

(1981) 05 CAL CK 0013

Calcutta High Court

Case No: C.R. No. 14610 (W) of 1979

Mahadev Dutta

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision: May 18, 1981

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: 85 CWN 864

Hon'ble Judges: B.C. Roy, J

Bench: Single Bench

Advocate: N.K. Roy and Sarada Parmar, for the Appellant; P.K. Ghosh and Sumitra Dasgupta and Sadhan Gupta, Addl. Advocate Genl. for the State, for the Respondent

Judgement

B.C. Roy, J.

The petitioner, who is an M.Sc. in Mathematics and D.Phil (Sc.) in Applied Mathematics and a professor of the Centre of Advance Study in Applied Mathematics of the University of Calcutta, was appointed as Professor-in-Charge of Satyendra Nath Bose Institute of Sciences of the Calcutta University and he has obtained this Rule challenging the validity, and legality of proceedings of the meeting of the committee appointed by the Calcutta University Council to frame rules for governing the said Institute held on 23rd July, 1979, the order of the Vice Chancellor dated 9th November, 1979 issued under Memo No. SNBIPS/557 intimating that in accordance with the resolution passed in a meeting by the Calcutta University Council on 14.9.79 the Institute would henceforth be administered by a governing body consisting of persons named therein and that in accordance with the resolution of the Calcutta University Council at its meeting held on 21.9.79 the one year post M.Sc. course leading to the M. Phil degree in Physical Sciences will henceforth be administered by a committee called the committee of M. Phil Study of Physical Sciences, and the letter by the Registrar of Calcutta University asking the petitioner to handover the charge of the office of the

Professor-in-Charge of Satyendra Nath Bose Institute of Physical Sciences to Professor P.K. Ghosh, Head of the Department of Applied Mathematics, Calcutta University, who had been appointed as Professor-in-Charge of the Institute in terms of Vice Chancellor's Order No. SNBIPS/557 dated 9th November, 1979. These letters have been marked as annexures "M", "R" and "T" respectively, to the petition. The fact of the case in a nutshell is that on the death of the National Professor S.N. Bose on February 4, 1974, the Vice Chancellor of the Calcutta University at the convocation held on February 9, 1974, announced that the University would set up an institute as the memorial institute to be named as "Satyendra Nath Bose Institute of Physical Sciences". It will be an institute for advance studies and research per excellence. In or about 1974 the Central Government constituted a committee called "National Organising Committee" for celebrating the 50th anniversary of "Bose Statistics". In March and April, 1974 the then Minister of Science and Technology announced in the Parliament the decision of the Central Government to set up a befitting memorial to Professor S.N. Bose, the details whereof were to be worked out by a National Committee. In July, 1974, the Vice Chancellor of the Calcutta University formally requested the "National Organising Committee" to accept the institute as the national memorial of Acharya S.N. Bose.

2. On February 22, 1974, the Syndicate of the University of Calcutta at its meeting considered the item No. 2 of the agenda relating to the matter of setting up of the institute as a memorial to Professor S.N. Bose and adopted a resolution to the effect that a steering committee be constituted to perform the necessary organisational work of the institute to start the activity of the institute. The said committee consisted of several heads of the departments of the Calcutta University as well as the Vice Chancellor of the Calcutta University as Chairman and Vice Chancellor of Jadavpur University etc. In the said meeting of the Syndicate the petitioner was made convener of the steering committee not only because of his academic distinction and research experience but also because he was one of the three executive secretaries of the National Organising Committee for the celebration of the 50th anniversary of the Bose Statistics constituted by the Government of India and also of his being a close research associate of the late professor S.N. Bose. On March 13, 1974, the steering committee prepared the plan, programme and budget in respect of the said institute. On June 20, 1974, the academic council of the Calcutta University at its meeting proposed the setting up of S.N. Bose Institute of Physical Sciences and also the proposal for introduction of Post Graduate M. Sc. Diploma Course. The said proposal as contained in item No. 26 of the agenda was moved by the Pro-Vice Chancellor (Academic) and the same was unanimously passed. It was also resolved that the proposal approved by the Academic Council be placed before the Senate. On July 30, 1974, the Steering Committee at its meeting passed a resolution appointing Professor M. Dutta, the petitioner, as Professor-in-Charge of the Institute with powers and functions of the Head of Department of the Institute. This resolution of the Steering Committee was

approved by the Syndicate at its meeting held on October 5, 1974. On January 11, 1977, the Senate formally instituted the M. Phil degree of Physical Sciences for S.N. Bose Institute of Physical Sciences. The petitioner has been working as Professor-in-Charge of the said Institute and he has been playing a keyrole in organising the activities of the said Institute, since the date of such appointment and students are being trained for research oriented course, of M. Sc. degree of Physical Sciences of the Calcutta University since July, 1974. The Senate formally instituted the degree of Physical science for S.N. Bose Institute of physical Sciences on and from January 11, 1977. It has been stated that in last 5 years (from 1974 to 1979) 36 students were awarded the degree of M. Phil in Physical Sciences by the Calcutta University and another batch of 10 students are receiving their training now in this Institute. The Expert Committee set up by the University Grants Commission submitted the report in 1977 wherefrom the above facts will appear. On January 12, 1978, the Governor of West Bengal promulgated the Calcutta University (Temporary supersession) Ordinance, 1978 which was subsequently replaced by the West Bengal Act VII of 1978. On January 31, 1978, University Grants Commission accepted the report of the Expert Committee dated October 3, 1977 and the scheme and sanctioned grants to the University for maintaining the Institute. On April 13, 1978, the Calcutta University Council which was vested with all the powers of the University, Syndicate and the Senate after the supersession of the University considered the proposal of the academic council and approved the proposal for establishment of the said institute. Thus the Institute was formally established under the provisions of the Calcutta University Act, 1966. On April 13, 1978, the Council of the Calcutta University appointed a committee to frame rules for governing the S.N. Bose Institute of Physical Sciences.

3. The petitioner being appointed a member of the said Rule Framing Committee attended some of the meetings of the Committee and found to his distress that the proceedings of the Committee were being conducted in an extremely arbitrary manner and cavalier fashion by the Chairman of the said Committee, professor R.K. Podar and that the minutes were not properly recorded by the Secretary of the Committee. It also became apparent that Professor R.K. Podar, Dr. S.L. Sarkar and some other learned members of the Committee were operating as a clique with a clear pre-conceived design and motive to oust the petitioner from the said Institute and to relegate the Institute to the position of a mere appendage to the department of the Applied Mathematics of the University in gross deviation from the earlier resolution of the various bodies of the University. The petitioner protested against these arbitrary conduct of proceedings but no notice was taken thereof by the said Chairman of the Committee. It has also been stated that Professor R.K. Podar who while being the Pro-Vice Chancellor of Academic Affairs was an ex-officio member and Chairman of the said committee after his being appointed Vice Chancellor could not remain as a member of the committee. Still he would take part in the deliberations of the committee. The Pro-Vice Chancellor, Business Affairs and

Finance was not a member of the committee and yet he was allowed to participate at the deliberations of the committee. It has also been stated that against the arbitrary conduct of the proceedings of the Rule Framing Committee Professor C.K. Majumdar, a member, wrote a letter of protest to the Vice Chancellor. This has been annexed as annexure "L" to the petition.

4. It has also been stated that on July 23, 1979, a meeting of the committee presided over by the Vice Chancellor was held wherein the Secretary placed for perusal of the members some official informations regarding the establishment of the Institute. There were discussions but no conclusion was recorded. As regards the framing of rules it was pointed out by the petitioner that the Institute being a memorial institute should have a permanent structure. The petitioner opposed the idea of the Chairman and some other members that the institute would be governed by the provisions contained in the newly framed amendments to ordinance of the University. It was thereupon decided that the Professor-in-Charge, the petitioner and other teachers should submit their views about the rules of functioning of the said institute as a Memorial Institute. The petitioner was surprised to receive a letter from the Secretary dated August 22, 1979 purporting to forward the alleged proceedings of the said meeting wherein it was recorded wrongly that item No. 31 dated 20.7.79 of the Calcutta University Council and resolution thereon was discussed and it was resolved that the S.N. Bose Institute should run within the framework of newly framed ordinance re : Autonomous Research Centres passed by the Calcutta University Council.

5. On receipt of a copy of the resolution the petitioner as well as Professor C.K. Majumdar, Pallit Professor of Physics and a member of the committee sent a note of dissent to the Vice Chancellor of the said University on September 12, 1979 stating that the Secretary did not record the proceedings properly but distorted the record arbitrarily. These letters are marked as annexures "N" and "O" to the petition.

6. It has been stated that the petitioner as Professor-in-Charge of the said Institute invited applications for admission to the research oriented post-M. Sc. course for the degree of M. Phil for Physical Sciences by an advertisement in the newspaper published on May 7, 1977. By the said advertisement applications were asked to be submitted by June 2, 1978 and classes were to commence in the first week of July, 1979. The Vice Chancellor made an order on June 7, 1979 directing the petitioner to postpone all admissions until further order. As a result of this order admissions to the M Phil course for the year 1978 remained held up and the academic activities of the Institute was seriously hampered by the arbitrary order of the Vice Chancellor.

7. The petitioner received a letter from the respondent No. 3, Pro-Vice Chancellor Academic Affairs, wherein the petitioner was addressed as Professor-in-Charge of M. Phil Course in Physical Science, S.N. Bose Institute asking him not to start the classes in haste. This letter is annexure "Q" to the petition.

