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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 16th November, 2021*

+ **W.P. (C) 517/2020 and CM Appl. Nos.1395/2020, 19625/2020
and 18965/2021**

DR. J. THULASEEDHARA KURUP PETITIONER
Through: Mr. Anunaya Mehta and Mr. Nishe
Rajen Shonker, Advocates

Versus

NATIONAL SCHOOL OF DRAMA
BAHAWALPUR HOUSE AND ORS.RESPONDENTS
Through: Ms. Tamali Wad and Ms. Aayushi
Singhal, Advocates for R-1
Ms. Suparna Srivastava, CGSC
with Mr. Tushar Mathur, Advocate
for R-2 & 3

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. By way of the present writ petition, Petitioner seeks a writ of mandamus to the Respondents to make appointment to the post of Director, National School of Drama, as per the result of the selection process initiated on 28.07.2018, in a time-bound manner.
2. Brief narrative of facts, as set out in the writ petition, is that National School of Drama (hereinafter referred to as 'NSD') is a premier Institution in India for training and development of theatre personalities, and numerous noted professionals in the artistic space are alumni of the

said Institution. Director, NSD is the *de-facto* Chief Executive of the Institution.

3. Vacancy for the post of Director, NSD was notified on the website of NSD on 28.07.2018. Tenure of the Director was five years with retirement age fixed at 62 years. Last date for submission of applications was 15.09.2018. Petitioner applied for the said post and received an interview call letter. Interviews were scheduled on 24.10.2018 and 25.10.2018. Petitioner was interviewed on 24.10.2018 by a Search-cum-Selection Committee (hereinafter referred to as 'Committee'), comprising of eminent personalities.

4. Petitioner learnt from reliable sources that his name had been unanimously recommended for the post and was ranked No.1, but there were forces working and lobbying for another candidate. Apprehending that his name may not be cleared for appointment, Petitioner sent a representation dated 22.11.2018 to the Hon'ble Prime Minister. RTI applications were also filed seeking information on the status of the selection process.

5. Since a period of six months from the dates of the interviews and nine months from the date of Notification of the vacancy had elapsed and no appointment was forth coming, despite there being no impediment in appointment, Petitioner preferred a writ petition being W.P.(C) No.5177/2019 before this Court. Direction was sought to the Respondents to make appointment to the post of Director in accordance with the result of the selection process. Vide order dated 13.05.2019, this Court disposed of the writ petition directing Respondent No.2 therein/Ministry of Culture, Government of India, to pursue with the Appointments

Committee of the Cabinet (hereinafter referred to as 'ACC')/Respondent No. 3 herein, since the Court was informed that the matter was pending with Respondent No.3 for approval. Court also observed that it expected Respondent No. 3 to take a decision within two months from the date of receipt of the order of the Court.

6. It is pleaded that in brazen disregard of the Court order, Respondent No.2/Ministry of Culture sent the file containing the proposal, only on 11.07.2019, i.e. just two days before the period of two months was coming to an end. On making enquiries with Respondent No.2, Petitioner was informed, orally, that certain complaints had been received against him and was advised to submit a detailed affidavit responding to the allegations. Petitioner sent an affidavit rebutting the allegations and rendering his explanation. By a communication dated 05.09.2019, Petitioner was informed that certain complaints were received pertaining to his application and was directed to furnish his comments. The allegations pertained to particulars furnished by the Petitioner in his Bio-Data. Petitioner furnished his comments, but was subsequently informed, on making an enquiry, that certain issues with regard to his qualifications were being examined and the complaint had been sent to Calicut University for its comments. Being unsuccessful in getting appointment to the post of Director, Petitioner approached this Court and filed the present writ petition.

7. On 15.01.2020, notice was issued and Respondents were directed to file their respective counter affidavits within two weeks. Be it mentioned that Respondent No.1 herein is NSD, Respondent No.2 is the Ministry of Culture and ACC has been impleaded as Respondent No.3.

Counter affidavits were not filed within the time granted by the Court. During the pendency of the petition, Respondent No.1 issued another Notification dated 17.07.2020, inviting fresh applications for the post of Director, NSD. This prompted the Petitioner to prefer an application being CM No.19625/2020 for an *ad-interim* order staying the Notification and directing the Respondents not to fill the vacancy, till the writ petition was finally decided by the Court.

8. Notice was issued in the application on 20.08.2020, returnable on 28.08.2020 and thereafter, with the consent of the learned counsels for the parties, the writ petition was listed for final hearing.

9. As there was no stay on the process of selection, pursuant to the fresh Notification, Respondent No.1 invited the prospective candidates for interviews on 24.06.2021. This triggered filing of a fresh application by the Petitioner, being CM No.18965/2021, seeking stay on the interview process and directing the Respondents not to fill up the vacancy, till the writ petition was finally decided. Vide order dated 23.06.2021, Court permitted Respondent No.1 to continue with the interview process but restrained Respondent No.1 from publishing the result of the interview and/or issuing the appointment letter.

10. Detailed reply/counter affidavit was filed on behalf of Respondent No.2/MOC as well as Respondent No.1/NSD.

CONTENTIONS ON BEHALF OF THE PETITIONER

11. Petitioner emerged as a successful candidate in the interview and was ranked No.1 in the panel by the Committee. Doctrine of Legitimate Expectation clearly applies and Petitioner has a vested right to claim that

the selection process be brought to its logical conclusion and the name of the Petitioner be placed before Respondent No.3 for approval.

12. This Court vide order dated 13.05.2019 had directed Respondent No. 2 to pursue the matter with Respondent No.3 with an observation that it expected Respondent No.3 to make the appointment within two months from the date of receipt of the order. However, Respondent No. 2 forwarded the file to Respondent No.3 only on 11.07.2019, just two days before the expiry of period of two months, within which the Court expected a decision to be taken by Respondent No.3. The delay in pursuing the matter was to overreach the order of the Court and defeat the valuable right of the Petitioner, i.e. consideration by Respondent No.3. Stand taken by Respondent No.2, to justify the delay that complaints were received against the Petitioner, is baseless and ill-founded as it was known that the allegations were false and frivolous. Petitioner satisfied all the eligibility conditions and yet time was wasted in making enquiries, even overlooking the fact that the complaints were so well timed, i.e. post the order of the Court, which was not a mere co-incidence.

13. It is admitted by Respondent No.2 in unequivocal terms that Respondent No. 2 had, vide its letter dated 11.07.2019, proposed the name of the Petitioner for appointment to Respondent No.3 and reiterated the same on 04.11.2019, also informing Respondent No. 3 that character and antecedents of the Petitioner would be verified only after the approval was granted. It needs to be highlighted that while Respondent No.2 thereafter changed its stand and informed Respondent No.3 that on expiry of period of one-year, the panel had lapsed owing to the provisions of DoPT O.M. dated 30.07.2007, Respondent No.3 was clearly of the

opinion that since the panel recommended by the Committee was still under consideration, the stipulation in the O.M that panel shall be valid for one year, may not be relevant.

14. Action of Respondent No. 2 in sending the proposal as late as on 11.07.2019 amounts to contempt of the Court order and needs to be deprecated. Having delayed completion of the process, Respondent No.2 cannot be permitted to take a stand that life of the panel has expired, to Petitioner's detriment. Had Respondent No.2 taken the directions of the Court seriously and complied with them on time, Respondent No.3 would have been in a position to accord consideration to the proposal sent on 11.07.2019 within a period of one year, assuming for the sake of arguments that the period mentioned in the O.M. is sacrosanct. Reliance was placed on the judgment of the Supreme Court in ***Purushottam vs. Chairman, M.S.E.B., (1999) 6 SCC 49*** and of this Court in ***Dr. Atul Bhardwaj vs. Government of NCT of Delhi and Ors., W.P.(C) 33/2013***, decided on 12.12.2013, for the proposition that if on account of an untenable decision on the part of the employer, life of a panel expires or when the employer himself does not make an appointment and permits the panel to lapse, the expiry of the panel cannot be taken against the selected candidate and Court can issue directions for appointment.

