

(2013) 07 AP CK 0058

Andhra Pradesh High Court

Case No: Writ Petition No"s. 39366 of 2012 and WVMP No. 1583 of 2013

Dr. K.R. Balam

APPELLANT

Vs

The Nizam Institute of Medical
Sciences
 Dr.
Dharmarakshak Vs Dr K.R.
Balam, The Nizam Institute of
Medical Sciences

RESPONDENT

Date of Decision: July 8, 2013

Citation: (2013) 5 ALD 662 : (2013) 6 ALT 308

Hon'ble Judges: Nooty Ramamohana Rao, J

Bench: Single Bench

Advocate: B. Adi Narayana Rao for Sri Kasa Jaganmohan Reddy in WVMP No. 1583 of 2013 and for the Petitioner No. 3 in Writ Petition No. 15232 of 2013 and Sri D. Prakash Reddy for Sri Vinay Kamisetty, for the Appellant; S. Nanda, Counsel for Respondent Nos. 1, 2 and 3 in WVMP No. 1583 and Writ Petition No. 15232 of 2013, Sri D. Prakash Reddy for Sri Vinay Kamisetty for the Respondent No. 2 in WVMP No. 1583 of 2013 and The Advocate General for G.P. Medical and Health and Family Welfare, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Nooty Ramamohana Rao, J.

Both these writ petitions are taken up together for consideration as the subject matter in both the cases is related to the Office of the Director of Nizams Institute of Medical Sciences, Hyderabad (NIMS, for short). WP No. 39366 of 2012 is instituted seeking a writ of Quo Warranto calling upon the 2nd respondent to show his authority and right to occupy the Office of the Director of the 1st respondent - NIMS, whereas WP No. 15232 of 2013 is instituted by the incumbent Director seeking a writ of mandamus for declaring the action of the 1st respondent - State Government in proceeding with the constitution of the Search Committee in terms of Section 17(1) of the NIMS Act, 1989 and thus initiating action to appoint a Director of NIMS, when

the petitioner's period of appointment as Director, NIMS, is still in force, as illegal, arbitrary and unconstitutional. Thus, practically, both these writ petitions are a case and a counter case.

2. Section 17 of the NIMS Act, 1989, dealt with the method of appointment of a Director. On 30.9.2011, the Chief Minister in his capacity as the President of the NIMS appointed the petitioner in WP No. 15232 of 2013 as the Director of the Institute for a period of one year. By another proceeding dated 29.9.2012, the Chief Minister extended his term for a further period of one year. The claim of the petitioner in WP No. 39366 of 2012 was that without a Search Committee, being constituted and without such a Search Committee making any recommendations, the President of the Institute could not have appointed the writ petitioner in WP No. 15232 of 2013 on 29.09.2012 as the Director of the Institute.

3. It will be significant to note that two separate counter affidavits by and on behalf of respondents 1 and 2 have been filed in WP No. 39366 of 2012. The stand taken therein reflects that the appointment of the Director has been ordered in accordance with sub-section (5) of Section 17 of the Act as the selection for appointment of a Director is likely to consume more time. At that stage, the learned Advocate General appeared on behalf of the 1st and the 3rd respondents in WP No. 39366 of 2012 and held out an assurance on 26.04.2013 that, necessary action would be initiated for finalizing the selection for the post of Director of the NIMS. However, the 2nd writ petition WP No. 15232 of 2013 is instituted during the summer recess seeking relief adverted to supra. Both the matters are heard together hence.

4. Sri D. Prakash Reddy, learned Senior Counsel appeared on behalf of the petitioner in WP No. 15232 of 2013, while Sri B. Adinarayana Rao, learned Senior Counsel appeared for the petitioner in WP No. 39366 of 2012 who incidentally got impleaded as 3rd respondent in WP No. 15232 of 2013.

5. The short question which falls for consideration is whether the President of the Institute is right in appointing the petitioner in WP No. 15232 of 2013 on 30.09.2011 and 29.09.2012 as Director only for a period of one year when the Statute sets out that the Director shall be appointed for a term of three years.

