



2023:DHC:7687-DB



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

+ **Date of Decision: 21.09.2023**

% **W.P.(C) 12464/2023 and CM APPL. 49165/2023**

DR AJAY KUMAR SACHDEV

..... Petitioner

Through: Mr. Avadh Bihari Kaushik &
Mr. Prateek Goyal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Santosh Kumar Tripathi,
Standing Counsel with Ms. Prashansa
Sharma, Mr. Kartik Sharma &
Mr. Rishabh Srivastava, Advocates for
respondents No.1, 2 & 3/ GNCTD.
Mr. Sanjay Poddar, Senior Advocate
with Mr. Siddharth Panda &
Mr. Govind Kumar, Advocates and
Mr. Manoj Kumar, Senior Manager
(HR), for respondents No.4 & 5/
ILBS.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The petitioner before this Court has filed the present petition as a Public Interest Litigation ('PIL') impugning the appointment of Respondent No.5/ Dr. Shiv Kumar Sarin ('Dr. Sarin') as Chancellor and the extension



of Dr. Sarin's tenure as Director of the Institute of Liver and Biliary Sciences (the '**ILBS**') –a deemed-to-be-university.

2. The Petitioner submits that he is a law abiding and watchful citizen of India holding degrees of MBBS, MS, PHD in G.I. Surgery, and is one of the most renowned surgical gastroenterologists in the country.

3. The facts of the case reveal that the Petitioner had applied for the position of Professor (Surgical Hepatology) at the ILBS in 2017, and his candidature was rejected upon the recommendation of Dr. Sarin. Aggrieved by the rejection of his candidature, the Petitioner preferred W.P.(C.) No. 5737/2021 before this Court. The learned Single Judge, in judgment dated March 29, 2023, ruled in favor of the Petitioner. However, this decision has been challenged in LPA No. 298/2023, which is presently awaiting adjudication. In the midst of these proceedings, the petitioner has initiated the current PIL, asserting that the appointment of Dr. Sarin as the Chancellor of ILBS is in violation of the statutory provisions governing this matter, namely the Bye-Laws of ILBS Society (the '**Bye-Laws**') and the Rules of ILBS Deemed-to-be University, New Delhi (the '**Rules**').

4. The petitioner's argument revolves around the eligibility criteria for appointment of Chancellor at ILBS. Specifically, the petitioner contends that no individual who has exceeded the age of 70 years is eligible for this position and as Dr. Sarin is more than 71 years of age, he is not eligible to be appointed as Chancellor.

5. At the outset, Learned Senior Counsel for Respondent No. 4/ILBS and Dr. Sarin has drawn the attention of this Court towards Rules 42 & 43 of the Rules which are pertinent for the present issue. The same read as under:



“42. Chancellor

Chancellor: The ILBS Deemed-to-be-University shall have a Chancellor who shall, when present, preside over the convocations of the ILBS Deemed-to-be-University but shall not be the Chief Executive Officer.

The Chancellor shall be appointed by the sponsoring Society i.e. the Institute of Liver and Biliary Sciences and shall hold office for a period of 5 years and shall be eligible for one more term.

Where power is conferred upon the Chancellor to nominate persons to authorities, he/she shall, to the extent necessary, nominate persons to represent the various interests for the furtherance of the objectives of the Institutions deemed to be university.

Expl: if a person holds the post for a term less than five years then also it shall be treated as a term for this purpose.

Till such time, a full time Chancellor of ILBS Deemed-to-be-University is appointed or in absence of the Chancellor, Chairman, ILBS shall discharge additional function as Chancellor of the ILBS Deemed to be University.

43. Vice-Chancellor

i. The Vice Chancellor shall be a person of the highest level of competence, integrity, morals and institutional commitment. He/she shall be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization.

The Vice - Chancellor of the ILBS Deemed-to-be-university shall be appointed by the Administrator on the recommendations of the Governing Council of ILBS. For the purpose, a panel of three (3) names shall be provided by the Governing Council

ii. The Vice-Chancellor shall hold office for a term of 5 years. He shall be eligible for a second term, provided that in



no case, shall he hold office beyond the age of 70 years.

Provided, that notwithstanding the expiry of the period of 5 years, he/she may continue in office for not more than six months or till his/her successor is appointed and the latter assumes office, whichever, is earlier.

iii. In case of the office of the Vice-Chancellor becoming vacant due to death, resignation or otherwise and in case of his/her absence due to illness or any other cause, in his/her absence, the Pro-Vice Chancellor and if both are not available, Director/ Senior Professor, as decided by Administrator shall perform the duties of the Vice -Chancellor until a new Vice-Chancellor is appointed, or the existing Vice-Chancellor resumes duties, as the case may be.

iv. The terms and conditions of the appointment of Vice-Chancellor including benefits and perquisites, which shall not be less than that of Director, ILBS, shall be fixed by the Governing Council with the concurrence of the State Government.”

