



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

% **Judgment reserved on: 26 July 2022**

Judgment pronounced on: 05 August 2022

+ W.P.(C) 6776/2021, CM Nos. 21354/2021 & 16419/2022

DR.HARISH GUPTA

..... Petitioner

Through: Mr.Jaideep Gupta, Sr. Adv. with
Ms.Pusshp Gupta, Ms.Manika Priya
S. and Mr.Riddhi Bose, Advs.

versus

U.O.I & OTHERS

..... Respondents

Through: Mr.Vikrant N Goyal, Mr. Mayank
Goswami, Mr. Shikhar Sardana, Ms.
Harshita, Mr. Ajay Singh, Advs. for
R-1/UOI.
Mr. Praveen Khattar, Adv. for R-2.
Mr. Anuj Agarwal, ASC with Ms.
Ayushi Bansal, Mr. Sanyam Suri,
Advs. for R-3 and 4.
Mr. T. Singhdev and Mr. Abhijit
Chakravarty, Advs. for R-5.
Mr.Maninder Singh, Sr. Adv. with
Mr. Shoaib Qureshi, Mr. Karmanbir
Singh, Mr.Prabhas Bajaj Advs. for
R-6.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. This writ petition had impugned a notice dated 23 June 2021 issued by the **Delhi Medical Council**¹ convening a meeting on 23 July 2021 of its

¹ DMC



members for discussion of various matters set out in the agenda including agenda No.4 which dealt with a proposed nomination of a new member to represent the DMC in the **Medical Advisory Council**² of the **National Medical Commission**³.

2. The petitioner assails the aforesaid notice in the backdrop of him having been elected as the nominee of the DMC and in turn to represent it in the MAC in terms of the provisions made in Section 11(2)(e) of the **National Medical Commission Act, 2019**⁴. The petitioner was elected as the nominee of the DMC in a meeting duly convened and held. The name of the petitioner as the nominee of the DMC was also duly notified by the Ministry of Health and Family Welfare in the Union Government on 11 October 2019. It was the assertion of the petitioner that since the aforesaid nomination had been made pursuant to a request made by the Union Government calling upon the DMC to communicate the name of its nominee, the DMC could not have unilaterally withdrawn that nomination. When the writ petition initially came to be entertained, an interim order was passed on 22 July 2021 which provided that in the interim while the DMC may hold the meeting fixed for 23 July 2021 in respect of all agendas including Item No.4, the decision taken in that meeting regarding that particular agenda would not be given effect to. It is that interim order which has continued during the pendency of the present writ petition. By an order of 21 October 2021, the sixth respondent came to be impleaded as

² MAC

³ Commission

⁴ Act



a party in these proceedings. That respondent is stated to have been elected as the nominee of the DMC in the meeting held on 23 July 2021. Before proceeding to notice the rival submissions addressed it would be apposite to notice the following undisputed facts.

3. On 09 August 2019 the DMC is stated to have received a letter from the Ministry of Health and Family Welfare in the Union Government requesting it to furnish the name of one of its elected members to represent that State Medical Council as a member of the MAC as per the provisions of Section 11(2) of the Act. It was in furtherance of the aforesaid communication that the petitioner came to be elected as the nominee on 28 August 2019. The term of the erstwhile DMC on the expiry of the period of 5 years was to come to an end sometime in March 2020. Fresh elections were thereafter held and the petitioner as well as the sixth respondent came to be elected as members of the DMC. The reconstituted DMC was notified by the Health and Family Welfare Department of GNCTD on 08 October 2020. The newly constituted DMC in its meeting of 06 January 2021 is stated to have taken up for consideration the issue of nominating one of its elected members as its nominee in the MAC. The minutes of the meeting of the DMC of that date records that members had unanimously agreed that since the DMC had been reconstituted, the process of selecting a nominee for the MAC may be initiated. It is pursuant to the aforesaid decision taken by the DMC that the impugned notice appears to have been issued. It would be apposite to note that Section 4 of the **Delhi Medical Council Act, 1997**⁵ prescribes that a member thereof would hold office for

⁵ 1997 Act



a term of five years from the date of publication of the constituted DMC. Section 4(4) further provides that the term of office of an outgoing member shall be deemed to extend and expire on the day immediately preceding the day on which the names of successor members are published. Section 4 of the 1997 Act is reproduced hereinbelow:

“4. Term of office.—(1) The Government, shall, by notification in the Official Gazette, publish the names of the members.

(2) Save as otherwise provided by this Act, a member, shall hold office for a term of five years from the date of publication of the notification under sub-section (1):

Provided that where a person is elected by members of medical faculty of a medical college, or is an ex-officio member, he shall cease to hold office as a member if he ceases to belong to that faculty or, as the case may be, ceases to hold such office, before the expiry of his term.

(3) Save as otherwise provided by this Act, the President or the Vice-President shall hold office from the date of his election upto the day on which his term of office as member expires.

(4) The term of office of an outgoing member shall, notwithstanding anything contained in sub-section (2) be deemed to extend and to expire with the day immediately preceding the day on which the names of the successor members are published under sub-section (1).

(5) The term of office of an outgoing President or Vice-President shall, notwithstanding anything contained in sub-section (3), be deemed to extend and to expire with the day immediately preceding the day on which the successor President or Vice-President, as the case may be, is elected.

(6) An outgoing member, President or Vice-President, shall be eligible for re-election or re-nomination for one more consecutive term only.

(7) Leave of absence may be granted by the Council to any member for a period not exceeding six months.”

4. The impugned notice issued by the DMC is assailed by Mr. Jaideep Gupta, learned Senior Counsel, contending that once a nomination has been made by a State Medical Council referable to the provisions made in



Section 11(2)(e) of the Act, it is not open to it to unilaterally withdraw or seek modification of the same unless and until the Union Government may call upon that DMC to furnish the name of a nominee. Mr. Gupta highlighted the fact that the name of the petitioner as the nominee of the DMC had been forwarded to the Union Government pursuant to a communication received by the DMC in that regard. It was pointed out that insofar as the notice of 23 June 2021 is concerned, undisputedly it was not prompted by any request made by the Union Government in that respect and consequently the process as initiated by the respondent DMC is wholly arbitrary and violative of the provisions of the Act. The validity of the proceedings drawn by the DMC was then assailed on the more fundamental plea of the action being not only in violation of the provisions of the Act but against the very spirit of the functions assigned to the MAC. Mr. Gupta drew the attention of the Court to the composition of the NMC and the MAC under the provisions of the Act to contend that out of the 22 part-time members, who are to form part of the NMC, 9 members are to be appointed from amongst nominees who would be part of the MAC in terms of Section 11(2)(e). It was pointed out that in terms of Section 4(4)(c) the Act has, in unambiguous terms, prescribed that the term of these 9 part-time members drawn from Section 11(2)(e) would be two years. It was submitted that the MAC which is a multi-member body is to also include one member who would represent each State Medical Council. It was submitted that Section 6 provides that the Chairperson and part-time members of the NMC would hold office for a term not exceeding four years or till attaining the age of 70 years whichever be earlier. According to Mr. Gupta, a conjoint reading of



Section 4(4)(c) and Section 11 of the Act would establish that the term of a part-time member cannot be less than four years. It was submitted that in case the provisions of the Act were construed as conferring a power on a State Medical Council to withdraw a nominee and to make a fresh nomination during the pendency of the term of the earlier member, it would disrupt and clearly impede the various functions, responsibilities and duties which stand placed upon the MAC. Mr. Gupta would contend that under the scheme of the Act, the MAC is the apex advisory body which provides views for the consideration of the NMC which in turn is charged with framing the national policy with respect to medical education. The submission in essence was that if the provisions of the Act were to be interpreted as empowering the State Medical Council to recall nominations made or to substitute nominations at any time without a specified tenure being recognized to stand attached to that nomination, it would violate the spirit underlying the provisions of the Act. Mr. Gupta then referred to the **National Medical Commission (Manner of Appointment and Nomination of Members, their Salary, Allowances and Terms and Conditions of Service, and Declaration of Assets, Professional and Commercial Engagements) Rules, 2019**⁶ to submit that in terms of the provisions of Rule 3, members of States and Union Territories and those contemplated under Sections 4(4)(b) and (c) are to be selected by a draw of lots. It was submitted that the system which is put in place in terms of those Rules would indicate that a nominated member would be entitled to continue as a part-time member for at least four years. This is explained

⁶ Rules



with Mr. Gupta contending that while those members who get selected in the first round of the draw of lots would remain in the NMC for a period of two years, those who do not get selected in the first draw would be eligible to be considered for selection after two years and for the next two years on a rotational basis.