6. Sri D. Prakash Reddy, learned Senior Counsel would submit that the Legislature intended that the Director should be appointed for a term of three years and hence the President of the Institute has discretion in the matter left except to appoint a suitable candidate for a period of three years. Sri D. Prakash Reddy, learned Senior Counsel would submit that though the petitioner in WP No. 15232 of 2013 has taken a specific stand that he has been appointed in terms of sub-section (5) of Section 17, but, however, he was not advised properly at that stage and in fact such a stand has been taken erroneously. It is contended that when the Statute has prescribed a particular act to be accomplished in a particular manner, that is the only way, the

tasks should be accomplished, but not otherwise. It is, therefore, contended that notwithstanding the expiry of the one year period by 30.9.2012, and notwithstanding the extension accorded to the petitioner for one more year by the President of the Institute, the petitioner can legitimately seek a declaration that he shall continue to hold the Office of the Director of the NIMS for the period of three years upto 30.09.2014.

7. It will be appropriate to notice the fact that this petitioner in the counter affidavit filed by him in WP No. 39366 of 2012 has taken the following stand:--

4. I submit it is true, that I have been appointed initially by Proceedings No. NIMS/ACAD/2010, dt. 30-9-2011 as Director, NIMS, Hyderabad, for a period of one year and the said proceedings reflects that the said appointment is made u/s. 17, Sub-clause (1), where as actually it is in fact a Proceedings issued to me u/s. 17, Sub-clause (5) and by mistake, inadvertently, it is issued, reciting a wrong provision as an order made u/s 17, Sub-clause (1) instead of Section 17, Sub-clause (5). It is true that the said term expired on 28-9-2012. The 3rd Respondent herein exercising his powers u/s 17, Sub-clause (5) afresh again, appointed me the second time again, as Director, NIMS, vide Proceedings No. NIMS/ACAD/2012, dt. 29-9-2012, for a further period of one year. It is true that an error in the said proceedings crept again the second time, inadvertently, and a wrong provision of Section 17 Sub-clause (1) of NIMS, Act, 1989 reflects in the said proceedings instead of Section 17, Sub-clause (5) of NIMS Act, 1989.

5. I submit that the terms of initial appointment dated 30-9-2011 of the 3rd Respondent herein issued in my favour is for a period of one year and the same is issued by the 3rd Respondent herein exercising his powers u/s 17, Sub-clause (5) of NIMS Act, 1989 and soon after the said period concluded I was appointed again as Director, NIMS, vide Proceedings dated 29-9-2012 of the 3rd Respondent herein for yet another period of one year with effect from 29-9-2012 and the same is issued to me by the 3rd Respondent herein exercising his powers afresh again u/s 17, Sub-clause (5) of NIMS Act, 1989.

6. I submit that a valid order made a Statutory Provision, and an error or a mistake in recitation of a Wrong Provision of Section 17, Sub-clause (1) of the Nizam's Institute of Medical Sciences Act, 1989 instead of Section 17, Sub-clause (5) in the order of appointment made by the Competent Authority i.e., the 3rd Respondent herein, in Procd. No. NIMS/ACAD/2012, dated 29-9-2012, appointing me as Director NIMS, shall not take away the Jurisdiction of the Competent Authority u/s 17, Sub-clause (5) of the NIMS Act, 1989. Therefore the order of appointment dated 29-9-2012 of the 3rd Respondent herein, cannot be vitiated on the said sole ground.

The Executive Registrar, NIMS, in the counter affidavit filed in W.P. No. 39366 of 2012 has taken the following pleas:

4. I submit it is true, that the 2nd Respondent herein has been appointed initially by Proceedings No. NIMS/ACAD/2012, dated 30-9-2011 as Director, NIMS, Hyderabad, for a period of one year and the said proceedings reflects that the said appointment is made U/s. 17, Sub-clause (1), where as actually it is in fact a Proceedings issued to the 2nd Respondent u/s. 17, Sub-clause (5) and by mistake, inadvertently, it is issued, reciting a wrong provision as an order made u/s 17, Sub-clause (1) instead of Section 17, Sub-clause (5). It is true that the said term expired on 28-9-2012. The 3rd Respondent herein exercising his powers u/s 17, Sub-clause (5), afresh again, appointed the 2nd Respondent, the second time again, as Director, NIMS, vide Proceedings No. NIMS/ACAD/2012, dated 29-9-2012, for a further period of one year. It is true that an error in the said proceedings crept again the second time, inadvertently, and a wrong provision of Section 17 Sub-clause (1) of NIMS Act, 1989 reflects in the said proceedings instead of Section 17, Sub-clause (5) of NIMS Act, 1989.

