier judgment of this Court reported in 2009 [6] MLJ 256 [cited supra], cannot be cited as a stare decisis and a binding precedent as the facts projected in this case, are entirely different. The petitioner / Party-in-person also reiterated his submission that the Council has no power to ratify and its power cannot be delegated to the Chairman of the Council and therefore, prays for allowing the writ petition.

19 This Court paid its anxious consideration and best attention to the rival submissions and also perused the

materials placed on record as well as the decisions relied on by the petitioner / Party-in-person and the learned Senior Counsel appearing for the 2nd respondent.

20 It is relevant to extract the following provisions of the Institute of Technology Act, 1961 [Central Act 59 of 1961]:-

"Section 3-Definitions:-

In this Act, unless the context otherwise requires:-

[a] "Board", in relation to any institute, means the Board of Governors thereof :

[b] "Chairman" means the Chairman of the Board :

[d] "Council" means the Council established under Subsection [I] of section 3I ;

Section 9 [1]-Visitor:- The President of India shall be the Visitor of every Institute.

Section 10-Authorities of Institutes:- The following shall be the authorities of an Institute, namely-

[a] a Board of Governors ;

[b] a Senate ; and

[c] Such other authorities as may be declared by the Statutes to be the authorities of the Institute.

Section 16[1]-Chairman of Board:-

The Chairman shall ordinarily preside at the meetings of the Board and at the Convocations of the Institute.

Section 17[1]-Director:-

The Director of each Institute be appointed by the Council with the prior approval of the Visitor.

Section 31-Establishment of Council:-

[1] With effect from such date as the Central Government may, by notification in the Official Gazette, specify in this behalf, there shall be established a Central body to be called the Council.

[2] The Council shall consist of the following members :

[a] the Minister in charge of technical education in the Central Government, ex-officio, as Chairman;

[b] the Chairman of each Institute, ex-officio,

[c] the Director of each Institute, ex-officio ;

[d] the Chairman, University Grants Commission, ex-officio ;

[e] the Director-General, Council of Scientific and Industrial Research, ex-officio;

[f] the Chairman of the Council of the Indian Institute of Science, Bangalore, ex-officio ;

[g] the Director of the Indian Institute of Science, Bangalore, ex-officio ;

[h] three persons to be nominated by the Central government, one to represent the Ministry concerned with technical education, another to represent the Ministry of Finance and the third to represent any other Ministry;

[i] one person to be nominated by the All India Council for Technical Education.

[j] not less than three, but not more than five, persons to be nominated by the Visitor, who shall be persons having special knowledge or practical experience in respect of education, industry, science or technology.

[k] three members of Parliament, of whom, two shall be elected by the House of People from among its members and one by the Council of States from among its members.

[3] An officer of the Ministry of the Central Government concerned with technical education shall be nominated by that Government to act as the Secretary of the Council.

....

Section 34 - Chairman of the Council:-

[1] The Chairman of the Council shall ordinarily preside at the Meetings of the Council ;

[2] It shall be the duty of the Chairman of the Council to ensure that the decisions taken by the Council are implemented ;

[3] The Chairman shall exercise such other powers and perform such other duties as are assigned to him by this Act.

21 The following provisions from the Indian Institute of Technology, Madras, Statutes, have also been extracted below:-

1-A Definitions:-

[g] "Council" means the Council of the Institute.

....

12-Appointments:-

[1] All posts the Institute shall normally be filled by Advertisement; but, the Board shall have the power to decide, on the recommendations of the Director, that a particular post be filled by invitation or by promotion from amongst the members of the staff of the Institute.

[2] While making appointments, the Appointing Authority shall take into consideration of the claims of the members of the Scheduled Caste and Scheduled Tribes consistently with the maintenance of efficiency of administration and the teaching at the Institute.

[3] Selection Committees for filling up of post under the Institute [other than the posts on contract basis] by advertisement or by promotion from amongst the staff of the Institute shall be constituted in the manner laid.

Section 15-Appointment of Contracts:-

[1] Notwithstanding anything contained in these Statutes, the Board, may in special circumstances, appoint an eminent person on contract for a period not exceeding five years, with a provision for renewal for further period, provided that every such appointment and the terms thereof shall be subject to the prior approval of the Visitor.

[2] Subject to the provisions contained in the Act, the Board may appoint any person on contract in the prescribed scales of pay and on the terms and conditions applicable to the relevant post for a period not exceeding five years with a provision of renewal for further period. For making such appointments, the Chairman may, at his discretion, constitute such ad hoc committees, as the circumstance of each case may require.