5. Mr. Gupta further submitted that State Medical Councils do not share a uniform tenure. It was pointed out that the tenure of each State Medical Council is governed by legislations framed by individual States and Union Territories. It was the learned Senior Counsel's contention that bearing in mind the fact that each State Medical Council would follow its own timeframe for elections, hypothetically speaking, each Council could withdraw its nominee every time the membership of that Council changes either on account of elections or by virtue of the operation of its peculiar statutory framework. According to Mr. Gupta, if this were to be understood as being the true construction of the provisions of the Act, it would result in the composition of the MAC also undergoing a change every time fresh elections are held by State Medical Councils.

6. Mr. Gupta further contended that nominees of State Medical Councils also come to be appointed as members of the autonomous boards which are constituted in terms of Section 16 of the Act. It was his submission that if the Court were to recognize and uphold the power of a State Medical Council to recall nominations every time it comes to be reconstituted, it would also and resultantly impact the composition of those autonomous boards. For all the aforesaid reasons, Mr. Gupta would contend that the Court must interpret the provisions of the Act in a manner that



uncertainty and flux is avoided and the MAC as well as the autonomous boards imbued with a degree of permanency.

7. Before proceeding to notice the contentions addressed on behalf of the respondents, it would be apposite to notice the following salient provisions contained in the Act. Section 3 of the Act envisages the constitution of the National Medical Commission. The composition of the Commission is set forth in Section 4 which reads as follows: -

“4. (1) The Commission shall consist of the following persons to be appointed by the Central Government, namely: —

- (a) a Chairperson;
- (b) ten ex officio Members; and
- (c) twenty-two part-time Members.

(2) The Chairperson shall be a medical professional of outstanding ability, proven administrative capacity and integrity, possessing a postgraduate degree in any discipline of medical sciences from any University and having experience of not less than twenty years in the field of medical sciences, out of which at least ten years shall be as a leader in the area of medical education.

(3) The following persons shall be the ex officio Members of the Commission, namely: —

- (a) the President of the Under-Graduate Medical Education Board;
- (b) the President of the Post-Graduate Medical Education Board;
- (c) the President of the Medical Assessment and Rating Board;
- (d) the President of the Ethics and Medical Registration Board;
- (e) the Director General of Health Services, Directorate General of Health Services, New Delhi;
- (f) the Director General, Indian Council of Medical Research;
- (g) a Director of any of the All India Institutes of Medical Sciences, to be nominated by the Central Government;



- (h) two persons from amongst the Directors of Postgraduate Institute of Medical Education and Research, Chandigarh; Jawaharlal Institute of Postgraduate Medical Education and Research, Puducherry; Tata Memorial Hospital, Mumbai; North Eastern Indira Gandhi Regional Institute of Health and Medical Sciences, Shillong; and All India Institute of Hygiene and Public Health, Kolkata; to be nominated by the Central Government; and
 - (i) one person to represent the Ministry of the Central Government dealing with Health and Family Welfare, not below the rank of Additional Secretary to the Government of India, to be nominated by that Ministry.
- (4) The following persons shall be appointed as part-time Members of the Commission, namely: —
- (a) three Members to be appointed from amongst persons of ability, integrity and standing, who have special knowledge and professional experience in such areas including management, law, medical ethics, health research, consumer or patient rights advocacy, science and technology and economics;
 - (b) ten Members to be appointed on rotational basis from amongst the nominees of the States and Union territories, under clauses (c) and (d) of sub-section (2) of section 11, in the Medical Advisory Council for a term of two years in such manner as may be prescribed;
 - (c) nine members to be appointed from amongst the nominees of the States and Union territories, under clause (e) of sub-section (2) of section 11, in the Medical Advisory Council for a term of two years in such manner as may be prescribed.”

8. Section 6 insofar as it is relevant for our purposes and deals with the tenure of the Chairperson and part time members of the NMC is set out hereinbelow:

“6.(1) The Chairperson and the part-time Members, other than the part-time Members appointed under clauses (b) and (c) of sub-section (4) of section 4, shall hold office for a term not exceeding four years and shall not be eligible for any extension or re-appointment:

Provided that such person shall cease to hold office after attaining the age of seventy years.



(2) The term of office of an ex officio Member shall continue as long as he holds the office by virtue of which he is such Member.

(3) Where a Member, other than an ex officio Member, is absent from three consecutive ordinary meetings of the Commission and the cause of such absence is not attributable to any valid reason in the opinion of the Commission, such Member shall be deemed to have vacated the seat.”

9. Section 11 deals with the constitution and composition of the MAC and reads thus:

“11. (1) The Central Government shall constitute an advisory body to be known as the Medical Advisory Council.

(2) The Council shall consist of a Chairperson and the following members, namely: —

(a) the Chairperson of the Commission shall be the ex officio Chairperson of the Council;

(b) every member of the Commission shall be the ex officio members of the Council;

(c) one member to represent each State, who is the Vice-Chancellor of a health University in that State, to be nominated by that State Government;

(d) one member to represent each Union territory, who is the Vice-Chancellor of a health University in that Union territory, to be nominated by the Ministry of Home Affairs in the Government of India;

(e) one member to represent each State and each Union territory from amongst elected members of the State Medical Council, to be nominated by that State Medical Council;

(f) the Chairman, University Grants Commission;

(g) the Director, National Assessment and Accreditation Council;

(h) four members to be nominated by the Central Government from amongst persons holding the post of Director in the Indian Institutes of Technology, Indian Institutes of Management and the Indian Institute of Science:

Provided that if there is no health University in any State or Union territory, the Vice-Chancellor of a University within that State or Union territory having the largest number of medical colleges affiliated to it shall be nominated by the State Government or by the Ministry of Home Affairs in the Government of India:



Provided further that if there is no University in any Union territory, the Ministry of Home Affairs shall nominate a member who possesses such medical qualification and experience as may be prescribed.”

10. Section 16 of the Act contemplates the constitution of four autonomous boards, namely, the Undergraduate Medical Education Board, the Postgraduate Medical Education Board, the Medical Assessment and Rating Board and the Ethics and Medical Registration Board. The composition of those autonomous boards is prescribed in Section 17 which reads as under:

“17. (1) Each Autonomous Board shall consist of a President and two whole-time Members and two part-time Members.

(2) The President of each Autonomous Board, three Members (including one part-time Member) of the Under-Graduate Medical Education Board and the Post-Graduate Medical Education Board, and two Members (including one part-time Member) each of the Medical Assessment and Rating Board and the Ethics and Medical Registration Board shall be persons of outstanding ability, proven administrative capacity and integrity, possessing a postgraduate degree in any discipline of medical sciences from any University and having experience of not less than fifteen years in such field, out of which at least seven years shall be as a leader in the area of medical education, public health, community medicine or health research.

(3) The third Member of the Medical Assessment and Rating Board shall be a person of outstanding ability and integrity, possessing a postgraduate degree in any of the disciplines of management, quality assurance, law or science and technology from any University, having not less than fifteen years’ experience in such field, out of which at least seven years shall be as a leader.

(4) The third Member of the Ethics and Medical Registration Board shall be a person of outstanding ability who has demonstrated public record of work on medical ethics or a person of outstanding ability possessing a postgraduate degree in any of the disciplines of quality assurance, public health, law or patient advocacy from any University and having not less than fifteen years’ experience in such field, out of which at least seven years shall be as a leader.



(5) The fourth Member of each Autonomous Boards, being a part-time Member, shall be chosen from amongst the elected Members of the State Medical Council in such manner as may be prescribed.”

11. Section 19 of the Act which sets out the terms of office and conditions of service of the President and the Members of autonomous boards reads thus:

“19.(1) The President and Members (other than part-time Members) of each Autonomous Board shall hold the office for a term not exceeding four years and shall not be eligible for any extension or re-appointment:

Provided that part-time Members of each Autonomous Board shall hold the office for a term of two years:

Provided further that a Member shall cease to hold office after attaining the age of seventy years.

(2) The salaries and allowances payable to, and other terms and conditions of service of the President and Members (other than part-time Members) of an Autonomous Board shall be such as may be prescribed:

Provided that part-time Members of each Autonomous Board shall be entitled for such allowances as may be prescribed.

(3) The provisions of sub-sections (3), (5), (6), (7) and (8) of section 6 relating to other terms and conditions of service of, and section 7 relating to removal from the office of, the Chairperson and Members of the Commission shall also be applicable to the President and Members of the Autonomous Boards.”

