

(2007) 09 MAD CK 0142

In the Madras High Court

Case No : Writ Petition No. 37245 of 2005 and W.P.M.P. No. 39877 of 2005

Christian Medical College, Vellore Association

APPELLANT

Vs

The Permanent Committee for the Conduct of Common
Entrance Examination in Private Professional Colleges, The
State of Tamil Nadu and The Tamil Nadu Dr. M.G.R. Medical
University

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 1 MLJ 604

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : Krishna Srinivasan, for Ramasubramaniam and Associates, for the Appellant; G. Sankaran, Special Government Pleader for Jothimanian, Government Advocate for Respondents 1 to 3 and A.L. Gandhimathi, for 4th Respondent, for the Respondent

Final Decision : Allowed

Judgement

R. Sudhakar, J.—The writ petition has been filed, challenging the order of the Permanent Committee for Common Entrance Test for Private

Professional Educational Institutions in Tamil Nadu dated 12.7.2005.

2. Pursuant to the direction of the Supreme Court in Islamic Academy of Education and Another Vs. State of Karnataka and Others, , a Special

Committee was formed to ensure that the tests conducted by the association of colleges is fair and transparent. Para 19 of the Apex Court

decision is as follows:

19. We now direct that the respective State Governments do appoint a permanent Committee which will ensure that the tests conducted by the

association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge is to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as the Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice-Chancellors of the University in that State so that the total number of persons on the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper(s), to know the names of the paper-setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have the power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college(s) shall be separately fixed on the basis of their need by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.

3. Petitioner institution is a minority, unaided, non-capitation fee institution. An application was filed by the petitioner institution seeking permission

to have their own admission procedure and to admit students for the medical and para medical courses for the year 2005-2006. The institution

having applied as above, appeared before the Committee and pleaded that the Committee should await the decision of the Apex Court in the P.A.

Inamdar's case. The Committee, however, rejected the application and held as follows in its order dated 12.7.2005:

It is admitted that college is owned by fifty three different Christian Churches organisation and 75% seats (45 seats) is distributed or sponsored

by Christian churches and organisation. In effect the owners are distributing the seats among themselves, even though as between them, a maximum

percentage is fixed for each church, so as to give an All India color. This procedure cannot be said is based on merit nor inter se merit is followed.

The college has also not placed any materials to show that the procedure is transparent. Law is settled that an affiliated professional institution

cannot reserve seats merely because they happen to be owner of the college. Such a procedure for admission amounts to a deal or business

between the owners inter se and it amounts to denial of merit based admission. When we read the entire affidavit of the petitioner, it is clear, the

merit is based on the recommendation of the individual church or Christian organisation. In case there is no sponsorship from a church or Christian

organisation, a candidate, even if he more meritorious will not get admission. The petitioner, though a minority institution, has only to follow merit

based admission. According to us, an exemption claimed on the basis of above admission procedure cannot be granted for it goes against the law

of the land.

4. Aggrieved by the above stated order of the Special Committee dated 12.7.2005, petitioners filed I.A. No. 6 in W.P.(Civil) No. 261/2003

before the Honourable Supreme Court of India against such order and the Supreme Court passed the following order:

Having heard the learned Counsel for the parties and pending decision by the Constitution Bench in SLP (C) No. 9932 of 2004 and connected

matters, we stay the operation of the order of the Committee dated 12th July, 2005 and permit the applicant-College to conduct the admissions in

the same manner in which it was conducted in the last academic year, i.e., 2004-2005.

The interlocutory application is, accordingly, disposed of.

5. Thereafter, the present Writ Petition has been filed challenging the order of the Special Committee dated 12.7.2005 and in view of P.A.

Inamdar's case an order of interim stay was granted.

6. In P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537, the Apex Court on 12.8.2005 considering the Islamic Academy's case held in

para 133 as follows:

Q.2 Admission Procedure of unaided educational institutions:

133. So far as the minority unaided institutions are concerned to admit students being one of the components of "the right to establish and administer an institution", the State cannot interfere therewith. Up to the level of undergraduate education, the minority unaided educational institutions enjoy total freedom.

Further, in para 137 the Supreme Court in P.A. Inamdar's case held as follows:

137. Pai Foundation T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, has held that minority unaided institutions can

legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefore subject to its being fair,

transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a

particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being

fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common

entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of

securing fair and merit based admissions and preventing mal-administration. The admission procedure so adopted by a private institution or group

of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure.

The second question is answered accordingly.

7. The learned senior Counsel appearing for the petitioner submitted that the findings of the Special Committee on merits are misconceived. The

Committee's reasoning rejecting the petitioner's plea is contrary to the decision

of the Apex Court in Islamic Academy's case. The reasonings given by the Committee are totally irrelevant as the institution enjoys unfettered fundamental right to admit students as its choice being a minority unaided institution. As to how the minority community students will be admitted, cannot be controlled by the Committee when the institution enjoys absolute freedom of choice thereon. The only requirement under the law laid down by the Apex Court is that the admission procedure should be fair, transparent and non-exploitative. Referring to the findings of the Committee, the learned Senior Counsel stated that nowhere it has been stated that the manner in which the question paper was set is at fault and the method in which the examination conducted was objectionable. In otherwords, the Committee did not find fault with the method in which the test or the examination was conducted. On the contrary, the findings of the Committee are with regard to the manner in which the students of the minority community are admitted. This power, according to the learned senior counsel appearing for the petitioner does not vest with the Committee. He placed much reliance on paragraphs 133 and 137 of the P.A. Inamdar's case and prayed for quashing the Committee's order. The learned Senior Counsel further contended that admitting students of the minority Community of their choice is different from the conduct of the qualifying test in the manner prescribed by the Apex Court. The Committee misconstrued its role and interfered with the petitioner's right with regard to the choice of students among the minority Community. It is contended that the order of the Committee is one without jurisdiction, the reasons given by the Committee is untenable and based on conjectures and surmises. There is no finding by the Committee that the petitioner institution's test/examination procedure is contrary to para 19 of Islamic Academy's case.

