

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 547 of 2020
RCCIIT Staff Association & Anr.
Vs.
State of West Bengal & Anr..
With
W.P.A. 4925 of 2021
Raja Sarkar
Vs.
The State of West Bengal & Ors.**

For the petitioner in WPA 547 of 2020	: Mr. Achintya Kumar Banerjee Ms. Indumoti Banerjeeadvocates
For the petitioner in WPA 4925 of 2021	: Mr. Ranajit Chatterjee Mr. Aniruddha Mitraadvocates
For the College	: Mr. Saptangsu Basu, Sr. Adv. Mr. Ankit Sureka Mr. Rajib Mullick Ms. Mrinalini Majumdar Ms. Shreyashi Maity ... advocates
For respondent no.6	: Mr. Arindam Paladvocate
For the State in WPA 547 of 2020	: Sk. Md. Galib Mr. Kapil Guhaadvocates
For the State in WPA 4925 of 2021	: Mr. Swapan Kumar Datta Mr. Tapas Kumar Deyadvocates
For respondent no.6 in WPA 547/2020 For respondent no.7 in WPA 4925/2021	: Mr. Amitava Chaudhuri Ms. Parna Mukherjee Mr. Arindam Pauladvocates

For Higher Education
Department

: Mr. N. Royadvocate

Reserved on : 22.03.2023

Judgment on : 16.08.2023

Hiranmay Bhattacharyya, J.:-

1. WPA 547 of 2020 (hereinafter referred to as “WP-1”) has been filed by a Staff Association praying for issuance of a writ of quo warranto directing the private respondent namely Sandip Saha to vacate the post of Deputy Registrar at RCC institute of Information Technology (hereinafter referred to as “the Institute”).
2. WPA 4925 of 2021 (hereinafter referred to as “WP-2”) has been filed praying for issuance of a writ of mandamus commanding the respondents to initiate a fresh selection process for the post of Registrar at the Institute after cancelling the impugned advertisements for the said post.
3. The petitioner in WP-2, while working as an Assistant Professor of an Engineering College submitted an application seeking appointment to the post of Registrar at the said Institute pursuant to an advertisement published in the website of the Institute. The petitioner received a call letter for appearing in the interview for the post of Registrar. Petitioner claims to have learnt that the selection/ interview would be an eye wash and the entire exercise was intended to give appointment to Sandip Saha, the private respondent, who, according to the petitioner is an influential non-teaching employee of the Institute. In the initial advertisement, it was stipulated that the maximum age for the post of Registrar would be as per Government Rules. However, in the corrigendum issued subsequently, it was stated that the age of the intending candidates should not be more than 40 years as on 01.11.2020 relaxable for specially qualified and experienced candidates.
4. The case of the petitioner in WP-1 is that the Institute is an authority within the meaning of Article 12 of the Constitution and the office of the Registrar is a public office. The petitioner claims that Sandip Saha, the private respondent was initially appointed as an Office Assistant purely on

contractual basis with a consolidated pay. Subsequently he was appointed as Assistant Programmer on contractual basis. Thereafter, the private respondent was appointed as Junior Administrative Officer on 01.08.2008. The private respondent was appointed as Deputy Registrar sometimes in October, 2015 without any advertisement being issued therefor. On or about 30.10.2019 the then Registrar of the Institute tendered his resignation and the private respondent was given the additional charge of the post of Registrar with effect from 01.11.2019. The petitioner claims to have come to know for the first time after the Government issued the order dated 24.12.2019 wherein the name of the private respondent was included as a member of the Board of Management of the society in the capacity of Deputy Registrar of the Institute. The petitioner claims that the private respondent was not eligible for the post of Deputy Registrar or even the post of Junior Administrative Officer and the private respondent should be reverted to the post of Assistant Programmer.

5. The Institute contested the aforesaid writ petitions by filing Affidavits-in-Opposition. The case of the Institute is that it is a self financing Engineering College established under a registered society namely RCCIT. As per the guidelines of AICTE, the governing body of the Institute is constituted by the Board of Management comprising members including those nominated by the State Government, affiliating university and the AICTE. The entire remuneration of the staff of the Institute and other recurring expenditure is paid from the funds of the Institute and the State Government does not exercise deep and all pervasive control over the administrative, financial and functional aspects of the Institute. It was specifically stated that the post of Registrar is administrative in nature and as such no writ of quo warranto can thus lie. It was specifically denied that the office of Registrar is a public office. It was stated that the Institute has the authority to create posts and duly appoint candidates for such posts. It was specifically stated that the recruitment of the private respondent was done in accordance with the service rules of the Institute.
6. The State of West Bengal contested the writ petitions by filing affidavit-in-opposition. It was stated therein that the Institute is a self financing private college governed by its own rules and regulations framed as per the Memorandum of Association and Articles of Association. The Institute does not receive any grant from the State Government in terms of regular salary and allowances of its employees. The post of Registrar is a non-teaching

post and the society being an autonomous private entity has the right to create posts to meet the need of the Institute.