12. The functions of the Commission are set out in Section 10 which is reproduced hereinbelow:

“10.(1) The Commission shall perform the following functions, namely:—

- (a) lay down policies for maintaining a high quality and high standards in medical education and make necessary regulations in this behalf;
- (b) lay down policies for regulating medical institutions, medical researches and medical professionals and make necessary regulations in this behalf;



- (c) assess the requirements in healthcare, including human resources for health and healthcare infrastructure and develop a road map for meeting such requirements;
 - (d) promote, co-ordinate and frame guidelines and lay down policies by making necessary regulations for the proper functioning of the Commission, the Autonomous Boards and the State Medical Councils;
 - (e) ensure co-ordination among the Autonomous Boards;
 - (f) take such measures, as may be necessary, to ensure compliance by the State Medical Councils of the guidelines framed and regulations made under this Act for their effective functioning under this Act;
 - (g) exercise appellate jurisdiction with respect to the decisions of the Autonomous Boards;
 - (h) lay down policies and codes to ensure observance of professional ethics in medical profession and to promote ethical conduct during the provision of care by medical practitioners;
 - (i) frame guidelines for determination of fees and all other charges in respect of fifty per cent. of seats in private medical institutions and deemed to be universities which are governed under the provisions of this Act;
 - (j) exercise such other powers and perform such other functions as may be prescribed.
- (2) All orders and decisions of the Commission shall be authenticated by the signature of the Secretary.
- (3) The Commission may delegate such of its powers of administrative and financial matters, as it deems fit, to the Secretary.
- (4) The Commission may constitute sub-committees and delegate such of its powers to such sub-committees as may be necessary to enable them to accomplish specific tasks.”

13. The functions of the MAC are spelt out in Section 12 which reads thus:

“12. (1) The Council shall be the primary platform through which the States and Union territories may put forth their views and concerns before the Commission and help in shaping the overall agenda, policy and action relating to medical education and training.



(2) The Council shall advise the Commission on measures to determine and maintain, and to co-ordinate maintenance of, the minimum standards in all matters relating to medical education, training and research.

(3) The Council shall advise the Commission on measures to enhance equitable access to medical education.”

14. Mr. Maninder Singh, learned Senior Counsel appearing for respondent No.6, submitted that the petitioner was merely a nominee of the DMC. Learned Senior Counsel contended that the term “nominated” is different from “election”. It was his submission that nomination is governed by the pleasure doctrine as well as Section 16 of the General Clauses Act, 1897⁷. Mr. Singh contended that since the act of nomination was merely an expression of pleasure by the DMC, it could be withdrawn or recalled at any time. Mr. Singh submitted that in light of the provisions contained in Section 4 of the 1997 Act, every member of the DMC holds office for a term of five years whereafter fresh elections are liable to be held and the DMC comes to be reconstituted. In view of the aforesaid, it was submitted that the DMC which comes to be reconstituted would be fully empowered in law to make a fresh nomination. It was the submission of Mr. Singh that the successor DMC which came into being in October 2020 was fully empowered to select a nominee who would duly convey and put forth its views before the MAC. It was his submission that the sixth respondent was duly elected as the nominee of the DMC and therefore the challenge as raised in the present writ petition is liable to be rejected.

15. Mr. Singh further drew the attention of the Court to the provisions of Section 11(2)(e) of the Act to submit that the same did not reserve a

⁷ The 1897 Act.



particular tenure for a nominee of a State Medical Council. In view of the aforesaid, it was his submission that the petitioner cannot claim any right to continue as a member of the MAC for any stipulated or reserved period. According to Mr. Singh, the acceptance of the submissions addressed at the behest of the petitioner would clearly amount to a rewriting of the Act and this Court reconstructing its provisions. Mr. Singh contended that the same would clearly not be justified in light of the well settled principles of statutory interpretation. Mr. Singh submitted that a reading of the various provisions of the Act would evidence that the NMC, MAC as well as the various autonomous boards would always comprise of members who may change or exit those bodies in terms of the provisions of the Act from time to time. It was his submission that the mere fact that the composition of those bodies may change periodically is self-evident and therefore it would be wholly impermissible to recognise any right inhering in the petitioner to continue in the MAC for any specified period.

16. In support of his submission with respect to the ambit and scope of the power to nominate, Mr. Singh firstly relied upon the decision of the Supreme Court in **Afjal Imam v. State of Bihar**⁸ and more particularly to the following observations made therein: -

“47. After a Mayor is removed under Section 25(4) of the Act, a new Mayor is to be elected under Section 23(3) of the Act. This section does not say that the newly elected Mayor will not have the power of nominating the other members to the Empowered Standing Committee which is available to the Chief Councillor or Mayor under Section 21(3) of the Act. Thus, in fact, by stating that the nomination of the members to the Empowered Standing Committee is a one-time act, the respondents

⁸ (2011) 5 SCC 729



are adding words in Section 21(3) of the Act. Thus, in a way, they are supplying in Section 21(3) the words “*only by the first Chief Councillor and not by his successors in office*” in place of “*the Chief Councillor*” after the words “*shall be nominated*” in Section 21(3) of the Act. Thus, they want Section 21(3) to read as follows:

“(3) The other members of the Empowered Standing Committee shall be nominated ‘only by the first Chief Councillor and not by his successors in office’ from among the Councillors elected under sub-section (1) of Section 12 within a period of seven days of his entering office.”

Such a reading and resultant situation will be contrary to the basic principle of parliamentary democracy viz. that those in office ought to be representative of and responsible to the House. Therefore, if the House has lost confidence in the earlier Mayor, it is all the more necessary that the members of the Empowered Standing Committee should be made to step down along with him and a newly elected Mayor be permitted to have his nominees on the Empowered Standing Committee.

59. We have noted that the view canvassed by the respondents that the nomination of the members to the Empowered Standing Committee is a one-time act, is possible only if the words are added in Section 21(3) of the Act as pointed out above. The intention of the legislature as seen from the provisions of the Act and the Rules is to have a “Mayor-in-Council” who enjoys the confidence of the Municipal House. The Empowered Standing Committee along with him is vested with the executive power and is expected to run the municipal governance. There is no reason to treat the subsequently elected Mayor differently, and deny him the right to nominate his nominees to the Empowered Standing Committee which right is available to the duly elected Mayor under Section 21(3) of the Act. Except for the fact that the person who is elected as the Mayor after the no-confidence motion is passed against the first Mayor, is elected subsequent to the first Mayor, there is no ground to classify the subsequent Mayor differently from the first Mayor. The view canvassed by the respondents would lead to a conflict between the newly elected Mayor and the other members of the Empowered Standing Committee if they are not nominated by him. That was surely not the intention of the legislature.

60. Considering the powers which are available to the Empowered Standing Committee, if the newly elected Mayor is not read as having the power to nominate his nominees on the Empowered Standing Committee, he will be treated dissimilarly and such an interpretation will make Section 27 violative of Article 14 of the Constitution and contrary to the powers of the Mayor under Section 21(3) of the Act. The only way,



therefore, to save Section 27 is to read it down by implication, and to make it subject to Sections 25(4), 23(3) and 21(3) of the Act, thereby holding that the nominated members shall also automatically vacate their office when the Mayor nominating them is no longer in the office. Thus, the newly elected Mayor will also have the authority to nominate seven members of his choice to the Empowered Standing Committee.”

17. Learned Senior Counsel then referred to the decision in **Dr. Bool Chand v. Kurukshetra University**⁹ in support of his contention that the power to appoint would also imply a power to determine that appointment at any time. Learned Senior Counsel referred to the following passages from that decision:-

“4. There is no express provision in the Kurukshetra University Act or the Statutes thereunder which deals with the termination of the tenure of office of Vice-Chancellor. But on that account we are unable to accept the plea of the appellant that the tenure of office of a Vice-Chancellor under the Act cannot be determined before the expiry of the period for which he is appointed. A power to appoint ordinarily implies a power to determine the employment. In *S.R. Tiwari v. District Board, Agra* [AIR 1964 SC 1680 : (1964) 3 SCR 55] it was observed by this Court at p. 67:

“Power to appoint ordinarily carries with it the power to determine appointment, and a power to terminate may in the absence of restrictions express or implied be exercised, subject to the conditions prescribed in that behalf, by the authority competent to appoint.”

A similar view was also expressed in *Lekhranj Sathramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer, Bombay* [AIR 1966 SC 334 : (1966) 1 SCR 120] . That rule is incorporated in Section 14 of the Punjab General Clauses Act 1 of 1898. That section provides:

“Where by any Punjab Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority by it in exercise of that power.”

