

T.M.A. Pai Foundation and others
Vs
State of Karnataka and others

CASE NUMBER

.As. Nos. 25-27 in Writ Petition (C) No. 317 of 1993 with I.As. Nos. 2-3 in W.P. (C) No. 350 of 1993, I.As. Nos. 2-3 in W.P. (C) No. 355 of 1993, I.A. No. 2 in W.P. (C) No. 399 of 1993, I.A. No. 3 in W.P. (C) No. 628 of 1993, I.A. No. 2 in W.P. (C) No. 627 of 1993, I.As. Nos. 28-30 in W.P. (C) No. 317 of 1993, I.A. No. 4 in W.P. (C) No. 417 of 1993, I.As. Nos. 2-3 in W.P. (C) No. 738 of 1993 and W.P. (C) No. ... of 1994 (CC No. 1741)

EQUIVALENT CITATION

1995-(004)-SCALE-0665B-SC
1995-(005)-SCC-0220-SC
1995-AIR-2431-SC
1995-(006)-JT-0033-SC

CORAM

Kuldip Singh
S. C. Agarwal
B. P. Jeevan Reddy

DATE OF JUDGMENT

11.08.1995

JUDGMENT

1. Though the orders we are now making are interim in nature, it is appropriate to set out briefly the circumstances leading to the present stage for a proper appreciation of the several directions we are making herein.

2. In *Unnikrishnan J. P. v. State of Andhra Pradesh* (1993) 1 SCC 645 : (1993) AIR SCW 863, a Constitution Bench of this Court framed a scheme governing admissions to professional colleges. This was done with a view to eliminate the evil of capitation fee and the absolute discretion which the managements of these colleges were exercising in the matter of admission of students. The main objective was to ensure that merit prevails in the matter of admissions, both in

respect of what were called "free seats" as well as in respect of "payment seats." This judgment was rendered on February 4, 1993. The scheme was to be effective from the Academic Year 1993-94 onwards.

2A. Review Petitions were filed by several institutions against the said judgment. They were dismissed by the Constitution Bench on May 14, 1993 subject to one clarification, viz., that it shall be open to the professional colleges to admit non-resident Indian students to the extent of five percent of the total intake in a given year. These five percent seats were to be out of fifty percent payment seats.

3. The Government of Karnataka sought to apply the said scheme to Minority Educational Institutions (M.E.Is.) as well, though the judgment did not purport to say so. Complaining against the extension of the scheme to them, certain M.E.Is. approached this Court by way of writ petitions. Writ Petition (C) No. 350 of 1993 was filed by Islamic Academy of Education, Mangalore (claiming to be a religious M.E.I.) and Writ Petition (C) No. 355 of 1993 was filed by S. Venkatesha Education Society (claiming to be a linguistic minority). While the Islamic Academy of Education was running a dental college in Karnataka, S. Venkatesh Education Society was running an engineering college in that State. These writ petitions came up before a Bench comprising the Hon'ble Chief Justice and one of us (B.P. Jeevan Reddy, j.) on May 14, 1993. The Bench made the following interim order.

"2. There will be an interim order in the following terms :-

(i) Fifty per cent of the total intake in the petitioner's educational institutions shall be permitted to be filled up by candidates selected by the agencies of the State Government on the basis of a competitive examination/test. The candidates so selected and admitted shall pay scales of fee as applicable to this class of students as determined by the State Government from time to time.

(ii) The remaining fifty percent of the intake may be regulated by the petitioners to admit candidates belonging to the particular religious or linguistic minority. However, the selection shall be made strictly on the basis of merit among the candidates seeking admission to the institutions. Such merit shall be determined on the basis of the academic performance of the qualifying examination; or on the basis of any objective test that the institution might itself apply to determine such relative and competing merits; or on the basis of performance of the results of the selection tests that the State Government may itself hold for selecting candidates for admission to technical colleges in the State. It is optional for the petitioners to adopt any one of these three modes and apply it uniformly. Candidates so selected on the basis of merit amongst the minorities shall, however, abide by such condition in the matter of payment of tuition and other fee as may be permitted by the State Government.

3. It is made clear that this order is made on the assumption that the petitioners are minority institutions. It is open to the respondents to question this status claimed by the petitioners."

4. Several other Educational Institutions claiming to be M.E.Is. filed writ petitions questioning the application of the said scheme to them. All these writ petitions including Writ Petition (C) Nos. 350 and 355 of 1993 were heard by a Constitution Bench. On August 18, 1993, it passed interim orders applicable to Academic Year 1993-94, which orders were based upon the order dated May 14, 1993 (made in Writ Petition (C) Nos. 350 and 355 of 1993) coupled with certain modifications and clarifications. After hearing the parties, the Constitution Bench framed three questions and referred the same to a larger Bench by its order dated October 7, 1993. The order of reference is reported in (1993) 4 SCC 286. The three questions referred are :

"(1) What is the meaning and content of the expression 'minorities' in Article 30 of the Constitution of India?

(2) What is the meaning of the expression 'Minority Educational Institution and what is the indicia to determine whether an educational institution is a Minority Educational Institution?

(3) Whether the decision of this Court in St. Stephens (1992 (1) SCC 558 : 1992 AIR SCW 1792) is right in saying that Article 30 clothes a Minority Educational Institution with the power to admit students by adopting its own method of selection and that the State or the affiliating University has no power to regulate admission of students to such Minority Educational Institution even while permitting the Minority Educational Institution to admit students belonging to the relevant minority to the extent of 50% of its intake capacity?