15. The technical objection of Respondent No. 2, that the panel was valid for one year only, was a deliberate attempt to scrap the proposal. In fact, when Respondent No.2 had reiterated the proposal in favour of the Petitioner and forwarded the same on 04.11.2019 to Respondent No. 3, one-year period was over. This only reflects that even up to that date, Respondent No.2 understood and rightly so, that once the matter

was under active consideration, the one year period prescribed in the O.M dated 30.07.2007 had no relevance. However, later there was a sudden change in the stance, which reflects arbitrariness and *malafides*, in action.

16. Plea of the Respondents that life of the panel had expired and it was no longer valid after one year is totally illegal and misconceived. It has been held by this Court in ***Vinay Kaushik vs. Union of India and Ors., W.P.(C) 1837/2016***, while interpreting the DoPT O.M. dated 30.07.2007, that the word ‘selection’ referred to in the O.M cannot be confused with ‘appointment’ and if no appointment was made but the candidate was selected, the panel cannot be treated as lapsed on expiry of one year. In the present case, Petitioner was selected when the proposal was sent by Respondent No. 2 on 11.07.2019, which was well within one year and thus, the provisions of DoPT O.M. dated 30.07.2007 did not cause any impediment in consideration of the proposal by Respondent No.3.

17. In any event, Courts have repeatedly held that the one-year life of a panel is not cast in stone. There are numerous judgments delivered by the Supreme Court wherein in the given set of facts, it was held that the mere expiry of the one-year period with regard to validity of a panel would not necessarily be an impediment in the way of a candidate seeking appointment after his/her name has been recommended in a selection process. Reliance was placed on the judgment of the Supreme Court in the case of ***BSNL vs. Abhishek Shukla, (2009) 5 SCC 368***, where on account of the fact that the candidates had preferred representations within one-year from the date the select list was approved, the Supreme Court upheld the judgment of the Division Bench of the High Court,

which had directed the Appellants therein to consider the candidature of the Respondents, despite the expiry of the life of the panel. Reliance was also placed on the judgment in the case of *State of UP vs. Ram Swarup Saroj, (2000) 3 SCC 699*, wherein the Supreme Court held that merely because a period of one-year had elapsed during the pendency of the litigation, Respondent could not be deprived of the relief granted by the High Court.

18. The case of the Petitioner is, in fact, on a better footing than the facts obtaining in the said judgements, inasmuch as the Petitioner had approached this Court within one-year and the Court had directed Respondent No.2 to pursue the matter with Respondent No.3. The time-bound directions of the Court were not without significance and not only has Respondent No.2 violated the directions of the Court, but by its inaction over a prolonged period, brought about a situation where the life of the panel allegedly expired and thus, Respondent No.2 cannot be given benefit of its own wrong.

19. It is an incorrect stand of the Respondents that the panel of 4 eligible candidates recommended by the Committee from amongst the 13 candidates who were interviewed, was not in the order of merit. DoPT O.M. dated 25.05.2009 clearly stipulates that Selection Committees/Search-cum-Selection Committees should recommend panels in the order of merit and that these directions are binding on all the concerned Ministries/Departments of the Government of India. Once the Rule position mandates preparation of select list in the order of merit, the recommendation need not specifically mention that the panel is in the order of merit. In any case, there was no reason to prepare a panel, short-

listing 4 persons and placing them in Serial Nos. 1 to 4 and in a non-alphabetical order, if the intent was not to indicate the merit position. Name of the Petitioner admittedly appears at Serial No.1 in the recommendation of the Committee and undoubtedly was in the order of merit. It is for this reason that Respondent No. 3 had also posed a query, at the initial stage, as to on what basis the name of Shri Suresh Sharma was proposed by the Ministry, when his name appeared at Serial No. 3 of the panel, which led to Respondent No.2 rectifying the mistake and proposing the name of the Petitioner.

20. The fact that the Petitioner was recommended at No.1 in the panel is also evident from the response furnished by Respondent No.1 dated 07.01.2019 to the RTI application dated 05.12.2018 filed by the Petitioner. Petitioner had specifically sought information with regard to the names of the candidates short-listed, in ranking order (1 to 4) and the reply by the CPIO clearly reflects that name of the Petitioner was at position No.1, in the order of merit.

21. No doubt, it is a settled law that a candidate recommended for appointment or in the select list does not have an indefeasible right to appointment, however, it is equally well settled that Government has to act fairly and having prepared a panel/select list, it cannot without good reason, nullify the entire exercise. This was held by the Supreme Court in *Asha Kaul & Ors. vs. State of Jammu and Kashmir & Ors., 1993 SCC (2) 573*. Reliance was also placed on the judgment in *R.S. Mittal vs. Union of India, 1995 (2) SCALE 433*, wherein the Supreme Court held that a candidate on the select list may not have a vested right of

appointment, but certainly has a right of consideration for appointment and the Authority concerned cannot ignore the select panel.

22. A welfare State does not enjoy an unqualified prerogative to refuse appointment in an arbitrary manner. The decision to terminate the panel in the present case is unreasonable and unfair and, therefore, the fresh advertisement and the process of selection pursuant thereto be quashed and directions be issued to Respondents No. 2 to forward the name of the Petitioner to Respondent No.3 for consideration and approval.

SUBMISSIONS AND CONTENTIONS ON BEHALF OF RESPONDENT NO.1

23. In compliance of order dated 13.05.2019 passed by the Court, Respondent No.1 actively pursued the matter with Respondent No.2. From time to time, response was sent to the letters received from the Ministry, including reply to the letter dated 24.09.2019, whereby clarification was sought from Respondent No.1, regarding qualifications of the Petitioner. Process of appointment of the Director is not solely in the hands of NSD, but is an inter-departmental process, involving Respondent No.2, NSD and Respondent No.3. Therefore, some time was consumed in discussions and clarifications etc., which was beyond the control of NSD and on account of this, process of selection could not be completed within one-year from the date of recommendation of the panel.

24. On 16.01.2020, Respondent No.1 received a letter from Respondent No. 2, bringing to its notice contents of DoPT O.M. dated 30.07.2007 and the expiry of the panel in terms thereof. Respondent No.1 was requested to furnish 5-10 names to Respondent No.2, as per relevant Guidelines of DoPT, out of which a panel of Search-cum-Selection

Committee could be constituted by Respondent No.2. Respondent No.1 was informed that the concurrence of DoPT shall be sought after approval from the Hon'ble Minister.

25. On receipt of the said letter, matter was deliberated upon at length by Members of NSD Society in the meeting held on 31.01.2020 and names were proposed for constitution of the Committee, in accordance with the relevant Recruitment Rules and subsequently, fresh Advertisement was issued.

26. Appointment to the post of Director is a collective decision as the procedure laid down does not envisage an independent/stand-alone decision by NSD, in this regard. Rather, an elaborate procedure involving recommendation by a Committee constituted by NSD, deliberation by Respondent No.2, approval by Respondent No.3 and finally appointment by NSD Society, is stipulated in the Recruitment Rules. Until the process was concluded, no appointment could have been made by Respondent No.1. All efforts were made by Respondent No.1 to conclude the process diligently and respond to the queries, as and when raised.

27. In any case, Petitioner was only placed on a panel and has no vested right to seek appointment, in view of the settled law that a person merely selected for a post does not acquire an indefeasible right to appointment. It is trite that notification of posts through an Advertisement is only an invitation to eligible candidates to apply for recruitment/appointment and on being placed on a panel, gives no vested right to a post until actual appointment. Reliance was placed on ***Vijoy Kumar Pandey vs. Arvind Kumar Rai and Ors., (2013) 11 SCC 611; Dr. Rakesh Meena vs. R.P.S.C. and Ors., reported in 2017 SCC Online Raj.***

1545 and Government of Orissa vs. Haraprasad Dass and Ors., (1998) 1 SCC 487.

SUBMISSIONS AND CONTENTIONS ON BEHALF OF RESPONDENT NO.2

28. Respondent No.1/NSD is an autonomous body working under the administrative control and aegis of Respondent No.2.

29. As per the NSD Recruitment Rules for appointment to the post of Director, appointment is to be made by the NSD Society, with prior approval of the Central Government, on such terms and conditions as may be approved by the Central Government, out of a panel of eminent persons in the field, drawn up through a Committee, proposed by the NSD Society and to be approved by the Government.