⁹ (1968) 1 SCR 434



6. Counsel also urged that under Section 14 of the Act power to appoint includes power to dismiss, but not to determine employment. In support of that contention he urged that in relation to the tenure of service of a public servant, the expression “to dismiss” has come to mean to determine employment as a measure of punishment. But Section 14 of the General Clauses Act is a general provision: it does not merely deal with the appointment of public servants. It deals with all appointments, and there is no reason to hold, having regard to the context in which the expression occurs, that the authority invested with the power of appointment has the power to determine employment as a penalty, but not otherwise. The expression “dismiss” does not in its etymological sense necessarily involve any such meaning as is urged by counsel for the appellant. The implication that dismissal of a servant involves determination of employment as a penalty has been a matter of recent development since the Government of India Act, 1935, was enacted. By that Act certain restrictions were imposed upon the power of the authorities to dismiss or remove members of the civil services from employment. There is no warrant however for assuming that in the General Clauses Act, 1898, the expression “dismiss” which was generally used in connection with the termination of appointments was intended to be used only in the sense of determination of employment as a measure of punishment.”

18. Turning then to the doctrine of pleasure, Mr. Singh sought to draw sustenance from the following principles as laid down by the Supreme Court in **Om Narain Agarwal v. Nagar Palika, Shahjahanpur**¹⁰:-

“9. Learned counsel for the private respondents submitted that once the power of nominating the women members is exercised by the State Government, such nominated members cannot be removed prior to the completion of the term of the Board unless they are removed on the grounds contained under Section 40 of the Act. It was also contended that the State Government cannot be allowed to remove a nominated member at its pleasure without assigning any reason and without affording any opportunity to show cause. Once a woman member is nominated she gets a vested right to hold the office of a member of the Board and the State Government cannot be given an uncanalised, uncontrolled and arbitrary power to remove such member. It is contended that such arbitrary and naked power without any guidelines would be contrary to the well-

¹⁰ (1993) 2 SCC 242



established principle of democracy and public policy. It would hamper the local bodies to act independently without any hindrance from the side of the Government.

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12. In our view, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations. In *Dr Rama Mishra case* [Writ Petition No. 11114 of 1990, Order dated December 9, 1991] the High Court wrongly held that the pleasure doctrine incorporated under the fourth proviso to Section 9 of the Act was violative of the fundamental right of equality as enshrined in Article 14 and Article 15(3) of the Constitution. We are unable to agree with the aforesaid reasoning of the High Court. Clause (3) of Article 15 is itself an exception to Article 14 and clauses (1) and (2) of Article 15 of the Constitution. Under Article 14, a duty is enjoined on the State not to deny any person equality before the law or the equal protection of the laws within the territory of India. Article 15(1) provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 15(2) provides that “no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainments; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.”

19. Continuing along this line, Mr. Singh then placed reliance on the decision of the Supreme Court in **Krishna v. State of Maharashtra & Ors.**¹¹ where, while explaining the doctrine of pleasure, the Court observed thus: -

“11. Once doctrine of pleasure is applicable neither the principle of natural justice would step in nor any question of giving an opportunity

¹¹ (2001) 2 SCC 441



before removal would arise. It is significant when stigma is cast then sub-section (3) of Section 10 specially provides for giving an opportunity to such incumbent before passing an order of removal under Section 10, while there is no such corresponding sub-section under Section 6. Thus intent of legislature is very clear which reinforces the inference which we have drawn that doctrine of pleasure is implicit under Section 6. In *Om Narain Agarwal v. Nagar Palika, Shahjahanpur* [(1993) 2 SCC 242] this Court was considering the provisions of Section 9 of the U.P. Municipalities Act, 1916 as introduced by U.P. Act 19 of 1990, which made provision for the nomination of two women members by the State Government, and the fourth proviso provides that the nomination of such two members is at the pleasure of the State Government. This Court held: (SCC p. 254, paras 11-12)

“The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. ... But so far as the nominated members are concerned, the legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

In our view, such provision neither offends any article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations.”



20. Reliance was then placed on a judgment delivered by a Division Bench of this Court in **Sarla Kaushik & Ors. v. Jagjit Singh Rathor & Ors.**¹² where the following pertinent observations came to be made:-

“23. The nominees of the Administrator in terms of Section 3 (3)(b) of the Act are not holders of any office or post. They do not enjoy any pecuniary benefit; their term of nomination is not governed by statute; and there does not exist any provision in the said Act for their removal. Would this mean that such nominated Councillors once nominated, even on erroneous premise, cannot be removed? The answer of the said question must be rendered in the negative.

24. A reason for removal may arise in various contexts apart from the political consideration. In a case, it may be held that a person who has criminal record has been nominated or the person nominated does not fulfil the conditions therefor. The nominated Councillor after nomination may be convicted in an offence involving moral turpitude. The contention of the writ petitioner is accepted as has been found favour with the learned Single Judge, in no situation the nominated Councillors can be removed at all. In other words, if once nomination is made, the hands of the Administrator would be tied and the entire Corporation will have no other option, but to bear the Councillors, who may not otherwise be fit to continue in the office.

25. It is, therefore, difficult for us to accept the proposition that the nomination of the Councillors in terms of Section 3(3) (b) of the said Act shall be co-terminus with the duration of the Corporation as provided under Section 4 thereof.

26. Section 16 of GC Act states that where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. Such a power is well known is an incident to or consequence of the power of appointment. Power to terminate flows naturally and as a necessary sequence from the power to create.

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29. In *Kailash Chand Mahajan's case* (Supra), the Apex Court while interpreting the relevant provisions of the Electricity Act, which *inter alia*

¹² 2002 (64) DRJ 545 (DB)



provided for the terms of office and conditions of reappointment of the Members of the Board, has observed:—

“54. A careful reading of the Section will clearly disclose the section merely talks of term of office and conditions for reappointment. Those conditions may be as prescribed. The word ‘prescribed’ has come to be defined under Section 2(9) of the said Act. “Prescribed” means prescribed by rules made under this Act. Nowhere in this Section, in our considered view, an additional power for appointment is conferred. At best it could be said that it merely lays down the eligibility for reappointment. As stated above, that eligibility must be as per conditions prescribed under the rules. As a matter of fact, when it says “shall hold the office for such period” it means the period as prescribed under the rules. Beyond this, we are unable to persuade ourselves to come to the conclusion that there is any separate power for reappointment. It is not even necessary to provide for such a separate power. The reason why we say so is Ss. 14 and 16 of Central General Clauses Act provide for such a power. Section 16 deals with the power of appointment carrying with it the power of dismissal, while S. 14 states any power conferred unless a different intention appears could be exercised from time to time as occasion requires. Where, therefore, Section 5 provides for a power to appoint, certainly that power could be exercised from time to time as occasion requires. Thus one need not search for a separate provision in this regard.”

30. In *Om Narain Agarwal's case* (Supra), the Apex Court held that where nomination appointments are made on political considerations, even the principles of natural justice are not required to be complied with stating:—

“11. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations.”

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32. As regards nomination of Members under Section 9 of the UP. Municipalities Act, it was further observed in *Om Narain Agarwal's case* (Supra):—

“We are not impressed with the reasoning given by the High Court that the fourth proviso to Section 9 of the Act in any manner deprived the fundamental right of equality as enshrined in Article



14 of the Constitution. It is well established that the right of equality enshrined under Article 14 of the Constitution applies to equals and not to unequals. The nominated members of the Board fall in a different class and cannot claim equality with the elected members. We are also not impressed with the argument that there would be a constant fear of removal at the will of the State Government and is bound to demoralize the nominated members in the discharge of their duties as a member in the Board. We do not find any justification for drawing such an inference, inasmuch as such contingency usually arises only with the change of ruling party in the Government. Even in the case of highest functionary in the Government like the Governors, the Ministers, the Attorney General and the Advocate General discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to demoralize or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office.”