5. The Seven-Judge Bench met and after hearing the counsel for the parties, it re-framed the questions arising before it into seven questions on March 18, 1994. The seven questions framed by the larger Bench are :

"(1) (a) Where a religious or linguistic minority in state 'A' established an educational institution in the said State, can the member of that religious/linguistic group in State 'B' claim rights flowing from Art. 30 (1) of the Constitution of India in respect of the abovesaid educational institution established in State 'A'?

(b) Whether it would be correct to say that only the members of that minority residing in State 'A' will be treated as the members of the minority vis-a-vis such institution?

(2) What are the indicia for treating an educational institution as a minority educational institution? Would an institution be regarded as a minority educational institution only because it was established by a person(s) belonging to a religious or linguistic minority or it is being administered by a person(s) belonging to a religious or linguistic minority?

(3) Whether the minority's right to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of a student?

(4) Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Govt. or by the University to which the Institution is

affiliated?

(5) Whether the decision of this Court in *St. Stephens* is right in saying that Article 30 clothes a minority educational institution with the power to admit students by adopting its own method of selection and that the State or the affiliated University has the power to regulate admission of students to such minority educational institution even while permitting the minority educational institution to admit students belonging to the relevant minority to the extent of 50% of intake capacity. We make it clear that the percentage decided in *St. Stephens* case will equally be open for reconsideration.

(6) What is meant by the expression 'religion' in Article 30 (1) ? Can the followers of a sect or denomination of a particular religion claim protection under Article 30(1) on the basis that they constitute a minority in the State even though the followers of that religion are in majority in that State?

(7) What is meant by the expression 'language' in Article 30(1) ? Does it include a language which is not included in the Eighth Schedule to the Constitution?"

The Bench could not, however, complete the hearing, the matters remained part heard.

6. In view of the approaching Academic Year 1994-95, the larger Bench directed on April 5, 1994 that the interim order made by this Court for the year 1993-94 shall continue to govern admissions for the Academic Year 1994-95 as well, both M.E.Is. and others. The directions included the fees to be charged from the 'free' students and 'payment' So far as N.R.I. quota is concerned, while it was fixed at fifteen percent for the Academic Year 1993-94, it was fixed at ten percent for the Academic Year 1994-95.

7. In view of the fact that the Academic Year 1995-96 was commencing, certain institutions approached this Court again for appropriate directions. This Court directed that the orders made earlier with respect to Minority Educational Institutions shall continue to govern the admissions for the Academic Year 1995-96 as well. While so, the Karnataka Government brought about a change in law which has made several institutions to approach this Court again for appropriate directions. As is well-known, the bulk of these private professional colleges are situated in the State of Karnatak and to a lesser extent in Maharashtra. Private professional colleges are there in Tamil Nadu, Andhra Pradesh and other states as well but the problem now before us mainly concerns the States of Karnataka and Maharashtra. We shall first state the change in law brought about by the Karnataka Government in the matter of admissions to private colleges.

8. In the year 1984, the Karnataka Legislature had enacted the Karnataka Educational Institutions (Prohibition of Capital Fee) Act, 1984. Rules were made under this Act called "Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental Pharmacy and Nursing Courses Rules, 1993" on March 10, 1993. The rules contained inter alia the definition of "Karnataka students." The rules provided certain preference in favour of Karnataka students in the matter of admission to these professional colleges. By amendments effected on May 20, 1995,

however, two major changes were brought about, viz., (a) definition of "Karnataka student" was amended to read as follows :

(1) "Karnataka Student" means a student who has studied in one or more Government or Government recognised educational institutions located within the State of Karnataka for a minimum period of ten academic years (commencing from first standard to twelfth standard, both standards inclusive or qualifying examination, either continuously or in broken periods) as on first July of the year in which Entrance Test is held and has studied, appeared and passed the Secondary Leaving Certificate Examination or Tenth Standard Examination and the Second Pre-University Examination or the 12th Standard Examination in a Government or Government recognised educational institution located within the State of Karnataka."

and (b) Rule 5 was amended providing that all free seats shall be filled only by Karnataka students and that all payment seats, except as otherwise provided in the said Rules, shall be filled by Karnataka students only. The result of these amendments is that no non-Karnataka student can be admitted to these institutions- except perhaps the non-resident Indians and that too under and by virtue of the orders of this Court.

9. The educational institutions both belonging to minorities and others are complaining that all these years they were admitting students from all over the country, N.R.Is. and even foreign students and that the present restriction causes grave prejudice to them inasmuch as they will not be able to fill up all the payments seats. They submit that after the scheme in Unnikrishnan (1993 AIR SCW 863), was implemented, the Karnataka Government was allotting only Karnataka students against free seats while the payment seats were divided between Karnataka students and non-Karnataka students in a certain proportion, besides, of course, the N.R.I. quota. The Minority Educational Institution complain that they are entitled to admit students belonging to their minority community (whether religious or linguistic) from all over the country and that they cannot be confined to Karnataka alone. They point out that one of the questions before the seven-Judge Bench is whether a M. E. I. is entitled to draw students belonging to that minority from outside the State or whether it is restricted to that particular State alone. By amending the said Rules in the above manner, they complain, the Karnataka Government has preempted the answer to the question.