6. I submit that a valid order made under a Statutory Provision, and an error or a mistake in recitation of a Wrong Provision of Section 17, Sub-clause (1) of the Nizam's Institute of Medical Sciences Act, 1989 instead of Section 17, Sub-clause (5) in the order of appointment made by the Competent Authority i.e. the 3rd Respondent herein, in Procd. No. NIMS/ACAD/2012, dated 29-9-2012, appointing the 2nd Respondent as Director, NIMS, shall not take away the Jurisdiction of the Competent Authority u/s 17, Sub-clause (5) of the NIMS Act, 1989. Therefore the order of appointment dated 29-9-2012 of the 3rd Respondent herein, cannot be vitiated on the said sole ground.

This apart, the petitioner in W.P. No. 15232 of 2013 he has accepted the order passed by the President of the Institute appointing him as the Director of the Institute for a period of one year through the proceedings dated 30.9.2011. Upon accepting such a condition, he entered the office and functioned as the Director. After expiry of the said term of office of one year, the President has passed another order on 30.9.2012 extending his term of office by one more year. It is the subsequent order which gave rise to the institution of WP No. 39366 of 2012. It was urged by Sri B. Adinarayana Rao, learned Senior Counsel that in accordance with sub-section (1) of Section 17 of the Act, a Director can be appointed for a fixed term which shall not, however, exceed three years and such an individual is also eligible for re-appointment for two more terms, but, however, the re-appointment can only take place if the incumbent's name is recommended by the Search Committee. It is, therefore, contended by the learned Senior Counsel that unless a Search Committee is constituted and that Search Committee makes its recommendation of a panel of names, the President of the Institute cannot re-appoint the incumbent Director of the Institute. Sri B. Adinarayana Rao would further contend that re-appointment is not the same as that of extension of employment. Re-appointment pre-supposes inclusion of the name of the incumbent Director in the panel of names recommended by the Search Committee. Since, no such Search Committee has been

constituted and no such recommendation of a panel of names has taken place, the orders of extension passed by the President of the Institute on 30.9.2012, are clearly illegal.

8. Alternatively, it is contended that that the term of office of the Director of the Institute can be extended in accordance with sub-section (5) of Section 17. But, however, the maximum term for which a Director can be appointed under sub-section (5) of Section 17 is one year and the provision under sub-section (5) can be invoked only when the vacancy in the Office of the Director cannot be conveniently and expeditiously filled in accordance with the provisions of sub-sections 1, 2 and 3 or for any other reasons of emergency. He, therefore, urged that it is improper to consider that the vacancy of the Director of the Institute cannot be expeditiously filled in accordance with sub-sections 1, 2 or 3 for a whole period of one year by the President at the very outset. Without making any effort to fill up the vacancy of the Director of the Institute in accordance with sub-sections 1, 2 and 3 of Section 17, the President cannot arbitrarily determine that the vacancy in the office of the Director cannot be filled for a period of one year and straight away grant such one year term through his orders dated 30.9.2012.

9. Apart from the conduct of the petitioner in WP No. 15232 of 2013 in adopting diametrically opposite stances in his pleadings set up in both the cases, but nonetheless, the question has got to be approached as to whether sub-section (1) of Section 17 invariably mandates a Director to be appointed for a term of three years. It is of help to consider the provision contained in Sub-section (1) of Section 17 of the Act, which reads as under:

17 (1) There shall be a Director of the Institute who shall be appointed by the President for a term of three years who shall be eligible for reappointment for two more terms from out of the panel of names recommended by a Committee consisting of,

(a) the Vice-President of the Institute;

(b) a nominee of the Governing Council of the Institute;

(c) a nominee of the Academic Council of the Institute;

10. Sub-section (1) uses the following crucial expressions viz., "shall be appointed by the President for a term of three years". Is the language employed by the Legislature decisive or did it vest the President of the Institute with any discretion for appointing a Director for a term which is less than three years, is required to be deciphered.