7. The private respondent also contested the writ petitions by filing affidavit-in-opposition denying the allegations contained in the writ petition. The private respondent contended that he possessed requisite qualifications for appointment to the post of Deputy Registrar and Registrar.
8. Mr. Achinta Banerjee learned advocate appearing in support of WP-1 contended that the office of the Registrar and the Deputy Registrar of the Institute is a public office. He contended that facilitating the availability of education to the citizens, is the sovereign function. He further contended that the Registrar as well as the Deputy Registrar of an educational institution has to deal with the public. Therefore, according to Mr. Banerjee the holders of the posts of Deputy Registrar or Registrar of an educational Institute are holders of public office. He also contended that the private respondent is an usurper of the public office as his appointment was not in accordance with law. Mr. Banerjee, took this Court through the Memorandum of Association, Articles of Association as well as other materials on record to demonstrate that the State Government had deep and pervasive control over the affairs of the Institute. Therefore, according to Mr. Banerjee, this Court should issue a quo warranto by removing the private respondent from the post of Deputy Registrar.
9. Mr. Chatterjee, learned advocate appearing in support of WP-2 placed in extenso the Memorandum of Association and the Articles of Association as well as other documents on record in support of his contention that the Institute is aided by the State Government and also that the State Government has deep and pervasive control over the Institute. He placed reliance upon a decision of a co-ordinate bench in WP No. 13874(W) of 2016 delivered on 13.11.2019 in the case of **Dr. Gautam Pal vs. State of West Bengal & ors.** in support of his contention that the instant writ petition is maintainable. Mr. Chatterjee challenged the advertisement issued by the Institute for appointment to the post of Registrar on the ground of failure in disclosing the recruitment rules to be followed; break up of marks to the awarded to candidates for performance in public exams and experience; relative weightage of interview and written test and unfiltered power of relaxation of age without specifying any criteria for relaxation. He contended that the petitioner cannot be estopped from challenging the selection process as he did not participate in the said process. In support of such

contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Dhananjay Malik and ors. vs. State of Uttaranchal and ors.*** reported at **(2008) 4 SCC 171**. Mr. Chatterjee contended that the power of age relaxation cannot be exercised by completely distorting the rules and regulations. In support of such contention, Mr. Chatterjee referred to the decisions of the Hon'ble Supreme Court in the case of ***Food Corporation of India and ors. vs. Bhanu Lodh & ors.*** reported at **(2005) 3 SCC 618** and ***Dr. Ami Lal Bhat vs. State of Rajasthan and ors.*** reported at **(1997) 6 SCC 614**. Mr. Chatterjee contended that the employment notifications must contain the requisite particulars to make the selection process a transparent one. In support of such contention, he referred to a decision of the Hon'ble Supreme Court in the case of ***Renu and ors. vs. District & Sessions Judge, Tis Hazari & Anr.*** reported at **(2014) 14 SCC 50**.

10. Mr. Saptansu Basu, learned Senior Advocate appearing for the Institute raised an objection against the maintainability of both the writ petitions. He contended that the Institute being a self financing one and also that the salaries of the staff of the Institute as well as other recurring expenses are not borne by the State and the State do not have deep and pervasive control over the Institute. Mr. Basu contended that on an appeal being MAT 2002 of 2019 preferred against the decision of the co-ordinate bench in ***Goutam Pal*** (supra), the Hon'ble Division Bench has left the issue of maintainability of the writ petition against the Institute open. Therefore, Mr. Basu, contended that it is well open for this Court to decide the issue of maintainability without being influenced by the findings of the co-ordinate bench, Mr. Basu placed reliance upon the decisions in the case of ***Bengal Engineering and Science University, Shibpur Teachers' Association & Anr. vs. Bengal Engineering & Science University, Shibpur & Ors.*** reported at **(2010) 4 CHN 89 (Cal)** and ***Tarakanath Das vs. Union of India & ors.*** reported at **2016 Lab IC 2644** in support of his contention that the post of Deputy Registrar and Registrar of the Institute is not a public office. He also referred to the decision of the Hon'ble Supreme Court in the case of ***St. Mary's Education Society & Anr. vs. Rajendra Prasad Bhargava & ors.*** reported at **2022 SCC Online 1091** in support of his contention that the writ petition is not maintainable.
11. Mr. Datta, learned Senior Advocate representing the State placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Mani Subrat***