10. There is no change in law so far as State of Maharashtra is concerned. The Maharashtra Government has, of course, filed an application seeking specific directions from this Court with respect to the extent of N.R.I. quota for the Academic Year 1995-96 and with respect in the manner in which the M.E.Is. should be allowed to make admissions.

11. Pausing here we must mention a change in law brought about by the Regulations framed by the Dental Council under the Dentists Act, 1948. This change, of course, is relevant insofar as dental colleges alone are concerned. But having regard to the fact that there are a large number of dental colleges in Karnataka- and may be some in other States- this question has become relevant. In the year 1948, Dentists Act was enacted. By Amendment Act 30 of 1993, Section 10-A was

inserted providing that no new college or new course of study shall be opened except with the prior permission of the Central Government. Every person applying for such permission is obliged to prepare and submit a scheme in accordance with the provisions of Section 10-A. Section 20, of the Act permits Regulations to be made by the Dental Council with the approval of the Central Government, regulating inter alia the standards of examinations held in the dental colleges and also in particular to "(fa) prescribe the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of Section 10A," Accordingly, the Dental Council has framed Regulations on January 5, 1995, these Regulations are broadly modelled upon and incorporate the scheme contained in Unnikrishnan (1993 AIR SCW 863). The expression "competent authority" is defined in clause (b) of Regulation 3 of the following words :

"Competent Authority' means a Government or University or any other authority may be designated by the Government or the University or by law to allot students for admissions to various dental colleges in a State or Union Territory."

12. It is contended by Sri F.S. Nariman that once these Regulations are made, they alone govern the admissions to and fees payable in the dental colleges and that the Karnataka Rules aforesaid- and in particular the amended Rule 5 read with the definition of "Karnataka student"- cease to apply to them with effect from the said date. It is submitted that with effect from the date of the said Regulations, Karnataka Government has no power over the dental colleges. These submissions are disputed by the learned Advocate General of the Karnataka.

13. Over the last two years, several problems and difficulties in the matter of implementation of the said scheme were brought to our notice by the governments, managements, students and their parents. In particular, it was being complained that the gap in the fees paid by 'free students' and 'payment students' is too large and that contrary to the intention of the scheme, most of the boys from the well-to-do families were taking away free seats leaving the payment seats to students from the rural areas and backward communities. The managements also complained that the fees prescribed by this Court is not sufficient to meet the necessary expenditure. Keeping these representations in mind, we made the following order on April 27, 1995 suo motu :

"A Constitution Bench of this Court in Unnikrishnan J.P. v. State of A.P. (1993) 1 SCC 645 : (1993 AIR SCW 863), framed a Scheme regarding admission of candidates to the private professional colleges. In terms of the Scheme 50% seats were free seats and the remaining 50% seats have (?) were payment seats. By a subsequent order part of the payment seats were also allocated as NRI quota. The Scheme has now been operative for over two years. We would like to have the suggestions and comments from the State Governments and Union of India regarding the functioning of the Scheme. The concerned Ministeries of the Government shall indicate in case any modification/change in the working of the Scheme is required at this stage.

Copy of this Order be sent to the Advocate Generals of all the States. Attorney General of India. Indian Medical Council, University Grants Commission, Dental Council of India, All India

Council for Technical Education. The response of the above shall be filed before 31st July, 1995."

14. In response to the above order, some of the State Governments, statutory councils, managements, students and other interested persons have come forward with suggestions which may briefly be mentioned hereinbelow.

SUGGESTIONS :

15. The Karnataka Government has suggested that there should be a uniform method of admission to all the professional colleges irrespective of the fact whether they were established and maintained by a minority community or by others and that the scheme of admissions should be applied equally to deemed universities. In short, they want a uniform scheme of admissions applicable to all professional colleges. It is further submitted that the denial of discretion to the management in the matter of admission of students altogether has led to great resentment and lack of incentive in better management and improvement of the institutions. It is suggested that all the professional colleges should be permitted to @page-SC2435 admit N.R.Is./foreign students (and in case N.R.Is./foreign students are not available, students of their own choice) to the extent of twenty five percent of the intake capacity and the rest seventy five percent should be treated as free seats.

MAHARASHTRA :

The Maharashtra Government has suggested that the present scheme of fifty percent free seats and fifty percent payment seats may be modified to make it eighty percent free seats and twenty percent non-resident quota. It is submitted that admissions to both these quotas should be allowed to be made by the State Government alone and that the fees for twenty percent N.R.I. seats should be so fixed as to cover entire cost of running the college. It is also submitted that constitutional reservations be allowed to be made among the eighty percent free seats. Another suggestion made is that students coming from outside Maharashtra should be allowed to be charged higher fees than the Maharashtra students.

TAMIL NADU :

The Tamil Nadu Government has suggested that under the present scheme, students from rural background and poor classes are not able to get into merit seats. It has suggested that twenty five percent seats be reserved for N.R.Is./Management and the balance of seventy five percent seats should be allowed to be filled by the government as free seats. It has requested that the separate status for minority institutions permitting them to admit fifty percent of the students on their own may be abolished and that there should be a uniform pattern of admissions for all the professional colleges. It has pointed out that because of the special consideration shown to M.E.Is., a number of institutions are falsely claiming to be minority institutions only with a view to gain the advantage of fifty percent admissions on their own.

UNION OF INDIA :

The Union of Indian has filed an application seeking extension of time by six weeks on the ground that the suggestions formulated by the Ministry of Human Resource Development have been submitted to the Cabinet for its approval and that the Cabinet is likely to consider the same and take a decision in about six weeks.