8. On November 12, 1979, the petitioner received two letters from the Registrar University of Calcutta informing that he had been appointed a member of the Committee on M. Phil Studies in Physical Sciences. It was also stated therein that in accordance with the resolution of the Calcutta, University Council adopted at its meeting held on 14.9.79 (item No. 16) the S.N. Bose Institute of Physical Sciences would be henceforth administered by a Governing Body consisting of members mentioned therein. It has also been intimated that in accordance with the resolution of the Calcutta University Council passed on 21.9.79 (item no, 39) the one year Post M.Sc. course leading to the M. Phil course in Physical Sciences will henceforth be administered by a committee called the committee on M. Phil studies on Physical Sciences. In one of the letters Professor P.K. Ghosh was described as Professor-in-Charge of the Institute and Professor S.B. Bhattacharjee was described as Programme Co-ordinator. It has also been stated that none of the said two orders had been made with the prior approval or terms of any resolution of the University Council. It has also been submitted that the said council did not pass any resolution for removal of the petitioner from the post of Professor-in-Charge of the said Institute nor did the Council authorise the Vice Chancellor to remove the petitioner from the said post or to appoint Professor P.K. Ghosh as the professor-in-Charge. It has also been submitted that there is no resolution of the council for appointment of Professor S.B. Bhattacharjee as Programme Co-Ordinator of M, Phil Course. The said M. Phil Course had all along been taught and administered by this Institute as a part of its activities and the petitioner had all along been in-Charge of the same in his capacity as Professor-in-Charge. It has also been stated that there was no such agenda in that meeting, a copy of which has been annexed as annexure "S" to the petition.

9. It has been submitted that the petitioner was appointed as Professor-in-Charge by the Syndicate which had confirmed the resolution of the steering committee. The Vice Chancellor is not competent to remove the petitioner from the said post nor can the Vice Chancellor appoint another person as Professor-in-Charge and thereby indirectly remove the petitioner. It has been submitted that no order has been made directly removing the petitioner from the said post. No show cause notice was served on the petitioner nor he was given any opportunity of being heard before the purported order of removal of the petitioner was made. It has been submitted that the Vice Chancellor, the respondent No. 2, acted with malice and prejudice in making the impugned order and as such the impugned order purporting to remove the petitioner from the office of the Professor-in-Charge is vitiated by malice and so bad. It has also been submitted that the petitioner was directed by a letter by the Registrar of the Calcutta University which was received by him on November 16, 1979 to hand over charge to Professor S.B. Bhattacharjee who was appointed as Programme Co-Ordinator of M. Phil Course. It has been submitted that the impugned resolution of the Rule Framing Committee dated July 17, 1979 was illegal, ultra vires and inoperative in law as neither the committee nor the council of the

University was competent to change the character of the Institute. It has been further submitted that the resolution of the committee was not lawfully adopted and the council would not validate an illegal resolution. The council in purporting to confirm the illegal resolution acted illegally and in excess of its jurisdiction.

10. On these statements and allegations this writ application was moved and the instant rule was obtained and an interim order was also made in terms of prayer "E" of the petition, that is, restraining the respondents from giving effect or further effect to the impugned resolution being annexures "M", "R" and "T" to the petition. This interim order was made for a limited period. After hearing the parties the interim order was extended till the disposal of the Rule by order dated 30th November, 1979.

11. An affidavit-in-opposition sworn by Sri Pratip Kumar Mukherjee, Registrar of the University of Calcutta, the respondent No. 5, on behalf of the respondents Nos. 1, 2, 3 and 5 has been filed on 7th December, 1979. In paragraph 5(b) of the said affidavit it has been stated that on April 1, 1974, the then Syndicate approved the plan and programme made by the Steering Committee for the S.N. Bose Institute and on June 20, 1974, the then Academic Council resolved, inter alia, that the proposal of setting up of the Institute be approved and placed before the Senate. Though Senate was the only approved Committee under the Calcutta University Act, 1966 to establish the Institute, the proposal was never referred to the Senate. Subsequently the Institute was never brought into legal existence. In subparagraph "C" of the said paragraph it has been further averred that the Steering Committee at its meeting on July 30, 1974 and the Syndicate at its meeting on October 5, 1974 purported to appoint the petitioner as Professor-in-Charge of the Institute with powers and functions as Head of the Department of the Institute though the Institute was not brought into legal existence. It has been stated that the petitioner had not acquired any legal right from either of such purported appointments. In subparagraph "d" it has been stated that the Institute was legally established on and from April 13, 1978 when the University Council approved the recommendation of the Academic Council. On April 13, 1978, the Council appointed a committee for framing rules for governing the Institute after its formal establishment. It has been stated that the University Council at its meeting dated July 20, 1979 amended the ordinances 35, 36 and made statutory changes regarding the appointment of the Heads of Departments under the University. Ordinance No. 39 of Calcutta University Ordinances, 1966 was further amended by the Calcutta University Council and Ordinance 39(2) was added. The said Ordinance 39(2) provides rules for the maintenance of the institutes or centers or units established managed by the Calcutta University. In sub paragraph "M" of paragraph 5 it has been stated that on November 9, 1979, the Vice Chancellor in exercise of his power under the amended Ordinance 35 and in consultation with the Pro-Vice Chancellor appointed Professor P.K. Ghosh as the Professor-in-Charge of the Institute and directed that the present arrangement for place will continue till alternative accommodation is provided. In

paragraph 11 it has been stated that the Institute is a department of the University of Calcutta and not an affiliated Institute under the University. The allegations made in paragraphs 19 and 23 were denied. The Institute is managed and maintained by the University of Calcutta which also gives financial assistance to the Institute. It has been stated that there was no justification for the petitioner to issue the said letters of protest which were uncalled for and irrelevant. It has also been stated that Professor Podar assumed office as Vice, Chancellor of the Calcutta University in June, 1979 and the office of the Pro-Vice Chancellor for Academic Affairs remaining vacant. Dr. Podar was carrying on the duties and functions of the Pro-Vice Chancellor of the Academic Affairs. It has also been stated that though the Pro-Vice Chancellor for Business Affairs and Finance was not a member of the committee but as a senior executive member he could participate in any of the meetings of the committee as Pro-Vice Chancellor of the University and he attended the said meeting at the instance of Dr. R.K. Podar. The allegations in paragraph 26 of the petition was denied and it has been stated that in the meeting of the committee held on July 23, 1979, the petitioner and few of his associates raised protest about the status of the Institute contending that the Institute is a memorial Institute and it can be treated as a special centre/institute/unit of research and the same would not come within the purview of the ordinance and the Professor-in-Charge and other teachers would submit their views in that respect. The deponent states that the said Institute was established by the University and therefore it is controlled by the University and the said Institute was never recognised as a Unit, independent and separate from the University. It was denied that the enforcement of the amended ordinance would alter the status of the Institute as a memorial Institute. The contents of the letters in annexures "N" and "O" are denied and disputed. It has been stated in paragraph 25 that in terms of ordinance 39(2)(c) as amended, the respondent No. 2, the Vice Chancellor is empowered to appoint a Professor of the University to act as Professor-in-Charge of the said Institute and the appointment of Professor P.K. Ghosh as Professor-in-Charge was so made. Similarly S.B. Bhattacharjea was directed to be a Programme Co-Ordinator in M. Phil degree course in Physical Sciences. ? The appointment of the present committee on M.Phil studies in Physical Sciences with Professor S.B. Bhattacharjee, as Programme Co-Ordinator was made by the University Council at its meeting of the Governing Body of the Institute with Professor P.K. Ghosh as the Professor-in-Charge were made by the Calcutta University Council in its meeting dated 11.9.79 (item No. 10). It has also been stated that according to the amended ordinance it was not necessary for the council to pass any order for removal of the petitioner from acting as Professor-in-Charge of the Institute. As the petitioner served for more than 2 years as Head of the Department the Council appointed Professor P.K. Ghose by rotation as the Professor-in-Charge and Head of the Institute. Similarly the appointment of Professor S.B. Bhattacharjee as Programme Co-Ordinator of M. Phil course of study was made according to the rules. This was made in paragraph 25. In paragraph 26 it has been stated that in accordance with the ordinance no order for removal from

the post of Professor-in-Charge is necessary. In paragraph 28, the allegations in paragraph 37 was denied. It has been denied that the impugned order appointing Professor P.K. Ghose as Professor-in-Charge of this institute was made malafide or that the petitioner was removed from the post illegally and with malice.