(emphasis supplied)

6. This Court has carefully gone through the Rules governing the field. For the post of Vice-Chancellor, there is certainly an age limit prescribed, i.e., 70 years; and beyond the age of 70 years, no person can hold the office of Vice-Chancellor. However, for the post of Chancellor, no upper age limit has been prescribed by the Rules.

7. The order dated 19th August, 2022, appointing Dr. Sarin as Chancellor w.e.f. 20th August, 2022, is on record as Annexure P-7 and reveals that Dr. Sarin was appointed as in terms of Bye-laws 4(iv) and 14(j) read with Rule 42 of the Rules and Regulation 10.12.1(ii) of the UGC (Institutions Deemed to be Universities) Regulations, 2019.

8. The Bye-laws *inter alia* deals with appointment of Chancellor and in



that regard, Bye-law 14 reads as under:

“14. Functions and Powers of the Governing Council:

1. The Governing Council shall be the principal executive authority of the Institute, and shall have the power to review action of the Scientific Advisory Committee, Finance Committee and all other Committees and shall exercise all powers of the Institute not otherwise provided for by the Rules:

It shall:

- a. Generally carry out and pursue the objectives of the Institute, as set forth in the Memorandum of its Association.*
- b. In particular and without prejudice to the generality of the foregoing provisions, it shall have the powers, subject to the provisions of these Rules and the bye-laws framed by it to;*
 - i. Consider the annual and supplementary budget reports placed before it by the Director from time to time, and pass them with such modifications as the Governing Council may think fit;*
 - ii. Create and abolish posts;*
 - iii. Appoint the Director, Professors, Professor-Emeritus, various faculty members, consultants, residents, scientists, scientific technical, administrative and other officers and staff of the Institute, fix their remuneration and define their duties and terms of employment;*
 - iv. Consider and decide the recommendations of the Board of Management of ILBS Deemed-to-be-University.*
 - v. Allow utilization of the services of the faculty and other administrative and support staff recruited by the ILBS Society by the ILBS Deemed-to-be-University*
 - vi. Enter into arrangements with the Govt. of India, State and local Govt., other public or private organizations or individuals, overseas universities, institutions and agencies for securing and accepting grants-in-aid, endowments, donations or gifts to the*



Institute, on mutually agreed terms and conditions, provided that such terms and conditions, if any, shall not be contrary to, inconsistent or in conflict with the objectives of the Institute; provided, further that for any such arrangement with foreign and/or international agencies, organization/corporate bodies, the approval of the Government of India shall be obtained;

vii. Take over, acquire by purchase, grants, gifts, exchange, lease or hire or otherwise from Government of India, State and local Governments and other public or private bodies or individuals, Institutions, libraries, laboratories, immovable properties. endowments or other funds and facilities together with any attendant obligations and engagements not inconsistent with the objectives of the Institute; provided that for any such activity involving a foreign and/or international agency or organization. the approval of the Government of India shall be obtained.

viii. Appoint Committees and sub-committees such as Finance Committee, Scientific Advisory Committee, Committees for Building and Purchases, with external domain expertise for such purposes and with such powers and for such periods and on such terms as it may deem fit, and dissolve/ discontinue any of them.

ix. Delegate such administrative and financial powers as it may think proper to the Chairman and the Director, as may be considered essential for achieving the objectives of the Institute;

x. Frame, amend or repeal bye-laws, for the proper and efficient administration and management of the affairs of the Institute and in particular, to provide for the following matters:-

1. preparation and sanction of budget estimates, expenditure, enter into and execution of contracts, investment of the funds of the Institute, sale or alteration of such investments and maintenance of accounts and their audit;



2. Lay down procedure for recruitment of officers and establishment in the service of the Institute.
 3. Lay down terms and tenures of appointments, emoluments, allowances, rules of discipline and other conditions of service of the establishment of the Institute.
 4. Set out terms and conditions governing the grant of scholarships, fellowships and grant-in-aid for research schemes and projects not inconsistent with the objectives of the Institute.
 5. Set out such other matters as may be necessary for the administration of the affairs and funds of the Institute,
- c. Co-opt from time to time as its member, eminent clinician, scientist distinguished persons of repute as it deems desirable in the interest of the Institute.
 - d. Consider and pass the resolutions on the annual reports and the financial estimates and audit report on such accounts;
 - e. Undertake such steps as are required for full autonomy or establish corporate structure based on a sound economic policy;
 - f. Give directions on specific matters.
 - g. Approve and adopt the amendments to the Rules and Regulations of the Institute.
 - h. Conduct periodical review and monitoring of the activities of the Institute and take remedial measures as deemed fit to meet the aims and objectives of the Institute.
 - i. Recommend the broad policies and programmes of the Institute and suggest measures for the improvement and the development of the Institute.
 - j. **Appoint a Chancellor to the ILBS Deemed to be University who shall be an eminent educationist or a distinguished public figure who shall neither be a member of the Society nor a close relative of the Chairman of the society;**



