

**(1998) 02 AP CK 0060**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 23006 of 1996 and Batch

B. Venkata Prashant

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

**Date of Decision :** 16-02-1998

**Acts Referred:**

All India Council for Technical Education Act, 1987 — Section 10  
Andhra Pradesh Education Act, 1982 — Section 44  
Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 2, 3(2), 4(1), 5, 7  
Andhra Pradesh Legislature (Prohibition of Capitation Fee) (Amendment) Act, 1992 — Section 3  
Constitution (Forty-Second Amendment) Act, 1976 — Section 57  
Constitution of India, 1950 — Article 14, 15(4), 16, 162, 19(1)  
Government of India Act, 1935 — Section 100(1)  
Universities Act, 1904 — Section 20, 22, 23

**Citation :** (1998) 2 ALD 343

**Hon'ble Judges :** B.S.A. Swamy, J

**Bench :** Single Bench

**Advocate :** Mr. C. Kodanda Ram, for the Appellant; Government Pleader for Higher Education, Mr. T.S. Harinath and Mr. P.V.R. Sharma, for the Respondent

## Judgement

1. In this batch of writ petitions the constitutional validity- of clause III in para No.2 of G.O. Ms. No-256, Education (EC-2) Department, dated 17-11-1993, as reiterated in clause (c) of para No.4 of G.O. Ms. No.379, Education (EC-2) Department, dated 9 5-10-1995, whereunder the minimum qualification for admission of local candidates into professional courses in lieu of Non-Resident Indian/Foreign Students (for short NRI) is prescribed as 1st class in Intermediate examination or equivalent examination and also in the concerned group, is assailed on various grounds. It is useful to extract both the clauses for better appreciation of the case, respectively:

(1) G.O. Ms. No.25G, Edn. (EC-2), Dept., dated 17-11-1993.

"x x x. In the light of representations received, Government have reconsidered

the question of fixation of fees to be charged to the candidates who will be admitted in lieu of Non-Resident Indians/ Foreign students. Keeping in view of the differential economic levels of Non-Resident Indians/Foreign students and Indian students and at the same time the need to maintain a distinction between candidates allotted by competent authority for payment seats by virtue of the common entrance test and candidates selected by managements without common entrance test, and also the need to maintain minimum academic standard, Government issue the following orders in partial modification of Government order 3rd read above.

(i) A fee of Rs.75,000/- per (academic year) (Rupees seventy five thousand only) shall be collected from the candidates admitted in lieu of Non-Resident Indian/ Foreign students.

(ii) The minimum qualification for the candidates to be admitted in lieu of Non-Resident Indian/Foreign Students is 1st class in Intermediate examinations or equivalent examination and also in the concerned group.

(iii) Since the managements are free to fill up the seats under 15% quota, the reservation would apply to balance 85% of the seats."

G.O. Ms. No.329, Edn. (EC-2), Dept., dated 5-10-1995, para 4:

"x x x x, In case, NRI/Foreign students are not available to fill up all the seats within the said 5% meant for them, it shall be open for the managements to admit other students within the said quota. It will not be necessary that the students admitted against the said 5% quota should be allottees from the competent authority or that they should have appeared for the EAMCET. However, they shall satisfy the eligibility criteria for admission mentioned in G.O. Ms. No.256 Edn, dated 17-11-1993. The fees chargeable will be as indicated in G.O. Ms. No.304, Ed., dated 30-12-1993."

In G.O. Ms. No.304, dated 30-12-1993, the yearly tuition fee payable by these candidates was further slashed down by Rs.50,000/-

2. The arguments on behalf of the petitioners in this batch of writ petitions were advanced by Sri P. Gangaiah Naidu and Sri C. Kodanda Ram. Sri S. Satyanarayana Prasad, Government Pleader for Higher Education countered their arguments. From the pleadings and the arguments advanced across the bar, the following issues are settled for adjudication

(1) The first and foremost contention urged on behalf of the petitioners is with regard to the legislative competency of the respondents in issuing the impugned G.O. i.e., G.O. Ms. No.256, dated 17-11-1993.

In other words, it is the contention of the petitioners that the State Government is not competent to issue such an order in relation to the subjects included in List I of Schedule VII and the Parliament alone is having exclusive power to make laws with respect to any of the matters enumerated in List I of Schedule VII

under Article 246(1) of the Constitution of India. Hence, the impugned GO. is a nullity in the eye of law.

(2) Even assuming without admitting that the impugned G.O. is not hit by the principle of occupied field, the same is repugnant to Section 10(o) of AICTE Act, 1987.

In other words, it is the contention of the petitioners that any guidelines for admission of students to technical institutions and Universities imparting technical education vests with the Council constituted under the Act and the action of the respondents in prescribing 1st class in Intermediate examination or equivalent examination as minimum qualification for admission under NRI quota, is repugnant to the said clause and as such it cannot be given effect to.

(3) The action of the respondents in prescribing 1st class in Intermediate examination as a minimum qualification for admission to professional courses under NRI quota results in hostile discrimination against this class of students (a) as no such qualification is prescribed for the students who are seeking admission through entrance test, (b) It is their further contention that no such minimum qualification was prescribed for admission under NRI quota in any of the technical institutions in other States and the same offends equality clause as enshrined under Article 14 of the Constitution of India

(4) The source of power to issue the impugned order by the respondents is not traceable to any statute or rules. Even assuming that the Government is having power, the same was not done in accordance with law and procedure.

(5) Alternatively, it is the contention of the petitioners that the respondents are not competent to issue the impugned G.O. in exercise of their executive power under Article 162 of the Constitution of India

(6) If the Court do not find substance in any of the grounds raised by the petitioners, their admission to engineering course may not be disturbed as most of them are on the verge of completing their courses.

3. Before taking up the issues for adjudication, a brief historical background is necessary to understand the scope of controversy involved in this batch of writ petitions.

Before 42nd Amendment of the Constitution came into force on 3-1-1997, education was a State subject. Entry 11 of List II of the Seventh Schedule as it stood then read as follows;

"" Education including Universities, subject to the provisions of entries 63,64, 65 and 66 of List I and entry 25 of List IE. Entries 63, 64, 65 and 66 of List I of Seventh Schedule read as follows:

63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the University established in pursuance of Article 371E, any other institution declared by

Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65. Union agencies and institutions for-

(a) professional, vocational or technical training, including the training of police officers; or

(b) the promotion of special studies or research; or

(c) scientific or technical assistance in the investigation or detection of crime.

66. Co-ordination and determination of standards in institutions for higher" education or research and scientific and technical institutions.

Entry 25 of List III of Seventh Schedule read as follows:

"Vocational and technical training of labour".

4. By Section 57 of the Constitution (Forty Second Amendment) Act, 1976, which came into force on 3-1-1997, Entry 11 of List II of the Seventh Schedule was omitted from the State List and the following entry was substituted as entry 25 of List III of the Seventh Schedule;

"Education, including technical education, medical education and Universities, subject to the provisions of entries 63,64,65 and 66 of List I; vocational and technical training of labour."

5. For the first time in 1982, higher education in the State was brought under the preview of the A.P. Education Act (Act 1 of 1982), with a view to reform, organise and develop the educational system consistent with national policy. In fact, all levels of education from primary to professional were brought within the purview of this legislation. Section 44 of the Act prohibited collection of capitation fee. As all other provisions are not germane to the issue, the same are not referred to.

6. In 1983, the A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (Acts of 1983) (for short "Prohibition of Capitation Fee" Act") was enacted by the State Legislature. The main objective in enacting this law was to regulate the admission and prohibition of collection of capitation fee. The preamble, to this Act says that the capitation fee is an undesirable practice contributing to large" scale commercialisation of education and so, "it was considered necessary to effectively curb this evil practice in order to avoid frustration among the meritorious and indigent students and to maintain excellence in standards of education."

7. Some of the important provisions of the Act are referred hereunder:

Section 2(b) defines capitation fee as an amount collected in excess of the fee

prescribed u/s 7, Under clause 2(c), an educational institution is defined as an institution whether managed by the Government, private body or local authority or University and carrying on the activity of imparting education whether technical or otherwise. u/s 3, admission into educational institutions shall be made either on the basis of marks obtained in the qualifying examination or on the basis of the ranks assigned in the entrance test conducted by such authority and in such manner as may be prescribed, provided admission to medical and engineering colleges shall be made only on the basis of ranks assigned in a common entrance test conducted as aforesaid. u/s 3(2), admission to these institutions shall be subject to the rules made by the Government in regard to reservation of seats to the members belonging to Scheduled Castes, Scheduled Tribes, Backward Classes. u/s 3(3), the Government is empowered to admit students belonging to other States on reciprocal basis and the nominees of the Government of India shall be admitted into medical and engineering colleges in accordance with such rules as may be prescribed.

8. But, across the bar, the Government Pleader for Higher Education, categorically asserted that no students are being admitted on reciprocal basis in this State though such a provision is made in the enactment.

9. Section 4, makes special provision in case of minority educational institutions. u/s 4(1), any minority educational institution is empowered to admit students belonging to the concerned minority whether based on religion or language, on the basis of marks obtained both in the qualifying examination or as the case may be on the basis of ranking assigned to them in the entrance test conducted in the prescribed manner. u/s 4(2), if any minority educational institution intends to admit students not belonging to the concerned minority, such admission shall be only on the basis of marks obtained in the qualifying examination or as the case may be on the basis of ranking assigned in the entrance test conducted in the prescribed manner.

10. The sum and substance of this section is that while the minority institutions are permitted to admit students belonging to the concerned minority, whether based on religion or language, to an extent of 50% of the total intake of the students, on the basis of the marks obtained by the students in the qualifying examination or on the basis of ranking assigned to them in the entrance test conducted in the prescribed manner and if the minority institution intends to admit students not belonging to the concerned minority, such admission shall be on the basis of the marks obtained in the qualifying examination or on the basis of the ranking assigned in the entrance test conducted in the prescribed manner.

11. Under Sections, collection of capitation fee by any educational institution or by any person who is incharge or is responsible for the management of the institution is totally prohibited. u/s 7, the Government is competent to issue a notification regulating the tuition fee or any other fee that may be levied or collected by "any educational institution in respect of each class of students and when once such notification is issued, no educational institution shall collect any

fee in excess of the fee notified by the Government apart from issuing official receipt for the fee collected by them.

12. Prohibition of Capitation Fee Act, 1983, was amended by Act 3 of 1984 by introducing Section 4(a), whereunder a special provision was made in respect of NRI students. Under this Section, it is lawful to the Government to admit students into medical colleges established for the purpose in accordance with such rules as may be prescribed on payment of such sum as may be notified by the Government in this behalf. The monies collected from the NRI students have to be credited to the Medical Education Fund, which has to be operated by a Committee consisting of such number of persons and in such manner as may be prescribed. All monies belonging to the said fund shall be deposited in such bank or treasury or be invested in such securities in accordance with such guidelines as may be issued by the Government in this behalf and shall be applied and expended for the improvement of the said college and the development of the Medical Educational facilities and such other related purposes as may be prescribed. Under explanation to this Section, an NRI student means a student of Indian origin residing in any country outside India.

13. The above Section came into force on 27-07-1983. But, at the same time, the Government did not take any decision with regard to allocation of seats to NRI students in professional colleges.

14. At this stage, it is useful to note that developments that have taken place at the level of Apex Court and the directions given by the Court under which the allocation of seats under the NRI quota became reality. In *Miss. Mohini Jain Vs. State of Karnataka and others*, the Supreme Court was called upon to decide whether the annual tuition fee charged at Rs.60,000 from students outside the Karnataka State u/s 5(1) of Karnataka Educational Institution (Prohibition of Capitation Fee) Act of 1984, can be considered as tuition fee or Capitation fee. Ms. Mohini Jain, a student who was allotted a seat in a private medical college and who was asked to pay Rs.60,000 towards tuition fee for the 1st year and furnish bank guarantee in respect of remaining years, filed a petition under Article 32 of the Constitution, of India, challenging exorbitant tuition fee different from the students other than those admitted to the Government seats. Kuldeep Singh, J. speaking for the Bench observed that Rs.2,000 fixed as tuition fee per annum for the students admitted on merit should be reasonably accepted for imparting medical education in the State, and observed as follows:

"Therefore, the tuition fee by a student admitted to the private medical college is only Rs.2,000/- per annum. The seats other than the "Government seats" which are to be filled from outside the State the management has been given free hand where the criteria of merit is not applicable and those who can afford to pay Rs. 60,000/-per annum are considered at the discretion of the management. Whatever name one may give to this type of extraction of money in the name of medical education it is nothing but the capitation fee. If the State Government fixes Rs.2,000/- per annum as the tuition fee in Government colleges and for

"Government seats" in private medical colleges then it is the State responsibility to see that any private college which has been set up with Government permission and is being run with Government recognition is prohibited from charging more than Rs.2,000/- from any student who may be resident of any part of India"

Certain observations made by their Lordships on the functioning of the private educational institutions and capitation fee are worth repeating and are repeated in this judgment. In para 15 their Lordships observed as follows:

"it is common knowledge that many of the newly started medical colleges charge huge capitation fees. Besides, most of these are poorly equipped and provide scanty facilities for training of students. At best such institutions can be termed as "Teaching Shops". Experience has shown that these colleges admit students who have been unable to gain admission in recognised medical colleges. The result is a back door entry into medical training obtained solely by the ability to pay one's way through. Even the advice of the Medical Council of India is sidelined in many such cases. The Government must resist all pressures to allow this practice to continue. Admission to medical colleges bought by paying capitation fees must be stopped forthwith and all such existing institutions required to strictly adhere to the Medical Council of India Rules."

Having referred to some of the decisions of the Supreme Court that an arbitrary action is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Relying on a judgment of the Supreme Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, , their Lordships held that the capitation fees brings to the fore a clear class bias and offends Article 14 which embodies a guarantee against the arbitrariness...

"x x x x The capitation fee brings to the fore a clear class bias. It enable the rich to take admission whereas the poor has to withdraw due to financial inability. A poor student with better merit cannot get admission because he has no money. Whereas the rich can purchase the admission. Such a treatment is patently unreasonable, unfair and unjust. There is, therefore, no escape from the conclusion that charging of capitation fee in consideration of admissions to educational institutions is wholly arbitrary and as such infracts Article 14 of the Constitution.

We do not agree with Mr. Hegde that the management has a right to admit non-meritorious candidates by charging capitation fee as a consideration. This practice strikes at the very root of the constitutional scheme and our educational system. Restructing admission to non-meritorious candidates belonging to the richer section of society and denying the same to poor meritorious is wholly arbitrary against the constitutional scheme and as such cannot be legally permitted. Capitation fee in any form cannot be sustained in the eye of law. The only method of admissions to the medical colleges in consonance with fair play and equity is by way of merit and merit atone.

We, therefore, hold and declare that charging of capitation fee by the private educational institutions as a consideration for admission is wholly illegal and cannot be permitted, x x x x x."

x x x x . We make it clear that nothing contained in this judgment shall be applicable to the case of foreign students and students who are non-resident Indians."

Except this statement no information about the allocation of seats to foreign students and NRI students are available from the above judgment.