Jain & ors. vs. State of Haryana & ors. reported at (1977) 1 SCC 486 and contended that no one can ask mandamus without a legal right. Mr. Datta contended that the writ petitioner by not appearing at the interview placed himself beyond the zone of consideration and, therefore, he cannot be said to be a person aggrieved. In support of such contention, Mr. Datta referred to a decision of the Hon'ble Supreme Court in the case of **A.P. Public Service Commission vs. G. Sankar and ors.** reported at (2010) 15 SCC 769. Mr. Datta also referred to a decision of the Hon'ble Supreme Court in the case of **Dr. Umakant Saran vs. State of Bihar and ors.** reported at AIR 1973 (SC) 964 in support of his contention that a mandamus can be issued to compel the authorities to do something only if it is shown that the statute imposes a legal duty and the aggrieved party had a legal right under the statute to enforce performance.

12. Mr. Galib, learned advocate, representing the State contended that the staff association has no *locus standi* to maintain the writ petition. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **B. Srinivasa Reddy vs. Karnataka Water Supply Employees' Association and others** reported at (2006) 11 SCC 731. He further contended that the jurisdiction of the High Court to issue a writ of quo warranto is a limited one and the same can be issued when a person holding public office does not fulfill the eligibility criteria prescribed to be appointed to such office or when the appointment is contrary to the statutory rules. He contended that the post in question is not a public office and, therefore, no quo warranto can be issued as prayed for by the petitioner. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Gambhirdan K. Gandhvi vs. State of Gujarat and ors.** reported at (2022) 5 SCC 179. He further contended that a writ of mandamus cannot be issued unless the writ petitioner can satisfy that they have a statutory right and a statutory duty is cast upon the authorities whose performance may be legally enforced. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **National Textile Corporation Limited and ors. vs. M/s. Haribox Swalram & ors.** reported at (2004) 9 SCC 786. Mr. Galib also referred to a decision of the Hon'ble Supreme Court in the case of **Maganvai Iswarbhai Patel vs. Union of India and anr.** reported at (1970) 3 SCC 400 in support of his contention that a writ can be issued at the instance of a person whose fundamental rights are directly and substantially invaded or are in imminent danger of being so

invaded. Mr. Galib, thus, concluded by submitting that the writ petition is liable to be dismissed.

13. Mr. Chowdhury, learned advocate representing the private respondent submitted that the said respondent possess the requisite qualifications for appointment to the post of Deputy Registrar and Registrar of the Institute. He contended that the private respondent applied for the post in question and the selection committee after considering the candidature of the various candidates appointed the petitioner to the post of Registrar after finding him suitable for the said post. Mr. Chowdury submitted that the Institute does not receive any funds from the government and it is a self financing Institute. There is no public law element involved in the matter of appointment by the Institute to the post of Registrar. He, therefore, submitted that the remedy under Article 226 of the Constitution of India is not available against alleged private wrongs. In support of such contention Mr. Chowdhury placed reliance upon an order of the Hon'ble Division Bench of the Bombay High Court dated 05.03.2020 in ***Writ Petition no. 3315 of 2019*** in the case of ***Chanda Deepak Kochhar vs. ICICI Bank Limited and anr.***
14. Heard the learned advocates for the parties and perused the materials placed.
15. The learned Senior Counsel for the Institute would contend that the Institute was exclusively run, managed and controlled by an autonomous society. It functions within the forecorners of its own Memorandum of Association and Regulations. It was contended that the Institute do not fall within the definition of "State" under Article 12 of the Constitution of India and, therefore, this writ petition against the Institute is not maintainable.
16. In reply to the objection as regards maintainability of the writ petitions, the learned advocates for the petitioners would contend that the Institute is substantially financed by the Government of West Bengal. All the members of the Board of Management are nominated by the Department of Higher Education, Government of West Bengal. It was contended that prior approval of the State Government was needed to make any variations in the rules and regulations of the Institute. Thus, according to the petitioners the State Government has a deep and pervasive control over the entire affairs of the Institute.