- k. Nominate such number of representatives/ nominees to the aforesaid Board of Management and other Authorities/bodies/ committees of the ILBS Deemed to be University, from time to time, as may be prescribed by the relevant Laws/ Rules/ Regulations, applicable as on date;*
- l. To consider and decide the recommendations of the Board of Management of ILBS Deemed-to-be-University.*
- m. Consider the request of the ILBS Deemed to be University to provide funds;*
- n. To provide funds for meeting the functional requirements of the ILBS Deemed to be University;*
- o. Consider and decide the request of the ILBS Deemed-to-be-University on the matters regarding acquisition, management & disposal of any immovable property, Creation of posts etc.;*
- p. Perform such other functions as may be prescribed by Rules.”*

(emphasis supplied)

9. Bye-law 14(j) provides for the appointment of Chancellor and merely specifies that the person appointed as Chancellor should be an eminent educationist or a distinguished public figure who shall neither be a member of the Society nor a close relative of the Chairman of the Society.

10. At this stage, it is pertinent to note the remarkable achievements of Dr. Sarin, who is widely recognized as an eminent gastroenterologist of our country and is certainly a distinguished public figure. His contributions have been lauded with prestigious honors, including the Padma Bhushan, the third-highest civilian award bestowed by the Government of India. Additionally, he has been honored with the Shanti Swarup Bhatnagar Award, the highest multi-disciplinary science award in India for Science and Technology. Dr. Sarin's accomplishments extend beyond national



boundaries. He has received the coveted prize of ‘The Most Distinguished Physician from India’ from the American Association of Physicians of Indian Origin. His dedication to medical education has been acknowledged with the ‘Gifted Teacher Award’ by the Association of Physicians of India. Notably, Dr. Sarin played a pivotal role in the establishment of ILBS under the auspices of the GNCTD in 2009.

11. The relevant portion of the order dated 19th August, 2022, issued by the GNCTD appointing Dr. Sarin as the Chancellor of ILBS is reproduced as under:

*“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI HEALTH AND FAMILY WELFARE DEPARTMENT*

*9th LEVEL, A-WING DELHI SECRETARIAT, IP ESTATE NEW
DELHI-11 0002*

No. 93/Society/H&FW/2017/hfwds/2-9 Date: 19/08/2022

ORDER

The competent authority is pleased to appoint Dr. S.K. Sarin as Chancellor of the ILBS Deemed-to-be-University in terms of Bye-laws 4(iv) and 14(j) of the ILBS Society read with rule 42 of the ILBS Deemed-to-be-University and Regulation 10.12.1 (ii) of the UGC (Institutions Deemed to be Universities) Regulations, 2019, for a period of 5 years w.e.f. 20/08/2022, or from the date of assuming office, whichever is later.

Sd/-

(AJAY BISHT)

Dy. Secretary (H&FW)”

12. The said order has been passed by the Competent Authority in this regard and this fact has not been disputed. Dr. Sarin has been appointed as the Chancellor of ILBS for a period of five years from 20th August 2022, and therefore, in light of the afore-extracted provisions, the ground canvassed by



the Petitioner that no person can be appointed as Chancellor of ILBS if he has crossed 70 years of age, does not hold water.

13. It has also been argued by Learned Counsel for the Petitioner that the extension of Dr. Sarin's tenure as Director of ILBS *vide* order dated 18th February 2023, issued by the GNCTD, violates Bye-Law 10.2 which specifies that the tenure of the Director shall be for a term of five years which can be extended for a further period of 5 years on the recommendation of the Governing Council. The Petitioner submits that as per Bye-Law 10.2, two tenures of Dr. Sarin has already expired on 13th January, 2020.

14. This Court has reviewed the order dated 18th February 2023 which reveals that the recruitment and appointment process for a regular incumbent to the position of Director has not yet reached completion. Given the vacancy in the Director's post, Dr. Sarin was temporarily entrusted with the responsibilities of this position, in public interest.

15. Learned counsel for the Petitioner argues that the extension granted for the temporary charge of Director bestowed upon Dr. Sarin is legally questionable.

16. In the considered opinion of this Court, the necessity to address the daily operational requirements of ILBS and ensure its uninterrupted functioning in the absence of a regular Director led to an interim arrangement where the Chancellor assumed the additional responsibility of Director. This measure was taken to maintain the institution's operational efficiency, uphold the quality of patient care, and safeguard the interests of both the faculty and students who depend on ILBS for their educational and



medical needs. It is important to note that the appointment of a regular Director is a time-consuming process that involves meticulous scrutiny and selection procedures, and any delay in this process could potentially disrupt the institution's functioning.