30. NSD Society, in its meeting held on 16.02.2018, constituted a Committee, which issued an Advertisement on 27.07.2018, in the Employment News, National/Regional newspapers as well as on the official website of NSD, inviting applications for the post of Director. Respondent No. 1 received 32 applications, which were screened by the Committee during its meetings held on 24.10.2018 and 25.10.2018. Thereafter, 13 candidates were evaluated through a personal interview and finally, a panel of 4 eligible candidates was prepared, which included the Petitioner.

31. The panel was approved by the NSD Society during its 141st Meeting held on 29.10.2018 and was thereafter sent to Respondent No.2, to be placed before Respondent No.3. On 20.12.2018, name of Shri Suresh Sharma was proposed by Respondent No.2 out of the panel and the proposal was sent to Respondent No. 3. However, on 01.01.2019, the

proposal was returned by Respondent No.3 to Respondent No.2 with certain observations, as also seeking the criteria based on which name of Shri Suresh Sharma was proposed, though he was placed at serial no.3 in the panel.

32. Further queries were raised by Respondent No. 3, which were duly answered by Respondent No.2, vide letter dated 21.01.2019. It was also clarified that the Committee had not specified that the Panel was in the order of merit and, therefore, the name of Shri Suresh Sharma was proposed out of the panel of 4 eligible candidates, on account of his long association with NSD, experience in the field of drama and clean image. Proposal was resubmitted by Respondent No.2 to Respondent No. 3. Vide letter dated 12.03.2019, the proposal was once again returned to Respondent No.2 with certain observations/queries. In order to respond to the letter, Respondent No.2 requested Respondent No.1 to provide certain clarifications and vide letter dated 10.04.2019, Respondent No.1 provided its input.

33. Considering the issues raised by Respondent No.3, Respondent No.2 re-examined its proposal and decided to propose the name of the Petitioner. Vide letter dated 11.07.2019, proposal containing the name of the Petitioner was sent to Respondent No.3. While the inter-departmental communications were underway, Petitioner approached this Court and vide order dated 13.05.2019, Court directed Respondent No. 2 to pursue the matter with Respondent No.3, with an observation that Respondent No. 3 was expected to take a decision within two months.

34. On 19.07.2019, Respondent No.3 returned the proposal with certain observations/queries and while Respondent No. 2 was in the

process of submitting an appropriate response, two complaints were received against the Petitioner on 22.07.2019 and 04.08.2019 respectively. As a follow-up, Petitioner was requested to furnish his comments on the allegations levelled, which were furnished by the Petitioner on 07.09.2019. Respondent No. 2, vide letter dated 24.09.2019, requested the University of Calicut, former employer of the Petitioner, to inform if there was anything adverse against the Petitioner. Vide a separate letter dated 24.09.2019, Respondent No.1 was also requested to provide comments regarding his professional qualifications, as per the information furnished, while applying for the post. University informed Respondent No.2 that there were no adverse remarks against the Petitioner during his tenure as a Lecturer and as per the reply sent by Respondent No. 1, Petitioner possessed the requisite qualifications.

35. While the matter was under consideration, in view of the stipulation in para 5(iv) of the DoPT O.M. dated 30.07.2007, Respondent No.2, vide its letter dated 09.01.2020, informed Respondent No.3 that since Respondent No.1 had forwarded the recommendations of the Committee on 30.10.2018 to Respondent No. 2, the validity of the panel expired on 30.10.2019. Accordingly, the process for selection was being started afresh, with the approval of the Competent Authority. Vide letter dated 16.01.2020, Respondent No. 2 requested Respondent No.1 to initiate the process of constituting a fresh Committee. The provisions of DoPT O.M. dated 30.07.2007 are applicable to the present selection process and are binding on the Respondents and thus, there was no option but to scrap the process and initiate a fresh selection process.

36. Respondent No. 1 completed the process of constitution of a fresh Committee in the 147th Meeting of the NSD Society held on 31.01.2020. Accordingly, on 17.07.2020, Respondent No. 1 issued a fresh Advertisement and in terms of the OM dated 30.07.2007, a note was inserted in the Advertisement that the Committee may also consider the names of persons recommended in the earlier panel on 25.10.2018.

37. Contention of the Petitioner that Respondents have deliberately delayed the process of selection is baseless and misconceived. Respondent No.2 has filed a detailed reply indicating the various steps taken as well the correspondences exchanged between NSD, Respondent No.2 and Respondent No.3 and also filed a chart indicating the timelines in the appointment process, which reflect that every endeavour was made to complete the process in a time bound manner. Process of appointment of the Director is an inter-departmental process and time was consumed in sending and resending the proposal as well as responding and furnishing clarifications to the queries raised by Respondent No.3, from time to time.

38. Respondent No.2 had proposed the name of the Petitioner on 11.07.2019, but thereafter certain queries were raised by Respondent No.3, which were promptly responded to. Since complaints were received against the Petitioner, there was no option but to seek comments from the University of Calicut and the Petitioner, as without being satisfied about the qualifications and credentials of a candidate, selection could not be made. Action was diligently taken and on receiving the response from the University, Respondent No.1 and the Petitioner, the proposal was resent to Respondent No.3. Attention of the Court was drawn to the reply

affidavit as well as the chart summarizing the steps taken and the timelines to substantiate the argument that there was no delay or non-compliance of order of the Court dated 13.05.2019, as alleged by the Petitioner.

39. In any event, Petitioner is not entitled to any relief as the appointment process had not concluded and he was not a selected candidate. It is a well settled law that merely because a candidate has emerged successful in a selection process or has been placed in a select list, it does not grant any vested or indefeasible right of appointment to the said candidate. Reliance was placed on the judgments of the Supreme Court in *Shankarasan Dash v. UOI, 1991 (3) SCC 47, Union Territory of Chandigarh vs. Dilbagh Singh and Ors., (1993) 1 SCC 154, S.S Balu and Anr. vs. State of Kerala and Ors., (2009) 2 SCC 479 and Rakhi Ray and Ors. vs. High Court of Delhi and Ors., (2010) 2 SCC 637.*

40. It is wrong for the Petitioner to contend that his name was at No.1 in the order of merit in the panel recommended by the Committee. Recommendation of the Committee has been placed on record and it does not indicate any order of merit or ranking. Wherever and whenever the Committee intended, in the past, to recommend a panel in the order of merit, it was clearly stipulated in the Minutes itself, which is not the case here.

CONTENTIONS ON BEHALF OF THE PETITIONER IN REJOINDER

41. The technical reason to deny appointment to the Petitioner and scrap the recommendation made by Respondent No.1, followed by a proposal by Respondent No.2 on 11.07.2019, reiterated on 04.11.2019,

that the panel was valid only for one-year, is only a farce as the one-year period was over when on 04.11.2019, Respondent No.2 had reiterated the proposal and also clarified that character and antecedents of the Petitioner shall be verified post his selection. Respondent No.3 was also of the opinion that since the panel was under its consideration, the one-year stipulation may not be relevant and this indicates that even Respondents understood the relevant provision of the DoPT O.M. dated 30.07.2007, to be directory and not mandatory.

42. Once the proposal was forwarded by Respondent No.2, after deliberating on the panel recommended, Respondent No.2 became *functus officio* and could not scrap the process, without the consent and approval of Respondent No.3, as per the provisions of DoPT O.M. dated 17.07.2012.

ANALYSIS AND FINDINGS

43. I have heard the learned counsels for the parties and examined their rival contentions.

44. From the exposé and gamut of facts succinctly put and the arguments addressed by learned counsels for the parties, it is palpably clear that name of the Petitioner was included in the panel recommended by Respondent No.1 and was also proposed by Respondent No.2 on 11.07.2019. However, Respondent No.3 was unable to accord its consideration to the proposal, on account of the stand of Respondent No.2 that on expiry of one-year from the date of receipt of the panel, the panel was no longer valid and a fresh selection process was required to be initiated. This stand of Respondent No.2 was predicated on para 5(iv) of the DoPT O.M. dated 30.07.2007.

45. Petitioner's counsel contested this position and articulated that the DoPT O.Ms are merely Guidelines and are directory in nature. Even assuming that the DoPT O.M. dated 30.07.2007 is binding, Respondents No.1 and 2 have consciously and deliberately delayed the process and allowed the one-year period to elapse, despite an order of this Court directing them to pursue the matter with Respondent No.3 and expecting Respondent No.3 to take a decision within two months.