17. Since the maintainability of this writ petition is under challenge, this Court has to first decide whether a writ petition against the Institute is maintainable.
18. A similar issue cropped up before a co-ordinate bench in the case of Dr. **Gautam Pal** (supra). The co-ordinate bench after taking into consideration the various clauses of the Memorandum of Association as well as various other documents observed that not only the Department of Higher Education, Government of West Bengal have administrative control over the constitution of the Board of Management of the society of which the Institute is a unit, the Institute was also performing a public duty by imparting technical education. The Institute is a public authority. The co-ordinate bench held thus-

"Thereafter, the Executive Director of the DOEACC Society, an autonomous body of Department of Information Technology, Ministry of Communications & Information Technology, Government of India) issued a letter dated December 3, 2003 to the Principal Secretary, Department of Higher Education Government of west Bengal, Technical Branch conveying the decision of the governing body of the Society as hereunder:-

"The RCC-IIT stands transferred to the Govt. of West Bengal from the date of passing of this resolution and intimating the decision of the Council to the Govt. of West Bengal, on as is where is basis. The existing Governing Body of the RCC-IIT also stands dissolved. The Govt. of West Bengal may take necessary administrative action, as it may deem fit, for smooth functioning of the said institute."

The Principal Secretary, Department of Higher Education, Government of west Bengal, issued a notification dated December 15, 2003, by appointing Dr. Amalendu Basu, Joint Director and Officiating Director Directorate of Technical Education, Government of West Bengal as the administrator of RCC-IIT. In the said notification it appears that RCC-IIT was referred to as a government aided institution. By a notification dated January 21, 2004, issued by the Joint Secretary, Government of West Bengal, Department of Higher Education, an ad-hoc committee was constituted to assist the administrator under order of the Governor of West Bengal and the Governor was pleased to direct the committee to draft the memorandum of association of an autonomous society, which would ultimately takeover the functions of the RCC-IIT from the administrator. Thereafter, RCC IT, society was registered under West

Bengal Societies Registration Act, 1961 on March 11, 2005. The name of the society under the memorandum was RCC-IT and the said college (RCC IIT) is a unit thereof. The object of the society was to provide education and teaching of high standards, leading to bachelors and masters degree in engineering technology and management. Clause 14 of the said memorandum provides that any amendment and or variation in the rules for the conduct of the affairs of the said college could be done only with the prior approval of the state government. The society was a non-profit making organization. The management of the said society was headed by the chairman who was the Director of Technical Education, Government of West Bengal. The state government had retained the right to cause an inspection of the society, its buildings, laboratories, education imparted and other works conducted and done by the society through the said college.

In the regulations of the society, the Board of Management has been defined as the governing body, responsible for the management of the affairs of the society. All the members of the society are nominated by the Department Higher Education, Government of West Bengal. For any expulsion or termination of any member from the Board of Management, the consent of the Department Higher Education, Government of West Bengal, was required. In the event of any vacancy accruing in the Board due to resignation or death and otherwise, it was to be filled up by nomination by the Department Higher Education, Government of West Bengal. The Chairman of the Board and members were nominated by the Department of Higher Education. The Board of Management had the power to frame rules and regulations for the management and administration of the institutions setup by the society and alter or vary the same from time to time and make new rules and regulations. The Board of Management comprising of all nominated members of the Government of West Bengal, was in over-all charge of the society and its assets etc. Any organization operating under the said society like the said college would be governed according to the service rules, administrative rules, academic rules and financial rules of the society. A governing body constituted as per regulations framed by the Board of Management looked after the management of the said college. In case of vacancy accruing in the governing body of the said college, owing to resignation or death or otherwise, the vacancy was to be filled up by nomination by the Board of Management of the Society in consultation with the state government. Thus, it appears from the Memorandum of Association of the Society, that the Board of Management was in-charge of the over-all management and control of the society. The Board comprised of members, all of whom were nominated by the Department Higher

Education, Government of West Bengal. The Director of Technical Education, Government of West Bengal was the chairman of the Board of Management. The expulsion and termination of any member of the Board of Management could be done only with the approval of the State Government. Filling up of any vacancies in the board due to resignation or otherwise was to be done nomination by the Government of West Bengal. It was the said Board of Management which had the power to make rules and regulations for the said college. Thus, Department Higher Education, Government of West, which nominated the members of the Board of Management did have all pervasive control in the functioning of the Board of Management as reflected from the Memorandum of Association. This Board of Management framed the service rules and other rules governing the said college/institutions under the society. The governing body was in-charge of the overall management of the said college. Vacancies in the governing body due to resignation, death or otherwise was to be filled up by the Board of Management of the Society in consultation with the State Government, if felt necessary. The society had been described as an autonomous society under the Department Higher Education, Government of West Bengal. The said society was in charge of the supervision, control and management of the said college, although, the immediate functioning of the college was done by the governing body whose members were nominated by the said Board of Management of the Society.