[3] Selection Committees for filling up of

posts under the Institute (other than the posts on contract basis) by advertisement or by promotion from amongst the members of staff of the Institute shall be constituted in the manner laid.

22 In exercise of the powers conferred by Section 35 of the Institute of Technology Act, 1961, the Ministry of Scientific Research and Cultural affairs had framed the rules called " the Council (Institute of Technology) Rules, 1962". It is relevant to extract the Rules 4 and 5:

Rule 4 :-

The meetings and the manner of conducting business there at

[1] The Council shall meet atleast once during a calendar year.

[2] Meetings of the Council shall be convened by the Chairman of the Council either on his own initiative or at the request of the Secretary or on

a requisition signed by not less than four members of the Council.

[3] Ten members shall form a quorum for a meeting of the Council.

[4] The Chairman of the Council, if present, shall preside at every meeting of the Council. In his absence, the member shall elect one from amongst themselves to preside at the meeting.

[5] A written notice of every meeting shall be sent by the Secretary to every member at least three weeks before the date of the meeting. The notice shall state the place, date and time of the meeting.

[6] The notice of a meeting may be delivered either by hand or sent by a registered post at the address of each member, as recorded in the office of the Council and if so, send, shall be deemed to be duly delivered at that time at which notice would be delivered in the ordinary course of post.

[7] Agenda for a meeting shall be circulated by the Secretary to the Member atleast 10 days before a meeting.

[8] Notices of motions for inclusion of any item in the agenda must reach the Secretary at least a week before the meeting. The Chairman of the Council may however, permit

inclusion of any item for which due notice has not been received.

[9] The ruling of the Chairman of the Council in regard to all questions of the procedure shall be final.

[10] The Minutes of the proceedings of a meeting of the Council shall be drawn up by the Secretary and circulated to all the members of the council, the minutes, together with any amendments suggested shall be placed for confirmation of the council at its next meeting. After the minutes are confirmed and signed by the Chairman of the Council, they shall be recorded in a minute book which shall be kept open for inspection of the members of the council at all times during office hours.

[11] All questions considered at the meetings of the council, shall be decided by a majority of the votes of the members present, including the Chairman of the Council. If the votes are equally divided, the Chairman of the Council shall have a second or casting vote.

Rule 5:-

Functions and manner of exercising thereof-

[a] The council shall exercise such powers and perform such duties as are assigned to it by the Act.

[b] The Council may exercise its functions either directly or delegate such of its functions as considered necessary to the Chairman of the Council. The actions taken by the Chairman of the Council, in exercise of such a delegation, shall be reported to the Council at its next meeting.

[c] Where it is not expedient to convene a meeting, the Secretary may with the approval of the Chairman of the Council, circulate such item or items, as are considered necessary, among the members and obtain their comments to enable the Chairman of the Council to take decisions thereon. Such matters shall be reported to the Council at its next meeting.

[d] The Council may set up such Committee or Committees, standing or ad hoc, with definite terms of reference, as are considered necessary. The report or reports of such Committee or Committees shall be placed for consideration and decisions of the Council at its meeting."

23 It is also brought to the knowledge of this Court that the Council at its 14th Meeting held during the year 1974, had also delegated the power of appointment of Directors of the existing IITs to the Ministry of Human Resources Development who was to be advised by the Search-cum-Selection Committee - Constitution of which had been stipulated at the First Meeting of the Council held during the year 1962, and thereafter, the matter should be placed before the Council for opinion at the next Meeting.

24 As per section 16[1] of the Act, the Chairman of the Board shall ordinarily preside at the meetings of the Board and at the Convocations of the Institute and sub-section [3] stipulates that the Chairman shall exercise such other powers and perform such other duties as may be assigned to him by this Act or Statute.