17. This Court acknowledges the Petitioner's concern regarding the extension of the temporary charge of Director to Dr. Sarin. However, it is essential to balance the need for regular appointment with the immediate needs of ILBS. Given the paramount importance of ensuring that the institution continues to provide medical services and education, this Court finds no compelling grounds to interfere with the decision to entrust the Chancellor with the additional role of Director during this transitional period. This arrangement serves the best interests of ILBS and its stakeholders while the process of appointing a regular Director progress.

18. Learned counsel for the Petitioner has heavily relied upon the judgment of this Court in the case of ***Suresh Gaur Vs. Government of NCT of Delhi & Ors.***, 300 (2023) DLT 562 (DB). However, this case can be distinguished based on factual dissimilarities. The facts surrounding the case of ***Suresh Gaur*** (supra) reveal that, in that case, there was no sanctioned post of Director, and an appointment was made outside the purview of Recruitment Rules therein. Given those circumstances, the appointment of a Director therein was rightfully set aside.

19. In contrast, the present case does not involve such contingencies. Here, a person was appointed to the post of Chancellor and was subsequently given the additional post of Director, in public interest and not in violation with the established norms and regulations governing the



appointment process. Therefore, the circumstances and legal basis for the appointment in this case differ from those in the **Suresh Gaur** case.

20. In the considered opinion of this Court, the grounds presented in the current petition lack any substantial merit. This petition appears to be a clear misuse of the legal process, as it takes the form of a PIL while presenting incorrect information about the age restriction placed for the post of Chancellor. It is worth noting that the Petitioner, who was not selected as a Professor at ILBS, has initiated this action. However, despite the questionable maintainability of this petition, we have chosen not to dismiss it solely on those grounds. Instead, we have thoroughly examined the matter on its merits. Upon a comprehensive review, for the reasons noted above, we find no irregularities or legal violations concerning the appointment of Dr. Sarin to the position of Chancellor and Director at ILBS.

21. The Hon'ble Supreme Court in the case of **Kushum Lata Vs. Union of India & Others**, (2006) 6 SCC 180, had deprecated the practice of filing such PILs which are nothing but a camouflage to foster personal disputes, and in paragraphs 5 to 22 has held as under:

“5. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public interest litigation which has now come to occupy an important field in the administration of law should not be “publicity interest litigation” or “private interest litigation” or “politics interest litigation” or the latest trend “paise income litigation”. The High Court has found that the case at hand belongs to the second category. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to



release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. The courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Kazi Lhendup Dorji v. CBI [1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873] . A writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. (See Ramjas Foundation v. Union of India [1993 Supp (2) SCC 20 : AIR 1993 SC 852] and K.R. Srinivas v. R.M. Premchand [(1994) 6 SCC 620] .)

6. *It is necessary to take note of the meaning of the expression “public interest litigation”. In Stroud's Judicial Dictionary, Vol. 4 (4th Edn.), “public interest” is defined thus:*

“Public interest.—(1) A matter of public or general interest ‘does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected’.”

7. *In Black's Law Dictionary (6th Edn.) “public interest” is defined as follows:*

“Public interest.—Something in which the public, the community at large, has some pecuniary



interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government.”

8. *In Janata Dal case [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] this Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is public interest, has laid down as follows : (SCC p. 331)*

“53. The expression ‘litigation’ means a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression ‘PIL’ means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.”

9. *In paras 60, 61 and 62 of the said judgment, it was pointed out as follows : (SCC p. 334)*

“62. Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold.”

10. *In para 98 of the said judgment, it has further been pointed out as follows : (SCC pp. 345-46)*

“98. While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also



hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddling interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration.”

11. *In subsequent paras of the said judgment, it was observed as follows : (SCC p. 348, para 109)*

“109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold.”

12. *It is depressing to note that on account of such trumped up proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters — government or private, persons awaiting the disposal of cases wherein huge amounts of public*



revenue or unauthorised collection of tax amounts are locked up, detenu expecting their release from the detention orders, etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffing their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

13. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, the court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by



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rejection at the threshold, and in appropriate cases with exemplary costs.”

22. Accordingly, the present Petition is dismissed with costs of Rs.10,000/-, to be deposited with Army Battle Casualty Fund within four weeks from the date of this judgement.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

SEPTEMBER 21, 2023

B.S. Rohella

(Judgment released on 19.10.2023)

Signature Not Verified

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By: BHUPINDER SINGH
ROHELLA
Signing Date: 19.10.2023
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