15. In Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., the office memorandum dated 13-08-1990, issued by the Government of India, whereunder 27% of vacancies in civil posts and services under the Government of India were reserved for socially, educationally backward classes among other things was assailed in a batch of petitions filed under Article 32 of the Constitution of India before the Supreme Court on various grounds. All those petitions were heard by a Constitution Bench of 9 Judges and judgment was pronounced on 16-11-1992. Justice B.P. Jeevan Reddy, as he then was, speaking for the majority, while answering question No.7 i.e., whether clause (4) of Article 16 provides reservation only in the matter of initial appointments/ direct recruitment or does it contemplate and provide for reservations being made in the matter of promotion as well, observed as follows:

"Reservation of appointments or posts may theoretically and conceivably means "some impairment of efficiency, but then it explains it away by saying"" but the risk involved in sacrificing efficiency of administration must always be borne in mind when any State sets about making a provision for reservation of appointments or posts. We see no justification to multiply "the risk", which would be the consequence of holding that reservation can be provided even in the matter of promotion, x x x x. The members of reserved categories need not have to compete with others but only among themselves. There would be no will to work, compete and excel among them. Whether they work or not, they tend to think, their promotion is assured. This in turn is bound to generate a feeling of despondence and "heart-burning" among open competition members. All this is bound to affect the efficiency of administration, x x x x.

We must also make it clear that it would not be impermissible for the State to extend concessions and relaxations to members or reserved categories in the matter of promotion without compromising the efficiency of the administration. The relaxation concerned in Thomas and concessions namely carrying forward of vacancies and provisions for in-service coaching/training in Karamchari Sangh are instances of such concessions and relaxations. However, it would not be permissible to prescribe lower qualifying marks or a lesser level of evaluation for the members of reserved categories since that would compromise the efficiency of administration. We reiterate that while it may be permissible to prescribe a reasonably lesser qualifying marks or evaluation for the O.B.Cs, S.Cs. and S.Ts. "



- consistent with the efficiency of administration and the nature of duties attaching to the office concerned - in the matter or direct recruitment, such a course would not be permissible in the matter of promotions for reason recorded herein above."

16. The sum and substance of this observation is that reservation in matters of appointments or posts should necessarily mean some impairment of efficiency and as the members of the reserved categories need not compete with others, they will not be having the will to work, competent and excel among them as they are tend to think that their promotion is assured whether they work or not, which ultimately results in despondence and heart burning among open competition members and ultimately affect the efficiency of administration. In matters of promotion, though certain relaxations like carrying forward of vacancies, making provision for coaching/ training are permissible, prescribing lower qualifying marks or lesser level of evaluation for the members of the reserved categories, is not permissible as such an action would result in compromise in the efficiency of administration.

17. Answering question No.8, i.e., whether reservations are anti-meritorial, their Lordships observed as follows:

"May be, efficiency, competence and merit are not synonymous concept; May be, it is wrong to treat merit as synonymous with efficiency in administration and that merit is but a component of the efficiency of an administrator. Even so, the relevance and significance of merit at the stage of initial recruitment cannot be ignored. It cannot also be ignored that the very idea of reservation implies selection of a less meritorious person. At the same time, we recognise that this much cost has to be paid, if the constitutional promise of social justice is to be redeemed. We also firmly believe that given an opportunity, members of these classes are bound to overcome their initial disadvantages and would compete with - and may, in some cases excel - members of open competition candidates. It is undeniable that nature had endowed merit upon members of backward classes as much as it has endowed upon members of other classes and that what is required is an opportunity to prove it. It may not, therefore, be said that reservations are anti-meritarian. Merit there is even among the reserved candidates and the small difference, that may be allowed at the stage of initial recruitment is bound to disappear in course of time. These members too will compete with and improve their efficiency along with others."

18. In para No.112, while considering the impact of Article 335, his Lordship held as follows:

"We are of the opinion that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hereinabove, alone counts. In such situations, it may not be advisable to provide for reservations. For example, technical posts in research and development organisations/departments/

institutions, in specialties and super-specialities in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishments connected therewith. Similarly, in the case of posts at the higher echelons e.g., Professors (in Education), Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application, provision for reservation would not be advisable.

19. Having recorded a finding that, it is undeniable that nature had endowed merit upon members of backward classes as much as it has endowed upon members of others classes and that what is required is an opportunity to prove it, and the small difference, that may be allowed at the stage of initial recruitment is bound to disappear in course of time, held that reservations would not be permissible in certain services and in respect of certain posts on the pretext that the very idea of reservation implies selection of less meritorious person.

20. In the mean time, the A.P. Legislature amended the Prohibition of Capitation Fee Act by Act 12 of 1992 and introduced Section 3-A with effect from 15-4-1992, Under this newly introduced section, the management of any unaided private educational institutions as notified by the Government are entitled to admit students into educational institutions to the extent of 1-1/2% of the total number of seats from among those who have qualified in the common entrance test or in the qualifying test without reference to the ranking assigned to them and such admissions are saved from the operation of Section 5 of the Act.

21. Section 3-A as introduced by the amendment Act was struck down by a Full Bench of this Court in *Kranti Sangram Parishadh v. Sri N. Janardhan Reddy*, 1992 (3) ALT 1991, as the section contravenes the dictum laid down by the Supreme Court in *Mohini Jains* case (supra). The review petitions filed questioning the correctness of the judgment of the Supreme Court in *Mohini Jains* case and the special leave petitions preferred against the Full Bench decision of the A.P. High Court dated 18-9-1992 came up for hearing before a Constitution Bench of 5 Judges in February, 1993, i.e., just two months after the judgment in *Indrasahawney's* case (supra), in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others* etc. etc., , B.P. Jeevan Reddy, J., as he then was, for himself and Justice Ratnavel Pandian held that right to education to be implicit in the right to life because of its inherent fundamental importance.

22. Answering the second question that whether a citizen is having a fundamental right to establish an educational institution under Article 19(1)(g) or any other provision in the Constitution. The learned Judge again speaking for himself and Ratnavel Pandian, J., held as follows:

"We are certainly of the opinion that such activity can neither be a trade or a business nor can it be a profession within the meaning of Article 19(1)(g). Trade or business normally carried on with a profit motive. Education has never been

commerce in this country. Making it one is opposed to the ethos, tradition and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in this country since times immemorial. It has been treated as a charitable activity. But, never as trade or business."''

23. The private educational institutions merely supplementing the effort of the State in educating the people and theirs is not an independent activity to went close and supplement to the activity of the State. Having taken such a view their Lordships opined that recognition/affiliating authority is the State. It is under an obligation to impose such condition as part of its duty enjoined on it by Article 14 of the Constitution of India, and proceed to frame a scheme with the help of the Counsels appearing before the Court. Whereunder two types of admissions in private colleges i.e., (1) free seats to be filled in purely on the basis of merit and these students have to pay the tuition fee on par with students in Government colleges. (2) payment seats to be filled in by the students who can afford to pay the tuition fee fixed by the Committee appointed for that purpose on the basis of their inter se merit, were envisaged.

24. The objective of the scheme has been explained as hereunder:

"The idea behind the scheme is to eliminate discretion in the management altogether in the matter of admission. "Capitation Fee" means charging or collecting amount beyond what is permitted by laws in all the State Acts prohibiting capitation fees have defined this expression in this sense. We must strive to bring about a situation where there is no room or occasion for the management or any one on its behalf to demand or collect any amount beyond what is permitted. We must clarify that charging the permitted fees by the private educational institutions - which is bound to be higher than the fees charged in similar Governmental institutions by itself cannot be characterised as capitation fees. This is the policy underlying all the four States enactments prohibiting capitation fees. All of them recognise the necessity of charging higher fees by private educational institutions. They seek to regulate the fees that can be charged by them - which may be called permitted fees - and to bar them from collecting anything other than the permitted fees, which is what "Capitation fees" means. Our attempt in evolving the following scheme precisely is to give effect to the said legislative policy. It would be highly desirable if this scheme is given a statutory shape by incorporating it in the rules that may be framed under these enactments.

25. The scheme to the extent necessary for adjudication of the issues raised in this batch of writ petitions is enumerated hereunder:

50% of the seats in every professional college shall be filled by the nominees of the Government or University as the case may be and they are known as free seats. The students shall be selected on the basis of merit in the common entrance test where it is held or in the absence of a common entrance test, by

such criteria as may be permitted by the competent or the appropriate authority as the case may be. The remaining 50% are referred as payment seats and they shall be filled by those candidates who are prepared to pay the fee prescribed therefore on the basis of inter se merit determined on the same basis as in the case of free seats.

26. It is further open to a professional college to provide for reservation of seats for constitutionally permissible classes. The rule of merit has to be followed even in such reserved categories. No professional college shall call for applicants for admission separately or individually. In other words the competent authority shall issue a comprehensive notification for all the colleges in the State and the application form shall contain a column or a separate part in which the applicant shall indicate whether he wishes to be admitted in the payment seat and the order of reference upto three professional colleges. The Committee shall fix the fee once every three years or at such longer intervals, as it may think appropriate. The working and orders of the Committee specified in clause 6(A) shall be subject to the orders/regulations issued by the Central Government, UGC, IMC, or AICTE, as the case may be. After the free seats in professional colleges are filled up, atleast 10 days time will be given to the candidates (students) to opt to be admitted against payment seats, not more than three colleges of his choice. The candidates selected for payment seats shall be allotted to different professional colleges on the basis of merit-cum-choice. No management of a professional college shall be permitted to admit a student other than the one allotted by the competent authority. Even in the matter of reserved categories, if any, the principle of inter se merit shall be followed.

27. The scheme is framed for the academic year 1993-94. His Lordship has given the theoretical foundation for this method by stating that a candidate/student who is stealing a march over his compatriot on account of his economic power should be made not only to pay for himself but also to pay for another meritorious student. This is the social justification behind the 50% rule prescribed under clause 2 of the scheme.

28. No mention was made about the reservation of seats in professional colleges for foreign students/NRI students in this judgment. From the events that have taken place subsequent to this judgment indicates that Review Petition No.483/93 in writ Petition No.678/93, seemed to have been filed seeking review of the above judgment and orders were passed on 14th May, 1993 on this application. In Unnikrishnan P.J. and Others Vs. State of A.P. and Others, . Under this order 5% of the total intake for a given year, is reserved for N.R.I, students and the seats have to be filled up on the basis of merit. Within the payment seats, the seats that have to be ear-marked for N.R.I, students have to be kept separately and the rest of the payment seats have to be filled up on the basis of "inter se merit.

29. Their Lordships further observed that as the N.R.I, students and foreign students will be drawn up from different backgrounds, the management of the

colleges concerned were permitted to Judge the merit of these candidates having regard to the relevant factors. The fee to be paid by these candidates (students) shall be fixed by the committee constituted for fixing up the tuition fee payable by the students who secured admission in free seats and payment seats. The N.R.I. students seeking admission under this quota are exempted from taking entrance examination, if any, prescribed for admission to that course. To the extent indicated above, their Lordships modified the orders of the Supreme Court in Mohini Jain's case (supra) and Unni Krishnan, J.P. v. State of A.P. (supra). Pursuant to the above orders of the Supreme Court, the 1st respondent issued G.O. Ms. No. 183, dated 18-08-1993 providing seats to an extent of 5% of the total intake from among payment seats for a given year to N.R.I. students.

30. In Para 4 of the above G.O. it is stated that the Government after careful consideration of the recommendations of the Committee constituted for the purpose, directed the admission of N.R.I. students into engineering colleges for the academic year 1993-94, subject to the following conditions:

- (1) An N.R.I. student has to pay \$ 6,000/- (six thousand U.S. dollars) per annum in foreign exchange,
- (2) An N.R.I. student need not appear for Common Entrance Test.
- (3) An N.R.I. student means as they are defined in Reserve Bank of India banking regulations,
- (4) It is for the managements of the Colleges concerned to judge the merit of the N.R.I. students having regard to the relevant factors.
- (5) It is for the management of the colleges concerned to publicise regarding the procedure for the admission of N.R.I. students.
- (6) The management of the colleges concerned after completion of the admission of the N.R.I. students shall intimate the position to the competent authority to allot the students against the unfilled seats.

31. At the same time, in exercise of the rule making power under Prohibition of Capitation Fee Act, the Government issued statutory" rules in G.O. Ms. No. 184, Education (E.C.2), Department, dated 20-08-1993 and they are known as A.P. Professional Educational Institutions (Regulation of Admission into Under-Graduate Professional Courses through Common Entrance Test) Rules, 1993 (hereinafter referred as "A.P. Professional Educational Institutions Admission Rules, 1993).

32. The above rules to the extent necessary are referred hereunder:

Under Rule 2(m), a Non-Resident Indian means, Non-Resident Indian as defined by Reserve Bank of India. Under Rule 3 upto sub-clause 4, rest of the sub-clauses of this Rule are not necessary. Rule 7 deals with procedure for admission into Government/University Professional Colleges, regional engineering colleges and private professional colleges.

33. Under Rule 7(1), the competent authority shall issue an advertisement inviting applications for admission from the qualified candidates who have been assigned ranking in the Common Entrance Test, who are desirous of seeking admission into Government/University Professional Colleges, regional colleges and private colleges. Under Rule 7(2), no private professional college shall call for applications for admission separately or individually. Under Rule 7(9), the seats reserved for N.R.I. students shall be filled by the respective managements by following criteria as laid down by the Government from time to time. The management shall intimate the Competent Authority about the left over seats reserved for N.R.I. students, if any, well in advance before commencement of admissions to be made for "payment seats" by Competent Authority to enable the Competent Authority to fill up such left over N.R.I. seats treating them as "payment seats". Under Rule 7(15), reservations applicable to local candidates, S.C., ST., B.C., CA.P., P.H., sports prescribed under Rule 8 of these Rules shall not be applicable to Non-Resident Indians.

34. It is seen that T.M.A. Pai Foundation and others filed another petition to review the orders of the Supreme Court in Unni Krishnan's case (supra) dated 14-05-1993, by contending that in the earlier order, a provision was made only for the N.R.I. students to the extent of 5% and as foreign students are also seeking admission, the quota shall be raised to 15% and the seats shall be made available to both N.R.I. and foreign students. As this Foundation filed a series of applications, they are being referred in alphabetical order, date-wise. Their Lordships of the Supreme Court having agreed to the request of the Review Petitioners observed that it will not be necessary that the students admitted against the said 15% quota should be the allottees from the Government or that they should have appeared for the Joint Entrance Examination, if any, held by the Government or authorities concerned. Their Lordships of the Supreme Court made it clear that this special provision was made only for that year being an year of transition vide orders of the Supreme Court dated 07-10-1993 in T.M.A. Pai Foundation and Others (I) Vs. State of Karnataka and Others, . By another order of even date in T.M.A. Pai Foundation and Others (II) Vs. State of Karnataka and Others, , while referring to the issue relating to Minority Educational Institutions to a larger bench for an authoritative pronouncement held that as far as minority educational institutions are concerned, they must be drawn only from common merit pool and that even the minority community students must also be admitted on the basis of inter se merit determined on the basis of Common/General Entrance Test. Their Lordships further observed that "Article 30, in our opinion does not enable a minority educational institution with the power to adopt its own method of selection of students." It is not a part of the minority character of the institution. The said requirement is, but a piece of regulation which the State/Affiliating University can prescribe in the interest of fairness and maintenance of standards. Accordingly, the interim order staying the admissions of students to minority educational institutions was vacated.