33. In *Ghanshyam Singh's case* (Supra), the law has been laid down in the following terms:—

“36. Other reasons for coming to this conclusions are as follows:

(1) The initial nomination of the petitioner herein and for that manner nomination of any official or non-official on the Board of Directors was at the will of the Government. The Government has an inherent power to revoke the same as per S. 16 of the General Clauses Act. A Division Bench of this Court in *Bar Council of Delhi v. The Bar Council of India*, AIR 1975 Delhi 200 has held that an elected office which is held at pleasure, the holder can be removed at will without showing any cause unless there is a provision in the rules or bye-laws laying down that he can be removed only for a cause. Setting aside the decision of the Bar Council of India that a rule cannot be made under S. 5 of the Advocates Act for the removal of the Chairman of the Bar Council, it was, *inter alia*, held in paragraph 12 of the reported judgment that:

“The view of the Bar Council of India is on the other hand based on the very silence of the statute on this point. We are of the opinion that such silence indicates that the common law regarding the removal of the holder of an office remains unchanged. The statute does not, therefore, have to say that the Chairman of the State Bar Council



would be removable by a resolution of no-confidence. The reason is that such power of removal is inherent in the Bar Council, which elects its Chairman. The power given to the State Bar Council to elect its Chairman is the codification of only a part of the common law. Such codification does not change the other part of common law, which implies in the State Bar Council the power to remove the Chairman so elected. Just as rules can be made u/S. 15 to carry out the expressed power of the Bar Council to elect the Chairman, it would appear that rules may also be made to carry out the implied power of the State Bar Council to remove the Chairman. The two powers are inseparable in common law. They can be separated only by a statutory intervention. So long as this is not done, they would remain connected with each other even though only one of the powers, namely, the power of election has been made statutory while the other power, namely, the power of removal has been left to be implied. If such a power is not implied, the mere codification of the power to elect would result in a change in the common law. There is no warrant for implying such a change. On the contrary, the construction of the statute in the light of the common law implies such a power in the State Bar Council.”

We are bound by the principles of law enunciated in the said decision. In our view even in the absence of sub-sec. (3) of Section 41, a nomination till further orders is liable to be revoked u/S. 41 (1) itself. The Government is vested with inherent powers to do so (See AIR 1950 PC 140 *Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Madhavi Amma* and AIR 1977 SC 2257 : (1977 Lab LC 1843), *Heckett Engineering Co. v. Their Workmen*).

It has been held by the Supreme Court in *Life Insurance Corporation of India v. Escorts Limited*, AIR 1986 SC 1370 : (1986 Tax LR 1826) that every share-holder (be it a corporation which is an instrumentality of the State has the same right as that of other shareholder to move a resolution to remove some Directors and appoint others in their places. It was held that the LIC of India cannot be restrained from doing so nor is it bound to disclose the reasons for moving the resolution. It was further held that Art. 14 cannot be construed as a charter for judicial review of State actions “and to call upon the State to account for its actions in its manifold activities by stating reasons for such actions.”



(2) The argument that the petitioner having been elected as Chairman by the Board of Directors of IFFCO, his term of office at any rate is conterminous with the term of the elected members of the Board and, therefore, he is to continue till 30th March, 1991 as a Chairman, is also to be negative. Mr. Thakur relies on Bye-law No. 44A in support of this submission. That bye-law reads as under:

“44A. The term of office of the Chairman and Vice-Chairman shall be conterminous with the term of the elected members of the Board. In case of any vacancy within this period, the Board shall fill up the vacancy through re-election for the unexpired term of the Board.”

The contention is that even if the petitioner is no longer a Director, he has to continue as a Chairman. This contention is also unacceptable. It is axiomatic that a Chairman has to be a Director. The above bye-law cannot be read out of context. The underlying idea of the above quoted bye-law is that a Director who has been elected as a Chairman; shall remain a Chairman for the term of the elected members of the Board but if he ceases to be one by virtue of bye-law No. 38 or on his resignation as a Director or for any other reason, he cannot be held to be continuing as a Chairman. It is unnecessary to further analyse the contention as we are of the view that the petitioner's nomination as a Director cannot be deemed to be for a fixed period of three years, i.e., conterminous with the term of the elected members of the Board, nor can we be asked to restrain the Government from recalling his nomination.”

34. Although the expression ‘*at the pleasure*’ does not find place in Section 3(3)(b), having regard to the facts and circumstances of the case, we are of the opinion that the same may not make any difference keeping in view the fact that duration of the nominee Councillors is not otherwise provided for in the Act.”

21. Reiterating his submission that nominated members in any body occupy an office at the pleasure of the nominating body, learned Senior Counsel also referred to a judgment handed down by the Allahabad High



Court in **Mahendri Chhabra & Ors. s. State of U.P. & Ors**¹³ where that Court held:-

“6. Having heard the learned counsel for the parties, we find that the petitioners were nominated as members of Nagar Palika Parishad on 30.10.2001 and took oath as members of the said Nagar Palika Parishad on 6.11.2001. Their nomination as member of the Nagar Palika Parishad was cancelled by the State Government vide notification dated 12.11.2001 bearing serial No. 4349 and the respondent Nos. 4 to 8 were nominated as members by the State Government vide Notification No. 4266 issued on the same day. In the case of *Prem Kumar Balmiki* (supra), a Division Bench of this Court was considering the question as to whether a nominated member of the Board can be removed by the State Government without expiry of the term of the Municipality or not. After examining various authorities on the question of doctrine of pleasure as also the powers available to the Government under sections 16 and 21 of the General Clauses Act, the Court has held as follows:

“13. The propositions of law emerging from the above authorities may be stated thus: It is settled law that the power to do a thing includes the power to undo that thing. Thus the power to appoint or nominate a person to a post or office includes necessarily the power to remove or dismiss from that post or office. The power to pass an order includes the power to rescind that order. These general principles have been given statutory recognition in sections 16 and 21 of the General Clauses Act, 1987. The general power to undo a thing or to remove or dismiss from office is subject to restrictions, which may be imposed by contract by terms of appointment or by statute. This is specifically provided in section 16 where it is said “unless a different intention appears.” The U.P. Municipalities Act does not exhibit an intention different from the general principles mentioned herein. Rather the incorporation of the pleasure doctrine in the Fourth Proviso puts the matter beyond the pale of doubt. It reinforces general proposition that the power to nominate carries necessarily with it the power to terminate that nomination.”

7. The office of member of Municipal Board is a political office. Appointment to political office carries with it political hazards. Such appointments are invariably made on political considerations and their termination is also actuated by political considerations. If appointment

¹³ 2003 SCC Online All 436



itself is made on political considerations we see no reason why political considerations should not be allowed to operate in termination of the nomination. The nomination as well as termination of the nomination fall within the field of subjective satisfaction of the nominating authority. In such a situation there is no question of invoking the principles of natural justice or of arbitrariness contained in Article 14 of the Constitution.”

8. Applying the principles laid down by this Court in the case of *Prem Kumar Balmiki v. State of U.P.* to the facts of the present case, we have no hesitation to hold that even after the deletion of the proviso to section 9 of the U.P. Municipalities Act by U.P. Act No. 19 of 1994 a nominated member of the Nagar Palika Parishad can be removed by the State Government by exercising the power under sections 16 and 21 of the General Clauses Act and a nominated member cannot insist upon to hold the office as a member of Nagar Palika Parishad for the full term. In the case of *Om Narain Agrawal* (supra), the Hon'ble Supreme Court has held that the nominated members of the Board fall in a different class and cannot claim equality with the elected members. The Apex Court was also not impressed with the arguments that there would be a constant fear of removal at the will of the State Government and is bound to demoralise the nominated members in the discharge of their duties as a member in the Board. While repelling such an argument the Apex Court held as follows:

“We do not find any justification for drawing such an inference, inasmuch as such contingency usually arises only with the change of ruling party in the Government. Even in the case of highest functionary in the Government like the Governors, the Ministers, the Attorney General and the Advocate General discharge their duties efficiently, through removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to demoralise or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office.””

22. Addressing submissions in rejoinder, Mr. Gupta, learned Senior Counsel, submitted that the contention that the act of nomination is traceable to the doctrine of pleasure loses sight of the settled position that in a democracy governed by the rule of law, no government or authority can be presumed to have been conferred with discretionary powers which may be exercised in absolute or unfettered terms. Mr. Gupta submitted that



bearing in mind the indubitable fact that the Constitution is supreme, it would be wholly incorrect to hold that an authority is entitled to exercise unbridled or unfettered power or be recognised to be vested with absolute discretion. Mr. Gupta drew the attention of the Court to the following passages from the decision of the Supreme Court in **B.P. Singhal v. Union of India**¹⁴ where the extent of application of the pleasure doctrine was explained as follows :-

“22. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by the rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no Government or authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for the public good.

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33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the “fundamentals of constitutionalism”. Therefore in a constitutional set-up, when an office is held during the pleasure of any authority, and if no limitations or restrictions are placed on the “at pleasure” doctrine, it means that the

¹⁴ (2010) 6 SCC 331



holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause.