25 Insofar as the selection and appointment of the 2nd respondent on contract basis is concerned, as per the Counter affidavit of the 1st respondent, the Meeting of the Search-cum-Selection Committee comprising of the Minister for Human Resources Development, who is also the Chairman of IIT Council along with four others, was held on 29.07.2011 and five candidates were shortlisted which include the 2nd respondent herein - the details of which, have been enumerated in the earlier paragraphs. The Counter Affidavit further proceeds that the Search-cum-Selection Committee met again on 20.08.2011 at New Delhi and one of the candidates, namely, Prof.Ethirajan Radhakrishnan, was help up at Tokyo and his candidature was also treated in absentia and personal discussion was held with four other candidates present and the Search-cum-Selection Committee unanimously recommended the name of the 2nd respondent to be appointed as the Director of IIT-M and it was submitted before His Excellency, the President of India, in his capacity as the Visitor of the Institute and it was also approved. The primordial submission made by the petitioner / Party-in-person is that it is only the Council can select and appoint the Director of IIT and the Search-cum-Selection Committee cannot undertake that exercise and even for the sake of argument, it was competent to do so, the power of the Council cannot be delegated to the said Sub Committee and in the absence of any specific rule, the ratification cannot be done and in the case on hand, the ratification was given nearly one year from the appointment of the 2nd respondent and in the Meeting, he has also participated and as such, fair and transparent procedure has not been followed.

26 The said submission made by the petitioner / Party-in-person though initially appears to be attractive, cannot hold good for the reason that as per section 10[1] of the

Act, such other authorities as may be declared by the Statutes to be the authorities of the Institute. Section 16[1] contemplates that the Chairman shall ordinarily preside at the Meetings of the Board and at the Convocations of the Institute and sub-section [3] states that "the Chairman shall exercise such other powers and perform such other duties as many be assigned to him by this Act [The Institute of Technology Act, 1961] or the Statutes".

27 The Council [The Institute of Technology] Rules, 1962, framed by the Ministry of Scientific Research and Cultural Affairs in S.O. 1793 dated 02.06.1962 stipulates among other things, that ruling of the Chairman of Council with regard to all questions of procedure shall be final [Rule 4[i]]. Rule 5 speaks about the functions and manner of exercising thereof and sub-rule [a] states that the Council shall exercise such powers and perform such duties as are assigned to it by the Act and as per sub-rule [b], "the Council may exercise its functions either directly or delegate such of its functions as considered to be necessary to the Chairman of the Council. The actions taken by the Chairman of the Council, in exercise of such a delegation, shall be reported to the Council at its next meeting". Sub-rule [d] of Rule 5 provides that, "the Council may set up such Committee or Committees, standing or ad hoc, with definite terms of reference, as are considered necessary. The report or reports of such Committee or Committees shall be placed for consideration and decisions of the Council at its meeting".

28 The 1st respondent, in paragraph No.5.2 of the Counter affidavit would state that IIT Council, in its First Meeting held on 25.05.1962, has laid down the procedure for appointment to the post of Director and it decided that for regular appointments to the post, it should be advised by the Selection Committee consisting of the Chairman of the Council as Chairman and Chairman of the concerned Board of Governors, Chairman of the University Grants Commission and one expert to be nominated by the Chairman of the Council as members and would further aver that since the Meeting of the Council are normally held once or twice in a year and in order to ensure timely appointment of the Director, the appointment order of the Director is issued by the Secretary, Council of IITs after seeking prior approval of the Visitor through the Chairman, Council of IIT and the appointment so made, is placed before the IIT Council in its following Meeting for ratification.

29 In the light of the said procedure laid down, the candidature of the 2nd respondent for the post of the Director, IIT-M was also considered along with four others and after deliberation, he was found meritorious to be selected and appointed as the Director of IIT-M on contract basis and the

said procedure cannot be faulted with in the light above cited statutory provisions.

30 At the same time, this Court is of the considered view that insofar as shortlisting candidates are concerned, more transparency should be in place. In sub-para [vi] of paragraph No.14 of the counter affidavit of the 1st respondent that the Search-cum-Selection Committee, in its First Meeting held on 29.07.2011, scrutinised 64 applications / nominations received for the post of Director of IIT-M and a Member of the Committee who could not come, sent the shortlisted candidates by E-Mail which was considered by the Committee and after considerable discussion, a decision has been taken to follow the following procedure, viz., [1]candidates above 60 years were not considered ; and [2]shortlisting was done on the basis of the outstanding academic record [Bhatnagar Awardees and members of various academies], administrative experience at higher level and fulfilling the requirements as indicated in the advertisement and based on the above criteria, out of 64 applications, five were shortlisted and insofar as the requirement No.2 is concerned, it appears to be subjective and in all fairness, the 1st respondent should have put the candidates on notice as to how the shortlisting has been done. Therefore, in future, the 1st respondent shall make every endeavour to put the applicants/candidates on notice in advance as to the procedure and the manner in which the shortlisting is being done and it would definitely avoid favouritism and ensure transparency in selection and appointment to the said post.