35. Pursuant to the orders of the Supreme Court increasing the N.R.I. quota, the

1 si respondent issued fresh orders with regard to admission of N.R.I, students by the private engineering colleges in the State. In clauses of G.O.Ms.No.250, dated 06-11-1993, subject to the following:

- (a) The maximum extent of seats that can be filled with N.R.I/foreign students is limited to 15% of the intake capacity during the academic year 1993-94 only.
- (b) The basis of selection, admission as well as fees chargeable for these students shall be as mentioned in G.O.Ms.No.183.
- (c) If the N.R.I. students/foreign students " are not available to fill up the seats to the extent of 15%, it shall be open for the managements to admit other students within the said quota.
- (d) The students admitted against this quota though Indians they need not be allotted by the competent authority nor they should appear for the Common Entrance Test. However, they can satisfy the eligibility criteria for admission mentioned in Para 4 of the statutory rules i.e., G.O. Ms. No. 184, dated 20-08-1989 in other respects.
- (e) As the students are finding it difficult to pay the fee in foreign exchange, they are permitted to pay the fee in Indian currency equivalent. The actual amount has been fixed keeping in view the current official exchange rate at Rs. 1.9 lakhs.
- (f) Candidates who secured admission during the academic year 1993-94 shall continue to pay the said fee only for the balance years of the course.
- (g) In Para 4, it is said that necessary amendment to relevant rules will be issued separately in the "lines indicated above, but, that amendment did to see the light of the day till this day.

36. After issuance of the said G.O., it is seen that the Government received several representatives for re-fixation of the fees to be collected from the candidates that are going to be admitted in lieu of N.R.I. students/ Foreign students. Having considered the representations the Government, keeping in view the differential economic levels of N.R.I. students/foreign students and Indian students and at the same time the need to maintain a distinction between the candidates allotted by the Competent Authority for payment seats by virtue of Common Entrance Test and candidates selected by the managements without Common Entrance Test and also the need to maintain minimum academic standards, issued G.O.Ms.No.256, dated 17-11-1993 in partial modification to G.O.Ms.No.250, dated 06-11-1993.

- (1) In this G.O. the fee to be collected from the Indian students admitted in lieu of N.R.I- students/foreign students was fixed at Rs.75,000/- per academic year.
- (2) The minimum qualification for the candidates to be admitted under this quota is specified as first class in Intermediate examination or equivalent examination and also in the concerned group.

(3) As the managements are given free hand to fill up the seats under 15% quota, the reservations in favour of the constitutionally permissible classes were limited to the remaining 85% of the seats.

37. Questioning the clause 2 of the above G.O. (G.O.256), several students approached this Court by filing writ petitions. His Lordship, Justice P. Venkataraina Reddi, after hearing the arguments on both sides, disposed of the miscellaneous petitions in this batch of writ petitions by order dated 1-12-1993, in W.P.M.P.No.22543/93 and batch in W.P.No.17844/93 and batch. It is useful to extract the order passed by the learned Judge:

"Considering the rival submissions and the judgment of the Supreme Court in Unni Krishnan, P.J. v. State of A. P. (supra) including the judgment in the Review petitions and the latest judgment in T.M.A. Pai Foundation v. Karnataka (supra), I consider it just and proper to issue the following directions with regard to the filling up of seats left over in the private engineering colleges as against the Non-resident Indians quota, pending disposal of the writ petitions :

(1) If there are applicants fulfilling the Intermediate First Class qualification, the Managements should first offer the seats to such candidates;

(2) After providing seats to the candidates aforementioned, if there are still seats left in the N.R.I. pool, they can be filled up by the Managements without reference to First Class qualification in the Intermediate by considering the inter se merit amongst the applicants either by taking into account their ranking in the EAMCET or the marks obtained, in the qualifying examination, viz., Intermediate or equivalent;

(3) It is further directed that the managements shall send statements regarding the details of the students admitted against the NRI quota and the number of seats remaining, soon after the admission process in respect of NRI quota is completed. The officer deputed by the Commissioner of Technical Education may inspect the records of the colleges concerning the applications and admissions;

(4) If the petitioners are found eligible after considering their cases as per the directions given hereinabove, they shall be admitted into the respective colleges on provisional basis at the risk of the petitioners. The validity of their admission shall depend upon the ultimate outcome of the writ petitions.

(5) The applications received hereafter shall not be considered without specific directions of this Court.

In W.P. Nos.17844 and 17982 of 1993, the quantum of fee fixed at Rs.75,000/- for the payment-seals has been questioned. I am not inclined to suspend this part of the impugned G.O. dated 17-11-1993. The question will be decided in the main writ petitions.

In view of the urgency and the general importance, it is necessary that the writ petitions are heard at an early date. Post the writ petitions for final hearing on



20-12-1993 subject to part-heard cases, after obtaining the orders of the learned Chief Justice."

38. Thereafter several other writ petitions seemed to have been filed, wherein similar directions were passed by this Court from time to time.

39. Though His Lordship specifically directed to post the writ petitions on 20-12-1993 subject to part-heard, the orders of the Court were not complied by the Registry. Neither the petitioners nor the respondents have taken any steps to get the cases disposed of in view of the importance of the case. Subsequently, the Government further considered the matter and reduced the tuition fee to Rs.50,000/- per academic year payable by the students admitted in lieu of NRI students foreign students instead of Rs.75,000/- per academic year as ordered in G.O. Ms. No-256 in G.O. Ms. No.304, Ed., (EC-2) Dept, dated 30-12-1993. In para 3 of the said G.O. it is observed that if the seats earmarked for NR[ students/foreign students and other students in lieu of the NRI students etc., are left unfilled by 10-1-1994, they shall be referred back to the Competent Authority and the Competent Authority shall allot the seats as per rules. In para 4 of the said G.O., the Competent Authority and the Director of Technical Education were requested to take action accordingly.

40. In the mean time, the Supreme Court in T.M.A- Pai Foundation v. State of Karnataka, (1993) 4 SCC 788 passed another order on 19-11-1993 in continuation of its earlier order dated 17-11-1993 with regard to Engineering Colleges run by minority institutions as the earlier order refers only to the Medical College admissions. In para 3 of the said order, their Lordships observed that any seats remaining vacant on 1-12-1993, whether in the category of free seats or in the category of payment seats can be filled up by the management. Obviously this direction is applicable to engineering colleges maintained by minority organisations.

41. Yet on another application filed by TMA Pai Foundation, for the academic year 1994-95, their Lordships of the Supreme Court while fixing the annual tuition fee payable by the students admitted to Medical Colleges and Dental Colleges, reduced the NRI quota from 15% to 10% by making it clear that in case any seat in the NRI quota remains unfilled, the same can be filled by the management at its discretion, vide TMA Pai Foundation and others v. State of Karnataka, (1994) 4 SCC 728, dated 13-5-1994.

42. Once again another batch of writ petitions were filed on the file of this Court questioning the clause 3 of G.O. Ms. No.304, dated 30-12-1993 and His Lordship Justice P.L.N. Sharma as he then was disposed of the batch of miscellaneous petitions in WP MP No.359/94 and batch in Writ Petition No. 320/93 and batch dated 8-2-1994, following the judgment of the Supreme Court dated 19-11-1993. His Lordship, prima facie having felt that clause 3 of the G.O., runs counter to the judgment of the Supreme Court, an interim direction was given to the respondents to consider the application of the petitioners for the unfilled

seats in NRI quota without taking into consideration the cut-off date i.e., 10-1-1994, mentioned in G.O. Ms. No.304, dated 3-12-1993 and giving preference to the applicants taking into consideration the inter se merit amongst the applicants either by taking into consideration the rank in the EAMCET or the marks obtained in the qualifying examination via intermediate or its equivalent and admit the petitioner accordingly, to the Engineering Courses for the academic year 1993-94 in the private colleges, who are shown as respondent No.2 in this batch of the petitions.

43. For academic year 1994-95, there is no change in the orders issued by the Government in G.O. Ms. No.382, dated 24-10-1994.

44. For the academic year 1995-96 once again the TMA Pai Foundation moved the Supreme Court by way of interlocutory application for liberalization of the scheme framed by it by bringing to the notice of the Supreme Court the difficulties faced by them in the implementation of the same. This application was disposed of on 11-8-1995 in TMA Pai Foundation v. State of Karnataka, (1995) 4 SCC 220.

45. I need not advert to the contents of the entire order and for the disposal of these batch of writ petitions. It is suffice to state that the NRI quota is once again raised to 15% for the academic year 1995-96 by observing that "it shall be open to the management to admit NRI students and foreign students within this quota and in case they are not able to get NRI students or foreign students up to the aforesaid specified percentage, it is open to them to admit students of their own in the order of merit within the said quota"

46. Pursuant to the above orders, the Government issued yet another G.O. i.e., G.O. Ms. No.379, dated 5-10-1995, fixing the NRI quota at 5% of intake capacity during the academic year 1995-96. The basis of selection and admission and also the fees chargeable to these NRI students and foreign students shall be the same as ordered in G.O. Ms. No. 183, dated 18-8-1993 and G.O. Ms. No. 184, dated 20-8-1993, i.e., in order of merit within the said quota. The other conditions remain the same.

47. On a further application filed by TMA Pai Foundation, seeking a variety of directions for the academic year 1996-97, the Supreme Court in TMA Pai Foundation v. State of Karnataka, (1996) 5 SCC 8, dated 9-8-1996, held that the orders of it, dated 11-8-1995 with respect to academic year 1995-96, shall continue to apply for the academic year 1996-97 also. Though the order contains some other directions of general nature, as the order of the Apex Court for the academic year 1995-96 has been applied in-toto, I need not advert to those directions.

48. From the above, it is seen that the intention of the Supreme Court in earmarking certain percentage of seats to foreign students and Non-Resident Indian students out of the total intake of each of the colleges is primarily intended to raise funds over and above the fees prescribed for Indian students under

payment category and these funds should be kept separate in bank and should be exclusively used for the purpose of development of the infrastructure and facilities in these engineering colleges in accordance with the guidelines that may be issued by the Government.

49. Allocation of a small percentage of seats as such in favour of NRI students cannot be found fault and there appears to be sufficient justification in not insisting upon the NRI students appearing for the common entrance test. Their background is different, the courses of study pursued by them in different countries are in many respects different from the syllabus prescribed for the qualifying examination, namely Intermediate in our country. Dispensing with the requirements of taking the common entrance test for NRI students would not result in lowering of standards for the obvious reason that in most of the foreign countries the level of academic standards of the course which is comparable to our qualifying examination -Intermediate is far higher. These aspects are evidently at the back of the mind when seats were reserved for NRI students without the requirement of their taking the common entrance test. From the point of view of the country's economy and culture, I think the special provision in favour of NRI students in a statutory one, as not only much needed foreign exchange can be secured in a small measure by charging fees in foreign exchange from NRI students, but also in making the fellow Indians, who left the country in search of Dollars to look back to their rich cultural and spiritual heritage which may result in their return to the motherland. It is rather ironical that when NRI students are not available, the short-fall is sought to be made good by giving discretion to the managements to grant admission to Indian students whose intelligent quotient level is far below than the students who secured admission in free as well as payment seats envisaged in Unni Krishnan "s case, by treating them as NRI students by charging a meagre amount of Rs.50,000/- in Indian currency." Why this grant concession has been shown in favour of Indian students by permitting the managements to metamorphise these students as NRI students and conferring undue favour on them in deviation of the normal rules of admission is unexplainable. No reasons were given by the Apex Court in this regard.

50. I on my part tried in vain to know whether there are any necessitated legally acceptable assumptions in extending the status of NRI students to locals. From the point of view of the type of education received, the quality of education, the conditions in which they live, the NRI students are totally different from the local students. To say that one is the same as the other appears, to present a situation defying logical consistence.

51. By granting admission to locals, fictionalising them as NRI students in respect of unfilled seats under NRI quota, the managements should not be permitted to convert the situation into a device for making money. Whether Rs.50,000/-, a paltry amount compared to 6,000 US dollars prescribed for the NRI students by the State Government, is really the amount collected by the

managements at whose instance the NRI quota has been increased by the Supreme Court year after year, or it is many a time more than that. This matter requires a thorough probe. Prima facie, it stands to reason that when irrespective of merit, the managements are admitting locals treating them as NRI students by collecting paltry amount as tuition fee, the only presumption is that the monetary consideration must be far higher than what is apparently shown. I should not lose sight of the fact that there is heavy demand for technical education in this country and people are willing to part with huge amounts to secure admission. That is the reason why in order to spot the admission, common entrance test was introduced and when an exception is made in respect of a small class of students, if known guidelines are followed in granting admission to such small segment, the presumption that what is prescribed apparently all long is charged as fees, is reversed.

52. I should not be mistaken that I am taking upon myself an advisory role while discharging adjudicatory functions. I am only basing my conclusions deriving support from the dicta laid down by the Summit Court.

53. To know the real state of affairs, I called for the particulars of the candidates admitted in various engineering colleges under NRI quota as per the directions given by the Supreme Court from time to time and they are shown hereunder in tabular form.