11. A quick scan of the provisions of the NIMS Act would disclose the following:

12. With a view to provide for the establishment of the Nizams Institute of Medical Sciences at Hyderabad, and to confer the status of a University thereon, and for

matters connected there with and incidentally thereto, the State Legislature enacted the Nizams Institute of Medical Sciences Act, 1989, henceforth referred to, for brevity as "Act". In terms of Section 3, the Government by notification established an institute of medical sciences at Hyderabad known as Nizams Institute of Medical Sciences (NIMS), Hyderabad, which shall function as a University established under the State Act. The institute shall be a body corporate having perpetual succession and a common seal and shall sue and be sued by the said corporate name. Sub-section (4) of Section 3 makes it clear that, in all suits and other legal proceedings by or against the institute, the pleadings shall be signed and verified by the Executive Registrar of the Institute. Section 4 of the Act, lists out the objects of the Institute, primarily for creating a centre of excellence for medicare, education and research. The institute was in fact, established to function as a referral hospital and to provide for post graduate/super speciality teaching and for carrying out research in the relevant disciplines of modern medicine. Section 7 listed out the officers of the institute. Amongst them, President of the Institute as well as the Director and the Executive Registrar are listed out. Section 8 has spelt out that the Chief Minister of Andhra Pradesh shall be the President of the Institute, while Section 9, inter-alia, spelt out that, the Minister in-charge of Medical, Health and Family Welfare shall be the Vice-President of the Institute. Section 17 dealt with the method of appointment of the Director of the Institute, while Section 18 spelt out that the Director of the Institute shall be the Chief Executive and Academic Officer. Section 25 sets out that the Government may pay to the Institute in each financial year, such sums of money as may be considered necessary for exercise of its powers and discharge of its functions. The financial resources of the Institute and their management have been dealt with in Section 26 of the Act. Section 33 empowers the Institute to have the power to grant medical degrees, diplomas and other academic distinctions. Section 35 dealt with the power of the State Government to give directions to the Institute. Section 37 conferred certain special powers on the President of the Institute on questions arising as to whether any person has been duly appointed as, or he is entitled to be a member of the Governing Council, Executive Board, or any authority or other Body of the Institute or whether any decision of the Governing Council, Executive Body or any other Authority or other Body of the Institute is in conformity with the Act or not, such questions shall be referred for the decision of the President and his decision thereon shall be final. Thus, it becomes clear that the President of the Institute apart from being a very important officer of the Institute, is also conferred certain special powers with regard to the proper administration of the Institute.

13. As is clear, the Chief Minister of the State acts as the President of the Institute. While the Minister of Health of the State Government acts as Vice President of the Institute. A Search Committee comprising of the Vice President of the Institute, the nominee of the Governing Council of the Institute and a nominee of the Academic Senate of the Institute is to be constituted and this Committee was required to make

a recommendation of a panel of names considered suitable by them for appointment as the Director of the Institute. Thereafter, the President of the Institute was required to select one of the persons who is included in the panel of names recommended by the Committee for appointment as the Director. The scheme of the Statute, therefore, has vested the President of the Institute with enough discretion to pick up the most suitable candidate, in his opinion, for appointment as the Director of the Institute. There was no necessity to record any reason as to why the President has picked up one particular name out of the panel of names recommended by the Committee and a fortiori there was also no necessity for recording any reasons, as to why the other names in the panel have not been chosen for appointment as the Director. When viewed in this backdrop, the expressions "for a term of three years" employed by the Legislature leave and vest the President of the Institute with necessary flexibility. However, this discretion is regulated by the qualifying words "three years". In other words, the President of the Institute has no discretion to appoint any person as a Director of the Institute for a term exceeding three years, however, eminent the person who has been so chosen could be.

14. Learned Senior Counsel Sri D. Prakash Reddy would submit that if the Legislature really intended to confer discretion on the President, they would have employed the expression "for a term not exceeding three years". Since the Legislature has used the expression "for a term of three years", according to the learned Senior Counsel, there is no choice for the President of the Institute except to appoint a suitable candidate for a term of three years. The President cannot curtail this term of three years at all.

15. I am afraid, this contention is not very sound. The Search Committee may have recommended a panel of names from out of which one has to be appointed as the Director. The panel of names to be recommended by the Search Committee is not to be arranged in any order of preference or ranking wise. If the President of the Institute considers that the panel of names recommended by the Search Committee did not contain the name of an eminent personality, who can effectively function as a Director, he can nonetheless, choose one of them to be appointed as a Director and in the process preserve the choice of looking forward for selection of a more eminent personality in a quick time. Such a choice can be preserved only if the selected candidate is appointed for a term of less than three years. Otherwise, the President will have to wait, almost helplessly, for a full three year term, for securing a better candidate than those recommended by the Search Committee. The Institute being a pre-eminent medical institution of excellence in the State, the larger public interest would, therefore, be sub-served by construing or preserving discretion in the hands of the President of the Institute. I am, therefore, of the opinion that sub-section (1) of Section 17 vested the President of the Institute with necessary discretion to appoint a Director for a term which can be of lesser duration than three years.