The Government of West Bengal had also taken a lead role in the management of RCC-IIT prior to registration of the society and the ad-hoc committee was also formed by the Governor. The Memorandum of Association was also prepared on the direction of the Governor. In the annual reports prepared by the said college, the college had been listed as a government aided institution. The Government of West Bengal, Department of Higher Education considered the said college as a government aided college. From an advertisement published by the said college for filling up the post of the Principal, the said college has been described as a government aided engineering college under an autonomous society of the Department of Higher Education, Government of West. All these documents referred to hereinabove clearly indicate that RCC-IT Society was a public authority and an agency or instrumentality of the State. Not only did the Department of Higher Education, Government of West Bengal have administrative control over the constitution of the Board of Management of the society of which the said college is a unit, the college was also performing a public duty by imparting technical education in the field of computer science and engineering and management. Even if the said college is

not 'State' under Article 12 of the Constitution of India, but by virtue of the function discharged by the said college and in consideration of the records as discussed above, it is a public authority and thus, the said college is amenable to writ jurisdiction under Article 226 of the Constitution of India. The concept of instrumentality or agency of the state cannot be restricted to institutions created by a statute only but would be equally extended to societies or corporations, upon consideration of some relevant factors with regard to control, supervision, financial aid and discharge of public functions.”

19. The co-ordinate bench considered the decision of the Hon'ble Supreme Court in the case of **Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology** reported at **(2002) 3 SCC 111** and held that if in cumulative assessment of facts it was found that the State played a dominant role functionally and administratively over a body, then the said body would be amenable to writ jurisdiction under Article 226 of the Constitution of India. The co-ordinate bench, further observed that initially the Central Government and later on the State Government played a dominant role functionally and administratively over the institute. It was further noted in the said decision that the college performed a public duty/public function in imparting technical and higher education to the public. The management of the Institute was under the direct supervision and control of the Board of Management of an autonomous society under the Government of West Bengal comprising of all members nominated by the State Government. The co-ordinate bench took note of the fact that though the salary of the staff was paid from the college funds, considerable amount of public money was spent as aid to the institute.
20. The Hon'ble Supreme Court in **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & ors. vs. V.R. Rudani and ors.** reported at **(1989) 2 SCC 691** held that the term “authority” used in Articles 226 must receive a liberal meaning unlike Article 12. Article 12 is relevant for the purpose of enforcement of fundamental rights whereas Article 226 confers power on the High Courts to issue writs for enforcement of fundamental as well as non fundamental rights. It was further held that the words “any person or authority” used in Article 226 cannot be confined only to statutory authorities and instrumentalities of State but would cover any other persons or body performing public duty. It was also observed that the form of the body

concerned is not very much relevant and what is relevant is the nature of the duty imposed on the body.

21. The co-ordinate bench after noting the aforesaid proposition of law laid down by the Hon'ble Supreme Court on facts held that the Institute is performing a public duty/ public function by imparting technical and higher education to the public.

22. The co-ordinate bench further observed as follows-

"The members of the society were nominated by the Government of West Bengal and the Board of Management of the society framed the rules and regulations governing the said college.

In the instant case, the pervasive control of the Department of Higher Education, Government of West Bengal, with regard to the formation of the society and its administration is obvious. The said college is run by the said society and the college has been described as a unit of the society which was an autonomous body of the Department of Higher Education, Government of West Bengal. In all official documents, the college has been described as a government aided college."

23. The Institute is imparting technical and higher education to the public in general. Imparting education is undoubtedly a public duty. It is well settled that the actions of the body discharging a public function or performing a public duty is amenable to judicial review by Constitutional Courts. The co-ordinate bench, after taking into consideration the various documents including the Memorandum of Association, the Articles of Association as well as the fact that the members of the society were nominated by the Government of West Bengal arrived at a finding that the pervasive control of the Department of Higher Education, Government of West Bengal with regard to formation of the society and its administration is obvious. This Court is not inclined to take a different view merely because of the fact that the maintainability issue has been left open in an appeal arising out of the said decision. Pendency of the appeal cannot in any event destroy the binding effect of the said decision.

24. This Court, therefore, holds that the actions of the Institute is amenable to Judicial Review by this Court.

25. Now, this Court has to consider whether a writ of quo warranto can be issued as prayed for by the petitioner in WP-1.

26. The Hon'ble Supreme Court in the case of ***The University Of Mysore And Anr. vs. C. D. Govinda Rao And Anr.*** reported at ***AIR 1965 SC 491*** held that before a citizen can claim a writ of quo warranto, he must satisfy the Court that the office in question is a public office and is held by userper without legal authority and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.
27. Therefore, it is to be first decided whether the office of the Deputy Registrar of the Institute is a public office or not.
28. In ***Bengal Engineering*** (supra), a co-ordinate bench held that the office of the Registrar of a University is not a public office. The co-ordinate bench held thus-

"22. Black's Law Dictionary (8th Edn) at page 1267 defines "public office" as under:

"a position whose occupant has legal authority to exercise a Government's sovereign power for a fixed period."