12. An affidavit-in-reply has been filed on behalf of the petitioner denying the statements and allegations made in the affidavit-in-opposition and reiterating the statements and allegation made in the petition. It has been denied that the purported order dated 9.11.79 was made by the Vice Chancellor either in exercise of his power under the amended ordinance 35 or in consultation with the Pro-Vice Chancellor as alleged. It has been stated that the said ordinance was not at all applicable to this Institute. The ordinance 35 applies to appointments of the Heads of the Departments of the University and it does not apply to the post of Professor-in-Charge of an institute like S.N. Bose Institute of Physical Sciences. The Institute is not a department of the University as alleged and this contention is wholly inconsistent with the stand taken by the deponent earlier in the affidavit-in-opposition. It has also been stated that merely because an Institute is managed, maintained and controlled by the University it cannot be deemed to be a department of the University but it is a University College. In paragraph 17 it has been stated that item No. 31 dated July 20, 1979 of the proceeding of the University Council was read out and it was decided that the same would be circulated amongst the teacher of the Institute for their considerations and comments. But in the minutes the said proceedings was not recorded truthfully and what were recorded in the minutes were completely different from what had actually happened in the meeting. It has been stated in paragraph 18 that Professor R.K. Podar on being appointed as Vice-Chancellor automatically ceased to be the Pro-Vice Chancellor and he was, therefore, no longer a member or Chairman of the said committee. It is wholly untenable and false that although he was Vice Chancellor of the University he was also carrying on the duties and functions of the Pro-Vice Chancellor. The respondent No. 2 was called upon to produce any document to prove the said allegation. It has also been stated that as Vice Chancellor he can attend any meeting but he cannot take part in the deliberations nor he has any right to vote, unless he is a member of the committee. It has also been stated that the Pro-Vice Chancellor for Finance and Business Affairs was not at all authorised to participate at the said meeting nor he had any right to vote. Professor A.N. Daw, who was another member of the committee, did not support the decision which was recorded in the minutes to be the alleged decision of the committee. It has also been stated that the presence of the Vice Chancellor and Pro-Vice Chancellor, Finance and Business Affairs made the deliberations of the said meeting wholly illegal and arbitrary. These two senior executives of the University were present at the said meeting only to influence the other members, Prof. C.K. Majumdar and Prof. C.K. Daw but they failed to persuade them to side with them in their attempt to get a preconceived resolution passed at the said meeting. On their failure to do so the Vice Chancellor

acting as the Chairman of the said meeting recorded the aforesaid false minutes purported to be the minutes of the proceedings of the said committee dated July 23, 1979.

13. After the learned Advocate for the petitioner concluded his argument leave was asked for by the learned Additional Advocate General to file a supplementary affidavit on Behalf of the respondents Nos. 1, 2, 3 and 5 to controvert certain fresh allegations made in affidavit-in-reply against the respondent No. 2 in person. This prayer was seriously opposed by Mr. Ghosh, learned Advocate appearing on, behalf of the petitioner on the ground that no leave should be granted to file supplementary affidavit in respect of facts at such a late stage and in support of his submissions reference has been made to several decisions of this Court. On 7th April, 1981, a supplementary affidavit was filed and a reply to the supplementary affidavit was also filed on 27th of April, 1981 on behalf of the petitioner. Mr. Ghosh contended that this supplementary affidavit should not be accepted at this late stage as it purports to plug the loopholes of the affidavit-in-opposition and to introduce fresh facts. Reference has been made to the decision in [Gobinda Chandra Dakua Vs. Dinesh Chandra Maitra](#), where it has been observed that "The applicants for prerogative Writs must come to Court with all the materials or grounds on which they went to rely in support of their applications." Respondent has been called upon to show cause on the grounds stated in the petition and he has, filed his affidavit and answer to the Rule. The petitioner has also filed an affidavit-in-reply in answer to the counter affidavit. "It would be extremely undesirable and in fact it would lead to a most unsatisfactory state of affairs if petitioners were allowed to raise new grounds involving new facts by supplementary affidavits put in at the hearing. "Similar observations have been made in the decisions in [Tarapasanna Choudhry Vs. Agricultural Income Tax Officer](#), and [J.K. and Sons Vs. Dy. Secy., Land and Land Revenue Deptt. and Others](#), .

14. Mr. Gupta, on the other hand, submitted that in the supplementary affidavit no new facts have been affirmed and as such there is no likelihood of any prejudice being caused to the petitioner.

15. Considering the facts and circumstances leave is granted to put in supplementary affidavit as it will not cause any prejudice to the petitioner who has already filed an affidavit-in-counter to the same.

16. Mr. Pradip Kumar Ghosh, learned Advocate appearing on behalf of the petitioner has submitted that the petitioner being appointed as Professor-in-Charge by the Calcutta University Syndicate the Vice Chancellor has no power to remove the petitioner from the post of Professor-in-Charge of the S.N. Bose Institute of Physical Sciences and the impugned order contained in Annexure "R" as well as the letters annexure "T" issued by the Registrar, Calcutta University asking the petitioner to handover the charge of the office of the Professor-in-Charge to Professor P.K. Ghosh who has been appointed as Professor-in-Charge in terms of order dated 9.11.79 by

the Vice Chancellor, respondent No. 2 is wholly illegal, unwarranted and without jurisdiction and as such the same is liable to be set aside. It has been submitted that the Steering Committee appointed by the Syndicate at its meeting held on July 30, 1974 appointed the petitioner as Professor-in-Charge of the said Institute and this proposal of the Steering Committee was approved by the Syndicate at its meeting dated 5th October, 1974. The Vice Chancellor is not empowered under the Calcutta University Act, 1966 to pass the impugned order removing the petitioner from the office and the post of the Professor-in-Charge of the said Institute. It has been submitted further that the Syndicate is empowered u/s 23 of the Calcutta University Act to appoint teachers of the Calcutta University and define their duties and terms and conditions of service according to the statutes and ordinances and it is the Syndicate alone which can discharge or otherwise punish the teachers in accordance with the statutes and ordinances. The Vice Chancellor has got no power to terminate his service or remove him from the office of Professor-in-Charge of the Institute. It has been further submitted by Mr. Ghosh that the Vice Chancellor though empowered in case of emergency to take such action as he may deem expedient is not competent to make the impugned order removing the petitioner from the post of Professor-in-Charge of the said Institute as the conditions precedent for exercise of such emergency power were conspicuous by their absence. More so because on the same day, that is, on 9.11.79 when the order was made by the Vice Chancellor there was a meeting of the Calcutta University Council. It has been further submitted that the impugned order being without jurisdiction and arbitrary and ultra vires of the powers of the Vice Chancellor the subsequent ratification of the said act of the Vice Chancellor by the University Council cannot validate such an invalid and illegal act or order of the Vice Chancellor.

17. It has been next submitted that the impugned orders contained in annexures "R" and "T" are also arbitrary and bad as the same were made in utter violation of the principles of natural justice as no opportunity of hearing was given to the petitioner before the order of removal prejudicially affecting the petitioner was made. No show cause notice was issued to the petitioner nor he was given any opportunity of submitting his explanation against any such show cause notice; nor he was given any opportunity of hearing against the same.

18. It has been next submitted that the impugned order contained in annexures R and T are bad as it is a colourable exercise of power by the Vice Chancellor, Dr. R.K. Podar, the respondent No. 2 by indirectly causing the removal of the petitioner by appointing Professor R.K. Ghosh as Professor-in-Charge of the said Institute which he cannot do under the Calcutta University Act and the statutes and ordinances framed thereunder. Such a colourable exercise of power is, therefore, liable to be set aside.

19. It has been further submitted that the resolution of the Rule Framing Committee appointed by the Calcutta University Council for framing rules for governing the S.N.

Bose Institute of Physical Sciences held on July 23, 1979 resolving that the Institute should run within the framework of the newly framed ordinances re : Autonomous Research Centre passed by the Calcutta University Council is illegal, ultra vires, void and inoperative inasmuch as the Vice Chancellor, the respondent No. 2 and the Pro-Vice Chancellor for Business Affairs and Finance of the University of Calcutta, the respondent No. 4 though not members of the Committee participated in the deliberations of the committee wherein the said resolution was alleged to have been adopted and as such by such participation of non-members of the proceedings of the meeting have become void and ineffective in law. Moreover, no such resolution was, in fact passed in the meeting of the committee. It has been further urged that the objections which were made by the petitioner in the said meeting and note of dissent which were made by the petitioner and another member of the committee, Mr. C.K. Majumdar were not recorded. It has also been submitted that these two members sent a letter to the Vice Chancellor, the respondent No. 2 objecting to the improper recording of the proceedings of the meeting on the grounds that no conclusions about the discussions were recorded and in particular the important decisions about the formal establishment of the Institute as per proceedings of the Calcutta University Act, 1965 should have been recorded. It was also stated in the said letter that it was decided on due considerations of the ordinances regarding autonomous research centre passed by the Calcutta University Council, the Professor-in-Charge and other teachers should submit their views about the rates of functioning of the S.N. Bose Institute as a memorial Institute. It was therefore submitted that the minutes of the proceedings being improperly recorded the impugned resolution contained in Annexure "M" is invalid and the same can not be validated by the subsequent confirmation by the Calcutta University Council.

20. It has been lastly submitted that the Vice Chancellor Dr. R.K. Podar acted with malice in making the orders contained in Annexures "R" and "T" and as such it is liable to be set aside. It has also been submitted that the provisions of amended ordinance 39(2) cannot apply as the S.N. Bose Institute for Physical Sciences is not a specialised institute or centre established by the Syndicate but it is an institute having a permanent structure and established by the Senate in accordance with the provisions of section 20(1)(i), 23(1)(ii) and 25(2)(i). The Institute is not established for a period of 5 years but it is an institute established as a memorial to Professor S.N. Bose for training students in research oriented post M. Sc. course for M. Phil degree in Physical Sciences. It has further been submitted that the proviso to Ordinance 44(2) in accordance with which this institute was established by the Senate on the recommendation of the Syndicate after consultation with the Academic Council empowers the Syndicate if it thinks fit may, after considering the views of the Academic Council, frame rules for the maintenance and management of the Institute. This rule framing committee was so made by a resolution of the Calcutta University Council on whom this power of the Syndicate came to be vested.

21. Mr. Ghosh has also submitted that this Institute cannot be termed a department of the University inasmuch as a department of the University does not require to be established like other institutes by the Senate in accordance with the provisions of Section 20(1) read with section 23(i)(ii), section 25(2) (i) and ordinance 44(1). According to Mr. Ghosh it is a University College and not a part of the department of Applied Mathematics of the Calcutta University.