16. I have also been made available the file relating to the appointment of the Director of the Institute.

17. Dr. D. Prasad Rao, whose term of appointment as Director of the Institute was drawing to a close on 29.9.2010 AN, requested steps to be taken for appointment of a Director to the Institute in accordance with the Act through his letter dated 7.7.2010. Thereafter, the State Government requested the Director to convene the meetings of the Academic Senate and the Governing Councils for securing their nominees to the Search Committee. Accordingly, the 13th Meeting of the Governing Council of the Institute was held on 7.9.2010 and it chose Dr. I.V. Rao, Vice-Chancellor of Dr. NTR University of Health Sciences as the nominee of the Governing Council of the Search Committee. Similarly, the Academic Senate at its 58th Meeting held on 7.9.2010 chose that Dr. V. Santa Ram, Former Dean and Professor and Head of the Department of General Medicine of the Institute as the nominee of the Search Committee. Accordingly, the State Government passed orders through their G.O. Rt. No. 1211, Health, Medical and Family Welfare (E2) Department, dated 8.9.2010 constituting the Search Committee. However, since the term of office of Dr. Prasad Rao was drawing to a close, through orders dated 29.9.2010, the President of the Institute appointed Dr. P.V. Ramesh, IAS, Principal Secretary to the Government, Health, Medical and Family Welfare Department as the Director of the Institute for a period of three months in terms of sub-section (5) of Section 17 of the Act. When this three months period also came to an end, once again the President of the Institute through his orders dated 31.12.2010 appointed Dr. Prasant Mahapatra, IAS, Principal Secretary to Government, Irrigation & Command Area Development as the Director initially for a period of six months. The State Government requested the Director to notify the appointment for the post of the Director in two leading English newspapers for securing greater attention; Accordingly, notifications were got published in Hindu Newspaper issue dated 30.3.2011 and Times of India newspaper issue dated 30.3.2011. In response thereto, several applications have been received from various places across the country. The meeting of the Search Committee was convened to take place at 11 AM on 25.5.2011 in the chambers of the Hon^{ble} Minister for Medical and Health. Accordingly, the Search Committee met and short listed the following three names:

1. Dr. A. Dharma Rakshak, Professor of Cardiothoracic Surgery, NIMS

2. Dr. Ravi Raju, Director of Medical Education, Government of Andhra Pradesh and

3. Dr. A.K. Mahapatra, Professor and Head of the Department of Neuro Surgery, All India Institute of Medical Sciences, New Delhi.

This panel of names has been sent up to the Hon^{ble} the Chief Minister for his consideration. In the interregnum, the tenure of appointment of Dr. Prasant Mahapatra has been extended by one month each time on 30.6.2011, 30.7.2011 and 30.8.2011. Thus, by 30.9.2012, the maximum period of one year for which a Director

can be appointed in accordance with sub-section (5) of Section 17 was getting exhausted. The Hon^{ble} the Chief Minister has considered the recommendations made by the Search Committee, but desired that the Search Committee to examine the matter further and submit a fresh panel in two weeks by his order dated 28.8.2011. Thus, the meeting of the Search Committee was once again convened and it met on 19.9.2011 and evolved a set of criterion and the process for evaluation of the candidates. After a detailed evaluation, the Search Committee recommended the following three names:

1. Dr. Prakash P. Kotwal, Professor and HOD of Orthopedics, All India Institute of Medical Sciences, New Delhi
2. Dr. S.V. Ratnam, Professor and Head of Department of Radiation Oncology, NIMS, Hyderabad and
3. Dr. A. Dharmarakshak, Professor and Head of Department of Cardiothoracic Surgery, NIMS, Hyderabad

18. When the matter was again placed for consideration before the Hon^{ble} the Chief Minister, he took a decision that Dr. A. Dharmarakshak (the petitioner in W.P. No. 15232 of 2013) be appointed as the Director of the Institute for a period of one year on 30.9.2011. Thus, it is clear that the Hon^{ble} Chief Minister in his capacity as the President of the Institute has considered the matter and taken a conscious decision to appoint Dr. Dharmarakshak only for a period of one year as Director of the Institute.

