Sant Ram and, as such, he would not feel prejudiced in any manner. He has further observed that recording of the statement of Sant Ram, which was essential to the just decision of the case, would not amount to filling up of the gap in the evidence. Thus, the impugned order does not call for any interference."

(6) Similar view was taken in *Gengal Singh* v. *The State of Haryana* (5).

(7) Now in the case before me, the detailed order of the Judicial Magistrate discloses that he has applied his mind, considered both sides of the matter presented to him on behalf of the prosecution as well as the accused and has come to entertain a definite opinion that the evidence of Constable Bhoop Singh Singh is essential for the just decision of the case. It is not possible at the stage for a Court sitting in revision to entertain a different opinion and still be quite certain that the interests of justice will not suffer.

(8) The reference is declined.

K. T. S.

Before S. S. Sandhawalia, A.C. J. and S. S. Dewan, J.

SAROJ MEHTA, ASSOCIATE PROFESSOR (DR.)—*Petitioner.*

versus

THE POST-GRADUATE INSTITUTE OF MEDICAL EDUCATION & RESEARCH, and others—*Respondents.*

Civil Writ Petition No. 3036 *of* 1977

July 17, 1978.

The Post-Graduate Institute of Medical Education and Research Act (51 of 1966)—*Constitution of India* 1950—*Article* 226—*Meeting of a selection committee—No quorum prescribed—Presence of majority of its members—Whether necessary to validate the proceedings.*

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(5) 1977 C.L.R. (Pb. and Hary.) 169.

Saroj Mehta, Associate Professor (Dr.) *v.* The Post Graduate Institute of Medical Education and Research, etc.
(S. S. Sandhawalia, A.C.J.)

Held, that statutory rules invariably provide for a quorum of a relatively small number for the transaction of business by large bodies or association of persons but in the absence thereof at least a majority of the total members of a Committee would have to attend to clothe its proceedings with validity. It follows that the converse would also be true. If in the absence of quorum the presence of a majority only would constitute a valid meeting then, *a fortiorari,* it may be said that the absence of such a majority would equally invalidate its proceedings and have no binding effect.

(Paras 9 and 10).

Petition Under Article 226 of the Constitution of India praying that a Writ of Certiorari, Mandamus, Quo Warranto or any other suitable Writ, Direction or Order be issued directing the respondents:—

(*i*) *to produce the complete records of the case;*

(*ii*) *the order at Annexure 'P-2' be quashed;*

(*iii*) *it be declared that the meeting of the Selection Committee was wholly invalid and void and a writ of Mandamus be issued directing the Committee to meet afresh and consider the various eligible candidates including the petitioner;*

(*iv*) *it be declared that the Respondent No. 10 is ineligible for the post and a writ of Quo-Warranto be issued calling upon him to show cause as to how he is competent to hold the post of Professor;*

(*v*) *this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case and grant all the consequential reliefs in the nature of arrears of salary, seniority etc. and any other relief to which the petitioner may be found entitled to after the decision of the case;*

(*vi*) *the petitioner be exempted from serving the five days notice as required under the High Court Rules and Orders;*

(*vii*) *it is further prayed that pending the disposal of the writ petition, the respondents be restrained from appointing Respondent No. 10;*

(*viii*) *the costs of this writ petition may also be awarded to the petitioner.*

J. L. Gupta, Advocate, *for the petitioner.*

D. N. Awasthy, Advocate, *for respondents 1 to 3.*

M. R. Agnihotri, Advocate, *for Respondent No. 10.*

JUDGMENT

S. S. Sandhawalia, C.J.—(1) The primary issue that has been successfully agitated on behalf of the writ petitioner herein is that in the absence of a prescribed quorum for a Committee, at least a majority of its members must attend in order to give validity to its proceedings. The facts, therefore, call for notice only in this context.

(2) Dr Mrs. Saroj Mehta claims considerable academic distinction in the field of her study, namely, pediatrics. After academically distinguishing herself at the Lady Harding Medical College, New Delhi, and the All-India Institute of Medical Sciences, she received post-doctoral training at the Cornell University, New York, and on her return to India was first selected as a senior lecturer in pediatrics in the Post-Graduate Institute of Medical Education and Research, Chandigarh (hereinafter referred to as the P.G.I.) in November, 1965. She was later promoted to the rank of Associate Professor and confirmed therein in August, 1976 and continues to hold the said post.