Sl. No. Name of institution Academic Year Total intake NRI Quota Total No. of seats reserved for NRIs No. of Seats filled with NRI's. Indian students admitted in lieu of NRI Quota order

Remarks

Covered by Court order Not covered by Court order Total

1 2 3 4 5 6 7 8 9 10

1. Chaitanya Bhatathi Institute of Technology, Hyderabad 1993-94 340 15% .. .. 10 41 51

-do- 1994-95 360 5% .. 2 1 15 18

-do- 1995-96 400 5% .. .. 2 18 20

-do- 1996-97 400 5% .. .. 3 17 20

2. MVSR Engineering College, Saidabad 1993-94 .. .. .. .. 38 All the candidates were admitted with G.O.Ms. 250

MVSR Engineering College, Saidabad 1994-95 ? ? ? 12 ? ? 12

-do-- 1995-96 ? ? ? ? 6 6 12

-do- 1996-97 ? ? ? ? 5 7 12

3. Gandhi Institute of Technology & Management Visakhapatnam

1993-94 ? ? ? ? ? 51 51

-do-- 1994-95 ? ? ? ? ? 18 18

-do- 1995-96 ? ? ? ? ? 20 20

-do- 1996-97 ? ? ? ? ? 20 20

4. Deccan College of Engg, & Technology, Hyd, 1994-95 ? ? ? 16 ? ? 16

-do- 1995-96 ? ? ? 10 ? 7 17

-do- 1996-97 ? ? ? 4 ? 11 15

5. Shadan College, Hyd. 1995-96 ? ? ? ? ? 7 7

-do- 1996-97 ? ? ? ? ? 5 3 8

6. RVR & JC College of Engg., Chodavaram 1993-94 240 15% 36 .. 22 14 36

-do- 1994-95 270 5% 14 ? 2 12 14

-do- 1995-96 360 5% 18 ? ? 18 18

-do- 1996-97 400 5% 20 ? ? 20 20

7. CRR College of Engg., Eluru 1993-94 ? ? ? ? ? 23 23

-do- 1994-95 ? ? ? ? ? 12 12

-do- 1995-96 ? ? ? ? ? 12 12

-do- 1996-97 ? ? ? ? ? 12 12

8. SRKR Engg. College, Bhimavaram 1993-94 ? ? ? ? ? 48 (37F 11C)

-do- 1994-95 ? ? ? ? ? 18 (15F 3C)

-do- 1995-96 ? ? ? ? ? 18 (13F 5C)

-do- 1996-97 ? ? ? ? ? 18 (11F 7C)

9. SVH College of Engg., Machilipatnam 1993-94 ? ? ? ? 12 12 24

-do- 1994-95 ? ? ? ? 1 12 13

-do- 1995-96 ? ? ? ? 2 9 11

-do- 1996-97 ? ? ? ? 6 5 11

10. Vasavi College of Engg., Hyderabad 1993-94 ? ? 45 Nil 15 30 45

-do- 1994-95 ? ? 14 Nil 6 8 14

-do- 1995-96 ? ? 14 Nil 3 11 14

-do-- 1996-97 ? .. 15 Nil . 1 14 15

11. G. Pulla Raddy Engg. College, Kurnool 1993-94 ? ? ? Nil 21 28 49

-do- 1994-95 ? ? ? Nil ? 15 15

-do- 1995-96 ? ? ? Nil 1 15 16

-do- 1996-97 ? ? ? Nil 6 12 18

12. RaJeev Gandhi Memorial College of Engg. & Technology, Nandyal  
1995-96 ? ? ? ? 7 10 17

-do- 1996-97 ? ? ? ? 5 .. 5

13. V.P. Siddartha Engg. College, Vijayawada 1993-94 ? ? ? 1 4 46 51

-do- 1994-95 ? ? ... Nil 1 17 18

-do- 1995-96 ? ? ? Nil 1 19 20

-do- 1996-97 ? ? ? Nil 1 19 20

14. KSRM College of Engg., Cuddapah 1993-94 ? ? ? ? 33 12 45

-do- 1994-95 ? ? ? ? 1 14 15

-do- 1995-96 ? ? ? ? 4 11 15

-do- 1996-97 ? ? ? ? 8 7 15

15. The Vazir Sultan Collega of Engg., Khammam 1995-96 ? ? ? ? ? 7 7

-do- 1996-97 ? ? ? ? ? 9 9

16. Kakatiya Institute of Technology & Science, Warangal 1993-94 ? ? ? ? 19  
17 36

-do- 1994-95 ? ? ? ? ? 15 15

-do- 1995-96 ? ? ? ? ? 15 15

-do- 1996-97 ? ? ? ? ? 14 14

-do- 1997-98 ? ? ? ? ? 11 11

17. Bapaila Engg. College, Baptala 1993-94 ? ? ? ? 13 23 36

-do- 1994-95 ? ? ? ? ? 15 15

-do- 1995-96 ? ? ? ? 5 12 17

-do- 1996-97 ? ? ? ? 7 11 13

18. Gayatri Vidya Perishad College of Engg., Visakhapatnam  
1996-97 .. .. .. 10 10

19. Sri Vidyanaiketan Engg. Collage, Chandragiri, Chittoor 1996-97 ? ? ? ? 4  
5 9

20. Koneru Lakshmaiah Collage of Engg. 1993-94 ? ? ? ? 18 26 42

-do- 1994-95 ? ? ? ? 2 2 14

-do- 1995-96 ? ? ? ? ? 8 16

-do- 1996-97 ? ? ? ? ? 2 6 18

21. NBKR Institute of Science & Technology, Vidyanagar 1994-95 ? ? ? ? ? 5  
15

-do- 1995-96 ? ? ? ? ? 4 14

22. Vallurupali Nageswara Rao Vignana Jyothi College of Engg. & Technology.  
Bachupalli 1995-96 ? ? ? ? ? 11 11

-do- 1996-97 ? ? ? ? ? 12 12

23. Swamy Ramananda Tirtha Institute of Science Marriguda, Nalgonda  
1996-97 ? ? ? ? ? 5 5

54. From the statistics available it is seen that in Chaitanya Bharathi Institute of Technology, Hyderabad, while two N.R.I. students were remitted during the academic year 1994-95, in M.V.S.R. Engineering College, Saidabad 12 students were admitted under this quota. The 3rd college i.e., in Deccan College of Engineering and Technology, Hyderabad during the academic year 1994-95, 16 N.R.I. students, during 1995-96 10 N.R.I. students and during 1996-897 4 N.R.I. students were admitted and in no other college N.R.I. students were admitted. Only local candidates were admitted as substitutes to N.R.I. students. Except first two colleges rest of the colleges did not furnish the total intake of students in a given academic year. Even if this information furnished by the management is to be true, as no one has verified about its authenticity, most of the students admitted under this category are only Indian students and they are again divided into three categories, they are:

1. The students with 1st class as per the guidelines given by the State Government admitted under the orders of the Court.

2. The students without 1st class admitted under the orders of the Court.

3. The students admitted by the managements of the respective colleges of their own.

55. In Mohini Jain's case (supra) the Supreme Court held that any tuition fees collected from a student admitted in a private professional college over and above the tuition fees collected from a student admitted in Government college is nothing but capitation fees under whatever name one may give to this type of extraction of money in the name of technical education. Further, it was held that restricting admission to the richer section of Society and denying the same to poor meritorious is wholly arbitrary against the Constitutional scheme and as such cannot be legally permitted, In Indra Sawhney's case (supra), the Supreme Court having recorded a finding that reservation in appointments or posts may theoretically and conceivably mean "some impairment of efficiency",

which is likely to result in no will to work, compete or excel among them and tend to think their promotion is assured. Such a situation is bound to generate a feeling of despondence and heart-burning among open competition members and is likely to effect the efficiency of administration. Having held theoretically that reservations are not anti-meritorian and even if there is small difference in the merit at the time of initial recruitment, the same is bound to disappear in course of time in practice, the Supreme Court declared that the people who were labouring under various disadvantages from times immemorial with social stigma attached to their birth, ruled that they are not suitable for appointment to the posts at the higher echelons like professors, pilots in Indian Airlines and Air-India, scientists and technicians in nuclear and space application, has taken a contrary view while disposing the second application filed by TMA Pai Foundation in TMA. Pai Foundation's case (supra) on 7-10-1993 and permitted the managements to fill up all the seats within 15% quota if N.R.I. students are not available. Further, the managements "at their discretion" were permitted to admit students without insisting for their appearance for the common entrance test or for their allotment by the Government. Though the Apex Court observed that "this is a special provision made only for this year, being an year of transition", i.e., 1993-94, the said concession has been extended by the Summit Court year after year on the ground that the Government did not frame any full fledged scheme as directed in Unni Krishnan 's case (supra).

56. The Supreme Court while disposing of the 1st application, to review Unni Krishnan's case in its order dated 14-05-1993 directed the admissions of N.R.I. students on the basis of merit and the managements concerned were given the liberty to judge the merit of the candidates. But, thereafter while permitting the admission by substituting N.R.I. students, the managements were given free hand out of reference to merit. The managements though made party respondents in these writ petitions, they neither choose to defend their action nor placed any scheme or guidelines evolved by them, giving wide publicity to attract more meritorious students from among the students, willing to pay the tuition fee fixed by the Committee for these students or they have given admission only to the meritorious students from among the applicants.

57. What is noticed from the admissions made by these institutions is that taking advantage of the absence of the words that these admissions should be based on inter se merit in some of the series of directions given by the Supreme Court from time to time, referred supra, these students were admitted by giving ago-bye to the concept of merit.

58. The liberty given by the Apex Court for filling up the left out seats under N.R.I. quota to the private managements "at their discretion", does not mean and cannot be intended to mean that irrespective of the merit inter se among the candidates seeking admission in the light of the consistent view expressed by that Court that merit, alone should be the criteria for admission to professional and technical colleges. If the managements resort to any other method in



admitting the students, it patently amounts to commercialisation of education, a concept which was rejected outright by the Supreme Court in Unni Krishnan's case (supra). Further, these local candidates (Indians) who might not have either appeared for the common entrance test or if appeared might have secured very lower ranks not even entitling them to secure admission under the payment seals quota. Some have not even secured pass marks in the entrance examination. In some cases they might not have appeared for the common entrance test, evidently conscious of their lack of competence to compete with others. It is this motley group of students, who passed the qualifying examination namely intermediate with lesser ratings, referred to, as N.R.I. students for the purpose of securing admission for the seats left over i.e., seats which remained unfilled after genuine N.R.I. students are admitted. In a situation of this nature, accepting the plea of the managements, the Supreme Court had permitted them "at their discretion", to admit local candidates with respect to short-fall in the N.R.I. quota, treating the said short-fall as real N.R.I. quota without any regard for merit even among such applicants would amount to permitting the managements to auction the seats in professional colleges, a concept which is not only illegal but also patently repulsive to all notions of justice and law. Vaguely worded directions of the Apex Courts in some of these N.R.I. cases, should not be allowed to be treated as licence to the managements to auction the seats to the Neo Rich Indians (N.R.I.) and make money. Discretion should be regulated in accordance with the well accepted judicial principles. Discretion was never understood an absolute and a free choice irrespective of the merit among the applicants. Recognising that the managements might resort to admitting students throwing overboard the concept of merit inter se even among the substituted N.R.I. group, while increasing the N.R.I. quota to 15% for the academic year 1995-96, the Apex Court categorically held that these candidates should also be admitted on the basis of merit within the said quota vide TMA Pai Foundation's case (supra), which is as hereunder;

"So far as NRI quota is concerned, it is fixed at fifteen per cent for the current academic year. It shall be open to the management to admit not able to get the NRI students and foreign students within this quota and in case they are not able to get the NRI or foreign students upto 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 State where admissions have not been finalised."

59. Wealth cannot be a consideration for admission to an educational institution, more so, to a professional institution, more so, to a professional institution was declared in unequivocal terms by a Full Bench of this Court in Kranthi Sangram Parishadh's case which was upheld by the Supreme Court in Unni Krishnan's case.

60. The problem may be viewed from another point of view. The minorities-linguistic and culture-enjoy constitutional protection in our country by virtue of

Articles 29 and 30. When a minority educational institution admits students belonging to a minority, it has to adhere to the principle of merit inter se among the students as per the judgment of the Supreme Court in TMA Pai Foundation "\$ case (supra), which is as hereunder :

"The remaining fifty per cent 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."

61. The so-called substituted N.R.I. students under any circumstances shall not be allowed to take privileges of a higher nature than what are conferred on the minorities under Articles 29 and 30.

62. In the light of the above discussion, I hold that the action of the management in admitting the local students without following the principle of inter se merit is per se illegal, contrary to the dictum laid down by the Supreme Court as well as the interim orders of this Court.

63. Now, I take up the legal issues that arise for consideration is seriatim In my view, strictly speaking, issues 1 and 2 may not arise for consideration in this batch of writ petitions as the Supreme Court is monitoring the issue and basing on the directions given by the Apex Court, the State Government went on giving guidelines for implementation of those directions, the arrangement made is only ad hoc in nature to comply with the directions of the Supreme Court. The Hon"ble Supreme Court while framing a scheme for the guidance of the authorities concerned granting recognition/affiliation in Para 6 of the scheme directed every State Government to constitute a Committee to fix the ceiling on the fees chargeable by a professional college or class or professional colleges as the case may be. The fee fixed by the Committee shall be reviewable once in every three years or at such longer intervals as the Government may think appropriate. But, none of the Governments did not do that exercise for the reasons best known to them. In T.M.A. Pai Foundation and others v. State of Karnataka (supra) their Lordships of the Supreme Court expressed their distress over the inaction on the part of the authorities concerned in not framing ,the scheme as directed by the Supreme Court. In Para 2 of the above judgment their Lordships observed as follows:

"The idea then was that the authorities referred to in Para 6 of the Scheme shall prepare a proper scheme consistent with the ground realities and that the Orders dated 10-10-1993 were to be only tentative in nature. Since no such scheme was coming forward from the side of the authorities, this Court had no option but to pass fresh set of orders with respect to Academic year 1994-95.""

64. Again in Para 5 of the judgment their Lordships observed as follows:

"We must express our distress at the inaction of the authorities pursuant to Para 6 of the Scheme aforementioned. Though a-period of more than three years have passed by since the decision in Unni Krishmn's case, the authorities mentioned in the said paragraph have not come forward with a workable, realistic and just fee structure, with the result that year after year, this Court is practically being forced to fix the fee on a tentative basis. Fixing the fees is not the function of this Court. It is the function of the Government, the affiliating Universities and the statutory professional bodies like, University Grants Commission, Indian Medical Council and All India Council for Technical Education. At least now, we expect the authorities concerned to move in the matter with" promptitude and evolve an appropriate fee structure. While doing so, it is made clear, they shall not feel shackled by the Orders made by this Court from time to time relating to fee structure, x x x x. We hope and trust that this would be done within a-period of three months from today and the matter be brought to the notice of this Court forthwith. We wish to make it clear that with effect from the Academic Year 1997-98, it shall be the responsibility of the authorities aforesaid to prescribe the fee payable in these colleges.""

65. Even at this stage neither of the parties placed before this Court, any scheme framed by either by the Central Government or the State Government as directed by the Apex Court, even for the academic year 1997-98. This judgment supports the view taken by me that neither the Central Government nor the State Government did apply their mind and passed orders in exercise of the plenary powers vested in them under Chapter 1, Part X of the Constitution and whatever directions are given by the respective State Governments they are intended to comply with the directions of the Apex Court. Hence, these issues raised by the petitioners may not really fall for consideration in this batch of writ petitions. But, as the Counsel for the petitioners have taken considerable pains and argued the matter at length spreading over a month and this being the main thrust of their contention, I am constrained to examine the issue .

66. Under Chapter I of Part X of the Constitution, the legislative powers are distributed between the Centre and the State. Under Article 246, while the Parliament is having exclusive power to make laws on any of the matters enumerated in List I (Union List) of the seventh schedule, the State is having exclusive power to make laws for the State or for any part thereof in respect of matters enumerated in List II (State List) of the seventh Schedule. In respect of matters enumerated in List III (Concurrent List) of the Seventh Schedule, the Parliament as well as the State are having power to make laws. Under Article

251, any law made by the State Legislature is repugnant to any provision of law made by the Parliament in exercise of its plenary powers on any of the matters enumerated in List I or List III. The law made by the Parliament, whether passed before or after the law made by the State Legislature, shall prevail and the law made by the State Legislature shall to that extent of repugnancy be inoperative as long as the law made by the Parliament continues to have effect. Under Article 254, if any of the provisions of the law made by the State Legislature is repugnant to any of the provisions of law made by the Parliament, with respect to any of the matters enumerated in the concurrent list, whether passed before or after the law made by the State Legislature or as the case may be, the law made by the Parliament shall prevail and the law made by the State Legislature shall to the extent of repugnancy be void, unless the law made by the State Legislature has been reserved for the consideration of the President or has received his assent.