UNIVERSITY GRANTS COMMISSIONS (U.G.C.) :

The U.G.C. has stated that because of certain legal difficulties, it could not evolve a fee structure or frame regulations governing the admissions to these professional colleges. It is stated that in any event regulations framed by A.I.C.T.E., M.C.A., and D.C.A. cover most of the field. It has requested the Court to empower it to frame regulations under Ss. 12 and 12A regulating the admissions and the fees to be charged in these colleges. It has sought a clarification whether the said scheme applies to deemed universities. It has also suggested that for generating additional resources the colleges may be permitted to admit more N.R.Is/foreign students against payment seats.

A.I.C.T.E. :

A.I.C.T.E. has stated that it has framed regulations as contemplated by this Court incorporating the scheme evolved in Unnikrishnan (1993 AIR SCW 863). It has suggested that the present fee structure should be revised and that the N.R.I. quota should be increased.

INTERVENORS :

A number of educational institutions have sought permission to intervene in the matter. They have made several suggestions. Broadly speaking, they want more discretion in the matter of admission of students, steep increase in the fees, hiking up of N.R.I. quota and so on. The fees it is submitted, should be 'need based' and fixed separately for each institution. Some of the M.E.Is. have asked for liberty to admit the entire hundred percent strength with the students belonging to the concerned minority. At the same time, Sri Nariman stated that the M.E.Is. should be made to admit the students belonging to the particular minority strictly in order of merit. Learned counsel did not plead for any discretion for the management of M.E.Is. in the matter of admission.

THE PRESENT STATUS:

16. The situation as on today is that in the State of Maharashtra, not only the common entrance test has been held and result published but the students have also been allotted against all the free seats. But for the clarification sought by the State Government with respect to N.R.I. quota, the allotment of payment seats would also have been completed by now. In Karnataka, common entrance test has been held confining it to Karnataka students alone and results have been published but no allotment has been made awaiting the orders of this Court. (Sri Rama Jois, learned counsel appearing for certain non-Karnataka students complaints that State Government is in truth colluding with the managements of professional colleges with a view to defeat the scheme framed by this Court and that while amending Rules on one hand restricting the

admissions to Karnataka students, the Government has permitted the managements to issue advertisements inviting @page-SC2436 applications for admission to these colleges to be submitted directly to them. Even the amendment of Rules in 1995 (referred to above), says Sri Jois, is in truth intended to allow these colleges to admit students of their choice directly since it is a well known fact that all the payment seats cannot be filled by Karnataka students.) So far as other States are concerned, precise information is not placed before us except to state that the process of admission is at various stages of finalisation.

17. In the above State of affairs, it is obvious, any major modification of the scheme in Unnikrishnan (1993 AIR SCW 863) can only be for the next academic year and onwards. The major demand of Karnataka and the Tamil Nadu Governments is for a uniform treatment of all professional colleges- whether established and maintained by minorities or by other- in the matter of admissions. This submission involves the question whether Art.30 of the Constitution stands in the way of such equal treatment. Several aspects of Art.30 are already pending before a large Bench as stated above. It is, therefore, not possible for us to make any such direction as prayed for by the said Governments. That can be done only by the larger Bench.

18. Moreover, admissions are already under way in several States in accordance with the said scheme, as modified by the subsequent orders of this Court referred to above. Regulations have been framed by the A.I.T.C.E., Dental Council and several State Governments on the basis of and in accordance with the said scheme. All of them cannot suddenly be suspended by us and at this point of time. It requires a much wider and more extensive hearing of all points of view and a deeper consideration of the suggestions of several Governments, councils, institutions and other before a definite opinion can be expressed. Need there certainly is for evolving a better and a fool proof scheme consistent with public interest. None before us, it may be noted, asked for a return to the situation obtaining prior to Mohini Jain v. State of Karnataka, (1992) 3 SCC 666 : (1992 AIR SCW 2100) and Unnikrishnan (1993 AIR SCW 863).

19. There is yet another consideration. Since the aforesaid decisions of this Court, the outlay in education has been raised substantially; we are told that as a percentage of G.D.P., it has almost been doubled. We need not emphasis the fundamental significance of investment in education. It is, therefore, time that the Governments and public financial institutions involve themselves more actively in promoting education.

20. We have also taken note of the grievance relating to the gap between the fees payable by the "free student" and "payment student" and the uniform demand for increasing the N.R.I./foreign students quota. Hence the following directions, confined no doubt to Academic Year 1995-96 only and limited to medical and dental colleges only :

(1) So far as N.R.I. quota is concerned, it is fixed at fifteen percent for the current academic year. It shall be open to the management to admit N.R.I. students and foreign students within this quota and in case they are not able to get the N.R.I. or foreign students up to the aforesaid specified percentage. It shall be open to them to admit students on their own, in the order of

merit, within the said quota. This direction shall be a general direction and shall operate in the case of all the States where admissions have not been finalised. It is, however, made clear that by virtue of this direction, no student who has already been admitted shall be disturbed or removed.

(2) So far as Minority Educational Institutions are concerned, the orders made on August 18, 1993 shall continue to govern them for this academic year. This shall also be a general direction applicable to all States. It is made clear that the above direction applies equally to colleges in Maharashtra imparting 'unani' medicine courses.