31 The materials placed before this Court would indicate that the process of selection was initiated by publishing the vacancy in prominent Dailies, including Employment News dated 21-27.05.2011 and was also uploaded in the websites of the Ministry and Pan IIT, besides addressing letters to over hundred eminent and distinguished personalities in various educational, scientific and management institutions soliciting their recommendations in respect of eminent persons suitable to the post of Director of IIT and the said fact has also been stated in sub-para [iv] of paragraph No.14 of the counter affidavit filed by the 1st respondent. Therefore, with regard to the manner of inviting applications for filling up the post of the Director in IIT on contract basis, this Court is of the opinion that a fair procedure has been followed and as already pointed out, while shortlisting the candidates, it was always better to put them on advance notice as to the procedure to be done for doing that exercise.

32 The petitioner / Party-in-person also made a vehement submission that since the post of Director, IIT-M is equivalent to the post of Additional Secretary to Government of

India, it should have been gone before ACC and admittedly, it has not been done so.

33 In the considered opinion of the Court the said submission lacks merit and substance for the reason that the provision of the Institute of Technology Act, 1961 and the Statutes of the Indian Institute of Technology Act, Madras, carve out the exception to the said procedure.

34 Paragraph No.[viii] of the Office Memorandum dated 03.07.2006 issued by the Department of Personnel and Training, Office of the Establishment Officer, Government of India, bearing No.28/13/2006-EO [SM II], "all appointments which are covered by the specific Statutes, are to be carried out, on the basis of the statutory provisions. Wherever the Statutes provide for an appointment, to the post, with the approval of the Central Government, appointment to the post of Chief Executives, of the Pay Scale of Rs.18400-22400 and above, will be within the purview of ACC. In cases of Statute, which do not lay down the manner of recruitment, appropriate rules may be framed, under these Statutes for such recruitments, in such a way, that they are in harmony with the extent of the orders of ACC". In the light of the said Memorandum coupled with the provisions of the Institutes of Technology Act, 1961 and the Statutes of IIT, Madras, this Court is of the view that the appointment of the Director of IIT-M, need not be placed before ACC.

35 Let this Court considers the decisions relied on by the petitioner / Party-in-person as well as by the learned Senior Counsel appearing for the 2nd respondent.

36 With regard to one R.Palaninathan, as to his non-selection to the post of Professor in IIT-M, filed WP.No.12354/1989 and vide order dated 24.04.1990, a Single Bench of this Court has held that, "if for whimsical reasons, the candidate is not called for interview or if the candidate is omitted to be called for interview without assigning any reason, it would amount to arbitrary power of exercise and violation of Article 14 and 16 of the Constitution of India and as per Statute 12[10], the Selection Committee shall examine the credentials of all persons who have applied." This Court, in the earlier paragraphs, has also observed with regard to the shortlisting of the candidate, the concerned candidate/s shall be put on notice in advance as to the manner in which the shortlisting is to be done. Therefore, in future, the said procedure is to be adopted.

37 The Judgment of the Hon'ble Supreme Court in Chandreswar Pathak 's case [cited supra], dated 07.08.2014, has

laid down the proposition that the advertisement should be issued giving liberty to the eligible candidates to compete and participate in the selection process and in the light of the stand of the 1st respondent in sub-para [iv] of paragraph No.14 of the counter affidavit, after due and proper advertisement and public notice only, the selection was done.

38 In Shri Mohan Singh's case [cited supra], dated 07.11.1996, the interpretation of the word "shall" came up for consideration and the Hon'ble Supreme Court, by following earlier decisions, observed that normally the word "shall", prima facie is mandatory but the Court may ascertain the real intention of the legislature by carefully attending the whole scope of the Statute. This Court has already rejected the submission made by the petitioner / Party-in-person that the Council alone vest with the power to select and appoint the Director of IIT and therefore, the above cited judgment has not application to the case on hand.

39 The learned Senior Counsel appearing for the 2nd respondent had cited three decisions as to the scope of Quo Warranto. In the decision reported in 2006 [11] SCC 731 [B.Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees Association and others], the Hon'ble Supreme Court, on the facts of the case, in paragraph No.70, has held that there is no violation of statutory provision and therefore, a writ of quo warranto does not lie and if there be any doubt, it has to be resolved in favour of the upholding authority and also placed reliance upon the judgment reported in AIR 1968 SC 1495 [Statesman Private Limited Vs. H.R.Deb], wherein, it has been held that "the High Court, in a Quo Warranto proceedings, should be slow to pronounce upon the matter unless there is a clear infringement of the law".