(3) Laying claim to a distinguished academic and professional career the petitioner avers that she is far superior both in academic qualifications as well as in professional competence to respondent No. 10 Dr. Vijay Kumar. The latter is stated to have first joined the P.G.I., in August, 1971, as Assistant Professor when the petitioner had already been appointed as Associate Professor. In October, 1974, respondent No. 10 was appointed on an *ad hoc* basis as an Associate Professor in the leave vacancy of Dr. Bhakoo the regular incumbent of the post, and when he returned back, respondent No. 10 is averred to have managed to continue as an Associate Professor on an *ad hoc* basis against one post or the other.

(4) A vacancy of the post of Professor in Social and Preventive Medicine had occurred in the P.G.I., sometime back but the same was finally advertised for being filled up in April, 1977. Both the petitioner and respondent No. 10 amongst others applied for the post above-said. It is not in dispute that the P.G.I. is a statutory body and a Medical Institution of national importance which has been created under the Post-Graduate Institute of Medical Education and Research Act, 1966. The aforesaid statute and the rules framed thereunder *inter alia* govern the recruitments and the conditions of service of of the employees of the P.G.I. The institute at its meeting held on

3rd August, 1977 constituted a Selection Committee for the purposes of selecting an incumbent to the post of Professor in Social and Preventive Medicine aforesaid. This Selection Committee admittedly consisted of respondents Nos. 3 to 9. Besides the seven regular members of the Selection Committee, Dr Sushila Nayar and Gen. R. S. Hoon were associated with it as Experts and it has been specifically averred that their role was purely advisory and these experts were not to be deemed as the members of the Selection Committee.

(5) The meeting of the Selection Committee was fixed for the 8th of September, 1977 but surprisingly only two members thereof, namely, respondent No. 3 Dr. P. N. Chhutani and respondent No. 4 Dr. Rajeshwar Parsad came to be present on the occasion. The remaining five members of the Committee including the Director-General of Health Services were not present. On the aforesaid day along with the two experts, the Selection Committee proceeded to select Dr. Vijay Kumar respondent No. 10 in preference to the writ petitioner. The proceedings of the Selection Committee owing to the absence of five out of its seven members have been assailed as being wholly illegal and unconstitutional on behalf of the writ petitioner, apart from other grounds to which a reference is unnecessary.

(6) Now this is beyond dispute that the Selection Committee for interviewing and selecting the candidates for the post of the Professor in Social and Preventive Medicine was constituted of seven persons, namely, respondent Nos. 3 to 9. It stands admitted that out of the aforesaid seven persons merely two members, namely, respondent No. 3 Dr. P. N. Chhutani and respondent No. 4 Dr. Rajeshwar Parshad were present at the material time of interviewing the candidates. Apparently whilst four of the members of the Committee did not attend at all, respondent No. 9 is averred to have left at the time when the matter of selection had come up for consideration. It is equally clear on the pleadings that the two experts who were associated in the selection were not and could not be deemed to be members of the Selection Committee as such. This also is the common case that under the statute and rules no quorum or minimum number for conducting the business of the Selection Committee has been prescribed nor even a hint of any such practice is suggested.

(7) On the aforesaid premises the forceful contention of Mr. J. L. Gupta is that unless at least a bare majority of the total membership of the Selection Committee is present at one of its meetings

the proceedings thereof cannot be deemed to be of any validity. Counsel submitted with plausibility that any view contrary to this may lead to a result that even in a Committee consisting of large number of persons if the others do not attend, a single person may presume to take decisions on behalf of the whole Committee to bind it.

(8) Mr. D. N. Awasthy appearing on behalf of the respondents was hard put to meet the aforesaid contention on principle. He did not go to the logical and if one may say so the extreme length of suggesting that even a single member in the absence of all others may constitute the Committee where no quorum has been prescribed. He, however, contended that a plurality of persons is all that the law requires and if in such a situation merely two persons are present it would constitute a valid meeting of the Committee.