(3) So far as State of Karnataka is concerned, the following additional directions are made :

(a) The restriction placed by the 1995 amendment to the Karnataka Selection of Candidates for Admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses Rules, 1993, viz., that only Karnataka students (as defined by the said Rules) shall be admitted against the payment seats shall not operate for the current academic year. Among the fifty percent payment seats, we have allocated fifteen percent to N.R.I./foreign students [direction (1)]. Out of the balance thirty-five percent seats, twenty percent shall be reserved for Karnataka students and remaining fifteen percent for non-Karnataka students- as was done during the previous academic year. The admission of Karnataka students against the payment seats shall be made in accordance with the scheme framed in Unnikrishnan (1993 AIR SCW 863) out of the students who have appeared in the entrance test already held. If any of the seats in this twenty percent remain vacant, they shall be added to the fifteen percent quota of non-Karnataka students and shall be filled in accordance with C1. (b) below.

(b) Since there is no sufficient time left for @page-SC2437 conducting a fresh common entrance test for non-Karnataka students for admission to the aforesaid fifteen percent seats specified in C1. (a) above, the following direction is made : a press note shall be issued by the Government of Karnataka on or before August 15, 1995, to be published in all the national dailies, calling for applications from non-Karnataka students for admission to payment seats in private medical and dental colleges in Karnataka, to be submitted on or before fifth day of September, 1995. The applications shall be accompanied by the Memorandum of marks in the qualifying examination, apart from other relevant documents. All the applications so received shall be tabulated and admissions made on the basis of merit determined on the basis of the marks obtained by them in the qualifying examination. The students admitted shall remit the requisite fee, as specified hereinbelow, within ten days of the order of allotment. The remitting of amount by the students into the Government account in the specified Bank or the Government treasury, as the case may be, shall be treated as acceptance of allotment of seat by the student and the same shall be binding upon all concerned.

(c) All free seats, hereinafter to be called "merit seats" shall be reserved for Karnataka students. Allotments against these free/merit seats and the payment seats meant for Karnataka students shall be completed on or before September 16, 1995. The allotment of seats to non-Karnataka students shall be completed on or before 9th day of October, 1995. Any seats

remaining unallotted after that date or remaining unfilled as on 30th October, 1995 shall be allowed to be filled by the Management on its own.

FEE STRUCTURE :

So far as fee structure is concerned, the following orders are made in respect of the medical colleges and dental colleges for the current academic year :

(A) The fee payable by the students allotted against free seats which may hereafter be designated as merit seats, shall be Rupees twenty thousand per annum. The fee payable by the payment student is fixed at Rupees seventy five thousand. Rupees seventy thousand and Rupees sixty five thousand per annum respectively. In other words, in respect of colleges having their own hospitals, the fee shall be Rupees seventy five thousand per annum, in respect of colleges which partly depend upon Government hospital and partly upon their own facility shall be Rupees seventy thousand per annum and in respect of colleges which depend wholly upon Government hospitals, the fees shall be Rupees sixty five thousand per annum.

So far as dental colleges are concerned, the fees shall be Rupees fifteen thousand per annum for free/merit seat and Rupees fifty thousand per annum for payment seats respectively.

(B) The Central Government shall provide a subvention of Rupees five thousand per annum in respect of every student admitted in a private medical college, whether admitted against free/merit seat or against a payment seat, but not in respect of a student admitted against N.R.I./foreign student quota specified above. The subvention shall be made and continued until the student completes the course or for a period of five years whichever is earlier. The subvention amount by the Central Government shall be sent directly to the concerned college, towards fee, every year, commencing with Academic Year 1995-96. This direction shall be subject, of course, to the directions that be issued by the larger Bench.

(C) The Reserve Bank of India is directed to evolve a scheme for extending study loans to the students studying in medical and dental colleges in private professional colleges. This direction is made after hearing Sri Harish Salve, for the Reserve Bank of India, to whom we had given a notice for this purpose. For this purpose, the study loans shall be deemed to be in the priority sector and shall be dealt with as a category under 'Differential Rate Interest'. Pending the evolving of such a scheme, the following direction is made for this academic year and the Reserve Bank of India is requested to issue appropriate directions to Nationalised Banks forthwith, not later than ten days.

So far as free/merit students are concerned, they shall be given a loan of Rupees fifteen thousand for the Academic Year 1995-96 on production of (i) a certificate from the concerned medical/dental college that he is admitted against a free seat, (ii) an affidavit by the student and his father (in the absence of the father, by mother or other near relative) that the total annual income of students' family does exceed Rupees fifty thousand a year and (iii) a bond executed by the student (and in case he is a minor by his father/mother or the guardian) undertaking to repay the

loan in five equal annual instalments commencing from two years after completion of the course he is studying, or within one year of his obtaining employment, whichever is earlier. No security need be insisted upon. The amount of loan shall be remitted directly to the college concerned. The free/merit students shall pay the fees now fixed or the difference between the existing fee and the fee now fixed within one month of their admission. @page-SC2438

So far as payment students are concerned, a loan upto Rupees fifty thousand may be extended to them on the same terms but on further condition that they furnish adequate security to the satisfaction of the Bank for the loan advanced.

So far as engineering and other colleges are concerned, the rules, regulations and orders made by the concerned council, Government and this Court shall continue to govern for this academic year. There shall be change insofar as these colleges are concerned. In short, the position obtaining in the Academic Year 1994-95 shall apply and continue for Academic Year 1995-96. The allotment of students to these colleges shall be completed by September 30, 1995. Any seats remaining unallotted- or any seats remaining unfilled on or after 16th October, 1995 shall be allowed to be filled by the Management.