40 The said judgment was considered and followed by the Jammu and Kashmir High Court in the decision reported in Mukhtar-ul-Aziz [cited supra], and a Division Bench of the said Court, after taking into consideration the decision rendered by this Court reported in AIR 1961 Mad 450 [A.Ramachandran Vs. A.Alagiriswami], wherein, it has been held that "the question of alleged motive and purpose supposed to constitute the background for the order of appointment of the respondent are wholly foreign to the scope of quo warranto proceedings." The Division Bench also extracted a portion of the judgment rendered by the Hon'ble Apex Court in Dineshwar Prasad Vs. State of Bihar reported in AIR 1980 Patna 54, which reads thus:-

"...

The arguments which had been advanced before us, were good arguments and bit to be considered in a case where there is a prayer for the issue

of writ of certiorari. The scope of quo warranto, as it has been discussed earlier, is very limited and this Court has to see whether the appointment of respondent No.6 is by proper authority and in accordance with law. I may, further, add that possession of public office under a Government order is not usurpation of office for which alone writ of quo warranto lies. Even if Government Order is violative of fundamental rights or against the rules and procedure laid down under the law, it will not be void though liable to be quashed by writ of certiorari."

41 In the decision reported in 2014 [1] SCC 161 [Central Electricity Supply Utility of Odisha and others Vs. Dhobei Sahoo and others], in paragraph No.21, it has been held that, "the jurisdiction of the High Court while issuing the writ of Quo Warranto is a limited one and can only be issued when the person holding public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart..... The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority."

42 In the light of the ratio laid down in the above cited decisions with regard to the issuance of a writ of quo warranto, the discretion vested with this Court to issue a quo warranto is very limited and in the considered opinion of the Court, the selection and appointment of the 2nd respondent to the post of the Director of IIT-M has been done in accordance with the provisions of the Institute of Technology Act, 1961 and Statutes.

43 The learned Senior Counsel appearing for the 2nd respondent has placed much reliance upon the decision reported in 2009 [6] MLJ 256 [cited supra] and it is contended that the points urged in this writ petition were urged in the said case also and those grounds were rejected and since the petitioner / party-in-person herein is the respondent in the said decision, in all fairness, it is not open to him to reiterate the submissions, in this present litigation.

44 This Court, after going through the said decision, is of the considered opinion that the very same points were urged by the petitioner / Party-in-person in WP.No.37252/2007 filed for issuance of a writ of quo warranto against Dr.M.S.Ananth, the previous Director of IIT-M. It is relevant to extract the following paragraphs from the said judgment:-

"...

22.A conjoint reading of the aforesaid sections 33[2][b], 35[2][i], of the IIT Act, Rule 5[b] of the Rules and the Resolutions passed by the Council on 25.05.1962, 13.09.1974, 12.01.1983, 10.06.1983 and 20.02.1999, it will be evident that the delegation of power by the Council to the Chairman of the Council to act on his behalf of the recommendation of the Selection Committee, is permissible and valid. The procedure followed for the last 46 years in the matter of appointment of the Director, after giving opportunity to all the eligible persons within the country, being the precedent, and having been not questioned by any person, is in consonance with Articles 14 and 16 of the Constitution of India.

...

24.In fact, similar matter fell for consideration before a Division Bench of this Court when appointment of one Dr.R.Natarajan as Director of IIT-M, was challenged in Writ Petition No.12128 of 1998. A Division Bench of this Court, by its order, dated 14.2.2000, held as follows in paragraphs 19 and 22:

"19.Though the submission of the learned counsel appearing for the petitioner that the appointment of the 1st respondent as Director was not made by the Council and thereby the procedure prescribed has not been followed in letter is correct, in substance the appointment of the 1st respondent as Director has been made with the concurrence of the Council. Though the petitioner has originally raised an objection to the effect that no prior approval was obtained from the Visitor, the learned counsel has not pressed the said objection, in view of the fact that prior approval has been obtained from the Visitor. So, the said submission of the learned counsel that the appointment of the 1st respondent to the post of Director, without following the procedures contemplated under the Act, cannot be sustained, cannot be countenanced.

...