34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, “at pleasure” doctrine enables the removal of a person holding office at the pleasure of an authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons...”

23. Mr. Gupta submitted that the reliance placed by Mr. Singh on the various decisions noticed above principally related to appointments made on political considerations or where Courts had found that the provisions of Section 16 of the 1897 Act may have applied. It was his submission that those decisions, in any case, do not hold that a doctrine of pleasure would apply to nominations.

24. In order to clear the air with respect to the invocation of the doctrine of pleasure and the submission advocated by Mr. Singh, it would be pertinent to briefly advert to the decisions cited by him in this respect. In **Afjal Imam**, the Supreme Court on a consideration of the fact that the powers of the newly elected Mayor to constitute an Empowered Standing Committee would be seriously impeded read down the relevant provisions of Section 27 of the concerned statute to hold that if a power were not recognized as inhering in the newly elected Mayor to nominate chosen members to the Empowered Standing Committee, it would render the provision violative of Article 14 of the Constitution. Insofar as the decision in **Dr. Bool Chand** is concerned, that judgment reiterates the well settled



principle that the power to appoint ordinarily carries with it the power to determine such an appointment. The Court further pertinently observed that the expression ‘appointment’ as used in Section 14 of the 1897 Act is not to be understood in a restrictive sense and would take within its ambit all nature of appointments that may be made and that the word ‘dismiss’ was not intended to be used in the limited sense of determining employment as a measure of punishment.

25. **Om Narain Agarwal** was dealing with an appointment which admittedly was made on political considerations. It was in that backdrop that the Supreme Court held that it was always open to the State Government to remove a nominated member and that it could not be said that their tenure would be co-terminus with that of the Board. **Krishna** is an authority for the proposition that once it is found that the doctrine of pleasure applies, the question of complying with the principles of natural justice would not arise at all. In **Sarla Kaushik**, the Division Bench while noticing the various decisions rendered by the Supreme Court with respect to the rights of a nominated member turned on the provisions of Section 16 of the 1897 Act. It further held that even if the pleasure doctrine is not specifically incorporated in the statute, it could be invoked if a consideration of the relevant provisions indicated that there was an implied adoption of that principle. In any case, in the considered opinion of the Court, the question which arises in the present writ petition really does not pivot upon the doctrine of pleasure as was invoked by Mr. Singh. The rights if any of the petitioner must firstly be tested and considered in the backdrop of the relevant provisions made and engrafted in the Act.



26. Mr. Khattar learned Counsel appearing for the DMC submitted that the petitioner has not challenged the minutes of the meeting of 06.01.2021 where it was resolved by the DMC that since the body has been freshly constituted, the process of nominating one member from amongst the elected members to the MAC should be initiated. According to learned Counsel, in the absence of any formal challenge to that decision, the writ petition is liable to be dismissed. Learned Counsel appearing for the DMC argued that it is not adopting the submissions addressed on behalf of the sixth respondent and insofar as it related to the doctrine of pleasure. Learned Counsel contended that the nomination of any member of a State Medical Council to the MAC is contingent on them being an elected member of that Council. This necessarily means that a nominee would be from amongst elected members of the current body of the State Medical Council. In the absence of any tenure having been fixed for that category, the tenure, according to learned Counsel, should be recognised to be co-terminus with the tenure of the individual State Medical Councils.

27. Learned Counsel appearing for the Union submitted that the issue raised does not relate to the said respondents since the issue of nomination would be one between the petitioner and the DMC. According to learned Counsel, the role of those respondents is limited to requesting all State Medical Councils to send up the names of their respective nominees. Learned Counsel further submitted that the nomination impugned is not found to be contrary to the statutory position which prevails and that the said respondents find no fault in a new member being nominated once a State Medical Council comes to be reconstituted.



28. Having noticed the rival submissions, the Court firstly turns its attention to the relevant provisions of the Act and which would have a bearing on the issues that stand raised. In terms of Section 4 of the Act, the Commission is to comprise of a Chairperson, 10 ex-officio members and 22 part-time members. The Chairperson is to be appointed by a Search Committee whose composition stands set out in Section 5 of the Act. Insofar as the 22 part-time members are concerned, it is the provisions of Section 4(4) which govern. In terms of Clause (a) of Section 4(4), 3 part-time members are to be appointed from amongst persons of ability, integrity and standing and who may have special knowledge and professional experience in areas including management, law, medical ethics, health research, consumers of patients' rights, science, technology and economics. As per Section 4(4)(b) of the Act, 10 members are to be appointed on a rotational basis from amongst the nominees of State and Union Territories falling within Section 11(2) (c) and (d). Clause (c) of Section 4(4) of the Act provides for the appointment of 9 members from amongst the nominees of States and the Union Territories and who may form part of the MAC in terms of Section 11(2)(e) of the Act. These nine members would be those who are part of the MAC and may have been nominated by the respective State Medical Councils.

29. It becomes pertinent to note that clause (c) of Section 11(2) refers to the co-option of one member from each State of the Union who may be the Vice-Chancellor of a Health University in that State and who is nominated as such by the State Government. An identical provision is made in Section 11(2)(d) with respect to the Vice-Chancellor of a Health University situate



in a Union Territory who may be nominated by the Ministry of Home Affairs in the Union Government. Section 11(2)(e) and with which we are specifically concerned, contemplates the co-option of one member from amongst the elected members of the State Medical Councils of each State and Union Territory. Clause (e) further prescribes that the said member must be one who is nominated as such by the State Medical Council. It becomes pertinent to note that members who come to become part of the MAC in terms of Section 11(2)(e) are to be nominated by the State Medical Councils. These nominees are thus not selected or earmarked based on any nomination made either by the State Government or the Ministry of Home Affairs in the Union Government. The Court, in the preceding part of this decision, has already noticed the provisions made in the Rules and which regulates the appointment of part-time members of the Commission in terms of Section 4 (4)(b) and (c). In terms of Rule 3(2) thereof, part-time members of the Commission who are to be appointed in terms of Section 4 (4)(b) and (c) are to be selected by a draw of lots from nominees of the States and Union Territories who may be members of the MAC. Persons who are part of the MAC in terms of Section 11(2) (b) and (c) thus form the pool from amongst which part-time members of the Commission may be drawn and appointed by a draw of lots. Rule 3(5) then prescribes that the first category of draw of lots would be conducted for the selection of 10 part-time members from the nominees of the State and Union Territories who may be a part of the MAC by virtue of having been nominated as such in terms of Section 11(2)(c) and (d). Rule 3(6) thereafter postulates that the second category of the draw of lots shall be conducted from amongst part-



time members of the States and Union Territories who may be part of the MAC by virtue of having been nominated to that body by the State Medical Councils in terms of Section 11(2)(e). The proviso to Rule 3(6) stipulates that in order to ensure adequate and equitable representation of maximum number of States and Union Territories, the States and Union Territories whose nominees stand selected in the first draw of lots shall be excluded from the subsequent draw of lots to be held for the category envisaged in Rule 3(6). It is in the aforesaid manner that members who may fall within the categories contemplated in Section 4(4)(b) and (c) come to be appointed to the NMC.

30. It is pertinent to highlight the fact that the Act reserves a specified tenure for nominated members only if they be appointed to the NMC. Both clauses (b) and (c) of Section 4(4) in unambiguous terms reserve a term of two years for such part-time members. It is thus evident that nominated members covered under clauses (c), (d) and (e) of Section 11(2) enjoy a reserved and specified tenure only if they come to be appointed as part-time members of the NMC. The tenure of members is a subject which is additionally dealt with in Section 6 of the Act. Section 6 prescribes that the Chairperson and other part-time members of the NMC would hold office for a term not exceeding four years. It additionally places a rider in terms of the Proviso appended to Section 6(1), which stipulates that such a person would cease to hold office upon attaining the age of 70 years. The term of office of ex-officio members of the NMC is for reasons which are clearly obvious and apparent prescribed to be as long as they hold office by virtue of which they may have become members and part of the NMC.



Significantly however Section 6(1) while prescribing a tenure for the Chairperson and part-time members falling within Section 4(4)(a) as four years, specifically excludes part-time members appointed under clauses (b) and (c) thereof. This essentially since Section 4(4) has independently stipulated the term of that category of members to be two years. However, neither Section 11 of the Act which deals with the composition of the MAC nor Sections 16 and 17 of the Act which relate to autonomous boards prescribe or specify a particular tenure for its members and constituents.