21. Insofar as the suggestion of Karnataka, and Tamil Nadu Governments for uniform system of admissions to private colleges and for equal treatment of all professional colleges- irrespective of the fact whether they are M.E.Is. or not- is concerned, it involves the issue whether Art. 30 stands in the way of equal treatment of M.E.Is. and other similarly placed educational institutions not established by the minorities. This question cannot be considered by us. It can be done only by the larger Bench. Similarly, the request of Maharashtra and Tamil Nadu Governments to introduce the system of only two categories (free seats and N.R.I. seats in the proportion of 80 : 20 or 75 : 25, as the case may be) cannot be considered by us but only by a larger Bench (of seven Judges) in view of the fact that decision in Unnikrishnan (1993 AIR SCW 863) was rendered by a Bench of five Judges. There is yet another circumstance : the Government of India is yet to come forward with its suggestions in the matter, as stated above. After the suggestions of the Government of India are received appropriate orders have to be made to be effective for the next academic year onwards. We are also of the opinion that so far as the final adjudication of the several issues indicated hereinabove are concerned, it has to be done by a larger Bench as indicated above. The questions posed before the seven Judge Bench too have to be answered. The scheme framed in Unnikrishnan (1993 AIR SCW 863) may also have to be reconsidered/modified.

22. The Hon'ble Chief Justice may consider constituting a Bench of seven Judges for considering and deciding the above issues.

Order accordingly.

T.M.A. Pai Foundation and others

Vs
State of Karnataka and Others

CASE NUMBER

Suo Motu Contempt Petn. In I.A.No. 18 of 1994

EQUIVALENT CITATION

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1995-(004)-JT-0624-SC

CORAM

Kuldip Singh
S. C. Agarwal
B. P. Jeevan Reddy

DATE OF JUDGMENT

10.05.1995

JUDGMENT

B. P. JEEVAN REDDY, J. :

1. The present proceedings for contempt of this Court were initiated suo motu when it was brought to our notice that the Government of Maharashtra has framed rules regarding admission to medical, dental and engineering courses reserving fifteen percent seats for NRIs/Foreign students contrary to the orders of this Court dated April 5, 1994 and May 13, 1994. In response to the notice, an affidavit sworn to by Sri Arvind Choudhari, Under Secretary, Medical Education and Drugs Department, Government of Maharashtra was filed stating that the said rules were framed after obtaining the opinion of the Law and Judiciary Department to the effect that the number of seats permitted to be filled by NRIs. for the academic year 1994-95 under the orders of this Court is fifteen percent. On the basis of the said opinion, it was stated, the earlier orders fixing the said quota at ten percent were revised to fifteen percent. After perusing the said

affidavit, this Court expressed a tentative view that there has been "an obvious attempt at overreaching the orders of this Court" and accordingly, issued notice to the Secretary/Officer concerned in the Law and Judiciary Department who has tendered the said opinion to show cause why contempt proceedings be not initiated against him. The Principal Law Secretary to the Government of Maharashtra was directed to identify the officer/Secretary with reference to records-vide orders dated 24th October, 1994.

2. Pursuant to the orders October 24, 1994, Sri Prabhakar Shivaji Mane, Secretary to the Government, Law and Judiciary Department filed an affidavit stating the following facts : he was appointed as a Civil Judge in the year 1978 and promoted as a District Judge in 1988. For two years, he worked as Additional Registrar, Bombay High Court. In May, 1992, he was deputed to the Government of Maharashtra and appointed as Secretary in the Law and Judiciary Department. By the time of the said posting, he had "very little experience of dealing opinion work". On June 7, 1994, he received a Memo from the Under Secretary, M.W. & D.D. raising doubts as to the quota of NRI for the academic year 1994-95. He examined the matter with reference to the orders passed by this Court and came to the conclusion that the permitted quota for NRI is fifteen percent for the academic year 1994-95. Sri Mane stated, "I admit that there was some confusion in my mind as a result of reading the order of 13th May, 1994 with the previous orders of this Hon'ble Court dated 5th April 1994. I respectfully submit that this was a bona fide error on my part..... I now realise that I should have been more careful in this matter but there was no intention on my part to over reach and flout the orders of this Hon'ble Court or to give any wrong advice to the Department". Sri Mane enclosed to his affidavit the Memo received by him from the Medical Education Department. The Memo states that reading the orders of this Court dated 5th April, 1994 with the order dated 13th May, 1994 "it gives an impression that the NRI quota has been continued to be fifteen percent. The Law and Judiciary Department was asked to give its opinion on the issue. The memo is dated June 7, 1994. It is signed by Sri Arvind Choudhari, Under Secretary and Capt. Shaikh, Deputy Secretary. On the very next day, i.e., June 8, 1994, Sri Mane expressed his opinion in the following words : "In view of above interpretation, it is clear that the view of ME & DD that the NRI quota is 15% in respect of institutions other than minority institution and in cases of minority institutions it is raised to 10% is correct". The reasoning in support of the said opinion is not only involved and confusing but is now admitted to be erroneous. We, therefore, think it unnecessary to refer to or set out the said reasoning.