67. As stated supra, before the 42nd amendment of the Constitution, education was a State subject as included in Entry 11 of List II and the State Legislature is empowered to make any law on education including Universities subject to provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III. But, after 42nd amendment, the entry from List K of the Seventh Schedule was deleted and Entry 25 of List III was substituted as hereunder:

"Education, including Technical Education Medical Education and Universities subject to provisions of Entries 63, 64, 65 and 66 of List I, Vocational and Technical training of labour."

68. Entry 63, 64 and 65 of List I does not have a bearing on the issue and Entry 66 relates to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. From this it is seen that though the State Legislature is empowered to make legislation in matters relating to education including technical education, the power to make law's with regard to co-ordination in imparting higher education or research and maintenance of standards in institutions is exclusively within the legislative competency of the Parliament. In other words, though the State Legislature is competent to make laws on matters relating to education, the same shall not encroach upon or infringe the power of the Central Government as well as the Parliament to make law with regard to matters enumerated in Entry 66 of List I. The question of repugnancy arises under Article 254(1) of the Constitution only when the State Legislature as well as the Parliament made laws on the matters in the concurrent list, but not otherwise.

69. The Parliament in exercise of its Plenary powers under Entry 25 of List III and Entry 66 of List I enacted All India Council for Technical Education Act, 1987 for establishment of All India Council for Technical Education with a view to; (1) proper planning and co-ordinated development of the Technical Education system through out the Country; (2) Promotion of qualitative improvement of such education in relation to planned quantitative growth; and (3) regulation and

proper maintenance of norms and standards in the technical education system; and for matters connected therewith,

70. Chapter II deals with the establishment of a Council by the name "All India Council for Technical Education" hereinafter referred to as "Council" for carrying out the objectives and purposes of Act.

71. Chapter 3 of the Act deals with power and functions of the Council. u/s 10, the Council among others is empowered to take all steps as it may think necessary to ensure the object of and perform the functions under the Act.

72. We are concerned with Section 10(o) which is as hereunder:

"provide guidelines for admission of students to technical institutions and Universities imparting technical education;"

73. Section 20 empowers the Central Government to give directions to the Council from time to time on questions of policy. Under Sections 22 and 23, the Central Government and the Council are empowered to make rules and regulations respectively under the Act. The Council in exercise of its powers vested in it u/s 10(o) of the Act, issued regulation No.F1/11/88-T.5 (AICTE) Published in Part 2, Section 3 sub-section (1) of Gazette of India, dated 15-6-1992. Under the above guidelines, one has to get a minimum aggregate marks of 60% in Physics, Chemistry and Mathematics, obtained in a single sitting, where admissions are based on the marks in the qualifying examination and not on the basis of entrance test and so far as S.T. and SC candidates are concerned, a pass in 10 + 2 Senior Secondary Examination is prescribed- The notification to the extent that is necessary is extracted hereunder:

#### "A. Engineering Degree Programmes

1. Qualifications for admission of general category students :--The minimum qualification for admission to degree programmes in engineering should be a pass in the 10+2 Senior Secondary Examination with a minimum aggregate of 60 per cent marks in Physics, Chemistry and Mathematics obtained in a single sitting. The duration of degree programme in engineering will be a 4 years after 12th standard. This will apply to cases where admissions are based on the marks in the qualifying examination and not on the basis of entrance tests.

2. Qualification for admission of Scheduled Caste and Scheduled Tribe (SC/ST) students :--The minimum qualification for admission to degree programmes in engineering in respect of SC/ST candidates will be a pass in the 10+2 senior secondary examination with a minimum aggregate of marks in Physics, Chemistry and Mathematics as prescribed by the respective State Governments/ Union Territory Administrations obtained in a single sitting."

Admittedly, these guidelines were issued by the All India Council, at a time when quota for NRI/foreign students in admission to technical institutions was not under contemplation It is only for the first time, the Supreme Court directed 50%

of the seats out of the total in-take in a given year in each of the professional colleges maintained by the private educational agencies, in the academic year 1993-94 while reviewing the judgment in Unni Krishnan "s case (supra) on 14-5-1993 in Review Petition No.4835/93, subsequent to the orders of the Supreme Court neither the All India Council nor the Central Government framed any scheme for admission to professional colleges under the NRI quota At that stage the State Government entered the arena and initially issued G.O. Ms. No. 183, Education (EC-2) Department, dated 18-8-1993, incorporating the directions given by the Supreme Court and fixing the fee payable by the NRI students. Subsequently, statutory rules were framed in G.O. Ms. No. 184, Edn (EC-2) Dept, dated 20-8-1993, under Prohibition of Capitation Fee Act, 1983. Under Rule 3(1)(b)(iv), for NRI students, the requirement of qualifying examination at the common entrance test was dispensed with.

Rule 7(9), dealing with the procedure for admission into professional colleges, it is mentioned that the seats reserved for NRI students shall be filled by respective managements by following the criteria as laid down by the Government from time to time. Though under this sub-rule, it is made clear that the left over seats reserved for NRI students shall be intimated to the competent authority well in advance before commencing the admissions for payment seats to enable that authority to fill up such left over NRI seats, treating them as payment seats, the Government gave liberty to the private managements to fill up the vacancies in G.O. Ms. No.250, dated 6-11-1993, pursuant to the orders of the Supreme Court dated 19-11-1993 in TMA Pai Foundation and others v. State of Karnataka and others, (supra). Under Rule 7(15) the seats earmarked for NRI students were kept out of the purview of the reservations in favour of the constitutionally permissible classes.

74. Perhaps, as the Central Government has not come up with a comprehensive scheme, in the light of the orders passed by the Supreme Court in Unni Krishnan"s case (supra) as well as the orders passed in review petitions filed by the private educational agencies from time to time and now as the local candidates are being admitted by metamorphising them as NRI students in the quota ear-marked for NRI students with a view to maintain minimum academic standards, keeping the aims and objectives of the Technical Education Act i.e., promotion of qualitative improvement of such education and as is being insisted by the Supreme Court that in matters of Technical Education high standards of efficiency have to be maintained and national interest should not be compromised.. The State Government issued G.O. Ms. No.256, Education (EC-2), Department, dated 17-11-1993, whereunder the minimum qualification for the candidates to be admitted in lieu of NRI/foreign students is prescribed as a 1st class in Intermediate education or equivalent examination and also in the concerned group.

75. This limb of the G.O. is under attack in this batch of writ petitions and this Court is called upon to decide whether the State Government is competent to

issue the impugned G.O. in the light of Entry 66 of List I of the Seventh Schedule. Alternatively, whether this G.O. is repugnant to the notification issued by the All India Council for Technical Education in exercise of the powers u/s 10(o) of the Act and the same cannot be given effect to.

76. The Supreme Court in *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, , analysed Article 246 and held as follows:

"It is obvious that Article 246 imposes limitations on the legislative powers of the Union and State Legislatures and its ultimate analysis would reveal the following essentials:

1. Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I notwithstanding anything contained in clauses (2) and (3). The non obstante clause in Article 246(1) provides for predominance or supremacy of Union Legislature. This power is not encumbered by anything contained in clauses (2) and (3) for these clauses themselves are expressly limited and made subject to the non obstante clause in Article 246(1). The combined effect of the different clauses contained in Article 246 is no more and no less than this that in respect of any matter falling within List I, Parliament has exclusive power of legislation.

2. The State Legislature has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II of the Seventh Schedule and it also has the power to make laws with respect to any matters enumerated in List III. The exclusive power of the State Legislature to legislate with respect to any of the matters enumerated in List II has to be exercised subject to clause (1) i.e., the exclusive power of Parliament to legislate with respect to matters enumerated in List I. As a consequence, if there is a conflict between an entry in the power of Parliament to legislate with respect to a matter enumerated in List II, must supersede pro tanto the exercise of power of the State Legislature.

3. Both Parliament and the State Legislature have concurrent powers of legislation with respect to any of the matters enumerated in List III. x x x. The words "Notwithstanding anything contained in clauses (2) and (3), in Article 246(1) and the words" "subject to clauses (1) and (2)" in Article 246(3) lay down the principle of Federal supremacy viz., that in case of inevitable conflict between Union power as enumerated in List I shall prevail over the State power as enumerated in Lists II and III, and in case of overlapping between Lists II and III, the former shall prevail. But, the principle of Federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an "irreconcilable" conflict between the entries in the Union and State Lists. In the case of seeming conflict between the Entries in the two lists, the Entries should be read together without giving a narrow and restricted sense to either of them. Secondly, an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction It should be considered whether

a fair reconciliation can be achieved by giving to the language of the Union Legislative List a meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it and equally giving to the language of the State Legislative List a meaning which it can properly bear. The non obstante clause in Article 246(1) must operate only if such reconciliation should prove impossible. Thirdly, no question of conflict between the two lists will arise if the impugned legislation, by the application of the doctrine of "pith and substance" appears to fall exclusively under one list, and the encroachment upon another list is only incidental."

Now, turning to Article 254, their Lordships observed as follows:

"Article 254 provides for the method of resolving conflicts between a law made by Parliament and a law made by the Legislature of a State with respect to a matter falling in the Concurrent List and it reads:

"254(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provision of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State." 77. However, in case of repugnancy between a State Act and a Union Law on a subject enumerated in List III, the State Law must yield to the Central Law unless it has been reserved for the assent of President or has received his assent under Article 254(2). The question of repugnancy arises only when both Legislatures are competent to legislate in the same field, i.e., when both the Union and State Laws relate to a subject specified in List III and occupied the same field.

78. Their Lordships of the Supreme Court referred to the judgment of Privy Council:

In *Prafulla Kumar Mukherjee v. Bank of Commerce Ltd, Khulna*, AIR 1941 PC 60, Lord Porter delivering the judgment of the Board held as follows:



"in distinguishing between the powers of the divided jurisdictions under Lists I, II and III of the Seventh Schedule to the Government of India Act, 1935, it is not possible to make a clean cut between the powers of the various Legislatures. They are bound to overlap from time to time, and the rule which has been evolved by the Judicial Committee whereby an impugned statute is examined to ascertain the pith and substance of its true character for the purpose of determining in which particular list the legislation falls, applies to Indian as well as to Dominion legislation

Having extracted the observations of Gwyer, CJ., in AIR 1941 47 (Federal Court) , his Lordship proceeded as hereunder:

"The invasion of the provinces into subjects in the Federal List'", in the words of Lord Porter, "was important" :

".....not ..... because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining as to what is the pith and substance of the impugned Act. Its provisions may advance so far into Federal territory as to show that its true nature is not covered with Provincial matters, but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not money-lending but promissory notes or banking ? Once that question is determined the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true content."

Having noticed the precedence accorded u/s 100(1) of the Government of India Act, 1935 to the three Lists in their proper perspectives the Privy Council observed:

"Where they come in conflict, List I has priority over Lists III and II and List III has priority over List II.

But added:

The priority of the Federal Legislature would not prevent the Provincial Legislature from dealing with any matter within List II though it may incidentally affect any item in List I."

Having referred to some other judgments of the English Courts, their Lordships of the Supreme Court held as follows:

"It is well settled that the validity of an Act is not affected if it incidentally trenches upon matters outside the authorised field and therefore it is necessary to inquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially, falls within the powers expressly conferred upon the Legislature which enacted it, then it cannot be held to be invalid merely because it incidentally encroaches on matters which have been assigned to another Legislature."

On pith and substance in *Russel v. The Queen* 1882 (7) AppCas 829, their

Lordships held as follows:

"If on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field."

On the question of repugnancy Nicholas in his Australian Constitution 2nd Ed, P.303, refers to three tests of inconsistency or repugnancy:

- "1. There may be inconsistency in the actual terms of the competing statutes;
2. Though there may be no direct conflict, a State Law may be inoperative because the Commonwealth Law, or the award of the Commonwealth Court, is intended to be a complete exhaustive Code; and
3. Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise of their powers over the same subject-matter."

Their Lordships of the Supreme Court in a recent case in State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , reviewed the whole issue and summarised the conclusions arrived at as hereunder:

"What emerges from the above discussion is as follows:

(i) The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons," It must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each cases.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant, the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally so also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority the State authorities act illegally.

In the light of the interpretation placed on Articles 246 and 254 of the Constitution of India in the above decisions. I would like to examine the facts of the case.

79. In *Adhiyaman's* case (supra), the Supreme Court held that All India Council for Technical Education Act, 1987, falls under Entry 66 of List I and Entry 25 of List III of the Seventh Schedule of the Constitution. As held by the Supreme Court, the power of the Parliament to make a law under Entry 66 is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention. But, admittedly, neither the Parliament nor the Union Government made any law on this subject or issued any executive instructions. At the same time, it is not in dispute that under Entry 25 of List III, both the Union Parliament as well as the State Legislature are having power to make legislation and in fact, in exercise of the said power, the Union Parliament passed All India Council for Technical Education Act, 1987. u/s 10(o), the Council is empowered to provide guidelines for admission of students to Technical Institutions and Universities imparting technical education to carry out the purpose of the Act. In fact, the Council in exercise of its power issued notification dated 15-6-1992, whereunder, one has to secure 60% marks option as obtained in a single sitting to secure admission, where admissions are based purely on the marks obtained in the qualifying examination, but not on the entrance test.

80. In the State of Andhra Pradesh, the admissions to engineering colleges are based on the marks obtained in EAMCET examination without reference to the marks obtained by the candidate in the qualifying examination, if he is otherwise qualified to secure admissions mentioned in para 4 of the GO. Ms. No. 184, Education, dated 20-8-1993. As the Supreme Court went on giving directions from time to time, permitting the private educational agencies to admit local candidates without any guidelines and without reference to the competent authority, which is incharge of making admission into respective professional institutions in the State, in order of merit on the basis of ranking assigned to the

students in the Common Entrance Test, the Government felt it desirable to issue certain guidelines to the private educational agencies for admitting the local students in lieu of the NRI/foreign students. As stated supra, it cannot be said that the State Government is not having power to issue these instructions as technical education squarely falls under Entry 25 of List III, i.e., Concurrent List in the Seventh Schedule. The said power has to be exercised subject to provisions of the Entries 63, 64, 65 and 66 of List I, but as the Union Government or the Parliament did not make any law under Entry 66 of List I, the State Legislature is perfectly well within its powers to issue the impugned G.O.

81. But, Mr. Kodanda Ram relying on Section 10(o) of AICTE Act, contended that mere expression of intention of a Legislature of superior competency denudes the power of the other Legislature and for that proposition he relied on a judgment in the *India Cements Ltd. v. State of Tamil Nadu*, AIR 1990 SC 86.

82. I have gone through the judgment carefully. Though their Lordships of the Supreme Court referred to the judgment in *M/s. Lakshminarayana Mining Co., Bangalore v. Taluk Dev Board* AIR 1972 Mys 299, whereunder Venkataramaiah, J., the learned Chief Justice of the Mysore High Court, as he then was, observed as contended by Mr. Kondanda Ram. Their Lordships of the Supreme Court, did not go to that extent and simply held that royalty is a tax and cess on royalty being a tax on royalty, the State Legislature is incompetent to levy a local cess at Rs.0.45 ps. per rupee as royalty, payable by the appellant on the mining lease for limestone and Kankar for a period of 20 years u/s 115 of Madras Panchayats Act. Hence, the impugned G.O. is not in conflict with any Central legislation. At any rate, in this case this question does not arise as the Council established under the AICTE Act issued notification dated 15-6-1992.