31. It becomes pertinent to note that the Act creates and secures a tenure for members of the NMC only. This is evident upon a perusal of Sections 4(4) and 6 of the Act. Section 4(4) of the Act creates a specific tenure of office for those who may come to be appointed to the NMC from out of the members constituting the class in Section 11(2)(e). However, the prescription of a tenure finds mention only in Section 4 and significantly not in Section 11. Similarly, Section 6 when it reserves a tenure for certain members of the NMC it specifically excludes those part time members who stand comprised in Section 4 (4) (b) and (c). This is evident and clear from the provisions of Section 6 which while prescribing a tenure for certain class of members of the NMC uses the expression, *“other than the part time Members appointed under clauses (b) and (c) of sub-section (4) of Section 4....”*. This firstly because the tenure of members of the NMC falling within the ambit of Section 4(4) clauses (b) and (c) already stands prescribed therein as 2 years. The second reason for this conscious exclusion appears to be on account of a singular lack of legislative expression of a reservation of tenure for persons who may be members of



the MAC in Section 11. The Court further notes that the autonomous boards also comprise of members who may be constituents of the MAC. However, even for those categories of members, no specific tenure has been prescribed or reserved.

32. The Court is thus faced with a situation where the statute while specifically prescribing a particular tenure of office for certain class of members, has chosen not to stipulate a similar prescription for other categories of members. The question which therefore arises is whether the Court by way of an interpretative exercise would be justified in declaring that part-time members of the MAC falling within the scope of Section 11(2)(e) are entitled to hold office for a particular and statutorily secured period notwithstanding the Legislature having chosen not to incorporate such a provision. The second issue which would require examination would be whether the Court would be justified in recognising such security of tenure by virtue of their position as members of the MAC.

33. It may and at the outset be noted that while Mr. Gupta eloquently explained the obligations and functions of the NMC and the MAC in order to highlight the pivotal role that those bodies discharge with respect to medical education and research, the Court would firstly have to consider whether a security of tenure can be discerned from the provisions of the Act. As would be evident from the preceding parts of this judgment, the Court on a consideration of the relevant provisions of the Act has found that it does not prescribe or secure a fixed tenure for a nominee of a State Medical Council who may come to be part of the MAC in terms of the



provisions of Section 11(2)(e). The nominees of a State Medical Council obtain a fixed tenure only if they become part of the NMC. Their inclusion in the NMC is dependent upon the draw of lots as contemplated under the Rules. It would therefore appear to be imprudent to enter a judicial declaration and recognize or mandate a specified tenure for nominees of State Medical Councils. As a necessary corollary to the above, the Court would then also have to prescribe a specified tenure for such nominees. As was noticed by the Court while recording the submissions of Mr. Gupta, who had urged that the tenure of that class of members could be 2 or 4 years. The Act provides no guidance or indication with respect to this issue. The difficulty in accepting the contention addressed on behalf of the petitioner essentially stems from the aforesaid aspects of the challenge mounted.

34. It would further be pertinent to note that the absence of a provision governing or prescribing a tenure for a nominee of a State Medical Council neither appears to be a case of a legislative oversight nor a *cassus omissus*. The Legislature has, where it thought fit, clearly and in unambiguous terms prescribed a tenure for members of the NMC. This is evident firstly from Section 6 which specifically deals with the subject of “*term of office*”. The subject of term of office is then governed by clauses (b) and (c) of Section 4(4) which stipulates that the tenure of members appointed to the NMC from amongst the class of members of the MAC falling within clauses (c), (d) and (e) of Section 11(2) would be two years. It is also relevant to note that the tenure of part time members falling under Section 4(4)(a) is also provisioned for in Section 6 with that section clearly prescribing a term not



exceeding four years. The Proviso to Section 6(1) then prescribes the age of seventy years at which such members of the NMC are to demit office. It is thus plainly evident that the Act incorporates specific provisions prescribing the term of members falling under clauses (a), (b) and (c) of Section 4(4) only and remains silent insofar as their term as members of the MAC is concerned.

35. Turning then to the composition of the MAC, it is evident that the Chairperson and all members of the NMC are to be ex officio members of the MAC. Their membership of the MAC would thus be governed and controlled by the tenure that may inure to them by virtue of being part of the NMC. Similarly, the inclusion of the Chairperson of the University Grants Commission and the Director of the National Assessment and Accreditation Council would run in consonance with their term on those posts. The above members of the MAC, except the latter two authorities noticed above, would be entitled to continue as such dependent upon the period during which they are members of the NMC. Their term as members of the NMC is controlled by the provisions of Sections 4 and 6 of the Act. However, and significantly, the term of members which may fall within clauses (c), (d) and (e) of Section 11(2) has not been specified under the Act. The only contemplated situation in which those categories of members may be legitimately recognised to hold office is that which is envisioned under clauses (b) and (c) of Section 4(4). It is thus manifest that it is only when members nominated to the MAC in terms of clauses (c), (d) and (e) of Section 11 come to be appointed as members of the NMC that they may hold office for a period of two years.



36. Accordingly, and on a conspectus of the relevant provisions of the Act the Court finds that members of the MAC falling within Section 11(2)(e) have not been guaranteed a specified tenure under the statute. The Act reserves a particular term of office for those members only in case of the eventuality that they also come to be appointed to the NMC. Thus, the only caveat which is liable to be entered is that when a member of the MAC falling within the ambit of Section 11(2)(e) comes to be appointed to the NMC, he/she or would be entitled to hold that office for a period of two years. It would logically follow that by virtue of having become a member of the NMC under Section 4(4)(c), the term of that member cannot be curtailed and the appointment of such a member to the NMC would entitle him to remain as part of the MAC also for a period of two years at least. The Court further observes that the power of a State Medical Council to recall or revise a nomination would necessarily have to be considered in light of the aforesaid factor. However, the aforesaid issue shall be dealt with in the subsequent parts of this decision.

37. Having noticed the statutory provisions and the scheme of the Act, the first issue which merits determination would be whether the Court would be justified in reading into its provisions a particular tenure for a nominee of a State Medical Council. As was noted by the Court in the preceding parts of this decision, the Act does not prescribe a particular term during which a nominee of a State Medical Council may continue to be a part of the MAC. In fact, Section 11 does not stipulate a term for persons falling within the ambit of Section 11(2)(e). While the statute does prescribe a tenure for members of the NMC in Sections 4 and 6, Section 11



remains conspicuously silent on this aspect. The issue which thus arises for consideration is whether the Court would be justified in reading into Section 11 or the other provisions of the Act, a tenure that may be recognised to exist in respect of the class of nominees falling under Section 11(2)(e). This Court is of the view that circumstances clearly do not warrant such a finding being recorded for the following reasons.

38. On first principles, while interpreting a statute, the Court must go by the plain language used by the draftsmen. The plain language principle is to be jettisoned only if it leads to absurd results. If there be an ambiguity in a particular provision of the statute, courts resort to employing the purposive principles of interpretation in order to determine the true meaning of that provision. This exercise is guided firstly by internal aids such as the accompanying provisions of the statute, the statement of objects and reasons. While undertaking an interpretative exercise, courts may also take recourse to external aids such as a consideration of the mischief which was sought to be cured as well as other contemporaneous material such as legislative debates or reports of committees in order to ascertain the real will and intent of the Legislature. However, while embarking upon this exercise, courts must also bear in mind that the exercise of judicial interpretation should not cross the Rubicon and take on the mantle of rewriting the statutory provision itself. While interpreting a statute, courts would be wary of either amending a provision or introducing words or content which are otherwise absent in the garb of an exercise of statutory interpretation. This all the more where the language of the provision is clear and unambiguous or where a literal construction does not lead to absurd



results. These well settled principles were eloquently explained by the Supreme Court in **Padma Sundara Rao Vs. State of T.N.**¹⁵ in the following terms: -

“12. The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. “Statutes should be construed, not as theorems of Euclid”, Judge Learned Hand said, “but words must be construed with some imagination of the purposes which lie behind them”. (See *Lenigh Valley Coal Co. v. Yensavage* [218 FR 547].) The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama* [(1990) 1 SCC 277: AIR 1990 SC 981].