3. After perusing the affidavit of Sri Mane, this Court issued notices to Sri Arvind Choudhari, Capt. Shaikh and Sri B. G. More (Principal Secretary to Law and Judiciary Department) to show cause why contempt proceedings be not initiated against them. Capt. Shaikh stated in his affidavit that on June 2, 1994 the Government has issued orders fixing the NRI quota at ten percent as per the orders of this Court dated April 5, 1994 and May 13, 1994. Later however, the Maharashtra Association of professional Education Institutions, said to be a representative body of private colleges for medical and engineering courses, submitted a representation on June 6, 1994 (addressed to the Chief Minister of Maharashtra) contending that the NRI quota, according to the orders of this Court, is fifteen percent. On receipt of the said representation, officers of the

Medical Education Department also entertained a doubt regarding the interpretation given to the orders of this Court and hence addressed the Memo dated June 7,1994 (Signed by Sri Arvind Choudhari and himself) to the Law Department. On receipt of the opinion of the Law Department, revised orders were issued on June 9,1974 raising the NRI quota to fifteen percent.

4. Sri Bhimrao Ganpatrao More, Principal Secretary and Remembrancer of Legal Affairs to the Government of Maharashtra, Law and Judiciary Department has also filed a separate affidavit stating that since the creation of the post of Secretary and Senior Legal Advisor to Government, the opinion work is being looked after mainly by the said officer and that at the relevant time Sri Mane was holding the said post. He stated that after recording his opinion Sri Mane referred the file to him for confirmation of his opinion and that he perused the file including the said opinion and agree with the same. Accordingly, he endorsed "I agree" on the said opinion. He submitted that he now realises that his understanding of this Court's order was wrong but, he says, the error was bona fide. Sri Arvind Choudhari has filed an additional affidavit practically on the same lines as his previous affidavit.

5. With a view to acquaint ourselves with all the relevant facts, we called upon the learned counsel for the State of Maharashtra to produce the files relevant to the Order dated June 9,1994. The files were accordingly produced, on perusing which a notice was issued to Mrs. Joyce Sankaran, Secretary in the Medical Education Department, Government of Maharashtra to show cause why she should not be punished for contempt of this Court for violating the Order dated May 13,1994. Pursuant thereto, Smt. Joyce Sankaran has filed an affidavit, which we have perused. We also heard Sri Andhyarujina afresh on her behalf. In her affidavit, she has stated inter alia, "it was with my knowledge and consent that this action of seeking the opinion of Law and Judiciary Department in this matter was taken". She has also stated and the file shows that the corrigendum was issued on 9th June with her knowledge and consent.

6. The order dated April 5, 1994 made by a Seven-judge Bench of this Court was con-fined to Minority Educational Institutions. The order states so at more than one place. Under this order, it was directed that "in so far as non-resident Indians and foreign students are concerned, the permissible limit would be only 5 percent of the total intake for a given year as per the direction contained in paragraph 6 of the order dated May 14,1993, as modified by order dated August 18,1993....."

7. The order dated May, 13,1994 deals with two aspects, viz., (a)fee structure in medical and dental colleges and (b) the NRI quota in these colleges. So far as NRI quota is concerned, the relevant paragraph reads as follows :

"So far as the NRI quota is concerned, we fixed the same as 15 per cent last year. We fixed the NRI quota in respect of minorities institutions as 5 percent. Although the NRI quota should not, normally, be more than 5 per cent, but keeping in view the reduction in the fee structure, we fix the same as 10 per cent (of the total seats) for this year. We further make it clear that in case any seat in the NRI quota remains unfilled, the same can be filled, by the management at its

discretion."

8. One fails to understand how the said direction in the order dated May 13, 1994 could be misunderstood by anyone. There was no question of any doubt arising as to its meaning nor did it call for any interpretation. The order clearly states these facts: for the previous year, the NRI quota was fixed at fifteen percent; for the minority institutions, it was five percent; though NRI quota should not normally exceed more than five percent but since this Court has reduced the fee structure, the said quota is fixed "as 10 per cent (of the total seats) for the year". Even if, this order is read with the direction (extracted hereinabove) in the order dated April 5, 1994, it is difficult to see how it leads to the conclusion that the said quota is fifteen percent. Firstly, as stated above, the order dated April 5, 1994 was confined to Minority Educational Institutions and it permitted only five percent which fact was referred to specifically in order dated May 13, 1994. Having further noted the fact that the N.R.I. quota fixed for the previous year was fifteen percent (and for M.EIs only five percent) the order dated May 13, 1994 stated that though N.R.I. quota should not normally be more than five percent, yet in view of the reduced fee structure provided in the order, the N.R.I. quota is being fixed at ten percent. It is thus evident that a doubt was sought to be created where there was no room for any doubt. It is equally clear that the doubt was inspired by the Association of Private Medical and Dental Colleges. The sequence of events speaks for itself. On June 2, 1994, the Government had issued orders, correctly fixing the N.R.I. quota at ten percent on the basis of the order of this Court dated May 13, 1994; on June 6, 1994, however, the Association of Private Medical college makes a representation that according to the orders of this Court, it should be fifteen percent; immediately, the Medical Education Department changes its opinion; now it says "(H)owever, after reading the Supreme Court judgment dated April 5, 1994 with judgment dated May 13, 1994, it gives an impression that the N.R.I. quota has been continued to be fifteen per-cent. But in case of Minority Educational Institutions, it is raised to ten percent; on the very next day, i.e. June 7, 1994, the Medical Education Department sends a Memo to the Law Department seeking its opinion on the issue; on the immediately following day, i.e., June 8, 1994 both Sri Mane and Sri More express their opinion and on the following day, i.e., June 9, 1994 a corrigendum is issued by the Government of Maharashtra to the earlier orders dated June 2, 1994 raising the quota from ten percent to fifteen percent. The extraordinary speed with which the representation of the Association of Private Medical Colleges was processed should stand as a shining example of the speed with which the Government works. How one wishes, representation of ordinary mortals are also dealt with equal despatch. Be that as it may, by the time the matter was brought to the notice of this Court, admissions were made and completed in accordance with the said revised quota and we were confronted with a fait accompli. The students so admitted in excess of ten percent also came before us (pursuant to the notices issued by us) pleading that they are innocent parties in the entire transaction and that they have bona fide obtained admission after paying substantial amounts by way of consideration for obtaining admission. It is common knowledge that each seat under this quota is sold for huge sums, not all accounted for and not all in Indian currency.