22. Mr. Gupta, learned Additional Advocate-General appearing on behalf of the respondents Nos. 1, 3, 4, 7, 9 and 12 to 17 has submitted that the writ application is not maintainable as the impugned order of removal of the petitioner from the post of Professor-in-Charge does not affect any legal right of the petitioner because the appointment of the petitioner as a Professor-in-Charge of S.N. Bose Institute has no legal basis. The appointment was made by the Steering Committee appointed by the Syndicate and subsequently confirmed by the Syndicate in 1974 when the S.N. Bose Institute of Physical Sciences did not come into legal existence. The said Institute came into legal existence on 13th of April, 1978 when the Calcutta University Council to whom the powers of the Senate was vested under the Calcutta University (Temporary Supersession) Act, 1978 approved the proposal of the Syndicate and the Academic Council regarding the establishment of the said Institute. It has been submitted that the appointment of the petitioner as Professor-in-Charge of the said Institute having thus no legal basis the impugned order as made by the Vice Chancellor terminating the petitioner's appointment and or removing him from the Office of the Professor-in-Charge of the said Institute does not affect any legal right of the petitioner and so this writ petition is not maintainable. It has been further submitted by Mr. Gupta that the impugned order does not have any penal consequences inasmuch as the petitioner who was appointed as Professor-in-Charge did not get any salary or emolument for doing such work. He is a Professor of the department of Applied Mathematics and the impugned order does not in any way touch his emoluments. Hence on this ground also the petitioner having no grievance cannot maintain the instant writ petition.

23. It has also been submitted that the appointment having no legal basis the Vice Chancellor Dr. R.K. Poddar, the respondent No. 2 can make arrangement for the Head of the Institute or in other words for the Professor-in-Charge of the Institute amongst the professors of the University. It is apparently an administrative matter and as such it cannot be the subject-matter of challenge in a writ petition.

24. It has also been submitted that the Steering Committee appointed by the Syndicate was empowered to do organisational work of the said Institute and this did not include appointment of the petitioner as Professor-in-Charge of the Institute. It has also been submitted that section 23(9) of the Calcutta University Act empowers the Syndicate to appoint teachers but the appointment made by Steering Committee did not confer any legal right on the petitioner. It has been next submitted that the Institute is maintained by the Calcutta University and as such it

comes within University College. It is not an Institute affiliated by the University. It has been submitted further that this Institute is a part of the department of Applied Mathematics. Ordinance 35 is applicable to such an Institute which clearly provides for change of the heads of departments every two years and as such the impugned order of the Vice Chancellor appointing Professor P.K. Ghosh as Professor-in-Charge of the Institute is not illegal and without jurisdiction. It has also been submitted that University Grants Commission in its report submitted in 1977 clearly suggested that this Institute should continue to be a part of the department (and not become a separate Institute) serving as an umbrella for seminars, symposia. Reference has also been made in this regard to the report of the Ghani Committee appointed by the University Grants Commission where it has been suggested that the head of the department may be appointed for two years by the Vice Chancellor from among the Professors and Readers ordinarily by rotation.

25. It has been next submitted by Mr. Gupta that in view of the resolution adopted at a meeting of the Rule Framing Committee on 23rd July, 1979 the amended ordinance 39(2) (c) will apply to this Institute. This amended ordinance clearly provides that the Vice Chancellor can appoint University Professors/Readers as Director/in-Charge for such Institute/Centre or Unit for a period of two years. And the impugned order being made by the Vice Chancellor in accordance with the provisions of this ordinance is not illegal or without jurisdiction or arbitrary. It has been lastly submitted by Mr. Gupta that the impugned order appointing Sri P.K. Ghosh as Professor-in-Charge and removing the petitioner from the said post is not vitiated by malice in fact nor the same has been made malafide as alleged by the petitioner. No particular of malice or malafides have been pleaded by the petitioner nor it has been pleaded that the impugned order was made for extraneous considerations and as such the impugned order cannot be held to be bad being vitiated by malice in fact and being made malafide. Some decisions have been cited at the Bar by Mr. Gupta.

26. Before considering the merits of the submissions advanced on behalf of the parties it is necessary to consider at the outset the question about the maintainability of the writ petition.

27. It is now well settled that in order to maintain an application for writ in the nature of Mandamus or in the nature of Certiorari or for any other appropriate order or directions under Article 226 of the Constitution of India it is not the sole test to be satisfied that the person making the application must show that any of his individual or personal rights either conferred by Part III of the Constitution or by any statute has been infringed illegally by the purported action or inaction on the part of the statutory authority. If a person has been shown to have a genuine grievance by an action or inaction on the part of the authority to discharge his public duties enjoined upon him by the Act in that case such person will be an aggrieved person having locus standi to maintain an application for a writ in the nature of Mandamus

and/or Certiorari against the purported action or inaction on the part of such public authority. This has been held in the case of *in re : Manoranjan Maity -vs- District School Board, Midnapore* decided on 31.3.1981 by this court following the decisions of the Supreme Court reported in [Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others,](#) [Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others,](#) and [Bar Council of Maharashtra Vs. M.V. Dabholkar and Others,](#). The impugned orders mentioned in annexures "M", "R" and "T" affect the petitioner prejudicially and as such the petitioner has got a genuine grievance. Therefore this writ application is maintainable.

28. The next question that possess itself for consideration is whether the S.N. Bose Institute of Physical Sciences is a department of the University or it is affiliated to the University or it is a University College within the meaning of Section 2(21) of the Calcutta University Act, 1966. Though in paragraph 5 it has been stated that the Institute is an affiliated Institute of the University, yet it has been submitted that it is a University College created under the provisions of the Calcutta University Act read ordinance 44 of the Calcutta University First Ordinances, 1966. It is not a part of the department of Applied Mathematics of the Calcutta University but it is an Institute though maintained by the University. It has been established by the Calcutta University to commemorate the hallowed memory of the illustrious Professor late S.N. Bose. This was an Institute for Advance Study and Research per Excellence. Section 20(1)(i) of the Calcutta University Act, 1966 empowers the Senate to establish Colleges, Institutions, libraries, laboratories and Museum for study and research. Section 23 sub-section (1) clause (ii) confers upon the Syndicate powers to recommend to the Senate after consulting the Academic Council, the establishment of colleges, libraries, laboratories or other institutions for study and research. Clause (9) empowers the Syndicate to appoint teachers etc. of the University and to define duties and other terms and conditions of service in accordance with the statutes and the ordinances. Clause (1) of the said section vest the Syndicate with the power to suspend, discharge or otherwise punish in accordance with the statutes and ordinances such teachers of the University as are appointed by the Syndicate. Section 25 (2)(i) empowers the Academic Council to make proposal to the Syndicate for establishment of colleges, libraries, other institutions etc. for study and research to be maintained by the University. Ordinance 44 of the Calcutta University First Ordinance, 1966 provides that other institutions for study and research as may be necessary shall be established by the Senate on the recommendation of the Syndicate and made after consultation with the Academic Council. It has also been provided in Clause (2) of the said ordinance that for establishment, maintenance and management of any such institution the provisions of ordinance 38 to 43 shall as far as may be applied. There is also a proviso to the said sub-clause which empowers the Syndicate to frame rules after considering the views of the Academic Council for maintenance and management of the institution. In this case the Syndicate at its meeting dated 22nd February, 1974 appointed

Steering Committee to perform the necessary organisational work for the said institute and to start the activities of the said institute. The Steering Committee prepared the plan, programme and budget in respect of the said institute by its resolution dated March 13, 1974. The said resolution was confirmed by the Syndicate at its meeting held on April 1, 1974. The Academic Council approved the proposal of setting up of S.N. Bose Institute for Physical Sciences as recommended by the Syndicate and it resolved at its meeting held on June 20, 1974 the same to be placed before the Senate. The Calcutta University Council at its meeting held on April 13, 1978 approved the proposal of the Academic Council for establishment of the said Institute. Therefore, the said Institute was established in accordance with the provisions of the Act and ordinances in April 13, 1978. In such background, in my opinion, it cannot be said that the Institute which was established by the Calcutta University to promote research in the Physical Sciences for the conferment of M. Phil degree is a department of the University inasmuch as a department of the University or a part of the department of Applied Mathematics of the Calcutta University is not required to be established in the manner as envisaged in Section 20(i)(ii), 23(i)(ii) and 25(2)(i) of Calcutta University Act, 1966 read with ordinance 44(1) of the Calcutta University First Ordinances, 1966. But a department cannot be conceived of being established as an Institute in accordance with the provisions of the said Act and the Ordinances. Furthermore, the Institute was established with the specific object of promoting research in physical sciences as a memorial to the illustrious Professor of Mathematics and Statistics, Acharya S.M. Bose. The question whether it is an Institute affiliated by the University does not require to be considered inasmuch as such a claim has not been made by the petitioner. It has been stated in the Supplementary Affidavit sworn by Dr. R.K. Poddar respondent No. 2 that this institute is a part of department of Applied Mathematics in terms of Section 2 (21) of the said Act and it is a specialised Research Institute forming part of department of Applied Mathematics with a separate budget to be administered by provisions of Ordinance 39(2) as adopted at the meeting of Rule Framing Committee dated 23.7.79 and approved by the Council. This contention that it is a part of the department of Applied Mathematics referring to the report of the University Grants Commission, in my opinion, is devoid of any merit for the simple reason that the University Grants Commission in their report merely expressed the desire that the Institute should be a part of the department and not a separate institute. Similar observations were made in Ghani Committee report that the Heads of the Departments should rotate every two years is also a mere suggestion having no legal and binding force. Apropos to refer in this connection the averments made by Sri S.N. Sen, the then Vice Chancellor of the Calcutta University who declared the establishment of this Institute to commemorate Prof. S.N. Bose at the convocation in 1974. Sri S.N. Sen, the then Vice Chancellor of Calcutta University stated that a decision was taken by the Organising Committee of which he was the Chairman for foundation of an Institute for Physical Sciences with which Prof. Bose was intimately associated during his life time. Immediately after the expiry of Acharya Satyendra