The essential elements of a "public office" are:

- (i) authority conferred by law.*
- (ii) Fixed tenure of office.*
- (iii) Power to exercise some portion of sovereign functions of the Government.*

23. One of the key elements of such test was that the officer was to carry out some portions of sovereign functions of the Government. That ingredient was absent in respect of the post of Registrar Bengal Engineering and Science University, Sibpur. Reference may be made to the decision of B. Srinavasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees Association, reported in (2006) 11 SCC 731 and the relevant portion of the above decision are quoted below:

"76. The notification dated 31.1.2004 clearly states that the appointment is on contract basis and until further orders. While laying down the terms of appointment in its order dated 21.4.2--4, the Government of Karnataka clearly stated that the term of contractual appointment of Shri B. Srinivasa Reddy shall commence on 1.2.2004 and will be in force until further orders of the Government and this is a temporary appointment". Section

6(1) of the Act categorically states that the Managing Director shall hold office during the pleasure of the Government. The power and functions of the Board are laid down in Chapter V of the Act. A reading of the Act clearly shows that neither the Board nor its Managing Director is entrusted with any sovereign function. Blacks. Law Dictionary defines public office as under:

"Public office.- Essential Characteristics of 'public office' are (1) authority conferred by law, (2) fixed tenure of office, and (3) power to exercise some portion of sovereign functions of Government: key element of such test is that 'officer' is carrying out sovereign function. *Spring V. Constantino*. Essential elements to establish public office are: position must be created by Constitution, legislature or through authority conferred by legislature, portion of sovereign power of Government must be delegated to position, duties and powers must be defined, directly or impliedly, by legislature or through legislative authority, duties must be performed independently without control or superior power other than law, and position must have some permanency and continuity. *State v. Taylor*.

77. Carrying out sovereign function by the Board and delegation of a portion of sovereign power of the Government to the Managing Director of the Board and some permanency and continuity in the appointment are quintessential features of public office. Every one of these ingredients are absent in the appointment of the appellant as Managing Director of the Board. This aspect of the matter was completely lost sight of by the High Court."

24. That apart a small section of public, namely the students and their guardian were interested as such in the university but that did not bring the office of the Registrar of the respondent University within the category of offices which could be described as "public Office".

29. Another co-ordinate bench in **Taraknath Das** (supra) held that since in **Bengal Engineering** (supra), the Registrar of the University has been held not to be a public office, the post of Assistant Registrar of the University cannot be held to be a public office.
30. The aforesaid decisions of the co-ordinate benches are binding upon this court. This Court, therefore, holds that the office of the Deputy Registrar of the Institute cannot be held to be a public office.

31. A writ of quo warranto can be issued only after the court is satisfied that the office in question is a public office and the same is held by usurper and without legal authority. Since, the post of the Deputy Registrar has been held not to be a public office, the question of making any further enquiry does not arise insofar as the relief claimed for issuance of a writ of quo warranto.
32. This Court has to now decide whether a mandamus is to be issued to command the authorities to cancel/ revoke the appointment of the private respondent.
33. The petitioner of WP-2 applied for appointment to the post of Registrar of the Institute pursuant to the advertisement published in the newspaper. It is evident from the minutes of the meeting of the screening committee dated 03.02.2021 for shortlisting of candidates that 18 applications were received and 8 candidates were shortlisted including the writ petitioner in WP-2. It is further evident from the minutes of the meeting of the selection committee held on 18.02.2021 that the aforesaid 8 candidates including the said writ petitioner were invited to appear in the interview before the Selection Committee. The said writ petitioner also admitted in WP-2 that he was called for the interview. Admittedly, the writ petitioner in WP-2 did not appear for the interview. The Selection Committee after assessing the relative merits of the 5 candidates who appeared at the interview prepared a panel in the order of merit wherein the private respondent was placed in the 1st position. It appears from the minutes of the meeting dated 03.02.2021 that the screening committee decided to relax the age criteria in order to accommodate more number of experienced candidates.
34. Mr. Chatterjee vehemently contended that the screening committee could not have relaxed the age criteria as the same was de hors the rules and regulations for appointment to the said post.
35. The Hon'ble Supreme Court in **Food Corporation** (supra) and **Ami Lal Bhat** (supra) held against wholesome relaxation of age criteria but proceeded further to observe that the power of relaxation may be exercised in public interest to accommodate exceptionally qualified candidates.
36. In the case on hand, the screening committee assigned cogent reasons in the minutes of the meeting for relaxing the age criteria. Therefore, the decision to relax age criteria does not call for interference.