9. On a consideration of all the relevant facts and circumstances, we find no room for a bona

vide error on the part of the officers concerned, viz., Sri Arvind Choudhari, Under Secretary, Capt. Sheikh, Deputy Secretary, Medical Education Department, Smt. Joyce Sankaran, Secretary to the Medical Department and Sri Mane and Sri More, Secretary and Principal Secretary respectively of Law Department. The Government, which means the Medical Education Department in this case, had issued orders on June 2, 1994 correctly stating that the quota for N.R.I.s in medical and dental colleges in ten percent. But when the Association of Private Medical Colleges made a representation on June 6, 1994, things started moving. The very officers who had issued orders only four days ago (June, 2, 1994) fixing N.R.I. quota at ten percent on the basis of the orders of this Court dated May 13, 1994, now read that very order-in particular, the paragraph quoted herein-above-as providing for fifteen percent. They write to Law Department for their opinion as to the correctness of their revised reading of this Court's orders and it is promptly affirmed by the law Department. In the course of three days, the earlier decision was revised on an ex-facie faulty-and we are inclined to say, deliberately distorted-interpretation of the orders of this Court and a corrigendum issued as desired by the Association of Private Medical Colleges. We are particularly pained by the role played by Sri Mane and Sri More in this matter. They are judicial officers of long standing. They have decades of judicial experience behind them. It is difficult to believe that they could make any mistake in understanding the orders of this Court which are worded in simple and unambiguous language. The least they could have done was to advise the Government to move this Court for a clarification. It is clear that these two officers of the law Department lent themselves as willing tools for achieving the illegitimate design of the Association of Private Colleges actively abetted by the Medical Education Department. If the said two judicial officers of such long standing cannot properly understand the short and clear order made by this Court on May 13, 1994, it is difficult to believe how they had been understanding the judgments of this Court and of the High Courts while performing their judicial duties all these years. We are, therefore, inclined to reject their explanations offered by Sri Arvind Choudhari, Capt. Sheikh and Smt. Joyce Shankaran. So far as Smt. Joyce Sankaran is concerned, we were told by Sri Andhyarujina that a copy of the representation of the Association was filed before her and that she had sent it down to Sri Arvind Choudhary. She has herself admitted that whatever Sri Choudhary and Capt. Sheikh did was done with her knowledge and consent. Interestingly, Smt. Joyce Sankaran has also offered an explanation for the unusual speed which the representation of the Association was processed. She has stated : "(A)s the printing the admission forms was in progress and the admission had to be stated, the matter was considered urgent and on 8th June, 1994, Sri P.S. Mane.... was requested to give his opinion on this issue early." This reason for urgency is not mentioned in the letter dated 7/8th June, 1994 nor has it been mentioned earlier by any other officer. The letter addressed to Law Department merely stated at the end : "Law and Judiciary Department is requested to give its opinion on this issue at the earliest"- an expression that did not convey the extraordinary urgency which was indeed exhibited in processing it. Be that as it may, we are of the opinion that Smt. Jyoce Sankaran, being the Head of the Department and a senior and experienced officer, ought to have scotched the exercise at the very inception. Instead of doing that she, on her own statement, was party to the revised- and in our opinion, distorted- reading and understanding of this Court's order and also responsible for issuing the

corrigendum. It cannot be forgotten that it was herself and the Deputy and Under Secretary of her Department that entertained the "impression" that the N.R.I. quota has been continued at fifteen percent(as against their earlier presumption that it was ten percent) and asked for the opinion of the Law Department.

10. All the five officers, viz., Sri Arvind Choudhary, Capt. Shaikh, Smt. Joycce Sankaran, Sri P. S. Mane and Sri B. G. More, have no doubt tendered unqualified apology to this Court but in the fact and circumstances stated above, it would be a travesty of justice to accept the same. They are senior and experienced officers and must be presumed to know that under the constitutional scheme obtaining in this country, orders of this Court have to be obeyed implicitly and that orders of the apex Court- for that matter, any Court- should not be trifled with. We have found hereinabove that they have acted deliberately to subvert the orders of this Court, evidently at the instance of the Association of Private Medical colleges. It is equally necessary to erase an impression which appears to be gaining ground; that the 'mantra' of unconditional apology is a complete answer to violations and infractions of the orders of this Court.

11. Accordingly, we reject the 'unconditional apology' tendered by the five officers, hold them guilty of contempt of Court and do hereby censure their conduct. A copy of this Order shall form part of the Annual Confidential Reports/record of service each of the said officers.

12. The contempt matter is disposed of accordingly.

Order accordingly.