83. The other question to be examined is whether the impugned G.O. is repugnant to the notification dated 15-6-1992, issued by the All India Council and the same is inoperative.

84. Admittedly, the notification issued by the All India Council is prior to the orders of the Supreme Court, wherein certain percentage of seats out of the total in-take of the students by a professional college in a given year are reserved for NRI/foreign students initially. Ultimately, these seats are sought to be filled with local candidates in lieu of NRI students under the directions of the Supreme Court without any guidelines. Hence, the necessity for issuing the impugned G.O. has arisen. As such I am of the opinion that there is no conflict between the notification issued by the All India Council and the impugned G.O., as they are dealing with two different and distinct situations i.e., while the notification issued by the All India Council relates to prescription of minimum marks in the qualifying examination for seeking admissions to professional colleges based on the marks obtained in the qualifying examination, but not on the basis of entrance tests, the impugned G.O. deals with the process of selection of the local students who are seeking admission to professional colleges in lieu of NRI/foreign students, circumventing the normal rules of admission. In other words,

the impugned G.O. is meant for selection of local students who are seeking admission into engineering courses without appearing for the Common Entrance Test and without being sponsored by the competent authority on the basis of the ranking secured by him in the Common Entrance Test. Hence, both the notification issued by the All India Council as well as the impugned G.O. are not in conflict and they can operate in their respective spheres.

85. Even assuming without admitting that both the notification issued by the All India Council and the impugned G.O. relate to the Concurrent subject, the prescription of 1st class by the State Government for admission to engineering courses test, over and above the qualification prescribed by the Council is intended to short-list the applicants, as the applicants seeking admission in lieu of NRI/ foreign students will normally far exceed the seats ear-marked for them, more so in the light of the orders of the Government reducing the tuition fee now to Rs.50,000/- from 6000 US dollars, if proper publicity is given or admissions are made in a manner known to law and x x x x to see that more meritorious among the affluent students who are capable of purchasing the seat, secure admission and also to prevent misuse of this provision by non-meritorious candidates belonging to richer section of the society with the economic power at their command. Further, the Supreme Court time and again reiterated that the only method of admission to the professional colleges in consonance with fair play and equity is merit and merit alone. My view is fortified by a catena of decisions of Supreme Court.

86. Before 42 amendment, a Constitution Bench of the Supreme Court in *R. Chitralakha and Another Vs. State of Mysore and Others*, , rejected the arguments of the petitioner that the Government has no power to appoint a selection committee for admitting students to colleges on the basis of higher or different qualifications than those prescribed by the University and therefore the orders made by the Government in respect of admissions were illegal as the coordination and determination of standards of University is a Union subject and therefore the State Legislature has no constitutional competency to make a law for maintaining the standards of the University education. Subba Rao, J, as he then was speaking for the majority observed as follows:

"This and similar other passages indicate that if the law made by the State by virtue of Entry 11 of the List II of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of the Parliament under the entry "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions" reserved to the Union, the State law may be bad. This cannot obviously be decided on speculative and hypothetical reasoning. If the impact of the State Law providing for such standards on entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the Central field, it may be struck down. But that is a question of fact to be ascertained in each case. It is not possible to hold that if a State Legislature made a law prescribing a higher

percentage of marks for extra-curricular activities in the matter of admission to colleges, it would be directly encroaching on the field covered by Entry 66 of List I of the Seventh Schedule to the Constitution. If so, it is not disputed that the State Government would be within its rights to prescribe qualifications for admission to colleges so long as its action does not contravene any other law."''

87. Next, in *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, , their Lordships of the Supreme Court were called upon to decide the legality of the action of the Government in trying to conduct a test for making selection of candidates from out of a large batch of applicants for admission into 1st year MBBS course, in disregard of the marks obtained at the examination held by University by contending that the same encroached upon the Central subject listed under Entry 66 of List I of Seventh Schedule to the Constitution. Their Lordships of the Supreme Court held as follows:

"The above provisions of law do not make it incumbent upon the Government to make their selection in accordance with the marks obtained by the applicant-candidates at the qualifying examination. Obtaining 50% of the marks at the qualifying examinations was the first hurdle to be crossed by any candidate before he could submit an application for admission into a medical college. The Government which ran the colleges had the right to make a selection out of a large number of candidates and for this purpose they could prescribe a test of their own which was not against any law. Merely because they tried to supplement the eligibility rule by a written test in subjects with which the candidates were already familiar, their action cannot be impeached nor was there any thing unfair in the test prescribed. The test prescribed by the Government must be considered in the light of a second hurdle for the purpose of a screening to find out who of all the candidates applying should be admitted and who should be rejected. Merely because the University had made regulations regarding the admission of students to its degree courses, it did not mean that any one who had passed the qualifying examination such as the PUC or HSC was ipso facto to be entitled to admission to such courses of study. If the number of candidates applying for such admission far exceeds the number of seats available, the University can have to make its choice out of the applicants to find out who should be admitted and if instead of judging the candidates by the number of marks obtained by them in the qualifying examination the University thinks fit to prescribe another test for admission no objection can be taken thereto. What the University can do in the matter of admissions to the Degree Courses can certainly be done by the Government in the matter of admission to the M.B.B.S. course.

In our view the test prescribed by the Government in no way militates against the power of Parliament under Entry 66 of List I of the Seventh Schedule to the Constitution. The said entry provides:

"Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

The above entry gives Parliament power to make laws for laying down how standards in an institution for higher education are to be determined and how they can be co-ordinated. It has no relation to a test prescribed by a Government or by a University for selection of a number of students from out of a large number applying for admission to a particular course of study even if it be for higher education in any particular subject."

88. In *Dr. Ambesh Kumar Vs. Principal, L.L.R.M. Medical College, Meerut and Others*, , their Lordships of the Supreme Court while dealing with the competency of the State Government to prescribe minimum marks obtained in M.B.B.S. course for admission to P.O. Courses and whether such order was in conflict with the power of Central Legislature to make laws in respect of matters specified in Entry 66 of List I, held as follows :

"x x x x. It had no relation to a test prescribed by Government or by a University for selection of a number of students from out of a large number applying for admission to a particular course of study.

In the instant case the number of seats for admission to various post-graduate Courses both Degree and Diploma in Medical Colleges is limited and a large number of candidates undoubtedly apply for admission to these Courses of study. x.x x x x x. On the other hand by laying down a further qualification of eligibility it promotes and furthers the standard in-an institution, x x x x. On a consideration of the aforesaid decisions we are unable to hold that the impugned order dated 15-12-1982 has in any way contravened or encroached upon the power of the Central Legislature to make Laws or the Central Government to make orders in regard to matters provided in Entry 66 of List I of Seventh Schedule to the Constitution. There is no conflict between the Regulations and also the order in question. The State Government by laying down the eligibility qualification namely the obtaining of certain minimum marks in the MBBS examination by the candidates has not in any way encroached upon the Regulations made under the Indian Medical Council Act nor does it infringe the central power provided in the Entry 66 of List I of theSeventh Schedule to the Constitution. The order merely provides an additional eligibility qualification. We are in full agreement with the reasoning and conclusion of the High Court in this respect. This contention, therefore, in our considered opinion, is without any merit."

The above ratio decidendi is once again reiterated in *Adhiyamam*'s case (supra).

Lastly, it is useful to extract Para 8 of the scheme framed by the Supreme Court in *Unni Krishnan* 's case (supra) :

"(8) The results of the entrance examination, if any, held should be published at least in two leading newspapers, one in English and the other in vernacular. The payment candidates shall be allotted to different professional Colleges on the basis of merit-cum-choice. The allotment shall be made by the competent authority. A professional college shall be bound to admit the students so allotted.

The casual vacancies or unfilled vacancies, if any, shall also be filled in the same manner. The management of a professional college shall not be permitted to admit any student other than the one allotted by the competent authority - whether against free seat or payment seat, as the case may be. It is made clear that even in the matter of reserved categories, if any, the principle of inter se merit shall be published in two leading newspapers as aforesaid and on the notice boards of the respective Colleges and at such other places as the competent authority may direct, along with the marks obtained by each candidate in the relevant entrance test or qualifying examination, as the case may be. No professional college shall be entitled to ask for any other or further payment or amount, under whatever name it may be called, from any student allotted to it - whether against the free seat or payment seat."

89. Infact, while reviewing the judgment in Unni Krishnan's case and providing seats to the extent of 5% of the total intake for N.R.I. students, the Supreme Court by order dated 14th May, 1993 categorically stated that the N.R.I. students shall be admitted on the basis of merit. But, in view of the different backgrounds they come from, it is for the management of the Colleges concerned by judge the merit of these candidates having regard to the relevant factors. At the same time, it is not the case of the petitioners that the management of these private Colleges framed any scheme to judge the merit of either the N.R.I. students or the local students who are seeking admission in lieu of N.R.I. students.

90. In the order dated 7th October, 1993 also, while raising the N.R.I. quota to 15% the Supreme Court observed that the basis of selection for admission for these N.R.I./foreign students shall be the same as indicated in the order dated 14th May, 1993. In other words, the selection and admission of these N.R.I. students should be on the basis of merit. But, at the same time, the Supreme Court observed that if the N.R.I. students are not available to the extent of seats reserved for them, it shall be open to the managements to admit other students within the said quota and they need not be the allottees from the Government or that they should have appeared for the Joint Entrance Examination. But, at the same time, their Lordships observed as follows:

"It is made clear that this special provision is made only for this year, being a year of transition, i.e., academic year 1993-94."

91. Even in case of minority educational institutions, their Lordship held that inter se merit among the minority student to the extent of 50% and general students for the remaining 50% have to be maintained in the interest of fairness and maintenance of standards.

92. Yet in another order dated 19th November, 1993, their Lordship in the Supreme Court held that seats remaining vacant as on 1st December, 1993, whether in the category of free seats or in the category of payments seats can be filled up by the managements. From the judgment, it is seen that such a concession was made by the Supreme Court only for that academic year i.e.,



1993-94, because of the peculiar circumstances prevailing at that point of time.

93. Again while giving directions for academic year 1994-95, the Supreme Court simply observed that if any seat in N.R.I. quota remained unfilled, the same may be filled by the managements at their discretion without reference to inter se merit among the candidates prepared to take admission by paying higher tuition fee as fixed by the Government in the quota ear-marked for N.R.I. students.

94. Had the Counsel appearing or the respective State Governments properly appraised the Supreme Court about the availability of the candidates in large numbers seeking admission in lieu of N.R.I. students by paying the fee fixed by the Committee concerned, in the seats earmarked for N.R.I./foreign students and left unfilled, I am sure, the Supreme Court would have given more comprehensive and consolidated guidelines for their selection and admission duly protecting the inter se merit among these candidates.

95. From the above narration of the facts, it is seen that neither the Supreme Court nor the managements have propounded any scheme for admission of the local students in lieu of N.R.I./foreign students, with the result, it can be safely presumed that the admission of local candidates in lieu of N.R.I. students is not based on any guidelines, more so, justifiable in a Court of law and there is every possibility of the managements giving admission to the students belonging to the richer sections of the society by collecting the fees over and above the fee fixed by the Government by sacrificing the inter se merit atleast among these students who are capable of purchasing the seats in professional Colleges.

96. Hence, the Government is well within its powers to prescribe minimum qualification as 1st class in Intermediate examination or in equivalent examination for those students who are seeking admission in lieu of N.R.I. students and the question of repugnancy as contended by the petitioners does not arise. Accordingly this contention was also rejected.

97. Lastly, I do not see any rationale in permitting the managements to fill up these vacancies/seats without following reservations in favour of Constitutionally permissible classes of students even though they are capable of paying Rs.50,000/- as tuition fee per year.

98. There may be justification in not applying the rule of reservation in the seats ear-marked for foreign/NRI students as long as those seats are filled up by them. But if any seats in the quota fixed remained unfilled and those vacancies sought to be filled up with substituted NRI students, there is no rationale why rule of reservation should not be applied when the affluent students belonging to these sections are willing to pay the tuition fee prescribed for this category of students by the committee constituted for the purpose. Any view taken otherwise violates Article 14 and 15(4) of the Constitution of India. Hence, Rules 7(15) of the Statutory rules issued in G.O. Ms. No. 184, Education, dated 20-08-1993 and clause (iii) of G.O. Ms. No.256 dated 17-11-1993 should be read down and as and when these seats are being filled up by substituted NRI students the rule of

reservation has to be implemented unless the students belonging to those sections have not come forward to take up admissions by paying the required tuition fees.

99. Thirdly, the petitioners contended that insisting 1st class in the Intermediate examination for the students seeking admission in lieu of N.R.I. students is arbitrary, as such a qualification was not prescribed for any other category of students and such an action is violative of Article 14, which prohibits class legislation. Hence, the same is liable to be struck-down by this Court.

100. Developing this contention, the Counsel for the petitioners argued that (1) in no other State such a minimum qualification was prescribed for the students seeking admission under this category, (b) even for N.R.I./foreign students such a qualification was not prescribed, and (c) no such qualification is prescribed even for the students who are being admitted on the basis of ranking obtained in EAMCET. In other words, it is their case that even a third class student or a student who passed the qualifying examination in the instant examination is also allowed to sit for Common Entrance Test.

101. The sum and substance of their argument is that while no minimum marks are prescribed in the qualifying examination for the students seeking admission under various categories, i.e., N.R.I./foreign students, general students, payment students, it is only in case of the local students who are seeking admission in lieu of N.R.I./foreign students, such a minimum qualification is prescribed only in the State of Andhra Pradesh, while such minimum qualification is not prescribed in any of the States.

102. A Constitution Bench of the Supreme Court in *Bhudhan Choudhry v. State of Bihar*, AIR 1995 SC 195, after reviewing various judgments of that Court held as follows:

"It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

In *Kangshari Haldar and Another Vs. The State of West Bengal*, , their Lordships of the Supreme Court held as follows:

"The equality before law which is guaranteed by Article 14 no doubt prohibits

class legislation but it does not prohibit the Legislature from legislating on the basis of a reasonable classification. If classification is reasonable and is founded on intelligible differentia and the said differentia have a rational relation to the object sought to be achieved by the statute based on such reasonable classification the validity of the statute cannot be successfully challenged under Article 14."

103. In *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, , reserving 70% of the seats at the Post Graduate level to the graduates who have taken their MDBS., Degrees from Delhi University was questioned.

104. R.S. Pathak, J. while justifying the reservation in favour of Delhi students observed as follows:

"The preference is based on a reasonable classification and bears a just relationship to the object of the education provided in the post-graduate classes. The concept of equality codified in our constitutional system is not violated. It has been said some times that classification contradicts equality. To my mind, classification is a feature of the very core of equality, for those who are similarly situated form a class between themselves, and the classification is not vulnerable to challenge if its constituent basis is reasonably related to achieving the object of the concerned law.""