46. Since extensive arguments were addressed by the parties with regard to the timelines and serious allegations have been levelled by the Petitioner with regard to a deliberate delay in the selection process, this Court had summoned the relevant files of the concerned Departments. Respondent No.2 had handed over the copies of the digitized files in a sealed cover. I have perused the file notings containing the dates and events and the same shall be adverted to in a later part of the judgment.

47. The first question that begs an answer is whether the Petitioner has an indefeasible right to claim appointment, in view of the fact that his name was only recommended by the Committee followed by a proposal by Respondent No.2. There cannot be any debate on the proposition of law put forth by the Respondents that no candidate has a legally enforceable right to any post until he is selected and this has been so held in several judgments by the Supreme Court. However, the proposition is not without a caveat. Supreme Court while enunciating the above principle has also held that a State does not have the license to act in an arbitrary manner by not filling up the vacancies and nor does the State enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or disregard the merit of the candidates, as reflected by the merit

list at the end of a selection process. It has also been consistently held by the Supreme Court that the validity of the State's decision not to make an appointment is a matter which is not beyond the scope of judicial review and jural interference by a writ Court and that if any such decision is found to be arbitrary or smacks of *malafide*, appropriate directions can be issued by the Courts.

48. In the case of ***East Coast Railway and Anr. vs. Mahadev Appa Rao and Ors., (2010) 7 SCC 678***, one of the contentions raised by the Appellant was that challenge to the order cancelling the test in question was legally untenable as no candidate had a legally enforceable right to the post until selected. The contention as recorded in para 12 of the judgment is as follows:-

“12. Relying upon the decision of this Court in Union of India v. Tarun K. Singh [(2003) 11 SCC 768 : 2004 SCC (L&S) 316] , Mr Malhotra all the same argued that the challenge to the order cancelling the test was legally untenable as no candidate had any legally enforceable right to any post until he was selected and an order of appointment issued in his favour. Cancellation of the selection process on the ground of malpractices could not, therefore, be subjected to judicial scrutiny before a writ court, at the instance of a candidate who had not even found a place in the select list.”

49. Relying on the judgment of the Constitution Bench of the Supreme Court in ***Shankarasan Dash (supra)***, the Supreme Court in ***East Coast Railway (supra)*** held as follows:-

“13. A Constitution Bench of this Court in Shankarsan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] had an occasion to examine whether a candidate seeking appointment to a civil post can

be regarded to have acquired an indefeasible right to appointment against such post merely because his name appeared in the merit list of candidates for such post. Answering the question in the negative this Court observed: (SCC pp. 50-51, para 7)

*“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. **However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons.** And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] , *Neelima Shangla v. State of Haryana* [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or *Jatinder Kumar v. State of Punjab* [(1985) 1 SCC 122 : 1985 SCC (L&S) 174] .”*

14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he

has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.”

(emphasis supplied)

50. Applying the principles propounded by the Supreme Court in ***Shankarasan Dash (supra)*** and ***Union Territory of Chandigarh (supra)***, the Supreme Court in paras 16 and 17 of the judgment in ***East Coast Railway (supra)*** held that while there is no gainsaying that the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek appointment, yet the same did not give a license to the Competent Authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates, who were otherwise eligible for appointment and had appeared in the examination that constituted a step in aid of a possible appointment in their favour, were entitled, is to ensure that the selection process was not allowed to be scuttled for *malafide* reasons or in an arbitrary manner. It is trite that Article 14 of the Constitution of India strikes at arbitrariness, which is an anti-thesis of the guarantees contained in Articles 14 and 16 of the Constitution. Relevant paras are as under:-

“16. Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to

the competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step-in-aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for mala fide reasons or in an arbitrary manner.

17. It is trite that Article 14 of the Constitution strikes at arbitrariness which is an antithesis of the guarantee contained in Articles 14 and 16 of the Constitution. Whether or not the cancellation of the typing test was arbitrary is a question which the Court shall have to examine once a challenge is mounted to any such action, no matter the candidates do not have an indefeasible right to claim an appointment against the advertised posts.”

51. The Supreme Court also examined the meaning of the word ‘arbitrary’ and after coming to the conclusion that the decision of the concerned Authority suffered from arbitrariness, remanded the matter for re-consideration. The relevant passages are as follows:-

“18. What then is meant by arbitrary/arbitrariness and how far can the decision of the competent authority in the present case be described as arbitrary?

19. Black's Law Dictionary describes the term “arbitrary” in the following words:

“Arbitrary.—1. Depending on individual discretion; specif., determined by a judge rather than by fixed rules, procedures, or law. 2. (Of a judicial decision) founded on prejudice or preference rather than on reason or fact. This type of decision is often termed arbitrary and capricious.”

20. To the same effect is the meaning given to the expression “arbitrary” by *Corpus Juris Secundum* which explains the term in the following words:

“Arbitrary.—Based alone upon one's will, and not upon any course of reasoning and exercise of judgment; bound by no law; capricious; exercised according to one's own will or caprice and therefore conveying a notion of a tendency to abuse possession of power; fixed or done capriciously or at pleasure, without adequate determining principle, non-rational, or not done or acting according to reason or judgment; not based upon actuality but beyond a reasonable extent; not founded in the nature of things; not governed by any fixed rules or standard; also, in a somewhat different sense, absolute in power, despotic, or tyrannical; harsh and unforbearing. When applied to acts, ‘arbitrary’ has been held to connote a disregard of evidence or of the proper weight thereof; to express an idea opposed to administrative, executive, judicial, or legislative discretion; and to imply at least an element of bad faith, and has been compared with ‘willful’.”

52. In a subsequent judgment in the case of *State of A.P. and Ors. vs. D. Dastagiri and Ors.*, (2003) 5 SCC 373, the Supreme Court reiterated the legal position stated in *Shankarasan Das (supra)*.

53. From a reading of the above judgments and the law enunciated therein by the Supreme Court, the principle and proposition that can be culled out is that no candidate has an indefeasible right to seek appointment to a post merely on the basis of a recommendation or being empanelled. However, it is equally well settled that the State does not have a license to act arbitrarily and the decision not to fill up the vacancy

advertised or take the selection to its logical conclusion must be based on sound reasoning and disclose application of mind. To put it in the words of Professor De Smith, Woolf and Jowell in their book on '*Judicial Review of Administrative Action*', a decision maker invested with wide discretion is expected to exercise that discretion in accordance with the principles governing exercise of power in a Constitutional democracy. One of the most fundamental principles of Rule of law recognized in all democratic systems is that the power vested in a Competent Authority shall not be exercised arbitrarily. Therefore, it is not open to the Respondents to contend that only because the Petitioner has no indefeasible right to an appointment to the post in question, Respondents are absolved from their duty and Constitutional obligation to act fairly or that it is beyond the scope of judicial review to examine if the impugned decision is arbitrary.

54. The issue that pronouncedly emanates and is required to be examined by this Court is, if the action of the Respondents is 'arbitrary', tested on the anvil of the principle of law laid down by the Supreme Court, which has been profitably reproduced above, that the least which the candidates who are otherwise eligible for appointment and had appeared in a selection process, that constituted a step in aid of a possible appointment in their favour, are entitled, is to ensure that the selection process is not scuttled for *malafide* reasons or in an arbitrary manner. 'Arbitrariness' has been defined to mean based alone upon one's will and not upon any course of reasoning and exercise of judgment; capricious; bound by no law and, therefore, conveying a notion of a tendency to abuse possession of power.

55. The case of Respondent No.2 is primarily predicated and premised on the provisions of DoPT O.M. dated 30.07.2007. Before examining the said stand, it would be useful to refer to the said O.M. and the relevant para, as relied upon, is as under:-

“5. Search-cum-Selection Committees for posts in autonomous/statutory bodies etc.