13. In *D.R. Venkatchalam v. Dy. Transport Commr.* [(1977) 2 SCC 273: AIR 1977 SC 842] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.* [(2000) 5 SCC 515]) The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in *Narasimhaiah* case [(1996) 3 SCC 88]. In *Nanjudaiah* case [(1996) 10 SCC 619] the period was further stretched to have the time period run from date of service of the High Court’s order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

¹⁵ (2002) 3 SCC 533



15. Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. “An intention to produce an unreasonable result”, said Danckwerts, L.J., in *Artemiou v. Procopiou* [(1966) 1 QB 878; (1965) 3 All ER 539; (1965) 3 WLR 1011 (CA)] (at All ER p. 544-I), “is not to be imputed to a statute if there is some other construction available”. Where to apply words literally would “defeat the obvious intention of the legislation and produce a wholly unreasonable result”, we must “do some violence to the words” and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* [1963 AC 557; (1963) 1 All ER 655; (1963) 2 WLR 559 (HL)] where at AC p. 577 he also observed: (All ER p. 664-I) “This is not a new problem, though our standard of drafting is such that it rarely emerges.”]”

39. The submissions of Mr. Gupta addressed in this respect and the imperatives of a term being recognised in favour of a nominee of a State Medical Council proceeded on the basis of the perceived need to provide continuity in the composition of the MAC. It was his submission that bearing in mind the salutary functions that the MAC discharges, it would be necessary to ensure that its members hold their position in that body for a reasonable term in order to enable that body to effectively guide and advise the NMC. However, no matter how beneficial, productive and profitable that intent may be, it would essentially require this Court to restructure Section 11 and amend it by inserting a prescription with respect to tenure which the Legislature has clearly refrained from laying in place. In the considered opinion of this Court, treading down this path would amount to



a bodily transformation and amendment of that statutory provision. The Court in that sense would be assuming unto itself a function exclusively reserved for the legislative body. It would be apposite to observe that the issue of whether the conferment of a degree of permanency on the composition of the MAC would be beneficial and effective is an aspect which must be reserved for the consideration of the Legislature as it would clearly fall within its prerogative and domain. Any attempt by the Court to restructure Section 11 would clearly amount to an encroachment on a function reserved for the Legislature. The Court is also conscious of the well settled limitations that would apply to the interpretation of statutes with courts desisting from introducing terms in a provision based on their individual perception of effectuating the legislative intent. It would be wholly impermissible for courts to amend or alter provisions of a statute in an overzealous attempt to infuse them with content which in their opinion be more expedient or justified. One may profitably refer to the cautionary note penned by Lord Diplock in **Duport Steels Ltd. v. Sirs**¹⁶ when he observed:-

"It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if Judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to public interest."

40. Acceptance of this contention of the petitioner would also and necessarily require the Court to prescribe a particular term of office for a

¹⁶ (1980 (1) ALL ER 529



nominee. As was noticed hereinabove, the suggestions mooted in this respect ranged from two to four years. It would essentially amount to the Court choosing a tenure which in its estimation would best subserve the interest of continuity of composition of the MAC. It would fundamentally require the Court to evaluate, choose and introduce a particular tenure. It would compel the Court to weigh choices and decree a fixed term of office. That function must necessarily stand reserved for the consideration of the Legislature. This aspect further reassures the Court that walking this line would not only be untenable, it would clearly be impermissible in law. The issue is answered accordingly.

41. The Court in the previous parts of this decision had noticed the interconnect between Sections 4 and 11 of the Act to the extent that members of the MAC falling within Section 11(2)(c), (d) and (e) may also come to be appointed as part time members of the NMC. In that eventuality that category of members of the MAC consequently become entitled to continue as members of the NMC for a period of two years by virtue of Section 4(4)(b) and (c). In such an eventuality, those members of the MAC would become entitled to a tenure of two years. The necessary caveat which must thus be entered is that in case a nominee of a State Medical Council comes to be appointed as a part time member of the NMC, the powers of the State Medical Council to revise or review that existing nomination would stand restricted and eclipsed to the aforesaid extent. To put it more plainly, a State Medical Council would stand restrained from recalling a nominee who by virtue of being a member of the MAC under Section 11(2)(e) comes to be appointed to the NMC under Section 4(4)(c). It is in



that eventuality alone that a tenure or a term can be said to inhere in a nominee of a State Medical Council. It must also be consequentially held that the term of two years which comes to be conferred on that nominee by virtue of Section 4(4)(c), cannot be curtailed in any manner by a State Medical Council except in the exceptional situation where that nominee ceases to be an elected member of that Council. This since that nominee would then cease to meet the requirements of Section 11(2)(e) itself.

42. Mr. Khattar learned Counsel appearing for the DMC had commended for the consideration of the Court the submission that the term of a nominee of a State Medical Council in the MAC must be recognised as being co-terminus with the term of the DMC. This Court finds itself unable to accept this contention since this too would amount to the introduction of a condition which does not find either recognition or resonance under the provisions of the principal Act or the 1997 Act. It would be pertinent to note that in terms of Section 3 of the 1997 Act, the State Government is entitled to nominate four members to that Council. Section 3(3)(d) and (e) of the 1997 Act speaks of persons who would be members of that Council ex officio. Section 6 of the 1997 Act deals with the contingency of elected members resigning from the DMC. Section 7 spells out situations in which persons may be rendered ineligible to be appointed or nominated to the DMC or to continue as members thereof. These provisions highlight the indubitable fact that the composition of the DMC under the 1997 Act is also impermanent and may change from time to time. This facet also warrants rejection of the submission that the term of the nominee should be co-terminus with that of the DMC. Regard must be had to the fact that Section



11(2)(e) of the Act speaks of an elected member of a State Medical Council being the nominee. If that nominee ceases to be an elected member for whatsoever reason, he would undoubtedly be rendered disqualified from continuing as a member of the DMC. The Court additionally notes that in **Sarla Kaushik**, the Division Bench upon taking into consideration the provisions of the 1897 Act had negated a similar argument of the term of the nominee being co-terminus with that of the elected body. It becomes important to recollect and underline the fact that **Sarla Kaushik** too was dealing with a case where the statute did not prescribe a term for the nominated Councilors. All the aforesaid reasons clearly persuade this Court to reject the co-terminus argument.

43. The Court then takes up for consideration the submission of Mr. Gupta who submitted that since the revised nomination had been forwarded by the DMC of its own volition and without any request in that respect having been conveyed by the Union respondent, the impugned action is wholly arbitrary and illegal. It was submitted that the nomination of the petitioner had been prompted by the request of the Union calling upon DMC to furnish the name of its nominee to the MAC. Mr. Gupta argued that while forwarding the name of the sixth respondent, the DMC had acted unilaterally and thus in violation of the Act. The Court finds itself unable to accept this contention for the following reasons. It is pertinent to note that each State Medical Council is empowered to nominate a person from amongst its elected members to be a part of the MAC. This act of nomination by a State Medical Council is not hedged by any statutory condition that may impose upon it an obligation to make the nomination on



the advice of or in consultation of the Union Government. The nominations which are liable to be made in terms of Section 11(2)(e) are also not dependent on any draw of lots or any other statutorily prescribed selection process. Section 11(2)(e) of the Act confers an unfettered right on a State Medical Council to nominate an elected member to the MAC. The choice of a State Medical Council is also not subject to the approval or concurrence of the Union Government. Viewed in that light, it is apparent that the act of nomination cannot be recognised as being dependent upon any invitation of the Union Government asking a State Medical Council to furnish a nomination. Merely because the original nomination of the petitioner was prompted by a request of the Union, that would not render the subsequent act of the DMC in nominating the sixth respondent illegal. The submissions addressed on this score are consequently negated.

44. That takes the Court to the submission of Mr. Singh who contended that the nomination made by the DMC must be tested on the anvil of the doctrine of pleasure. It was vehemently contended by Mr. Singh that since the nomination was the expression of the pleasure of the DMC, the petitioner could not claim an indefeasible right to continue notwithstanding the nominating body having decided to make a fresh nomination. According to Mr. Singh the doctrine of pleasure clearly applied and hence the DMC had the unfettered discretion to revoke and revise any nomination that may have been made earlier. The contentions addressed on the lines of the doctrine of pleasure were countered by Mr. Gupta who while placing reliance on **B.P. Singhal** sought to highlight the fact that the said precept would have limited application in a constitutional democracy and in a



society which is governed by the rule of law. However, in the considered view of this Court, the question of whether the said precept would apply to the office in question or be otherwise read into the power of the DMC to nominate need not be answered since the issue even otherwise would stand covered by Sections 16 and 21 of the 1897 Act. The power to appoint and which would necessarily include the power to appoint by way of nomination would include the power to determine and revoke. In light of the aforesaid, the Court finds no illegality in the action of the DMC.

45. Accordingly and for all the aforesaid reasons, the writ petition fails and shall stand dismissed.

AUGUST 05, 2022
rsk/bh

YASHWANT VARMA, J.

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