105. In *Deepak Sibal Vs. Punjab University and Another*, the vires of the rule for admission in the evening course of three year L.L.B., Degree course conducted by the Department of Laws of Punjab University, whereunder, the admissions to evening classes were restricted to only Government, Semi-Government and similar other institutions to the exclusion of private employees came up for consideration. And while declaring the rule as discriminatory and violative of Article 14 of the Constitution of India, their Lordships explained the scope of Article 14 once again, in the same lines as in *Bhudhan Choudhary's* case (supra).

106. In the light of the dicta laid down by the Supreme Court on Article 14, the question arises for consideration is whether the classification is a reasonable classification within the meaning of Article 14. In order to consider the question as to the reasonableness of the classification, it is necessary to take into account the objective for such classification.

107. Justice Jeevan Reddy speaking for majority in *Unni Krishnan's* case held that the private institutions supplement the functions performed by the Institution of the State. The State cannot claim any immunity from the obligations arising from Articles 14 and 15, while granting recognition or affiliation to these institutions. The relevant portion of Para 149 of the Judgment is extracted hereunder:

"The private educational institutions merely supplement the effort of the State in educating the people, as explained above, it is not an independent activity. It is an activity supplemental to the principal activity carried on by the State. No

private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory-in the interest of the general public - upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognising/affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution, It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach in supplemental activity as well Affiliation/ recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or University is justified or is entitled to grant recognition/ affiliation without imposing such conditions. Doing so would amount to abdicating its obligations enjoined upon it by Part III; its activity is bound to be characterised as unconstitutional and illegal. To reiterate, what applies to the main activity applies equally to supplemental activity. The State cannot claim immunity from the obligations arising from Articles 14 and 15. If so, it cannot confer such immunity upon its affiliates."

108. While framing scheme for admission to professional Colleges, the Supreme Court emphasised that admission within all groups and categories should be based on merit determined on the basis of common entrance test where it is held or in the absence of an entrance test, by such criteria as may be determined by the competent authority subject to reservations in favour of constitutionally permissible classes under Article 15. But the Supreme Court departed from the general principle and observed that the managements need not observe rule of reservation while admitting substituted NRIs at their discretion

109. The National Policy of Education 1996 makes it clear that merit shall be primordial consideration at higher levels.

" "The policy makes it clear that merit shall be the primordial consideration at higher levels. "In higher education in general, and technical education in particular, steps will be taken to facilitate interregional mobility by providing equal access to every Indian of requisite merit, regardless of his origins". Describing education as "vital area of national life" the policy envisages "a meaningful partnership" between the Union and the States after the subject Education was included in the Concurrent List by the Union accepting "a larger responsibility", inter alia, "to promote excellence at all levels of the educational Pyramid throughout the country."

From the Preamble of AICTE. Act it is seen that the All India council of Technical Education is established to ensure:

(1) proper planning and co-ordinated development of the technical educational throughout the country;

(2) promotion of qualitative improvement of technical education in relation to planned quantitative growth; and

(3) regulation of the system and proper maintenance of norms and standards.

In *T.M.A. Pat Foundation (II) v. State of Karnataka* (supra), 2nd case relating to admissions by Minority Institutions their Lordships of the Supreme Court held:

"We see no reason why the State/ affiliating University cannot stipulate that the general students as well as minority students must also be admitted on the basis of inter se merit determined on the basis of Common/Joint entrance test Article 30, in our opinion, does not clothe a Minority Educational Institution with the power to adopt its own method of selection of students, x x x x- The said requirement is but a piece of regulation which the State/ affiliating University can prescribe in the interest of fairness and maintenance of standards."

110. In *Jagadeesh Saran v. Union of India*, (supra), the Honourable Supreme Court emphasizing the need for merit in the higher levels of education as hereunder:

"If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate Courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populists considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless."

In *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, it is observed that:

"The object of selection for admission to the Medical Colleges considered in the background of the Directive Principles of State Policy contained in our Constitution, appears to be to select the best material from amongst the

candidates in order not only to provide them with adequate means of livelihood but also to provide the much needed medical aid to the people and to improve public health generally."''

111. The above discussion leads to an irresistible conclusion that admissions to higher educational Courses like technical Courses requiring liiher skills should be based no merit and best among the lot should be preferred. In fact, the Supreme Court while permitting the private educational institutions to admit N.R.I./foreign students, made it very clear that their admission should be based purely on merit. But, when the private educational institutions once again approached the Supreme Court saying that required number of N.R.I./foreign students are not coming forward seeking admission in their institutions, the Supreme Court permitted the private educational managements to admit local students in the left over seats reserved for N.R.I./foreign students without reference to the competent authority and without insisting for a pass in common entrance test without fear of contradiction I am of the firm view that the directions given by the Supreme Court have to be interpreted catena in the light of the dictum laid down by the Supreme Court in a catena of decisions and the objectives sought to be achieved by the Parliament in enacting All India Council for Technical Education. It is true that the managements were given liberty to adopt their own procedure for admitting the local students in the left over seats earmarked for N.R.I. students, but at the same time it is not the case of the petitioners that the private managements laid down any guidelines and procedure for selecting the meritorious students among the local students, who are willing to purchase the seats by paying the fees fixed by the Committee constituted for the purpose. As the yearly tution fee fixed to the local students seeking admission in lieu of N.R.I. students at Rs.50,000/- definitely the students who can afford to pay the above tution fee will cut-number the seats that are left unfilled by N.R.I. students, for which a process of selection is needed to select the best among them.

112. In Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, speaking on the process of selection their Lordships of the Supreme Court in Para 12 of the Judgment observed:

"But let us understand what we mean we say that selection for admission to Medical Colleges must be based on merit What is merit which must govern the process of selection ? It undoubtedly consists of a high Degree of intelligence coupled with a keen and incisive mind, sound knowledge of the basic subjects and infinite capacity for hard work, but that is not enough; it also calls for a sense of social commitment and dedication to the cause of the poor."

113. In State of Andhra Pradesh v. Lavu Narendm Nath (supra) it is held by the Supreme Court that the Government, undoubtedly ha a right and a duty to make a selection from the number of applicants applied for admission if all could not be admitted- If there was no legislation covering this field Government would undoubtedly be competent to prescribe a test itself to screen the best candidates. In the light of the above discussion, the Government is justified in

prescribing minimum qualification to select the best among the candidates treating these students as a class who are seeking admission not in the manner provided under the Prohibition of Capitation Fee Act i.e., without reference to the rank secured by him in the common entrance test and without reference to the competent authority who has to allot the students as per their choice both in free seats and payment seats to any of the private educational institution strictly basing on the inter se merit among those groups of students.

114. This class of people can be clearly distinguishable from others left out of this group and the same satisfies the test of reasonable classification and prescribing minimum 1st class in the qualifying examination for this group of students is intended to maintain high standards and norms in the technical education system and this differentia is having rational nexus to the object sought to be achieved by the G.O. in question.

115. Hence, I hold that the objective in issuing the impugned G.O. is intended to select best talent available out of this class of students in consonance with the objectives of A.I.C.T.E. Act and the same in conformity with the constitutional scheme envisaged under Article 14 of the Constitution of India .

116. Coming to the other contentions of the petitioners, under Article 14, as far as N.R.I. students are concerned, the Judgment of the Supreme Court is crystal clear that these students should be admitted on the basis of merit. The managements of the Colleges concerned are given the liberty to judge the merit of these candidates by evolving their own procedure. There is justification for not insisting N.R.I. students to appear for common entrance test as they come from different backgrounds and the Courses of study pursued by them are different and distinct in different countries and the academic standards of the Courses pursued by them are comparably higher than the qualifying examination prescribed in our country i.e., Intermediate examination.

117. Hence, the impugned G.O. cannot be attacked on the ground that no minimum marks in the qualifying examination were prescribed for N.R.I./foreign students. At any rate, the statistics available show that not even 1% of the total seats earmarked for N.R.I. students in all the educational institutions managed by private managements were filled. As stated supra, the managements of the Colleges concerned were admitting the local candidates substituting them as N.R.I. students only for monetary considerations.

118. Nextly, though the petitioners raised the plea that in other States, minimum marks were not prescribed in the qualifying examination for the students to be admitted in lieu of N.R.I. students, they did not place any material before this Court as to how admissions are taking place there. At any rate, the All India Council, way back on 15-6-1992, prescribed that one should get minimum aggregate of 60% of marks in groups i.e. Physics, Chemistry and Mathematics, obtained in a single sitting where the admissions are based on marks in the qualifying examination and not on the basis of entrance test.

119. If the private educational institutions in other States are admitting candidates with lesser marks than the one prescribed by the All India Council for Technical Education, they will be doing so at the risk of declaring such admissions as illegal. As far as this State is concerned, the Government is well within its powers in prescribing 1st class for these students as they out-number the seats really available under N.R.I. category to select best among them by a process of selection.

120. Coming to the other contention that no minimum marks were prescribed for the students appearing for the common entrance test, the Supreme Court upheld the admissions through "Common entrance test in State of A.P. v. I. Narendm Nath (supra). In case of admissions through common entrance test though one has to pass the minimum qualifying examination, the admissions shall be in order of merit on the basis of ranking assigned to the student in the common entrance test conducted for that purpose. Even in the scheme framed by the Supreme Court, students to be admitted strictly on the basis of ranking obtained by them in the common entrance examination in the general seats to the extent of 50% in the Private Engineering Colleges and they are liable to pay the tuition fee on par with students admitted in Government Colleges. The admissions to the remaining 50% of payment seats shall be made strictly on the basis of merit from among those students who are willing to pay higher tuition fee over and above the one paid by the student admitted under the general category. Likewise, the minority institutions are given liberty to fill up 50% of the total intake in a given year from among the minority students. Once again these admissions are directed to be strictly on the basis of inter se merit among the minority students.

121. From this it is evident that the students seeking admission to professional Colleges are divided into four different groups, they are:

- (1) Students seeking admission to general seats.
- (2) Students seeking admission to payment seats.
- (3) Students seeking admission to minority institutions (minority students)
- (4) Local students seeking admission in lieu of N.R.I./foreign students.

122. The different standards prescribed for their admissions cannot be treated as irrational and that there is no nexus to the object sought to be achieved.

123. For all the above reasons this contention also falls to ground.

124. Coming to the 4th contention i.e. whether the Government is empowered to issue the impugned G.O. in exercise of its executive powers under Article 162 of the Constitution of India- In other words, it is the contention of the petitioners that the G.O. is only declaratory in nature and it is not a source of power by itself, unless made into a law by appropriate Legislature or issued as a rule in exercise of the statutory power.



125. This contention is also devoid of merits. Under Article 162 of the Constitution of India the executive power of the State is co-extensive with that of the Legislature powers of the State. A Constitution Bench of the Supreme Court in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, held :

"The State in exercise of its executive powers is charged with the responsibility and duty of carrying on the general administration of the State so long as the State Government does not go against the provisions of the Constitution or any law the width and amplitude of its executive powers cannot be surmised. If there is no enactment covering a particular aspect certainly the Government can carry on the administration by issuing administrative directions or instructions until the Legislature makes a law in that behalf.

In the State of *A.P. v. Lavu Narendra Nath* (supra) the question that arises for consideration of the Supreme Court was

"Whether the Government had the right to prescribe a test for making a selection of a number of candidates from out of the large body of applicants for admission into the first year M.B.B.S. course and whether such action of the Government contravened any provision already made by the Legislature in that respect under Article 162 of the Constitution of India,"

During the course of the arguments, the Counsel for the Respondents raised the following contentions:

- (1) The State has no power to trench upon the powers given to the University. The test prescribed contravenes Section 23 of the Universities Act.
- (2) Even if the matter is not covered by the Universities Act, the Executive cannot be allowed to usurp a law making power in prescribing the test.
- (3) The rule affects prejudicially the right conferred on candidates by the University Regulations.

Repelling the above arguments their Lordships of the Supreme Court held:

"In our view there is no substance in any of the contentions as will be apparent from our conclusions noted above and the decisions of this Court bearing on this point. The University Act, as pointed out, merely prescribed a minimum qualification for entry into the higher courses of study. There was no regulation to the effect that admission to higher course of study was guaranteed by the securing of eligibility. The Executive have a power to make any regulation which would have the effect of a law so long as it does not contravene any legislation already covering the field and the Government order in this case in no way affected the rights of candidates with regard to eligibility for admission; the test prescribed was a further hurdle by way of competition when mere eligibility could not be made the determining factor."

In *Indra Sawhney's* case (supra), while answering question No. 1 (b), i.e., whether an executive order making a provision under Article 16, is enforceable,

their Lordships of the Supreme Court held as follows:

"It is well settled by the decisions of this Court that the appropriate Government is empowered to prescribe the conditions of service of its employees by an executive order in the absence of the rules made under the proviso to Article 309. It is further held by this Court, even where rules under the proviso to Article 309 are made, the Government can issue orders/ instructions with respect to matters upon which the rules are silent.""

Their Lordships further observed as follows :

"It would, therefore, follow that until a law is made or rules are issued under Article 309 with respect to reservations in favour of Backward Classes, it would always be open to the executive - to provide for reservations of appointments/ postings in favour of Backward Classes by an executive order.""

126. From the above discussion it is seen that even though the Legislature has a power to make law relating to a subject, the executive action by the appropriate Government is not rendered invalid merely because there is no legislation to support such action. (Naraindas v. State of M.P 1974 SC 1232).

127. In the instant case Section 4(a) of the Prohibition of Capitation Fee Act made a provision for admission of NRI students in accordance with the Rules prescribed by the Government in that behalf.

128. In Rule 3(1)(a) of the statutory rules the admissions are directed to be made in the order of merit on the basis of the ranking assigned to the students in the common entrance test i.e., EAMCET conducted. Under Rule 3(1)(b)(IV) the statutory rules were not made applicable to the non-resident Indian students. Under Rule 7(9) the respective Managements are given the discretion to admit the N.R.I. students following the criteria laid down by the Government from time to time and the managements are directed to intimate the competent authority of left over seats reserved for N.R.I. students, if any, well in advance before the commencement of the admissions to be made for "payment seats". But the Government did not choose to issue any guidelines for making selection among the N.R.I. students on the basis of the merit. The Supreme Court while reviewing the Judgment in Unni Krishnan's case (supra) reserved 5% of the total intake of the seats in a given year in a college for N.R.I. students and the managements are given the discretion to formulate their own procedure for admissions of these students strictly on the basis of the merit. Following the guidelines issued by the Supreme Court, Government issued G.O. Ms.No.IS3; dated 18-8-93 permitting the managements to admit the N. R. I. students after publicising the procedure formulated by these institutions for admission of N.R.I. students. In Para 6 of the G.O., the Managements were directed to intimate the position to the competent authority after giving admission to N.R.I. students so as to enable him to allot the students against the unfilled seats. But the Supreme Court in T.M.A. Pai's case (supra) permitted the managements to admit the local students in the left over seats reserved for N.R.I. students i.e., 15% of their own by observing that

these students need not appear for the joint entrance examination nor be allotted by the Government. But the Supreme Court cautiously observed that special provision was only made for that year being an year of transition.