Though the principles applicable for posts in Government as in para 4 ibid would generally apply, the following principles would specifically apply to Search-cum-Selection Committees for posts in autonomous/statutory bodies, entities registered under the Societies Registration Act, etc.

x x x

(iv). The panel recommended by the Committee will be valid for one year. If no selection is made from the panel within a period of one year, a fresh Committee shall be constituted to prepare a fresh panel. Such a Committee may also consider the names of persons recommended in the earlier panel;”

56. The first contention of the Petitioner with respect to the interpretation of para 5(iv) of the said O.M. was that the relevant provision would be inapplicable in the present case as the Petitioner was ‘selected’ for the post of Director, NSD and, therefore, the question with regard to the expiry of the panel does not arise. In order to appreciate this contention, it would be relevant to highlight the procedure of appointment of Director, NSD, which can be best understood from the Recruitment Rules in question. Relevant part of the Recruitment Rules is as under:-

**“NATIONAL SCHOOL OF DRAMA
NEW DELHI-110 001
RECRUITMENT RULES**

<i>Name of Post</i>	<i>Director</i>
<i>No. of post</i>	<i>one</i>
<i>Scale of Pay</i>	<i>7th CPC- Level 14-Pay Range Rs.144200-218200</i>
<i>Method of recruitment (whether by direct recruitment or by promotion & percentage of vacancies to be filled by various methods)</i>	<i>The Director of the School shall be appointed by the Society with prior approval of the Central Government on such terms and conditions as may be approved by the Central Government out of a panel of eminent persons in the field drawn up through a Search-cum-Selection Committee proposed by the NSD Society and to be approved by the Government.</i>
<i>Tenure</i>	<i>The term of the Director will be for a period of five years w.e.f. the date of assuming the regular charge of the post or till the age of 62 years as on superannuation, whichever is earlier."</i>

57. The Recruitment Rules clearly stipulate that the Director, NSD shall be appointed by the NSD Society, with prior approval of the Central Government from the panel of eminent persons in the field drawn up through a Search-cum-Selection Committee proposed by the NSD Society and to be approved by the Government. The procedure, therefore, envisages constitution of a Search-cum-Selection Committee by the NSD Society which, through the process of screening/interview, recommends a panel. This is merely a recommendation and the final approval is accorded by the Central Government/ACC. As explained by learned counsel appearing on behalf of Respondent No.2 and categorically averred in the reply, the panel is sent to Respondent No.2 and as per the procedure and practice, Respondent No.2 proposes a name from the panel, after which the proposal along with the recommendation by

Respondent No.1 is placed before Respondent No.3, for approval. It is only after the approval is granted by Respondent No.3 that the appointment is made by the NSD Society, which undisputedly is the Appointing Authority. Therefore, under the Recruitment Rules, until the name of a candidate recommended/proposed is approved by the ACC, it cannot be said that the selection is complete. In service jurisprudence, there is a clear distinction between the terms 'recommended', 'selected' and 'appointed' and the three cannot be used interchangeably.

58. In the present case, Petitioner does not and cannot dispute that his name was recommended in the panel by Respondent No.1 and was proposed by Respondent No.2, but before the proposal could receive consideration by Respondent No.3, a decision was taken by Respondent No.2 to scrap the selection process on the ground that on expiry of period of one year, the panel had lapsed and was no longer valid. Therefore, this Court rejects the interpretation sought to be given by learned counsel for the Petitioner to the word 'selection' referred to in the DoPT O.M. dated 30.07.2007 and holds that in the present case, in terms of the Recruitment Rules, 'selection' would connote a stage in the process of selection when the ACC accords approval. In view thereof, it is also held that the name of the Petitioner was only recommended/proposed, awaiting consideration by the ACC and this Court cannot agree with the submission of the Petitioner that he was a 'selected' candidate.

59. Having so held, the vexed question that next follows is whether it was open to Respondent No.2 to have initiated a fresh process of selection to the post of Director, NSD, owing to the stipulation in the DoPT O.M. dated 30.07.2007, regarding the validity of the panel, after

expiry of one-year period, in the facts and circumstances of the present case.

60. In order to answer this question, it would be important to refer to certain dates and events pertaining to the selection process, more particularly, post the order passed by this Court on 13.05.2019 in W.P.(C) 5177/2019. It is relevant to make a mention that the following dates and events are as discernible from the counter affidavits of Respondents No.1 and 2, the additional note detailing the timelines of appointment process as well as the files of the Departments concerned. The extracts hereunder are from the counter affidavit of Respondent No.2 as corroborated from the files produced. Relevant dates and events are as follows:-

- (i) NSD Society in its meeting held on 16.02.2018, constituted a Committee for appointment to the post of Director, NSD.
- (ii) Advertisement was issued on 28.07.2018, in National/Regional Newspapers and the Employment News dated 04th to 10th August, 2018 as well as on the official website of Respondent No.1, inviting applications from eminent persons in the field of theatre.
- (iii) 32 applications were received by Respondent No.1, which were screened by the Committee in its Meetings held on 24.10.2018 and 25.10.2018, wherein after consideration of 13 candidates, who were evaluated through a personal interview, a panel of 4 eligible candidates, was prepared as follows:-

- (a) Dr. Thulaseedhara Kurup
- (b) Mr. Kewal Dhaliwal

- (c) Mr. Suresh Sharma
- (d) Mr. Abdul Latif Khatana

(iv) The panel was approved by NSD Society on 29.10.2018 and was sent to Respondent No.2, to be placed before Respondent No.3.

(v) Name of Shri Suresh Sharma was recommended on 20.12.2018 by Respondent No.2 to Respondent No.3 for appointment.

(vi) On 01.01.2019, proposal was returned by Respondent No.3 to Respondent No.2 with certain queries, which are as follow:-

“(i). Copy of the vacancy advertisement for the post of Director, NSD published in National dailies and the Employment Newspaper.

(ii). Minutes of the Search-cum-Selection Committee (SCSC) meeting dated 24.09.2018 alongwith the details of the 32 applicants and the basis for shortlisting 15 candidates.

(iii). It is not clear whether approval of DoPT was obtained for composition of the SCSC.

(iv). In terms of the RRs, the tenure of the Director will be 05 years w.e.f. the date of assumption of regular charge of the post or till the incumbent attains the age of 62 years whichever is earlier.

In this regard it is noted that in terms of DoP&T's instruction dated 16.11.2012 (copy enclosed), approval of the Prime Minister is required for incorporating the provision in the RRs which allows for appointment or continuation beyond the normal superannuation age. In then instant case, it is not clear whether the approval of Prime Minister has been obtained in the matter.

(v). In terms of RRs, the norms and criteria for selection shall be finalized by the institution with the concurrence of the Ministry concerned. Copy of the concurrence of the

Ministry on norms and criteria for selection to the post of Director NSD may be provided.

(vi). As per extant instructions, the panel recommended by the SCSC must indicate the order of preference, unless statutorily required otherwise. In the present case, it is noted that the panel recommended by the SCSC is not in the order of merit.

(vii). Further, the name of the recommended candidate i.e. Shri Suresh Sharma is at Sl. No.3 in the panel. The Ministry have not shared the basis of recommending the name of Shri Suresh Sharma.”

(vii) The queries raised by Respondent No.3 were answered by Respondent No.2, vide letter dated 21.01.2019, clarifying that the Committee had not specified whether the recommended panel was in order of merit or not. It was also conveyed that the name of Shri Suresh was proposed in view of his long association with Respondent No.1 and experience in the field of Drama as well as clean image. Proposal was resubmitted by Respondent No.2.

(viii) Respondent No.3, vide letter dated 12.03.2019, once again returned the proposal with certain observations, which are as follow:-

“2(i). the Ministry does not seem to have obtained the approval of ACC for provisioning the RRs, which provide for a tenure beyond the normal age of superannuation;

(ii). the Ministry has not shared the norms and criteria for selection to the post;

(iii). the Search-cum-Selection Committee (SCSC) has not indicated if the panel recommended by it is in order of preference. AS per extant instructions, SCSC must indicate the order of preference in the panel recommended by it. The Ministry has recommended a candidate, who is at Sl. No.3

in the panel. The Ministry has not shared the basis for recommending the name of Shri Suresh Sharma.”

(ix) Respondent No.2, vide its letter dated 19.03.2019, sought certain clarifications from Respondent No.1, which were responded to vide letter dated 10.04.2019 by Respondent No.1, as under:-

“The panel or eminent persons recommended by the Search-cum-Selection Committee and approved by the NSD Society has been forwarded to MoC for further necessary action. A suitable decision may be taken on the panel forwarded by NSD for appointment to the post of Director, NSD.”

(x) Respondent No.2 re-examined its proposal and this time proposed the name of the Petitioner and resubmitted the proposal to Respondent No.3, vide letter dated 11.07.2019.