Nath Bose the Calcutta University on 9.2.74 decided at the convocation announced the setting up of this Institute by the University and Sri A.L. Dias, the Chancellor of the University endorsed the said proposal and announced it to be an Institute for Advance Study and Research per excellence. On 22.2.74 the Syndicate constitute a steering committee to perform the necessary organisational work for starting the Institute. The deponent was the Chairman of the Committee and the petitioner was the convenor thereof. In October, 1976 a formal proposal was placed before the Syndicate of the Calcutta University for acceptance of S.N. Bose Institute of Physical Sciences as the National Memorial of Late Acharya Bose. The proposal was accepted by the Syndicate and in that meeting the deponent presided. The Institute was being run in exceptional and unique manner and gained international recognition as an Institute for Advanced Study and Research. The position of the Guha Institute stood on a different footing and there can be no comparison between Guha Institute and the Satyendra Nath Bose Institute of Physical Sciences. It has been stated that as far as he knows the department of Applied Mathematics cannot have any claim over the said Institute nor was it ever in contemplation of any of the authorities of the University that the said Institute shall be a part of the said department, The only involvement of the department of Applied Mathematics in this matter was that at the time, of initiating a proposal for conversion of the Associateship of the said Institute into M. Phil degree course in Physical Science, the matter had to be instated through the Board of Studies on Applied Mathematics. The Institute has already been approved by the authorities of the University like the Syndicate and Academic Council and it already started its teaching and research for the M. Phil Degree in Physical Sciences independently of the Department to Applied Mathematics. In paragraph 12 of the affidavit-in-reply to supplementary affidavit the above position has been stated. It has been stated that M. Phil Degree course in Physical Sciences was specifically meant to be conducted in this Institute and not in any other department of the University. This Institute is multi-disciplinary in its nature and character involving cross disciplinary studies which, it is said, cannot be a part of a single department like Applied Mathematics as it is only a part of the Physical Sciences. There are other branches of Physical Sciences such as Physics, Chemistry etc.

In my opinion this Institute is not a department of Applied Mathematics but it is a multi-disciplinary Institute established by the University for conducting research in M. Phil Degree Course in Physical Sciences and it actually conferred M. Phil Degree in Physical Sciences. Therefore this Institute in my opinion, cannot be treated as an appendage to the department of Applied Mathematics.

29. The Calcutta University Council appointed a committee to frame rules for governing the said Institute at its meeting held on April 13, 1979 and the names of the members of the Governing Body were specified in the said resolution. It included the Pro-Vice Chancellor for Academic Affairs as Chairman and 7 other members of the committee. The Secretary of the Council of Post Graduate Study of

Science etc sent a copy of proceedings of the meeting of the Rule Framing Committee held on July 23, 1979 with a copy of the Calcutta University notification No. CSR/4/ORB/79 dt. 3.8.79 to the petitioner for his information and necessary action. Paragraph 2 of the said proceedings annexed as annexures "M" to the petition runs as follows : "Item No. 31 dt. 20.7.79 of the C.U. Council and the resolution of this item was discussed and it was resolved that the S.N. Bose Institute of Physical Sciences should run within the frame work of newly framed ordinances re : Autonomous Research Centre passed by the C.U. Council." On receipt of the copy of the proceedings the petitioner sent a letter to the respondent No. 2 on September 10, 1979 voicing his protest that the Secretary did not record the proceedings correctly but recorded it distortedly and arbitrarily. A joint letter of protest about the improper recording of the proceedings of the meeting was submitted by the petitioner and Professor C.K. Majumdar, another member of the committee. It has been specifically stated therein that in the said meeting no conclusion about the discussion were recorded. It was further mentioned therein that it was decided in the said meeting after due consideration of the ordinance regarding Autonomous Research Centre passed by the Calcutta University Council that the Professor-in-Charge and other teachers should submit their views about the rules of functioning of the S.N. Bose Institute as a memorial Institute. No reply was given to these two letters by the respondent No. 2. It also appears that a similar objection was made about the improper recording of proceedings of the meeting of the Rule Framing Committee by Mr. C.K. Majumdar, Palit Professor of Physics department another member of the said committee. This has been annexed as annexure "L" to the petition. This has been stated in paragraphs 26 and 27 of the petition. At the time of hearing it has been urged by the learned Advocate for the petitioner that the University would be directed to produce the original record of the proceedings of the Rule Framing Committee held on July 23, 1979 as well as the agenda of that meeting. Though repeatedly asked by this court the respondent Nos. 2 to 5 did not take any steps to comply with the directions of this court and they did not produce the agenda of the committee meeting held on July 23, 1979. Mr. Ghosh, learned Advocate for the petitioner, however, produced the copy of the agenda served on his client by the Secretary, Council for Post Graduate Science Technology etc under reference No. 272-78/53-58 dt. June 22, 1979 intimating that a meeting of the committee would be held on July 23, 1979 with the following agenda: (1) To consider letter No. SNBIPS/79-80/General dt. 12.6.79 from Professor M. Dutta addressed to the Vice Chancellor (annexure 1 of the letter is circulated herewith). (2) To consider letter No. SNBIPS/79-80/V. Professor/V. dt. 14.6.79 from Professor M. Dutta addressed to the Vice Chancellor regarding appointment of Professor A.K. Rajugopal as a visiting professor. The same was shown to the learned Additional Advocate General also who did not raise any protest against the same. Further two copies of the proceedings of the meeting of the said committee were produced before this court. It is startling to note that in one copy of the proceedings signed by the Secretary on 20th August, 1979 item No. 2 read as follows: "Item No. 31 dt.

20.7.79 of the C.U. Council and the resolution on this item was discussed and it was resolved that the S.N. Bose Institute of Physical Sciences should run within the framework of the newly framed ordinances re: Autonomous Research Centre passed by the C.U. Council. Another copy of the said resolution signed by the Secretary on 20.8.79 was produced before this court. Paragraph 2 of the said proceedings is as follows: "Item No. 31 dt. 20.7.79 of the C.U. Council and the resolution of this item was discussed and it was resolved that the S.N. Bose Institute of Physical Sciences should run within the framework of the stipulation passed by the C.U. Council."

30. On a look at the said two copies of the resolution it is quite evident that the striking out of the word stipulation in paragraph 2 of the proceedings of the said meeting and insertion of the words "newly framed ordinance re : Autonomous Res Centre "which was not in the original proceedings as evident from the other copy of the proceedings of the said meeting have been subsequently substituted. It also appears that in one of the copies of the resolution the words "for his opinion", the opinion of have been struck out. This clearly goes to show that there has been a clear tampering of the proceedings of the meeting of the committee. It also appears that these corrections and/or additions have not been endorsed by the Secretary. Furthermore, it is difficult to conceive how an item which is not in the agenda of the said meeting and there being no miscellaneous agenda can be taken up for consideration in the meeting of the committee. All these clearly go to prove that the proceedings of the meeting were not recorded correctly and it is not a true copy of the conclusions and decisions arrived at in the said committee meeting. The allegations as made by two members of the said committee about the improper recording of the proceedings and also non-recording of the notes of dissent are clearly proved. It is very unfortunate that proceedings of the Rull Framing Committee in which the Vice Chancellor Dr. R.K. Poddar, respondent No. 2, participated and Pro-Vice Chancellor for Finance and Business Affairs, the respondent No. 4 also participated will be so improperly recorded and interpolations and corrections will be made in the said proceedings after the same was signed by the Secretary of the Committee. It is really a matter of great regret that the proceedings of the meeting of a committee of University will be conducted in such an arbitrary manner and an item which is not in the agenda of the meeting will be considered and resolution will be adopted regarding the said item though two members of the committee categorically stated in their letter of objection to the respondent No. 2 that no conclusion was reached and it was resolved that the Professor-in-Charge and other teachers should submit their views about the rules of functioning of the Institute as a Memorial Institute. It also appears from paragraph 18 of the affidavit-in-reply sworn on 17th December, 1979 that the petitioner, Professor C.K. Majumdar and A.N. Daw who are the members of the said committee did not support but were against the official move to record the purported resolution. The said meeting was attended by 6 members including Professor R.K.