8. The Special Government Pleader Mr. G. Sankaran, appearing for respondents 1 to 3 stated that if the petitioner's institution satisfies the triple test then there is no scope for the Committee to probe further. He further stated that the Committee's term has not been extended in view of subsequent development and due to formation of new Committee for fixing of fee structure and for common entrance test. No counter is filed in spite of several opportunity given.

9. The petitioner minority unaided institution enjoys total freedom to admit students of its choice. This is clearly held in para 137 of the P.A.

Inamdar's case. The Committee's finding that the distribution of the seats between the church should be in a particular manner will amount to

interfering with the rights of the minority institution and will be opposed to the judgment of the Supreme Court as held in para 133 of the P.A.

Inamdar's case. As regards inter se merit even before admission is taken up, the Committee has come to the conclusion that inter se merit is

denied. Therefore, such decision is in the realm of conjectures and surmises. The finding of the Committee that if there is no sponsorship from a

church or Christian organisation, a candidate, even if he more meritorious will not get admission. This finding is opposed to the scope and power

vested with the Committee in terms of para 19 of Islamic Academy's case. The Committee also comes to the conclusion that the admission

procedure goes against the law of the land. As rightly pointed out by petitioner's counsel, the Apex Court has in many of the earlier cases,

observed that the admission procedure followed by the petitioner for more than 20 years can continue. This only emphasises the fact that the long

established procedure of the petitioner's institution need not be interfered with save and except for good reasons.

10. As directed by the Apex Court in Islamic Academy's case, the Committee's role is to supervise and to ensure that the test conducted by the

institution is done in a fair and transparent manner. The Committee was called upon to consider the plea of the petitioner and other similarly placed

institutions and grant permission to adopt admission procedure which was followed for more than 25 years. The Committee has not given any

finding that the procedure adopted while conducting the test as in the past, is not fair or transparent. On the contrary, the Committee has gone into

the manner in which the students of the minority community are selected. The All India Entrance Test conducted by the petitioner is not found fault

with. Para 133 of P.A. Inamdar's case cited supra gives total freedom to minority unaided institution to admit students of its choice. This Court

finds no reason why the Committee should endeavour in this aspect. In para 137, all that the Apex Court said was that the procedure should be

fair, transparent and non-exploitative and that is relatable to the entrance test. In this case, the Committee has found fault with the manner in which

the minority institutions admit the students of the minority community and not the test conducted. The finding of the Committee that the institution cannot reserve seats as it is the owner of the college, is based on misconception that the Committee has got the right to go into the issue as to how the students of minority community should be admitted. The test conducted by the petitioner institution has not been found fault with. Therefore, the various inferences made by Committee runs counter to the decision of the Apex Court in P.A. Inamdar's case and in any event no test was conducted at that point of time. Hence, the Committee had no justification to hold that the procedure was not fair, transparent and non-exploitative. The impugned decision of the Committee, therefore, runs contrary to the law laid down by the Apex Court and it is also beyond the scope of the power vested with the Committee.

11. In view of the decision of the Supreme Court in P.A. Inamdar v. State of Maharashtra (2005)6 SCC 537 and particularly in view of para 137, the power of State Government is always there to deal with the institution to ensure that in the conduct of test/examination the institution satisfies the triple tests, namely, fair, transparent and non-exploitative.

12. Pursuant to the order of the Supreme Court dated 25.7.2005, the admission for the year 2005-2006 is already over. In any event, it is stated that the respondent university has accepted the list of candidates submitted and the students are pursuing the second year course. There is no objection by the university.

13. As regards the admission of the candidates belonging to the minority community and the procedure adopted, the Committee will have no jurisdiction, in view of the decision of the Apex Court in P.A. Inamdar's case. As has been stated above, the power of the Committee is only with regard to manner in which the test is conducted, which should be fair, transparent and non-exploitative. There is no finding by the Committee on this aspect. The rejection of the application is therefore, based on no material and purely on conjectures and surmises.

14. The one other factor which is relevant in the present case is that for the subsequent year, the nature of test/examination conducted by the petitioner was challenged by some of the students stating that it does not satisfy the triple test (i.e.) fair, transparent and non exploitative. Such

challenge was dismissed by a learned single Judge and the same was confirmed in Writ Appeal Nos.494, 812 and 495 of 2007 as per order dated

25.7.2007. Relevant portion reads as follows:

Therefore by applying the principles enunciated above, to the factual situation of the manner in which the interview is conducted by the first

respondent Institution and grading system made like that of the entrance examination, we do not see any arbitrariness or violation of Article 14 of

the Constitution in the said process. As long as the procedure followed by the first respondent Institution for admission of students is fair,

transparent and non-exploitative, based on merit as held by the Supreme Court in P.A. Inamdhar's case, there is no reason to interfere with the

selection process, which is ancient in the first respondent Institution.

15. For the above stated reasons and in view of the decision of the Supreme Court and the right of the institution as recognised in para 133 of the

Supreme Court Case in P.A. Inamdhar's case, the order of the Committee which is under challenge cannot be sustained and the same is quashed

and the writ petition is allowed as above. Consequently, connected Miscellaneous Petition is closed. However, there will be no order as to cost.