(xi) In the meantime, Petitioner approached this Court on 01.05.2019 and filed W.P.(C) 5177/2019 seeking the following reliefs:-

“a). Issue a Writ of Mandamus to summon the records pertaining to the appointment of Director, National School of Drama, including minutes of the Selection Committee;

b). Issue, a Writ of Mandamus to Respondent to make the appointment of Director, National School of Drama, as per the result of the Selection process in a time bound manner;”

(xii) Vide order dated 13.05.2019, the writ petition was disposed of with the following direction and observation:-

“In view of the facts above, I hereby dispose of the present petition directing the Respondent No.2 to pursue with the ACC to get approval.

This Court also expect from the ACC to take a decision within two months from the date of receipt of this order.”

(xiii) On 19.07.2019, Respondent No.3 returned the proposal with the following observations:-

“(i). Report on verification of character and antecedents of Dr. J Thulaseedhara Kurup as he is from private sector.

(ii). It has been mentioned in the personal particulars and bio-data of Dr. Kurup that his tenure as Hon. Director in Stage India Performing Arts and Research Centre was upto the year 2018 and he was drawing Rs.10000 per month. His present employment status is not known.

(iii). The proposal has not been submitted in the prescribed proforma. Instead, the Ministry has submitted a copy of proforma submitted earlier when Ministry had proposed the name of Shri Suresh Sharma. In this regard, it is stated that the vigilance clearance, pendency of court cases etc. at the time of submission of proposal are relevant.

(iv). As the SCSC has not recommended the panel in order of merit. The basis of recommending the name of Dr. Kurup may be shared.”

(xiv) On 22.07.2019 and 04.08.2019, Respondent No.2 received certain complaints against the Petitioner. Petitioner was requested to furnish his comments regarding the allegations made, which he did on 07.09.2019. Respondent No.2 requested the University of Calicut (former employer of the Petitioner), vide letter dated 24.09.2019, to inform if there was anything adverse against the Petitioner and vide another letter dated 24.09.2019, requested Respondent No.1 to provide comments regarding the Petitioner's professional qualifications, as disclosed while applying.

(xv) Vide reply dated 21.10.2019, University informed Respondent No.2 that there was nothing adverse against the Petitioner during his tenure as

Lecturer and Respondent No.1, vide letter dated 30.09.2019, informed that the Petitioner possessed requisite qualifications.

(xvi) On 22.11.2019, Respondent No.3 sought further information from Respondent No.2 along with report on verification of character and antecedents, in respect of the Petitioner, for consideration by the ACC.

(xvii) In response to the said letter, Respondent No.2, vide its letter dated 09.01.2020, informed Respondent No.3 that the Committee had not specially mentioned that the list was in order of merit, which was an omission on the part of the Committee and the basis of recommending the name of the Petitioner was in view of the observations of Respondent No.3 and following the DoPT norms on the subject. Respondent No.3 was also informed that the process for selection was being started afresh as the period of one year had expired and the panel was no longer valid in terms of DoPT O.M. dated 30.07.2007.

(xviii) Vide letter dated 16.01.2020, Respondent No.2 informed Respondent No.1 that the panel had expired and requested Respondent No.1 to furnish 5-10 names, out of which a panel of the Committee could be formed and that concurrence of DoPT shall be sought after approval of the Competent Authority, for constitution of Selection Committee.

(xix) Replying to Respondent No.2's letter dated 09.01.2020, particularly with regard to the DoPT O.M. dated 30.07.2007, Respondent No.3 categorically stated that since the panel recommended by the Committee was under consideration of the ACC, in view of the pending clarifications from Respondent No.2, the stipulation in the O.M. dated 30.07.2007 may not be relevant. However, in case Respondent No.2 had decided to initiate

the selection process afresh, a proposal be submitted with appropriate justification for scrapping the panel.

(xx) On 09.04.2020, Respondent No.2 wrote to Respondent No.3 stating therein that owing to the stipulation in the DoPT O.M. on the validity of the panel as also the fact that the recommendation by the Committee was not in the order of merit, Respondent No.2 had decided to start the selection process afresh.

61. The above chronology of dates indicates that the initial panel, including the name of the Petitioner, was forwarded by Respondent No.1 to Respondent No.2 on 30.10.2018, for further action. Respondent No.2 nominated Shri Suresh Sharma and sent the proposal to Respondent No.3 for approval, though he appeared at Serial No.3 in the panel recommended by Respondent No.1. This exercise by Respondent No.2 was premised on the ground that the panel was not in the order of merit and Shri Suresh Sharma had special factors in his favour, such as long association, etc. Respondent No.3 rightly questioned the action and sought justification for proposing the name of a candidate, recommended at No.3. Perhaps, Respondent No.2 realized the illegality of its action, especially in view of DoPT O.M. dated 25.05.2009, which directs that the Selection Committees/Search-cum-Selection Committees should recommend panels in the order of merit. Correcting the mistake and retracing its steps, Respondent No.2 proposed the name of the Petitioner in its proposal sent on 11.07.2019 to Respondent No.3.

62. A very significant development took place in the meantime and is one of the important facets of this case. Petitioner approached this Court

by filing a writ petition being W.P.(C) No.5177/2019, wherein he sought issuance of a writ of mandamus to the Respondents to make appointment of Director, NSD as per the result of selection process in a time-bound manner. Relevant would it be to note that the Court while disposing of the writ petition on 13.05.2019 directed Respondent No.2 to pursue the matter with ACC to get approval and made an important observation that it expected the ACC to take a decision within two months from the date of receipt of the order.

63. Respondent No.2 herein was Respondent No.2 in the said writ petition as well and was represented in Court on the date the order was passed. The file notings indicate that the order was communicated to Respondent No.3 on 03.06.2019. Thereafter, the matter was re-examined and the name of the Petitioner was proposed on 11.07.2019. Firstly, there was no reason to forward the order of the Court dated 13.05.2019 to Respondent No.3 after a delay of almost twenty days. Again, there was a considerable delay at the second stage when the proposal itself was sent on 11.07.2019, which as rightly contended by the Petitioner, was only two days short of the two months period referred to in the Court order, for taking a decision. There is no explanation in the counter affidavit or even the file as to why it took Respondent No.2 two months to forward the proposal, being aware of the timelines in the DoPT O.M. coupled with the Court order. It needs to be highlighted that initially when Respondent No.2 had nominated the name of Shri Suresh Sharma from the panel sent by Respondent No.1, it acted with great efficiency and expediency. The files and the note on timelines of the appointment process submitted by Respondent No.2 corroborate this fact. On 15.11.2018, the Competent

Authority proposed the name of Shri Suresh Sharma from the panel and on 16.11.2018 itself, file was put up for further action. On 18.12.2018, proposal is placed before the Competent Authority for approval and on 19.12.2018, the proposal is approved. Immediately, on the next day, i.e. 20.12.2018, the proposal is sent to ACC.

64. Going further, certain queries were raised by Respondent No.3 on 19.07.2019. Since there was no response by Respondent No.2, conscious of the fact that there were timelines to be adhered to, Respondent No.3, on 28.08.2019, requested Respondent No.2 to furnish the information sought, so as to expedite the consideration. *Albeit* vide letter dated 03.09.2019, Respondent No.2 assured that the information was being collected, there was yet again silence and inaction and Respondent No.3 again sent a reminder on 26.09.2019 to expedite the matter and furnish the desired information. Even this reminder from Respondent No.3 had no impact on Respondent No.2 and it was only on 04.11.2019 that Respondent No.2 woke up from its slumber and responded to the ACC's queries raised vide letter dated 19.07.2019, i.e. after a period of approximately 108 days. Therefore, there can no scintilla of doubt that a crucial period of over three months was lost on account of delay caused by Respondent No.2.