Poddar, Vice Chancellor, and Sri Arun Rey the Pro-Vice Chancellor of Finance and Business Affairs. The Vice Chancellor is not a member of the committee and the Pro-Vice Chancellor of Finance and Business Affairs is also not a member of the committee. It has also been stated in paragraph 18 of the affidavit-in-reply that the Vice Chancellor acting as Chairman of the said meeting recorded the aforesaid false minutes purported to be the minutes of the proceedings of the said committee dated July 23, 1979. This specific averment has not been controverted in the supplementary affidavit though it was made to controvert the facts stated in the affidavit-in-reply. Though the Vice Chancellor in accordance with the provisions of Section 9 sub-section 1 of Calcutta University Act, 1966 is entitled to be present and address any meeting of any authority or body of the University of which he is not a member cannot vote in such meeting. The Pro-Vice Chancellor of Finance and Business Affairs the respondent No. 4 being not a member of the committee is not entitled to be present in the meeting of the Rule Framing Committee and he is not entitled to participate in its deliberation. Therefore, in my opinion, the resolution as recorded of the meeting of the committee is firstly not a resolution passed by majority of members of the committee and secondly it is vitiated by the presence of non-members who were allowed to participate in the deliberations of the said meeting of committee. It has been stated in the affidavit-in-op-position that as the office of the Pro-Vice Chancellor for Academic Affairs was lying vacant, Dr. Poddar was carrying on the duties and functions of Pro-Vice Chancellor, Academic as well. It has also been stated that though provice-chancellor for business and finance is not a member of the committee but as a senior executive member he could participate any of the committee meetings of the University of Calcutta and he attended the said committee meetings at the instance of Dr. R.K. Poddar. This statement in my opinion, cannot, in any way, improve the position. It is a well known position that non-members cannot participate in the deliberations held in the meeting of the committee and cannot vote. Therefore, the very presence of and participation in such deliberations by respondent No. 2 and 4 renders the proceedings of the committee meeting ineffective and void. Therefore, the impugned resolution alleged to have been adopted at the meeting of the Rule Framing Committee on July 23, 1979 as mentioned as annexure M to the petition is illegal and void. I have already held that the said proceedings are illegal and bad being improperly recorded and also the subsequent corrections and additions made to the said proceedings does not bear the signature of the person who made these corrections and additions. Moreover, it is not a resolution passed by the majority of the members of the committee and framed the proceedings itself it appears that no final decision was reached about the rules that will govern the Institute otherwise it should not have been recorded in the said proceedings as follows : "it was also resolved to send the resolution of the C.U. Council on the aforesaid item to the Professor-in Charge of the S.N. Bose Institute for his opinion as well as opinion of others of the Institute."

31. On a consideration of all these facts and circumstances as well as the agenda of the meeting of the Council held on July 23, 1979 it is crystal clear and apparent that the proceedings of the Rule framing Committee in regard to item No. 31 dt. 20.7.79 of the Calcutta University Council as contained in item No. 2 of the proceedings of the said committee meeting does not represent the correct recording of the proceedings of the said meeting and as such the proceedings as alleged to have been passed in the said meeting are illegal and bad and hence ineffective and unenforceable in law. It is really a matter of great regret that the Vice Chancellor Dr. R.K. Poddar who is the Chairman of this committee and who presided over this meetings in spite of objections being specifically raised by two members of the committee about the irregular and arbitrary manner of recording the proceedings of the meetings of the Rule Framing Committee did not care to give any reply particularly to the objections mentioned in annexure O to the petition. On the other hand, the Vice Chancellor, the respondent No. 2 intentionally allowed the proceedings to be improperly recorded and to be subsequently corrected and added in the said proceedings arbitrarily and without due observance of the established rules of procedure. It is also unfortunate that two copies of the alleged proceedings of the said meeting produced before this court do not tally with each other. Moreover, I find that the minutes of the proceedings of the meeting of such a public body are not kept properly and there are various corrections, additions and over-writings without any signature which clearly go to cast a doubt about the genuineness and correctness of the recording of these proceedings. I am constrained to make this observation on going through the copy of the proceedings of the Rule Framing Committee dated July 23, 1979 that were produced before this court, I do not find any signature of the person who made these corrections and additions. On a look at the resolution which has been placed before this court as the original, corrected record of the proceedings of the meeting will raise a suspicion and doubt about the genuineness and/or the correctness of the resolution. Moreover, the doubt of this court is further strengthened by the persistent refusal in spite of repeated directions by this court to produce the agenda of the meeting of the Rule Framing Committee held on July 23, 1979. This withholding of the agenda of the said meeting spells a doubt in the mind of the court that the question of framing of rules perhaps was not in the agenda of that meeting and this doubt is confirmed by the copy of the agenda which was served on the petitioner by the Secretary, Council for Post Graduate Studies who is the Secretary for the Committee.

32. The impugned order as mentioned in annexure "R" dt. 9.11.1979 issued by Dr. R.K. Poddar. Vice Chancellor, the respondent No. 2 wherein Professor S.B. Bhattacharjee was shown as Programme Coordinator and Professor P.K. Ghosh was shown as Professor-in-Charge were made without issuing any notice on the petitioner to show cause as to why he should not be removed from the office of the Professor-in-Charge of this Institute and without giving him any opportunity of hearing before such orders are made. It appears that in these two orders annexed

as annexure "R" to the petition it has been stated that these orders have been made in accordance with the resolution of the Calcutta University Council adopted at its meeting held on 14.9.79 and 21.9.79 respectively (item No. 16 and 39) but and a look at the agenda of these meetings which have been annexed as annexure S collectively to the writ petition, it is evident that no such item find place in item No. 16 and item No. 39 of the agenda of the said meetings of the Calcutta University Council. Therefore, the orders of the respondent No. 2 in so far as it recites that they were made in accordance with the resolution of the Calcutta University Council adopted at the said meetings are not correct and it is quite clear that these orders were made by the Vice Chancellor, the respondent No. 2 himself though under the statute the respondent No. 2 is not empowered to exercise such powers. The petitioner was appointed to the post of Professor-in-Charge of the Institute with the powers and functions of the Heads of Department of the Institute by a resolution dated July 30, 1974. This was approved at the meeting of the Syndicate held on October 5, 1974 as evident from the proceedings of the Syndicate annexed as annexure E to the petition. It is also clear and undisputed that no show cause notice was issued to the petitioner before the passing of the impugned orders as well as the letter annexure "T" dt. 16.11.79 issued by the Registrar in terms of the aforesaid orders of the Vice Chancellor dt. 9.11.79 asking the petitioner to hand over the charge of the office of the Professor-in-Charge of this Institute to Prof. P.K. Ghosh who has been appointed as Professor-in-Charge of the Institute in terms of the above order and also that Prof. S.B. Bhattacharjee has been appointed as Programme Co-Ordinator for the M. Phil Course for Physical Sciences at the said Institute and the petitioner has been directed to hand over all relevant papers to him. It is now well settled that the rule of audi alteram partem is applicable equally to quasi judicial order as well as to administrative orders and as such the rules of natural justice require that an opportunity of hearing has to be given to a person affected by the impugned order. There is no expressed provision in the statute for giving any opportunity of hearing. The rule of law requires that the order affecting a party should not be made arbitrarily but the same should be made in accordance with the procedure prescribed by the Act and also in accordance with procedure which is consonance with the principles of natural justice. Therefore an order made by an administrative authority affecting any person has to conform to the principles of natural justice or in other words the person affected by the order has to be given a reasonable opportunity of hearing against the order proposed to be made. Unless the application of the principles of natural justice is expressly excluded by the statute. This has been observed in the case of [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), . Similar view has been expressed in [Babu Ram Gupta Vs. Sudhir Bhasin and Another](#), where it has been held that every action or the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. This principle will apply in all cases. It does not matter whether the exercise of the power involves affectation of some right or denial of some privilege.

In this case the impugned orders removing the petitioner from the office of the Professor-in-Charge and appointing Prof. P.K. Ghosh as Professor-in-charge, Professor S.B. Bhattacharjee as Programme Co-Ordinator has been made arbitrarily by the Vice Chancellor issuing no notice to show cause to the petitioner against the proposed orders and without giving the petitioner any opportunity of hearing. Therefore, the impugned orders as contained in annexures "R" and "T" to the petition are clearly made arbitrarily and contrary to the Rule of Law and also in utter violation of the audi alteram partem rules. Furthermore, the petitioner was appointed by the Syndicate and so he can be removed from the post of Professor-in-Charge of the Institute only by the Calcutta University Council in which the powers of Syndicate came to be vested. The Vice Chancellor cannot remove him from the office of Professor-in-Charge of the Institute. The question of exercise of emergency powers of the Vice Chancellor u/s 9(b) of the Act does not arise as no such pleading has been made on behalf of respondents No. 2. Even assuming for arguments sake that the impugned order was under this emergency power even then the orders in question are bad as conditions precedent to the exercise of such powers are absent. The orders impugned were made on 9.11.79 and on the same day there was a meeting of the Council. The subsequent ratification of any order made without jurisdiction does not confer legality and validity on such order. Therefore, these orders are liable to be quashed and set aside.