19. It, therefore, emerges that that the decision has been taken to appoint Dr. Dharmarakshak for a shorter term than three year period. As was noticed supra, the Search Committee which met on 25.5.2011 did recommend his name along with two other names. But, however, the Chief Minister instead of accepting or acting on that panel, desired the matter to be examined further and a fresh panel be submitted in two weeks by his order dated 28.8.2011. Once again the Search Committee met on 17.9.2011 and recommended a panel of three names. However, even on this occasion Dr. Dharmarakshak's name has been recommended though names of two other Doctors were recommended on this occasion.

20. Therefore, this is a clear case where discretion has been very carefully exercised obviously after making a proper assessment by the President of the Institute. Hence, I have no hesitation to hold that the order of appointment issued in favour of Dr. Dharmarakshak on 30.9.2011 appointing him as the Director of the Institute for a period of one year is a legitimate and valid exercise and it cannot be construed that Dr. Dharmarakshak is appointed for a period of three years commencing from 30.9.2011. When the Search Committee met on 25.05.2011 and made its recommendations, the President of the Institute did not prefer to accept the same and instead ordered the Search Committee to re-examine the matter further and make its recommendations by suggesting a panel of names in two weeks time by

his order dated 28.08.2011. If the President is satisfied with the findings of the Search Committee which met on 25.05.2011, there was no necessity for him to call upon the Search Committee to examine the matter further and call for a panel of names afresh. That is how the second meeting of the Search Committee took place on 19.09.2011. They made a recommendation by drawing a panel of three names, out of which two names are not the same names which the Committee drew on 25.05.2011. In those set of circumstances, the President has obviously considered it appropriate to appoint the Director for a shorter term of one year rather than appoint him for the full term of three years. To my mind, therefore, a conscious decision has been taken by the President of the Institute to appoint the writ petitioner in W.P. No. 15232 of 2013 only for a period of one year, but not for a period of three years, so that the benefit of choice of a more suitable candidate is not lost out.

21. The petitioner in W.P. No. 15232 of 2013 has accepted the terms contained in the order of appointment dated 30.09.2011 and entered upon the office and discharged the functions as the Director of the Institute. The order of appointment has therefore worked itself out by the afternoon of 29.09.2012. It is purely incidental that the President of the Institute has chosen to appoint the same candidate for a further period of one year and issued the necessary order of appointment on 30.09.2012. If the contention canvassed by the petitioner in W.P. No. 15232 of 2013 is accepted and taken to its logical conclusion, two things emerge:

22. First is the proceedings dated 30.09.2012, appointing the petitioner in W.P. No. 15232 of 2013 for a further period of one year becomes redundant and unnecessary order and the second conclusion is that, an order which was passed on 30.09.2011, which has worked itself out by 29.09.2012 has to be revived by infusing fresh life of two years into it. An order which has become worked out cannot be infused life into it. Therefore, to my mind, there is no merit in the contention canvassed by the petitioner in W.P. No. 15232 of 2013 that the order dated 30.09.2011 must be construed as one which appoints him for a term of three years and on that basis, he must be allowed to hold his office up to 29.09.2014.

23. Sri D. Prakash Reddy, learned senior counsel for the petitioners has contended that, when the language employed by the Legislature in a provision is very clear, it is not open to the Court to add any words therein. According to the learned counsel, if any discretion is left to the President of the Institute in choosing a Director, it amounts to introducing words such as "not exceeding" in Sub-section (1) of Section 17 of the NIMS Act, 1989, before the words "a term of three years". There is hardly any doubt that it is no part of the duty of the Court to supply words to a statute. In my view, Sub-section (1) of Section 17 of the Act is clear enough to indicate that the President of the Institute can appoint a Director for a term of three years. Therefore, the President cannot appoint any person for a term exceeding even by a day than three years. It does not mean that the President cannot appoint a Director for a

term less than three years. In my opinion, the words "three years" qualify the expressions contained in Sub-section (1) of Section 17. The exercise carried out in terms of Sub-section (1) of Section 17 by the President of the Institute is sought to be resisted by emphasizing the expressions "for a term of three years". The term of appointment of a Director, therefore, need not invariably be for a term of three years, but it can be for a term less than three years also.