65. While learned counsel for Respondent No.2 had endeavoured hard and strenuously articulated to justify the delay caused during this period, primarily attributing the same to the two complaints received against the Petitioner, but on careful cogitation, in my view, the explanation is far from satisfactory for numerous reasons. Firstly, once the Committee had recommended the name of the Petitioner, it was implicit that it had

examined and scrutinized the educational qualifications, etc. as these were the basic eligibility conditions. Even in the understanding of Respondent No.1, the panel recommended by the Committee was a short list of 'eligible' candidates. Disdainfully ignoring that Petitioner was empanelled only after meeting the threshold eligibility conditions, which included educational qualifications, Respondent No.2 treaded on a path of investigating into the complaints regarding the Petitioner's educational qualifications, which was completely unwarranted and resulted in loss of time, which was crucial at that stage, if the timelines of the DoPT OM were to be met. The exercise to solicit information from the University of Calicut was also uncalled for as the educational qualifications had been ascertained and verified by the Committee and the credentials/character/antecedent verification, even in the understanding of Respondent No.2, had to be carried out post the approval/selection. There may be some merit in the contention of the Petitioner that the timing of the complaints was also a pointer to the fact that perhaps some vested interests were making every effort to stall the process of selection once the name of the Petitioner was proposed. This time period was very crucial to the selection process and was lost due to the unnecessary investigation carried out by Respondent No.2 and had an impact on the one-year period stipulated in the DoPT O.M. dated 30.07.2007.

66. Even assuming for the sake of argument that Respondent No.2 was genuinely investigating into the complaints, there was clearly a delay even while following the said course of action. The complaints are dated 22.07.2019 and 04.08.2019 respectively. Clarifications were sought by Respondent No.2 vide letters both dated 24.09.2019, i.e. after wasting

over a month. Again, it is to be noted that clarification was furnished by Respondent No.1 on 30.09.2019 and by the University of Calicut on 21.10.2019. Knowing well that one-year period from the date of receipt of the panel was expiring on 30.10.2019, Respondent No.2 instead of immediately intimating the ACC that there was nothing adverse against the Petitioner and seeking approval, chose to wait till 04.11.2019 and allowed the one-year period to expire. Had Respondent No.2 taken requisite steps with due diligence and abided by the directions of the Court, the issue of validity of the panel would not have impeded the consideration by Respondent No.3 within the stipulated period under the O.M. and would have obviated the present litigation.

67. Insofar as the plea of Respondent No.2 regarding the life of the panel, in terms of DoPT O.M. dated 30.07.2007, is concerned, there may be merit in the stand of Respondent No.2 that the life of the panel is one year and if no selection is made, the panel lapses. However, the question is whether in the present set of facts, Respondent No.2 can be permitted to take shelter under the said O.M., when the file notings, which are self-speaking, reveal that there was uncalled for and unexplained delay caused at every step, which ultimately delayed the consideration by Respondent No.3. There is no gain-saying that Respondent No.2 was duty-bound to ensure that the selection process reaches its logical conclusion expeditiously, in view of the stipulated life of the panel in the DoPT O.M. This duty, in my view, became more onerous on account of the direction/observation of the Court issued on 13.05.2019. Yet, Respondent No.2 was not diligent in taking timely action to complete the selection process which would have ensured consideration of the proposal

by Respondent No.3. It needs a mention that Respondent No.3 was certainly conscious of the timelines and the Court order and had sent two reminders to expedite the process.

68. Be it ingeminated that to permit Respondent No.2 to proceed with the fresh selection and to uphold the action of scrapping the earlier selection process would be to permit Respondent No.2 to take advantage of its own wrong. This Court cannot be a party to perpetuate the wrongdoings of Respondent No.2. The writ jurisdiction of this Court is an extraordinary and equity jurisdiction and is meant to be exercised to ensure justice and not encourage the unjust and unfair actions of the State. Thus, in my view, the issue of validity of a panel cannot be set up as a defence by Respondent No.2 to overcome its unjust actions. In this context, I am fortified by the observations of a Co-ordinate Bench of this Court in **Ankit Kumar Aggarwal & Ors. vs. Airport Authority of India and Anr., 2015 SCC Online Del 8846** and I quote as under:-

“9.Respondent no. 1 in my opinion however cannot contend that they will in effect conceal the fact of existence of vacancies, and it will not inform the petitioners that out of successful candidates they are also entitled to appointment because there remained vacancies on account of the actual number of persons to whom appointment letters were issued did not join, because to permit respondent no. 1 to do so would be to allow the respondent no. 1 to take advantage of its own wrong. I thus refuse to allow the respondent no. 1 to do so. Once the respondent no. 1 did not inform the petitioners that there remained vacancies to which they were entitled to be appointed, merely because there is a life period of one year of the panel, it cannot be said that the petitioners should be denied the appointments. The issue of validity of a panel cannot be pressed in aid to cause injustice, more so when

the injustice is caused on account of the actions of the respondent no. 1 and, which will amount to respondent no. 1 taking advantage of its own wrong. This argument on behalf of the respondent no. 1 is also therefore rejected.”

69. The said judgment has been upheld by a Division Bench of this Court in LPA No.354/2015 and finally, by the Supreme Court in SLP(C) No.33369/2015.

70. There is yet another reason why the plea of validity of the panel cannot come in the way of the Petitioner. According to the plea set up by Respondent No.2, the one-year period envisaged under the DoPT O.M. dated 30.07.2007 expired on 30.10.2019. It is writ large from a reading of the counter affidavit, the note on timelines of appointment as well as the files submitted to this Court that even after the so-called deadline, Respondent No.2, vide letter dated 04.11.2019, rendered clarifications with regard to the Bio-data and other credentials of the Petitioner, including a statement that since the Petitioner was not currently in a Government Sector, his vigilance clearance may not be required and that pendency of cases, if any, both civil or criminal, may be verified at the time of verification of his character and antecedents. It was also reiterated by Respondent No.2 in the said letter that the Ministry has nominated the name of the Petitioner as being No.1 on the list after due approval from the Competent Authority. Interestingly, it was much later on 09.01.2020 that Respondent No.2 expressed its reservations on the expiry of the panel in view of the DoPT O.M. While this realization suddenly dawned on Respondent No.2 after delaying and prolonging the process to the detriment of the Petitioner, Respondent No.3 was conscious of the injury that would be caused to the Petitioner if the process was scrapped for no

fault of the Petitioner and, therefore, rightly took a stand in its communication dated 17.01.2020 that once the panel was under consideration, the validity under the O.M. may be irrelevant. Respondent No.2 unfortunately did not give any heed even to the observations of Respondent No.3 and requested Respondent No.1 to initiate a fresh process of selection.

71. The above saga depicts that the Petitioner, despite being duly qualified and eligible for the post, became a victim of the circumstances and the delay in the process of selection, which remains unexplained and unjustified. Petitioner diligently pursued his remedies at the appropriate time to seek justice and not only made several representations to Respondent No.2 to complete the selection process but also approached this Court in May, 2019 itself. Surely, that is all that the Petitioner could have done to seek justice. The Court came to his rescue and passed directions to complete the process in a time-bound manner, however, the directions of the Court were not complied with as the timelines were violated with impunity. Even today, before this Court, the explanation for delay borders on the usual and routine reasons, i.e. movement of files from one Department to the other, inter-departmental consultations, queries and clarifications and finally, the plea of validity of the panel. As afore-noted, the movement of the file and the communications by Respondent No.2 do not satisfy the conscience of this Court that diligent steps were taken by Respondent No.2 to ensure that timelines are adhered to not only because of the hanging sword of the DoPT O.M. but also the need to abide by the binding and enduring directions of a Court of Law. After perusing the files and the affidavits, the position is crystal clear that

efforts were made to delay and stall the process despite the correct stand of Respondent No.3 that the panel was under consideration and the defence of its validity may not be relevant and equally the significant reminders sent by Respondent No.3 to expedite the process. I, accordingly, hold that the Respondents cannot press the ground of validity of the panel in the present case for the reasons stated above and Respondent No.2 is bound to place the panel along with nomination of the Petitioner, before Respondent No.3, for according its consideration, as an Approving Authority.

72. I may at this stage refer to the judgment of the Supreme Court in ***Bharat Sanchar Nigam Limited and Ors. vs. Abhishek Shukla and Anr., 2009 (5) SCC 368***, wherein one of the issues raised before the Supreme Court was the life of the panel vis-à-vis the right of the wait-listed candidates who had been wronged. The Supreme Court observed that while the Court was not oblivious of the fact that ordinarily, the life of such a panel is one-year but after the select list was approved, the Respondents therein had made representations within one year therefrom and, therefore, could not be ousted on that ground.