33. It has been urged on behalf of the petitioner that the respondent No. 2, Dr. R.K. Poddar, the Vice Chancellor of the Calcutta University is ill-disposed towards the petitioner because of the success of the institute of which the petitioner is the Professor-in-Charge and the high acclaim received from the University Grants Commission as well as from various other bodies and authorities. It has been pleaded in paragraph 19 that some high officials of the University did not relish the fact that the petitioner as Professor-in-Charge and convenor of the Steering Committee was being praised and glorified by the success of the said Institute. All these gentlemen combined to denigrate the position of the petitioner as the Professor-in-Charge and also to discredit the said Institute. A concerted attempt was made by the said interested persons to make use of bureaucratic measures with the blessings of the high officials of the University so as to curb the autonomous status of the said Institute and to have the petitioner removed from the position of the Professor-in-Charge. In paragraph 23 of the petition it has been stated that Professor R.K. Poddar, Dr. S.L. Sarkar and some other learned members of the said committee were operating as a clique with a clear pre-conceived design and motive to oust the petitioner from the said Institute and to relegate the Institute to the position of a mere appendage to the department of Applied Mathematics of the University in gross deviation from the earlier resolution of the various bodies of the University inspite of protests made by the petitioner against the arbitrary conduct of proceedings of the Rule Framing Committee. No notice was taken of by the respondent No. 2, the Chairman of the Committee. It has also been stated that on

June 7, 1979, the Academic activities of the Institute was seriously affected because of the arbitrary, unwarranted and illegal order of the Vice Chancellor directing the petitioner to postpone all admissions until further orders. The said order was communicated to the petitioner by a letter of the Secretary, dated 14th June, 1979. As a result admission to the M. Phil Course for the year 1979-80 remained held up. It has also been stated that the authority at every step interfered with the smooth running of the Institute as will be evident from the printed Memorandum dated June 12, 1979 annexed as annexure "P" to the petition. On November 12, 1979, the petitioner received two letters from the Registrar of the University each enclosing relevant copy of a purported, order of the Vice Chancellor. In one letter dated November 9, 1979, the petitioner was informed that he was appointed a member of the Committee on M. Phil studies in Physical Sciences. It was alleged therein that in accordance with the resolution of the Calcutta University Council adopted at its meeting held in September 17, 1979, the one year Post M. Sc. Course leading to M. Phil Degree in Physical Sciences would be governed by a committee consisting of 8 persons including the Vice Chancellor. In the list of names Professor P.K. Ghosh was shown as Professor-in-Charge. This has been annexed as annexure "R" to the petition. In paragraph 37 of the petition it has been submitted that the Vice Chancellor Dr. R.K. Poddar acted with malice and prejudice against the petitioner. In 1976, when the respondent No. 2 was a Professor of Physics department it was at his instance the physics lecture theatre was closed in order to prevent the holding of classes of this Institute and the same was kept under lock and key. The key was kept with the Professor R.K. Poddar and the petitioner on coming to know of the same strongly protested against the activity of Dr. Poddar and this created his displeasure. It was also pleaded that Professor R.K. Poddar on becoming Vice Chancellor openly declared in a re-union function of the Institution that the petitioner would be ousted from the Institute and he should not be allowed to make it his monopoly. It has also been stated that the vice chancellor actuated by his personal malice and grudge acted in a malafide manner and in abuse of his official power in denigrating the Institute culminating in passing of the two impugned order purporting to removing the petitioner from the post of Professor-in-Charge of the Institute. It was also been pleaded that on November 18, 1979, the Vice Chancellor caused a letter to be sent to the petitioner by Pro-Vice Chancellor of Academic Affairs, the respondent No. 3, requesting the petitioner not to start the classes in haste before teaching programme was finalised in terms of the instructions of the Vice Chancellor. It has also been stated in the said letter that the routine should be fixed up through the Post Graduate Science Secretary in consultation with the heads of the other departments to be utilised for the petitioner's M. Phil Course. On the next day the impugned orders were passed by the Vice Chancellor and this clearly goes to show that there was a pre-conceived plan and design to remove the petitioner and it was with that and in view that the Vice Chancellor at first postponed admission to the M. Phil Course and thereafter when the classes were about to commence get the same deferred and finally passed

the impugned order removing the petitioner. These are all the pleadings made in the question of malice in fact.

34. In the affidavit in opposition sworn by the Registrar, the respondent No. 5, the allegations in paragraph 19 was denied and it was also denied that certain interested persons of the Academic world of Calcutta and certain high officials of the Calcutta University combined, a colluded and conspired to denigrate and to discredit the position of the petitioner as Professor in Charge and Head of Department of the Institute as alleged. It has also been stated that no particulars or names of persons who allegedly acted as such against the petitioner has been disclosed. In paragraph 16 it has been denied that Dr. R.K. Poddar or Dr. S.L. Sarkar or some other learned members of the Rule Framing Committee operated at a clique with a clear preconceived design to oust the petitioner from the Institute and or to reduce the Institute to the position of a mere appendage of a department of Applied Mathematics. The proceedings of the meeting were not kept improperly as alleged. It has also been stated that the allegations were absolutely vague and there was no justification for the petitioner to issue a letter of protest. There is no malafide on the part of the Chairman or committee members in passing the impugned resolution. It has also been denied in paragraph 20 of the affidavit in opposition that the order of the Vies Chancellor dt. June 7, 1979 was arbitrary, unwarranted and illegal. The said order postponing the admission was an administrative one being made for the purpose of re-organisation of the Institute particularly in view of the fact that the matters concerning the amendment of the ordinances were then pending before the Calcutta University Council. It has also been stated that the advertisement issued by the petitioner inviting applications for admission to the Research Oriented Post M. Sc. Course of study fixing the date of commencement of the classes to be held in the 1st week of July 1979 are immaterial in the facts and circumstances of the case. It has been stated that the classes were held up under the order of the Vice Chancellor. In paragraph 28 of the affidavit in opposition it has been denied that the lecture theatre was kept under lock and key by Dr. R.K. Poddar in order to prevent the petitioner from holding up lectures there. It has also been stated that in 1973-74 Professor P.C. Bhattacharjee was the Head of Department at that material time. Dr. R.K. Poddar was not the Head of Department at that time. The petitioner did not ask Dr. R.K. Poddar for the key and broke the lock. Thereafter the petitioner put his own lock and Prof. Bhattacharjee also put another lock. Dr. Poddar had no intention to prevent the petitioner from holding up lecture there nor he had any knowledge that the petitioner used the said lecture theatre for delivering lecture there. It has also been stated that Dr. Poddar had no connection with the dispute which arose between the petitioner and the said Prof. P.C. Bhattacharjee who was the Head of Department at the material time. It has also been stated that letter dt. November 8, 1979 was written under his instruction in normal course of business so that the petitioner might not start classes prejudicial to the arrangement made by the Council. It has also been denied that there was any pre conceived plan and design to

remove the petitioner and the said letter of the Pro Vice Chancellor could be interpreted as an evidence of such plan, as alleged.

35. In paragraph 28 of the affidavit in reply it has specifically denied that the petitioner did not ask for the key from Dr. R.K. Poddar or he broke the lock put on the doors of the lecture theatre. It has also been stated that Dr. Poddar was personally aware of these facts. It has also been stated that on a number of occasions Dr. Poddar compelled the Institute to hold its classes outside the said room.

36. There is no doubt that malice in fact cannot be proved conclusively by either oral or documentary evidences. It has to be inferred from the facts and circumstances pleaded in the petition as well as acts purported to have been done by the person or authority against whom such an allegation of acting with prejudice, malafide and malice is alleged. It is pertinent to refer in this connection the observation of the Supreme Court in the case of [S. Pratap Singh Vs. The State of Punjab](#), where it has been held that the use of power for achieving an alien purpose-wrecking the ministers vengeance on the officer would be malafide and a colourable exercise of that power, and would therefore be struck down by the courts. Undoubtedly the onus is on the petitioner who alleges that the impugned orders have been made malafide or in bad faith or with malice to establish the same. Though it is difficult to establish the motive or purpose of bad faith yet the name has to be established only either by direct evidence, that is, from the order impugned or from other orders of the authority concerned. In this instant case the Vice Chancellor of Calcutta University announced at the function held on February 8, 1974 that an Institute would be set up as a memorial Institute to be called S.N. Bose Institute of Physical Sciences for advance study and research per excellence. For this purpose the Syndicate appointed a Steering Committee which prepared plan, programme and budget of the Institute. The resolution of the Steering Committee was confirmed by the Syndicate and the proposal for setting up of the Institute was also duly approved and recommended by the Academic Council to the Senate. On 13th April 1978, the Calcutta University Council approved the proposal of the Syndicate as approved and recommended by the Academic Council and this Institute was established. It appears that in the said meeting of the Calcutta University Council a committee was appointed to frame rules to govern the said Institute. The members of the Rule Framing Committee consisted of the Pro-Vice Chancellor for Academic Affairs as Chairman and 7 other members. The respondent No. 2 Dr. R.K. Poddar, the Vice Chancellor was then Pro-Vice Chancellor for Academic Affairs. On the coming into force of the Calcutta University (Temporary Supersession) Act, 1978, Prof. R.K. Poddar became the Vice Chancellor in or about June, 1979. The Rule Framing Committee held a meeting on July 23, 1979. In the agenda of the said meeting there was no item regarding framing of the rules for governing the said Institute. In spite of that in item No. 2 of the proceedings of the said meeting a resolution was adopted to the effect that the said Institute should run within the framework of the