22. In the present case as no dispute was raised regarding competency of the 1st respondent to occupy the said post, he can be re-appointed by the Council. Merely because the said procedure of appointment by the Council was not followed, the Council has approved the said appointment by accepting the changes in the Council, and so this Court need not issue a writ of quo warranto. Moreover, the Chairman of the Council exercising power delegated to him by the Council under Rule 5 of the Rules has passed the order. So, if such writ is issued, it would be futile, as the defect if any, can be cured by immediate re-appointment. As quo warranto is not a writ of right, and it is in the discretion of the Court, to refuse or grant it is according to the facts and circumstances of the case. In view of the above, we find it difficult to accept the submission of the learned counsel appearing for the petitioner, with respect to the appointment of the 1st respondent to the post of Director, IIT, Madras."

45 The petitioner / Party-in-person put forth the contention that the ratification of the appointment of the 2nd respondent cannot be done by the Council at a later point of time and admittedly, it has been done belatedly. Ratification means, "to conform, by expressing consent, approval on formal sanction." To approve means "to have or express the favourable opinion of, to accept as satisfactory" [Government of NCT of Delhi and another Vs. Dr.R.C.Anand and another reported in 2004 [4] SCC 615].

46 The Act and Statute gives powers to the Chairman to take a decision and the appointment was also approved by the Visitor and as such, there is nothing wrong in ratifying the same by the Council at a later point of time and it is also pertinent to point out at this juncture that as per the counter affidavit of the 1st respondent, the Meetings of the Council are normally held once or twice in a year and in order to ensure timely appointment, the set of procedure is followed including ratification and therefore, it cannot be faulted with. However, it is to be pointed out at this juncture that in the 46th Meeting of the Council of IIT held on 07.01.2013, one of the Agendas is with regard to the ratification of appointment of Directors of IIT-Madras, IIT-Kanpur, IIT-Gorakput and the Directors of IIT-

Madras [2nd respondent herein] IIT-Kanpur, had also participated and their participation can be termed as infraction, having no serious consequences and in future, when such a kind of ratification comes, the persons concerned, should not be a part of that process, at least for that subject.

47 This Court carefully scanned and scrutinised the entire materials and considering the rival submissions, is of the considered opinion that the points urged by the petitioner / Party-in-person lack merit, especially, in the light of the judgment reported in 2009 [6] MLJ 256 [DB] [cited supra].

48 It is also the submission of the petitioner / Party-in-person that the Reservation Policy is not followed in letter and spirit and he has also filed WMP.No.14988/2006. On behalf of IIT-M, counter affidavit has been filed and in paragraphs No.6 and 7, it has been specifically stated that the Reservation Policy is followed and in the light of the admission of students as well as recruitment, in paragraph No.7 it is stated that that "in IITs, there is a flexi-cadre system by which, total number of posts alone are fixed and are not distributed grade wise".

49 The Hon'ble Supreme Court of India in the judgment dated 21.08.1990 in CA.No.1451/1988, formulated the following questions for determination:-

"[i] Whether the employment notice issued by the respondent - University on July 27, 1984, ought to have indicated reservations post wise, and

[ii] Whether assuming that the said notice was invalid the termination of services of the appellants on April 21, 1987 was valid?"

50 The Hon'ble Supreme Court of India found that the Nagpur University in the Employment Notice had mentioned about the total number of reservation, categorywise, but not subject wise. The Hon'ble Apex Court in paragraph No.11 of the said judgment observed that, "according to us, the word "post" used in the context as a relation to the faculty and discipline or the subject for which, it is created. When, therefore, reservations are required to be made "in post", reservations have to be post wise, i.e., subject wise. The mere announcement of the number of reserved posts is no better than inviting applications for post without mentioning the subject for which the posts are advertised" and in paragraph No.14, concluded as follows:-

"...

14.We are, therefore, in complete agreement

with the view taken by the Full Bench that the employment notice dated July 27, 1984, was bad in law since it had failed to notify the reservations of the posts subjectwise and had mentioned only the total number of reserved post without indicating the particular post so reserved subjectwise."

51 The 1st respondent shall take note of the said decision and issue appropriate guidelines / instructions in the matter of reservation for SC, ST and OBC candidates in selection and appointment of posts in IITs.

52 This Court, having found that this writ petition lacks merit, is not inclined to issue a writ of quo warranto as prayed for by the petitioner / Party-in-person.

53 In the result, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

AP
To

1.The Secretary
Union of India
Higher Education,
Ministry of Human Resources
Development, Government
of India, New Delhi 110001.

2. Dr.Bhaskar Ramamurthi
Director IIT, Madras,
Chennai 600036.

+2 CCs to Mr. Dr. E. Muralidharan, Advocate sr 39328

WP.No.22489/2013

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