37. It is well settled that the duly constituted Selection Committee has the expertise to decide whether a candidate is fit for a particular post or not. The Court is not an expert on such subject. There is nothing on record to show that there is any illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the entire selection process. The Hon'ble Supreme Court in the case of **B.C. Mylarappa @ Chikkamylarappa vs. R.Venkatsubbaiah & Ors.** reported at **(2008) 14 SCC 306** and **Dalpat Abasaheb Solunke And Ors. vs Dr. B.S. Mahajan And Ors.** reported at **(1990) 1 SCC 305** highlighted that the decision of the Selection Committee can be interfered with only on limited grounds. This Court, not being an expert in the matter of selection to the post of Registrar, is not inclined to interfere with the decision of the Selection Committee.
38. That apart the petitioner in WP-2 applied for appointment to the post of Registrar of the Institute and he was called to appear at the interview. The petitioner, however, did not appear at the interview. The reasons cited by the petitioner for not appearing at the interview is that he learnt from few of his friends who are teachers of the Institute that the selection/ interview would be an eye wash and the entire exercise was intended to give appointment to the private respondent. The petitioner has not disclosed the names of his friends from whom he got an information that the selection/interview would be an eye wash. No credence to such vague allegations can be given by this Court. Whatever may be the reason for the petitioner not to appear at the interview, the fact remains that by not appearing at the interview, the petitioner placed himself beyond the zone of consideration. The Hon'ble Supreme Court in the case of **G. Sankar** (supra) held that when a person placed himself beyond the zone of consideration, the question of considering their case for the post in question would not arise at all. This Court, therefore, is of the considered view that the petitioner in WP No. 2 failed to satisfy this Court that he has a judicially enforceable right. It is well settled that no one can ask for a mandamus without a legal right.
39. The petitioner association in WP No. 1 apart from praying for a writ of quo warranto, also prayed for a writ of mandamus and certiorari. It is well settled that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed is for habeas corpus or quo warranto. It is not in dispute that none of the members of the petitioner association in WP-1 participated in the

selection process for appointment to the post of the Registrar. Therefore, the writ petitioner association in WP-1 cannot seek mandamus in the case on hand.

40. There is, however, no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in the case of ***The University Of Mysore And Anr. vs C. D. Govinda Rao And Anr.*** (supra) as to the conditions that are to be satisfied before a writ of quo warranto can be issued. The Hon'ble Supreme Court was, however, pleased to set aside the judgment of the Hon'ble High Court at Mysore upon observing that the judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto. The aforesaid judgment is of no assistance to the writ petitioner.
41. In the case of ***Rajesh Awasthi vs. Nandlal Jaiswal and ors.*** reported at **(2012) 10 SCR 883**, the Hon'ble Supreme Court after reiterating the proposition of law that a writ of quo warranto will lie when the appointment is made contrary to the statutory provisions proceeded further to observe that such appointment of the first respondent being in clear violation of Subsection 5 of Section 85 of the Electricity Act, he had no authority to hold the post of Chairperson of the Regulatory Commission. The said decision being distinguishable on facts has no manner of application to the case on hand.
42. In the case of ***Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo and others*** reported at **(2014) 1 SCC 161** the Hon'ble Supreme Court held that when a writ of quo warranto is filed it is the obligation of the relater to satisfy the court that the office in question is a public office and is held by the usurper without the legal authority. In the case on hand this Court has already held that the post of Deputy Registrar is not a public office and, therefore, the said decision cannot come to the aid of the writ petitioner.
43. In the case of ***National Textile Corporation Limited and ors. vs. M/s. Haribox Swalram & ors.*** reported at **(2004) 9 SCC 786** a writ petition was filed for issuance of a writ of mandamus in a case of pure and simple business contract. The Hon'ble Supreme Court held that the writ petitioners have no statutory right nor there is any statutory duty cast upon the appellants whose performance may be legally enforced. The Hon'ble Supreme Court held that no writ of mandamus can be issued on such facts.

The said decision does not have any manner of application to the case on hand.