24. In this very context, learned senior counsel has emphasized that the statute has prescribed the procedure for selection and appointment of a Director and it can be done only in the said manner, but not otherwise. There is no quarrel on this aspect. The statute required the Search Committee to be constituted and it is the Search Committee which will draw a panel of names and forward the same for consideration of the President of the Institute. That is exactly what has been done when the petitioner in W.P. No. 15232 of 2013 has been appointed on 30.09.2011 for a period of one year. Therefore, the President of the Institute has not acted in any manner contrary to the requirement of law in this regard. Since the same individual also came to be appointed by the President for a further term of one year on 30.09.2012, it cannot be construed that either the order dated 30.09.2011 has not worked itself out or the petitioner in W.P. No. 15232 of 2013 is also entitled to be issued one more order of reappointment/extension by a term of one more year on 30.09.2013, only for purposes of enabling him to complete the tenure of three years. Therefore, I am not able to find any merit in the contention that, since there was no gap in the functioning of the petitioner in W.P. No. 15232 of 2013, as the Director of the Institute continuously from 30.09.2011, he shall be declared as entitled to go as such upto 30.09.2014.

25. The learned Government Pleader for Medical and Health and Sri B. Adinarayana Rao, learned senior counsel, in my opinion are both right in pointing out that the petitioner in W.P. No. 15232 of 2013 has been blowing simultaneously hot and cold. Having accepted the order of appointment for a period of one year, the petitioner entered upon the office of the Director of the Institute on 30.09.2011 and thereafter also accepted the reappointment order on 30.09.2012. When the subsequent order of appointment has been challenged, by instituting W.P. No. 39366 of 2012, he had also taken the same plea. Now, he is seeking to resile therefrom, on the ground that he has not been correctly advised when he took such a plea.

26. In this context, it is worthy to notice that, on behalf of the respondent-NIMS, it's Executive Registrar also filed a counter affidavit in W.P. No. 9366 of 2012 and even the first respondent-NIMS also has taken the same plea. Therefore, the explanation now offered by the petitioner in W.P. No. 15253 of 2013 that the earlier pleadings have been set up are erroneous, cannot be accepted.

27. Sri B. Adinarayana Rao, learned senior counsel has rightly pointed out that, any appointment of a Director liable to be made under Sub-section (1) of Section 17 has got to be preceded by constitution of a Search Committee and the Search

Committee after scrutinizing the cases of all applicants, had to make a recommendation of a panel of names. Thereafter, the President has to pick up one of the suitable candidates for appointment as the Director. In the absence of constitution of a Search Committee and in the absence of a panel of names recommended by such a Search Committee, question of invoking the power available under Sub-section (1) of Section 17 of the Act, would not arise. An ad-hoc or temporary arrangement can only be made in terms of Sub-section (5) of Section 17 where a cap has been prescribed for the exercise to be carried out therein by setting out that the term, however shall not exceed one year. The provision under Sub-section (5) of Section 17 can be invoked, as is rightly contended by Sri B. Adinarayana Rao, only where it is found not convenient to expeditiously fill in the vacancy of Director in accordance with the provisions of Sub-section 1, 2 and 3 of Section 17. The NIMS and its officers cannot plead that it is not convenient for them to fill up a vacancy of Director of the Institute in accordance with the provisions contained in Sub-sections 1, 2 and 3 of Section 17, for the period of a whole year. Therefore, the order passed on 30.09.2012 is an order passed contrary to the requirements of Sub-section (5) of Section 17.

28. Sri B. Adinarayana Rao has incidentally pointed out that, under Sub-section (1) of Section 17, it is the President of the NIIMS who is the competent authority to appoint a suitable person as a Director of the Institute. In terms of Section 8, the Chief Minister of Andhra Pradesh acts as the President of the Institute. Even without impleading the President of the Institute, W.P. No. 15232 of 2013 has been instituted and hence for non-joinder of a necessary or proper party also, W.P. No. 15232 of 2013 deserves to be dismissed.

29. For all the aforesaid reasons, I do not find any merit in W.P. No. 15232 of 2013 and it is accordingly dismissed, but however without costs.

30. I direct the President of the Nizams Institute of Medical Sciences (NIMS) to take all necessary steps to fill up the vacancy of Director, NIMS, in accordance with law, as expeditiously as possible, preferably before the end of September, 2013. Accordingly, W.P. No. 39366 of 2012 stands disposed of. All the miscellaneous applications, shall stand disposed of with this order. No costs.