stipulation passed by the Calcutta University Council. Of the two copies of the proceedings which was filed in this court in one of these copies the words "stipulation" was struck out and in its place the words "newly framed ordinances re : Autonomous Research Institute" were inserted. There is no endorsement by any person at the foot of these additions or corrections. I have already held that this proceedings as recorded does not represent the correct recording of the proceedings of the said meeting as according to the majority of the members attending the said committee meeting no such conclusion was arrived at. This meeting was presided over by the respondent No. 2 as Vice Chancellor of the University though he ceased to be Pro-Vice Chancellor of Academic Affairs; so ceased to be a member of the committee. Furthermore, it was attended by Sri Arun Roy, Pro-Vice Chancellor Finance and Business Affairs who was not a member of the Committee. The legal position is quite clear that non-members cannot participate in the deliberations of the committee nor the Vice Chancellor who can address the meeting can participate in its deliberations nor cast his vote at the said meeting. It has been alleged that Dr. R.K. Poddar, the respondent No. 2 and at his instance the pro-Vice Chancellor respondent No. 4 participated in the said meeting in order to influence the other members and to have their support to the resolution which the Vice Chancellor intends to have adopted at the said meeting of the Rule Framing Committee. The purported resolution apart from its validity and correctness which is seriously in-question purports to apply the amended ordinance 39 (2) of the Calcutta University First Ordinances which is applicable to specialised research Institute or Centre established for a term of 5 years. This resolution undoubtedly affects the status of the institute inasmuch as it purports to change the status of the institute from its permanent character to a temporary character. Secondly it appears that the respondent No. 2 issued a letter on June 7, 1979 directing the petitioner as Professor-in-Charge of the Institute to In-further orders even though the petitioner as Professor-in-Charge of the Institute invited applications for admission to the research oriented post of M. Sc. course for the degree of M. Phil course for Physical Sciences by an advertisement in newspaper published in May, 1979. It was stated in the said advertisement that the applications were to be submitted by June 2, 1979 and classes would commence from the first week of July, 1979. There is no denial of the issuance of this letter by the Vice Chancellor. The only explanation given is that this letter was issued for the purpose of re-organisation of the Institution particularly the matter concerning amendment of ordinance were pending before the Calcutta University Council. Thus there is no clear reasons stated for the issuance of the said letter which had the effect of holding up the classes of the Institute indefinitely. Consideration of the amendment of the ordinance before the Calcutta University Council cannot be a ground for holding up classes of the Institute to the detriment of the interests of students who are desirous of pursuing their studies in the post M. Sc. M. Phil course in Physical Sciences. The admission to the said M-Phil course for the year 1979-80 was also stopped. It also appears that on November 8, 1979 a letter was sent by the Pro-Vice Chancellor to the petitioner

intimating him that the classes should not be started before teaching programme is finalised in terms of earlier instruction of the Vice Chancellor. This letter was issued on November 9, 1979 and on the very same day it appears that the respondent No. 2 has sent two letters to the petitioner. In one of such letters it has been stated that in accordance with the resolution of the Calcutta University Council adopted at its meeting dt. 14.9.79 the said Institute will be administered by a governing body consisting of persons named therein. In these letters Professor P.K. Ghosh was described as Professor-in-Charge. In the other letter issued by the Vice Chancellor on the same day intimating the petitioner that the post M. Sc. course of M. Phil degree in Physical Sciences would be administered by a committee on M-Phil studies on Physical Sciences and the said committee will be consisted of 9 persons wherein Prof. S.B. Bhattacharjee was described as Programme Coordinator and it has been further stated therein that the Programme Coordinator shall take urgent measures in consultation with teachers and Heads of Departments etc. so that the classes of M. Phil courses start within the specific day. It appears that from the agenda of the said meeting annexed as annexure "S" to the petition that there was no agenda regarding removal of the petitioner from the office of the Professor-in-Charge and the appointment of a new Professor-in-Charge or a programme Coordinator. It also appear from the pleadings that there was an incident in 1976 when the physics lecture theatre was closed and the classes of the Institute were not permitted to be held. It was specifically pleaded in the petition that the room was kept under lock and key by Professor R.K. Poddar as he then was and the petitioner strongly protested against the unacademic conduct of Professor Poddar. Of course, this was denied in the affidavit-in-opposition but nonetheless it is clear from the affidavit-in-opposition that this room was kept under lock and key not to prevent the classes of the Institute to be held in the Physics Lecture Theatre and it is also not disputed that Professor R.K. Poddar was at that time a Professor of Physics department and there is a clear averment in the affidavit-in-opposition that the room was locked by Professor S.B. Bhattacharjee and the key was kept with Professor Poddar. This clearly goes to show that Dr. R.K. Poddar, respondent No. 2 was well aware of the matter that lectures of this institute were held in the room. Moreover, there is no doubt that the post M. Sc. course in Physical Science was introduced in the S.N. Bose Institute of Physical Sciences in 1974 and the regulations of the course of studies for associateship of the institute is prepared by the Steering Committee and approved by the post Graduate Board of studies in physics and applied Mathematics and it was forwarded to the Post Graduate Council of Science for placing it to the Academic Council for its acceptance. The Academic Council considered the regulations and syllabus for the post M. Sc. diploma course for associateship of the Institute and approved the same. On July 7, 1976, the Academic Council of Calcutta University accepted the proposal for Post M. Sc. training course of associateship in M. Phil degree in Physical Sciences and also approved necessary changes in the regulations. On January 11, 1977, the Senate formally instituted the degree in M. Phil in Physical Sciences for this institute in accordance with the

provisions of this Act. Therefore the M. Phil degree in Physical Sciences which was formerly post M. Sc. Diploma in associateship was started on and from 1975 and several students reading in the said Institute obtained the said degree. In the facts and circumstances the letter of the Vice Chancellor issued in June, 1979 directing the petitioner to postpone all admissions and also the letter dated November 8, 1979 issued to the petitioner not to start classes in haste were issued not bonafide but for extraneous considerations and purposes. The letter for stopping classes though bear the date of Sept. 8, 1979 was actually signed by the Vice Chancellor on September 9, 1979 and on 12th September, 1979 the petitioner was intimated by an order of the Vice Chancellor dt. 9th September, 1979 that he had been removed from the office of the Professor-in-Charge of the said Institute and the Institute will be governed by a Governing Body and the M. Phil course of study in the said Institute will be governed by an M. Phil Committee. All these if considered along with the purported resolution adopted at a meeting of the Rule framing Committee presided over by the respondent No. 2 on 23rd July 1979 whereby the status of the Institute was sought to be changed from its permanent character to a purely temporary character clearly leads to the irresistible conclusion that these orders were made not bonafide but for other purposes namely to reduce the position of this Institution to a mere temporary one and to relegate the Institute to the position of a mere appendage to the department of Applied Mathematics of the Calcutta University. Furthermore, the petitioner has been appointed as Professor-in-Charge by the Synicate u/s 23 of the Calcutta University Act, 1966. The Vice Chancellor has got no power or authority under the statute to remove the petitioner from the office of the Professor-in-Charge and the letter of the Registrar mentioned in Annexure "T" that the petitioner has been removed by the Vice Chancellor clearly he speaks that the order was made illegally and malafide and for improper and oblique purposes. It is an arbitrary exercise of power and hence it is vitiated by malice in fact. In AIR 1952 Cal 65 66 paragraph 15 (Sudhindra Nath Datta -vs- Sailendra Nath Mitra) it has been held that before a court can hold that orders of Govt. are "mala fide" facts must be established upon which the court can hold affirmatively that an order was not honestly made or not made under a particular provision. It is not sufficient to place facts which raise a suspicion that the order might not have been made honestly. This has been followed in a subsequent decision rendered in the case of [Kamalakar Singh and Another Vs. S.K. Gupta and Another](#), . In the instant case I have already held that the M. Phil course of study was duly introduced in the Institute since 1975 and several students have been awarded the M. Phil degree in Physical Sciences by the Calcutta University from the said Institute as has been Specifically stated in paragraph 16 of the petition. Moreover, the M. Phil degree in Physical Sciences was formally instituted by the Senate in this Institute under the provisions of section 20, 23 and 25 and section 28 of the Calcutta University Act, 1966 and the Calcutta University Statute and it also appears that the Rules and Regulations for such course of study have been duly prepared. Therefore, there is no reason for postponing the admission of students in the said course of study in the said

Institute and thereby holding up of classes of the Institute. It has been urged on behalf of the respondent No. 2 that the orders are issued by the Vice Chancellor in order to prevent the petitioner from admitting students and from holding classes before the Post Graduate M. Phil degree course of study is finalised and necessary Rules and Regulations are framed for the purpose. This argument, in my opinion, is wholly without any foundation as I have held already that the facts and circumstances clearly show that the impugned orders contained in annexures "R" have been made for an ulterior purpose namely to remove the petitioner from the post of Professor-in-Charge and to reduce the Institute from its permanent status to that of a temporary status and also to reduce it to an appendage to the department of the Applied Mathematics of the Calcutta University and not an Institute as established by the Calcutta University for promoting advanced study and research per excellence in Physical Science which involve not only Applied Mathematics but also Physics, Chemistry etc. as a memorial to the illustrious educationist, Acharya Satyendra Nath Bose. Therefore, on a consideration of the facts of the case it is clear that the impugned orders were made with malice and the same were made not bonafide but malafide and for improper purposes.

37. In the premises aforesaid the contentions raised on behalf of the petitioner having succeeded the Rule succeeds and is therefore made absolute.

38. Let a writ of Mandamus be issued commanding the respondents not to give effect or further effects to the impugned orders mentioned in annexures M, R and T to the writ petition.

39. Let a writ of certiorari be also issued directing the respondents for quashing and setting aside the impugned orders and the impugned resolution including the purported confirmation made by the respondent No. 1.

40. In the facts and circumstances there will, however, be no order as to costs. Mr. Additional Advocate General in course of his argument submitted before this Court that his client specially the respondent No. 2 is prepared to appear before the Court and to give evidence. I already expressed that if the materials on record is not sufficient for disposal of the points urged by the learned Advocates for the purpose, in that case this submission made by the learned Additional Advocate General will be considered, After considering the materials on record it is found that there is no necessity of taking any evidence by this Court. Hence, the prayer cannot be acceded to.