44. ***Maganvai Iswarbhai Patel vs. Union of India and anr.*** reported at **(1970) 3 SCC 400** do not have any manner of application to the instant case as in the said reports a writ of mandamus was sought under Article 32 of the Constitution to restrain the Government of India from ceding without the approval of the Parliament certain areas to Pakistan.
45. In ***Gambhirdan K. Gandhvi vs. State of Gujarat and ors.*** the appointment to the post of Vice Chancellor of a university was challenged in a writ of quo warranto. It was recorded by the Hon'ble Supreme Court that it is nobody's case that holding the post of Vice Chancellor cannot be said to be holding a post of public office. The said decision being distinguishable on facts, do not have any manner of application to the case on hand.
46. In the case of ***B. Srinivasa Reddy vs. Karnataka Water Supply Employees' Association and others*** the *locus standi* of the writ petitioner employees' union was in issue. The Hon'ble Supreme Court noted that the writ petitioner made a false averment that it was a registered trade union and by suppressing material facts has snatched an order on wrong averments when the employees' union had no *locus standi* to maintain the writ petition on the relevant date. On facts the Hon'ble Supreme Court held that the High Court gravely erred in issuing a writ of quo warranto when there was no clear violation of law in the appointment of the appellant therein. The said decision does not have any manner of application to the case on hand.
47. In ***St. Mary's Education Society*** (supra) the issue was whether a service dispute involving a private unaided minority education institutions and its employee can be adjudicated in an application under Article 226 of the Constitution. In view of the observations made hereinbefore the said reported decision is not applicable to the facts of the case in hand.
48. In the case of ***Bhabani Adhikari vs. West Bengal State Co-operative Bank Ltd. and ors.*** reported at **(2009) 1 CHN 573** the Hon'ble Division Bench observed that the statutory provision and the breach thereof have to be asserted and only upon such assertion being made that the writ court would assume jurisdiction to entertain the petition even against a person who is not a "State" or "other authority" within the meaning of Article 12 of the Constitution. In the said reported decision, the Hon'ble Division Bench

observed that the challenge was thrown to the order of dismissal passed in the disciplinary proceedings initiated by a co-operative bank. The said decision being distinguishable on facts has no manner of application to the case on hand.

49. In ***T.M.A. Pai Foundation & Ors. vs. The State of Karnataka & Ors.*** reported at **(2002) 8 SCC 481** the issue which fell for consideration before the Hon'ble Supreme Court was whether there can be government regulations and, if so, to what extent in the case of private (unaided and aided) minority institutions. Since the said issue is not involved in this writ petition, the said decision cannot be of any assistance to the petitioner.
50. In ***V. Sasitharan and ors. vs. The Government of Tamil Nadu*** reported at **(1996) ILLJ 647 MAD** the extension of service given to the Chief Secretary to the Government of Tamil Nadu was under challenge. It was held in the said decision that since the validity of extension of service to a public office was under challenge, the writ of quo-warranto is maintainable at the instance of any person whether any fundamental or other legal right of such person has been infringed or not. There is, however, no quarrel to such proposition but the same do not have any manner of application to the case on hand as it has been already held by this court that the post of Deputy Registrar of the Institute is not a public office.
51. In ***Nitya Nanda KVI Bhushan Lal vs. Khasil Ahmed, Ali Ahmed*** reported at **AIR 61 Punjab 105** it was held that a Municipal Commissioner holds a public office and, therefore, a writ of quo-warranto can be issued when his election was invalid being based on defective electoral roll. The said decision being distinguishable on facts cannot come to the aid of the petitioner.
52. In ***Dr. Kashinath G. Jalmi vs. The Speaker and ors.*** **(1993) 2 SCC 703** it was held that a writ petition ought not to have been dismissed merely on the grounds of laches at the admission stage without examining the contention on merits that the offices including that of the Chief Minister of the State are being held by persons without lawful authority. The said decision being distinguishable on facts do not have any manner of application to the case on hand.
53. In the case of ***State of Rajasthan vs. Ganeshi Lal*** reported at **(2008) 2 SCC 533** the issue was whether the law department was an industry. The said decision does not have any manner of application to the case on hand.

54. In the decision of the Hon'ble Supreme Court in the case of ***M/s. Granules India Ltd. vs. Union of India and ors.*** reported at **2020 SCC Online SC 71** the Hon'ble Supreme Court held that the State cannot behave like a private litigant and rely on abstract theories of the burden of proof. The said decisions also do not have any manner of application to the case on hand.
55. In ***Chanda Deepak Kochhar*** (supra) the challenge was against the order of termination of a Managing Director of ICICI Bank. It was held therein that ICICI being a private body is not an instrumentality of the State. It receives no public funding and the service conditions of the petitioner therein are not governed by any statute and the dispute raised therein arose from a contract of personal service. On such facts it was held that since the termination is in the realm of contractual relationship, the petitioner cannot avail of the remedies by filing an application under Article 226 of the Constitution of India. The said decision being distinguishable on facts do not have any manner of application to the case on hand.
56. For all the reasons as aforesaid this Court is not inclined to grant any relief in favour of the writ petitioners in the aforesaid writ petitions. WP-1 and WP-2 accordingly stands dismissed. There shall be, however, no order as to costs.
57. Urgent Photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)