(9) On principle one cannot but agree with the contention raised on behalf of the petitioner. It is true that statutory rules invariably provide for a quorum of a relatively small number for the transaction of business by large bodies or association of persons. A convenient example is the quorum provided for each house of Parliament and of the State Legislatures. Where such a quorum is prescribed then obviously the transaction of business by the prescribed number of persons would be valid.

(10) Reference in this connection may be made to *the Punjab University, Chandigarh* v. *Vijay Singh Lamba, etc.* (1), wherein their Lordships whilst affirming the minority view in the Full Bench case of 1976 Punjab and Haryana 143 held that the prescribed quorum of two was sufficient for the Standing Committee constituted by the Punjab University and it was not necessary that all the three members of the Committee should necessarily participate in all its proceedings. Whilst the above rule is obviously applicable in cases where a quorum is prescribed the only reasonable view in the absence thereof appears to be that at least a majority of the total members of a Committee would have to attend to clothe its proceedings with validity. The aforesaid view gets direct sustenance from the following statement of law in Halsbury's Laws of England,

(1) A.I.R. 1976 S.C. 1441.

Third Edition, Volume 9, at page 48 in the context of the meeting of a Corporation:—

> "* *. In other words, in the absence of special custom or of special provision in the constitution, the major part must be present at the meeting, and of that major part there must be a majority in favour of the act or resolution contemplated. Where, therefore, a corporation consists of thirteen members, there ought to be at least seven present to form a valid meeting, and the act of the majority of these seven or greater number will bind the corporation."

By way of analogy the aforesaid rule would obviously be applicable to the case of a Selection Committee as well. However, the case that directly covers the issue is *Ishwar Chandra* v. *Satyanarain Sinha and others* (2), wherein the validity of the proceedings of a Committee constituted under the University of Sagar Act was put in issue. Their Lordships whilst upholding the validity of the proceedings conducted by only two out of its three members observed as follows:—

> "* * * It is also not denied that the meeting held by two of the three members on the 4th April, 1970, was legal because sufficient notice was given to all the three members. If for one reason or the other one of them could not attend that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid."

From the above observations, it seems to follow that the converse would also be true. If in the absence of quorum the presence of a majority would constitute a valid meeting then, *a fortiorari*, it may be said that the absence of such a majority would equally invalidate its proceedings and have no binding effect. Obviously the aforesaid observations conclude the matter in favour of the petitioner. Learned counsel for the respondents has been unable to cite any precedent to the contrary or to advance any cogent argument against the aforesaid view on principle. I am accordingly compelled to hold that the proceedings of the Selection Committee in the absence of

(2) A.I.R. 1972 S.C. 1812.

five out of the seven members cannot be deemed to be valid or binding. Accordingly the writ petition is allowed and the selection of respondent No. 10 as a Professor is hereby set aside. The parties are left to bear their own costs.

(11) In view of the success of the petitioner on this primary point I would deem it unnecessary to examine the other two contentions raised on her behalf, namely, that respondent No. 10 did not fulfil the qualifications prescribed for the post and that the absence of respondent No. 8 Dr. P. P. Goel would particularly vitiate the proceedings.

K.T.S.

Before S. S. Sandhawalia C.J. and S. S. Dewan J.

MATHANA EX-SERVICEMEN COOPERATIVE TENANTS FARMING SOCIETY—*Petitioner.*

versus

STATE OF HARYANA and others—*Respondents.*

Civil Writ Petition No. 6485 *of* 1976.

July 24, 1978.

East Punjab Utilization of Lands Act (XXXVIII of 1949)—*Section 7—Collector directing dispossession of ex-servicemen from lands under section 7—Orders challenged on the ground that the land was not allotted under the Act—Supreme Court remanding the case for deciding after determining the question whether the lands were allotted under the Act—Such direction—Whether places the onus of determining the question on the Collector—Collector—Whether required to collect evidence himself unaided by the parties.*

Held, that the Supreme Court's observation that the Collector would have no jurisdiction to order dispossession of the aggrieved Ex-Servicemen Societies from the land unless he had found after the requisite investigation that the land had been leased out to them under the Act, does not necessarily suggest that the burden of proving various pleas which the questions involve had been laid on the authority itself. There is nothing in such a direction which would deviate from the ordinary rule that the burden of proving the pleas forming the subject matter of the question would lie on the party by which it