129. In terms of this Judgment, the Government issued GO. Ms. No.250, Education (E.C.2) Department, dated 6-11-1993 subsequently keeping (sic. in mind) the demand for these seats and the fact that people are willing to pay any amount for admission in Engineering College even in the seats ear-marked under this category if proper publicity is given which may result in the process of selection to admit the students. When once the process of selection is put in motion the best among the lot to be selected by evolving a procedure in that direction. Hence, the Government is justified in issuing the impugned G.O. Ms. No.256, Education (E.C.2) Department, dated 17-11-1993 prescribing first class minimum, in the qualifying examination in exercise of its executive power under Article 162 of the Constitution for those students who are clamouring for seats under this quota In the light of the above discussion, the third contention of the petitioner is also rejected.

130. Both the Counsel placed the entire case law before this Court arising under Articles 246 and 254 of the Constitution of India as well as under Article 14 of the Constitution of India, As all these judgments confirm to the views referred above they were not specifically referred to in the Judgment.

131. Now the question remains whether the admission of substituted N.R.I. students in violation of G.O. Ms. No.256 shall be permitted to continue their studies in the Colleges in which they were admitted.

132. Both Sri Gangaiah Naidu as well as Sri C. Kodanda Ram in one voice appealed that if the Court is not agreeing with any of the contentions raised on behalf of the students, the admission of the petitioners may not be disturbed by applying equities in their favour as most of them are nearing completion of their Engineering Courses. In support of their case they relied on a Judgment of the Supreme Court reported in Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, . In this case, the Registrar of Kamataka University in its letter dated 7th April, 1983 informed the Principal of the Dharmasthala Manjunatheswara College of Engineering and Technology that H.S.C. examination of 11 years duration conducted by State of Rajaslhan is not equivalent to the Pre-Universily (10+2) examinations conducted in the State of Kamataka is not equivalent as such, the admission of the Petitioner and another who passed H.S.C. Examination of Rajasthan State are not eligible for admission to the first year Engineering Courses for the year 1981-82 as per the eligibility rules and the candidates may be informed accordingly. The Supreme Court having upheld the validity of the said letter allowed the petitioners who continued their studies under interim orders of the Court to continue their studies by holding that the fault lies with the Engineering Colleges which admitted the appellants as the principals of these Engineering Colleges must have known that the appellants are not eligible for admission and yet for the sake of capitation fee in some of the

cases they granted admission to the appellants and allowed the students to continue their studies. It is useful to extract the observations of the Supreme Court.

"We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. But the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective Engineering Colleges and their admissions should not now be disturbed because if they are now thrown out after a period of almost four years since their admission their whole future will be blighted. Now it is true that the appellants were not eligible for admission to the Engineering Degree Courses and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the Engineering Colleges which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc., examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc., examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission.""

133. They also relied on decision of the Judgment of the Supreme Court in Unni Krishnan's case (supra). It is true that the Supreme Court while confirming the Judgment of a Full Bench of this Court in Kranth Sangram Parishath 's case (supra) justified the continuance of the students admitted by the Managements under the management quota on the ground that the situation has been brought about by a combination of circumstances, namely, enactment of Section 3-A, the allotment of students to the extent of 50% only by the Convenor and the failure of the Government to immediately rectify the misunderstandings of the Convenor.

134. On the other hand, Sri Satyctnarayana Prasad, Government Pleader for Higher Education strenuously contended that the students knowing fully well the decisions rendered by the Supreme Court from time to time wherein it was emphasised that admissions to technical institutions should be on the basis of merit and if admissions are granted by any other method it would result in fall in the standards of technical education which requires sophisticated skills resulting in grave national risk and the present situation is brought by themselves and no one can be blamed for the situation in which they are placed. In support of his contention, he relied on the following Judgments of the Supreme Court.

135. In Nageswaramma v. State of Andhra Pradesh, AJR 1986 SC 1188 the Supreme Court observed that, if permission is granted to the students of an

unrecognised institution to appear at the examination it would amount to encourage and condoning the establishment of unauthorised institutions.

136. In *U.P. Junior Doctors' Action Committee and Others Vs. Dr. B. Sheetal Nandwani and Others*, : Before the Supreme Court the interim orders given by the Allahabad High Court for admission of the respondents into M.S. (Surgery) and in M.D. (Medicine) was assailed. The contention raised before the Court is that, granting admission at an interlocutory stage in pending proceedings even by styling it as provisional creates lot of adverse consequences and leads to indiscipline in the system of imparting education. Accepting the contention of the State, their Lordships of the Supreme Court observed that:

"It is a well-known rule of practice and procedure that at interlocutory stage a relief which is asked for and is available at the disposal of the matter is not granted. The Writ Petitioners wanted admission into post-graduate course as the main relief in the writ petition. To have it granted at the threshold creates a lot of difficulties. In a case where the petitioner ultimately loses in a case of this type a very embarrassing situation crops up. If he has by then read for two to three years, there is a claim of equity raised on the plea that one cannot reverse the course of time. In a case of this type equities should not be claimed or granted. Taking an overall picture of the matter we are of the view that unless there is any special reason to be indicated in clear times in an interlocutory order as a rule no provisional admission should be granted and more so into technical courses."

137. Another decision of the Supreme Court reported in *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, : questioning the orders of the Government of A.P. refusing to grant permission to the appellant society to start a Medical College, the petitioner's Society filed a Writ Petition in the High Court of A.P. and the same was dismissed. Thereafter the Society carried the matter in appeal. In appeal, the Supreme Court confirmed the Judgment of this Court by holding that the right guaranteed by Article 30(1) gives the minority to give full liberty to establish educational institutions of its own choice. If the minority community expresses to join the scheme of national educational policy, it must naturally abide by the terms of that policy unless the terms require the surrender of the right under Article 30(1). Thereafter the Counsel appearing for the students pleaded that their interest should not be sacrificed. Repelling the said argument.

"We regret that the students who have been admitted into the College have not only lost the money which they must have spent to gain admission into the College, but have also lost one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the College despite the warnings issued by the University from time to time.""

138. Another decision of the Supreme Court reported in *State of Maharashtra Vs. Vikas Sahebrao Roundale and others*, . In this Writ Petition the students who are

admitted to Diploma education course by certain unrecognised schools in Maharashtra filed Writ Petition in the High Court of Bombay at Nagpur seeking a direction to the authorities concerned to permit them to appear in the examination to be held and the request was acceded too by the High Court. The State carried the matter in appeal. Speaking for the Bench Justice Sri K. Rama Swamy as he then was after referring to the Judgments in N.M. Nageshwaramma's case (supra) and A.P. Christain Medical Educational Society's case (supra) held:

"We do not think that we can possibly accede the request made on behalf of the students any direction of the nature sought for would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself We cannot imagine anything more destructive of the rules of law than a direction by the Court to disobey the laws."

139. Once again the fate of students admitted by a society without affiliation came up for consideration before a Division Bench of this Court in Registrar, Osmania University v. Madina Educational Society, 1996 (2) ALD 605. The Society claiming minority status and protection under Article 30 of the Constitution filed a Writ Petition seeking direction to the University to permit students to take the examinations and a learned single Judge of this Court by way of an interim order directed the University to allow the students of the society to sit for the semester examination. On an appeal filed by the University the Division Bench of this Court reversed the order after screening the case law Sri Prabha Shankar Mishra, C. J. as he then was speaking for the Bench observed that there are regulations clearly laying down that such institutions should not admit students until they are granted affiliation and even if such institutions admits students they are free to do so for the limited purpose of Article 30 of the Constitution. But as a matter of fact, cannot claim affiliation unless they fulfil conditions and regulations in this behalf and obviously cannot ask the students to be admitted to the examinations conducted by the University. It is useful to extract the concluding para of the Judgment:

"In spite of the strong worded orders issued by the Courts it is seen, however, that Universities and other authorities do not strictly enforce the conditions of affiliation and regulations in this behalf and many such institutions which otherwise are not fit to be recognised or affiliated come up and grow beyond size for the administrators in the Government and the University to contain them. Where such unscrupulous acts begin and why they go unchecked, however, are matters on which the Court can only conjecture unless there are specific informations made available to it. Learned single Judge felt persuaded to issue an interim direction because in his opinion there was some fault somewhere in the conduct of the University and fate of unsuspecting students was/is involved. Compassion and sympathy do play a very important role and sharp edges of

justice are softened by such considerations. Sympathy, however, cannot be extended or stretched beyond a limit and when they enter into the realm of law and it is found that they are likely to go against the rules of law and regulations in this behalf the Courts must not be guided by any sympathy."

From the above discussion, the following principles emerge:

- (1) As a rule no provisional admission should be granted, more so in technical courses by way of interim orders.
- (2) In this type of cases equity should not be claimed or granted.
- (3) Compassion and sympathy cannot be extended or stretched beyond a limit and when they come into the realm of law. The Courts must not be guided by any sympathy.
- (4) By a fiat of the Court if the students are permitted to appear at the examinations it will be practically giving premium on inefficiency and allow the rich to take march over the poor meritorious students.

140. In the instant case, the conduct of the parties gave me an impression that they tried to walk away with the Degrees under the interim orders of this Court than getting the issues raised by them, finally resolved. The interim orders granted at the earliest point of time by Justice Venkataram Reddy, J. was also extracted supra. His Lordship while giving interim directions gave sufficient guidelines to safeguard the merit among this category of students. The very first direction given by his Lordship was that if students with first class in Intermediate Examinations are available seats should be offered to them in the first instance. Neither the Government nor the private managements who are made party respondents to these proceedings placed any material to show that the managements evolved a procedure of their own to offer admissions to the meritorious students among that group by giving wide publicity. If first class students are not available the management should offer admissions on the basis of inter se merit amongst the applicants either on the basis of the marks obtained in EAMCET or marks obtained in the qualifying examination. No material is placed by the respondents or the petitioners that even this direction was followed by any known procedure permissible in law. The petitioners if found eligible as per the above directions, they shall be admitted into the respective colleges only on provisional basis at the risk of the petitioners and the validity of their admissions shall depend upon the ultimate outcome of the writ petition; again no evidence is forthcoming that this direction was also complied with. On the other hand, many of the students were admitted by the managements on their own without reference to the impugned G.O. or the interim direction given by this Court. Further, His Lordships having realised the urgency and general importance on the question involved in these batch of writ petitions directed the office to post the writ petition for final hearing subject to part-heard on 20-12-1993. But the petitioners has not taken any steps to get the cases posted for hearing. On the other hand, immediately after I became a Judge of this

Court, a similar writ petition came up for admission before me. Realising the general importance of the question raised by the petitioners without giving interim directions while directing the Government Pleader to file a counter, I posted the writ petition for orders within a week thereafter. But that writ petition never came up for orders before me. Again, I think in the beginning of the year 1997 similar writ petitions came up for admission before me and thereafter virtually I was after the petitioners to argue the matter so that these batch of writ petitions can be disposed of on merits once for all, in fact a first batch of writ petitions were dismissed by me for default in the 2nd half of 1997 after my patience was exhausted. Again after some time when some more writ petitions came up before me I could get the cases posted and heard the matters for more than a month or so at the fag end of 1997. In the meantime, writ petitions are being filed and students are being admitted under the interim orders granted by this Court. From the narration of the facts I am of the firm belief that these petitioners tried to walk out of the colleges with degrees under the interim orders of this Court, so that they can raise the plea of equity as and when these writ petitions are taken up for hearing at a later point of time. If there are any bona fides on the part of the petitioners, even if they try to plead ignorance of the direction laid down by the Supreme Court, the very interim orders of this Court under which they could get the admission made it very clear that their admissions are only provisional and at their own risk and directed the final hearing of these writ petitions on 20-12-1993 itself. Knowing fully well the risk in continuing their studies without getting the writ petitions finally disposed off, they tried to postpone the hearing of these writ petitions for years and every year new students are getting admissions under the interim orders of this Court including the academic year 1997-98 after the judgment is reversed in these batch of cases. Such an evil practice, if allowed to go on unchecked, it amounts to giving seal of approval for the illegal methods that are being adopted by unscrupulous litigants directly under the nose of seat of justice.

141. Hence, I am of the opinion that the petitioners can neither claim equity nor can be granted by this Court. Further, extraordinary situations require extraordinary remedies. To uphold the majesty of law and to make every one realise the need of obeying law of the land and the rule of law, no one is above law. I have no option except to set aside all the admissions made to various private engineering colleges in contravention of G.O. Ms. No.256, dated 17-11-1993. It is needless to observe that whoever fulfills the conditions stipulated in that G.O. shall be allowed to complete the course.

142. It is also on record that inspite of the directions given by the Supreme Court in TMA Pai Foundation's case (supra) neither the Central Government nor the State Government framed any comprehensive scheme for admission of students in the professional courses in technical institutions for the year 1997-98 though time granted by Supreme Court expired long back. In fact, in the above case, the Supreme Court made it clear that it has no intention of framing any scheme for the academic year 1997-98 in the following terms:



" "We wish to make it clear that, with effect from the academic year 1997-98 it shall be the responsibility of the authorities aforesaid to prescribe the fees payable in these colleges."

143. Having seen the way in which the private managements admitted substituted NRI students at their discretion, I feel it is the duty of the Court to protect the interests of all by giving the following directions for the academic year 1997-98.

(1) After giving admission to NRI/ foreign students each of the institution shall submit the list of NRI/foreign students seeking admission into their college with necessary particulars relating to the course of study, the rank/marks obtained by them. If the NRI students are over and above the seats reserved for them in that college their admission may be regulated in order of merit with the approval of the competent authority nominated for the purpose of conducting EAMCET examinations. Any admission of NRI/foreign students without prior approval of the Convenor, they will be doing so at the risk of invalidating these admissions.

(2) After admitting the above candidates, if the seats meant for the NRI students are left unfilled, the Convenor shall issue a notification inviting applications from those students who are willing to pay the tuition fee fixed by the Committee constituted for that purpose by giving due publicity and hereafter the left over seats under this category have to be filled by the candidates allotted by the Convenor EAMCET examinations on the basis of their inter se merit from among the applicants under this category.

(3) Clause 7(15) of the statutory rules issued in G.O. Ms. No. 184, Education, dated 20-8-1993 and clause (iii) of G. O. Ms. No.256, dated 17-11-1993 have to be read down and in the event of filling up of the left over seats reserved for NRI students by substituted NRI students, the rule of reservation in favour of constitutionally permissible classes have to be followed unless they have not come forward to take up admission by paying the tuition fee fixed for this category of students.

144. Any deviation in the admissions under this category amounts to permitting the management to auction the seats in professional colleges, a concept which is not only illegal but also patently repulsive to all notions of justice and law.

145. Accordingly, this batch of writ petitions are dismissed with costs to the 1st respondent. Advocate fee is fixed at Rs.500/ - in each of the writ petition.

146. Before parting with the case, I feel it my duty to place on record the valuable assistance rendered by the Government Pleader for Higher Education in disposing of the batch of writ petitions.

147. After pronouncement of the orders, a request was made on behalf of the Counsel for the petitioners, to suspend the order by 4 weeks.

148. As the very admissions of the students who were admitted in the year

1993-94 were set aside, I feel it appropriate to give an opportunity to the petitioners to test the correctness of the judgment rendered by me.

149, Accordingly, the judgment is suspended by 2 weeks from today. However, it is made clear that this suspension will not be made use by the students who are seeking admission for the academic year 1997-98.