73. In ***State of U.P. vs. Ram Swarup Saroj (supra)***, the Supreme Court came to the rescue of the Respondent and held that relief could not be declined to the Respondent merely because a period of one year had elapsed during the pendency of the litigation. The present case, as rightly argued by learned counsel for the Petitioner, is on a far better footing on facts. Petitioner had approached the Court in May, 2019 well within a period of one year and the Court had passed a favourable order issuing directions to the Ministry to pursue the case with the ACC and expecting

the ACC to decide within two months. In my view, it would be grave injustice to the Petitioner in case Respondent No.2 is permitted to scrap the initial process of selection for their own wrongdoings.

74. Learned counsel appearing on behalf of Respondent No.2 has relied on the judgment of the Supreme Court in ***Shankarasan Dash (supra)*** including several other judgments as referred to in para 39 above on the proposition that a candidate has no indefeasible right to appointment only because he or she has emerged successful in an selection process. It bears repetition to state that there cannot be a dispute or debate on the said proposition of law. However, the common thread that also runs in each of these judgments relied upon by Respondent No.2 is that the decision taken by the State should be for sound and bonafide reasons and not *malafide* or arbitrary. Arbitrariness strikes at the root of the matter and in case the decision is found to be arbitrary, the Courts can interfere even if the selection process has not culminated into an actual appointment. The judgments, therefore, do not help Respondent No.2.

75. Learned counsel appearing on behalf of Respondent No.1 placed reliance on the judgment of the High Court of Rajasthan in ***Dr. Rakesh Meena (supra)*** to contend that empanelment of a candidate in a select list confers no right to seek appointment and a select list once made does not exist forever. In my view, the said judgment has no application to the present case. In the said case, Respondent RPSC had issued an advertisement for 43 posts of Homeopathic Chikitsadhikari. Petitioner therein applied for the post and after the interview was at placed at Serial No.16 in the reserve/waiting list and at No.1 in the category of ST candidates. Petitioner subsequently learnt that one of the successful

candidates in the said reserved category had not joined and thus approached the Court seeking appointment. The issue really involved in the said case was the right of a candidate in a waiting list when a successful candidate above him in the merit list does not join the post in question. It is in that context that the High Court held that in terms of the judgment of the Supreme Court in *Sanjay Bhattacharjee vs. Union of India, 1997 (S) SCT 339*, a candidate whose name appears in the waiting list does not have any right of appointment and if a candidate whose name appear in the merit list does not join, it is open to the concerned Authority to carry out fresh recruitment and mere empanelment would confer no right, especially to a candidate in a reserved list. There was, however, a clear observation by the High Court that while a selected candidate has no indefeasible right to compel issuance of an appointment letter but a right of a selected candidate cannot be denied on whims and caprice. In the present case, this Court has rendered a finding that there was a delay on the part of Respondent No.2 in concluding the selection process, despite an order of Court and the Petitioner having resorted to appropriate remedy available to him in law, well in time, before the expiry of the one-year period. The action of Respondent No.2 has been found to be clearly arbitrary and the aforesaid judgment cannot enure to the advantage of Respondent No.1.

76. Insofar as the judgment in *Government of Orissa (supra)* relied upon by learned counsel for Respondent No.1 is concerned, the Supreme Court held that merely because there were some vacant posts of Copyholders and the Director of the Press had recommended to the Government to fill up these posts, it was not open to the Tribunal to direct

the Government to fill up those posts, even though the Government had good reasons not to do so. The principle that mere empanelment or inclusion in the selection list does not give a right was reiterated. But having so held, the Supreme Court further observed that if the Government decides not to make further appointments for a valid reason, it cannot be said that it has acted arbitrarily by not appointing those whose names are included in the selection list. Whether to fill up a post or not is a policy decision and unless it is shown to be arbitrary, it is not open to the Tribunal to interfere with the decision of the Government and direct it to make further appointments. Significantly, the Supreme Court also observed that while giving such direction, what the Tribunal failed to appreciate that the decision of the Government not to make further appointment was not challenged as being arbitrary. In the present case, the entire case of the Petitioner is predicated on the contention that the action of Respondents No.1 and 2 is *malafide* and arbitrary and they have deliberately allowed the time to pass by and delayed the selection process and, therefore, cannot take shelter under the DoPT O.M. dated 30.07.2007 to contend that the life of the panel has expired. The judgment, therefore, would not come to the rescue of Respondent No.1.

77. Learned counsel for Respondent No.1 had also placed reliance on the judgment of the Supreme Court in *Vijoy Kumar Pandey (supra)*. A bare reading of the judgment leaves no doubt that the same is wholly inapplicable to the present case. In the said case, as a matter of fact, the panel in question was neither prepared nor published and the Supreme Court, therefore, held that preparation and publication of a panel was the least which any candidate seeking appointment on the basis thereof was

required to establish. During the course of hearing, learned Senior Counsel for the contesting Respondent therein had fairly conceded that no such panel was ever published. In that context, the Supreme Court observed that the publication of the panel was absolutely essential not only because the entire process was regulated by statutory regulations but also because publication was essential in the interest of transparency and probity in matters concerning appointments under the State and affecting rights of citizens in discharge of Governmental functions. Since there was no panel in existence, the Supreme Court observed that even assuming the preparation of a panel gives rise to any such right, since no panel had actually been prepared and published, the direction issued to the Commission to act on the basis of the panel by the High Court was wholly unjustified and unsustainable. In the present case, it is undisputed that the Committee constituted by Respondent No.1 had recommended a panel of 4 persons, which included the name of the Petitioner and the same was forwarded to Respondent No.2 for placing before Respondent No.3. Going further, Respondent No.2 had acted on the panel and proposed the name of the Petitioner on 11.07.2019 for consideration by Respondent No.3, the Approving Authority. Reliance on the said judgment by learned counsel for Respondent No.1 is, therefore, not understood as the facts are not even remotely similar.

78. The final contention raised by the Respondents that requires consideration is that the panel recommended by Respondent No.1 was not in the order of merit, on which extensive arguments were addressed by the respective parties. The contention, in my view, deserves to be outrightly rejected. First and foremost, the DoPT O.M. dated 25.05.2009

stipulates that the Selection Committees should recommend panels in the order of merit. Secondly, Respondent No.3 was completely conscious of the said Instruction and had, therefore, objected to the proposal of Respondent No.2, when it had initially proposed the name of Shri Suresh Sharma, who was at Serial No.3 of the panel. Thirdly, realizing the folly of their action, Respondent No.2 had corrected the error and proposed the name of the Petitioner, being at Serial No.1. In fact, in the letter dated 09.01.2020, Respondent No.2 had categorically stated that the Competent Authority had nominated the incumbent appearing at Serial No.1, i.e. the Petitioner, based on the observations of Respondent No.3 and the DoPT norms. Additionally, Petitioner had filed an application under the Right to Information Act, 2005 and the question posed and the response thereto, are as under:-

<i>Question Posed</i>	<i>Information supplied</i>
<i>Please provide the names of the candidates shortlisted for the post of Director, National School of Drama, New Delhi in ranking order (1 to 4).</i>	<i>Dr. Thulaseedhara Kurup Mr. Kewal Dhaliwal Mr. Suresh Sharma Mr. Abdul Latif Khatana</i>

79. The aforesaid factors lead to an inevitable conclusion that the panel recommended by Respondent No.1 was in the order of merit and Petitioner was at No.1 in the merit list.

80. It is a settled law that a candidate has right of consideration and had Respondent No.2 acted diligently, the proposal forwarded by Respondent No.2 would have received consideration by Respondent

No.3. Petitioner has clearly been wronged and in my view, his case deserves consideration by Respondent No.3, in accordance with law.

81. For all the aforesaid reasons, the writ petition is allowed. Notification dated 17.07.2020 and the process of selection pursuant thereto is hereby quashed and set aside. Respondent No.2 is directed to place the recommendation of Respondent No.1 along with its proposal dated 11.07.2019, before Respondent No.3 for its consideration. The said exercise shall be carried out by Respondent No.2, within a period of two weeks from today. Needless to state, if the name of the Petitioner is approved by Respondent No.3, he shall be appointed to the post of Director, NSD forthwith.

82. Writ petition along with pending applications, is accordingly disposed of, with costs of Rs.25,000/- payable to the Petitioner by Respondent No.2.

JYOTI SINGH, J

NOVEMBER 16th, 2021
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