

(1997) 01 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26291 of 1997

D. Ravikanth

APPELLANT

Vs

Bapatla Engineering College and Another

RESPONDENT

Date of Decision : 20-01-1997

Acts Referred:

Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee (Amendment) Act, 1992 — Section 3(A)
Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 — Section 3
Constitution of India, 1950 — Article 14

Citation : (1998) 2 ALD 218 : (1998) 4 ALT 21

Hon'ble Judges : Chelameshwar, J

Bench : Single Bench

Advocate : Mr. D.V. Sitharam Murthy, for the Appellant; Government Pleader for Higher Education and Mr. B. Adinarayana Rao, for the Respondent

Judgement

1. The petitioner's son a minor seeks admission into the first respondent college in the course of engineering.
2. The petitioner submits that the minor appeared for the EAMCEM997 and obtained rank of 7,560. Obviously the minor could not secure admission into any engineering college on the basis of the above mentioned rank in the process of allotment made by the Convenor of EAMCET-1997 in accordance with the rules governing the allotment.
3. In the absence of any allotment by the Convenor of EAMCET-1997, the minor seeks admission into the first respondent-college under a category of seats which are basically ear-marked for Non-Resident Indian students.
4. The issue of management of private engineering colleges and medical colleges and the scope of the power of the private management to allot seats in the State of Andhra Pradesh is governed by the "Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, Section 3

of the said Act amended by way of insertion of Section 3(A) by Act 12 of 1992. The amendment was challenged and eventually the matter went up to the Supreme Court. Disposing of the Appeals before them, their Lordships of the Supreme Court passed orders framing an elaborate scheme in Unnikrishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., dated 4-2-1993, as to how the admissions are to be granted in the professional colleges. Which was later modified by another order dated 14-5-1993 in Unnikrishnan P.J. and Others Vs. State of A.P. and Others, , making it open to the professional colleges to admit Non-Resident Indian students to the extent of only 5% of their total intake for a given year,

5. Pursuant to the judgement of the Supreme Court, the Government of Andhra Pradesh issued G.O.Ms.No.183 Education dated 18.8.1993, creating 5% of seats in favour of the Non-Resident Indian students in Professional Colleges. These 5% of the students are out of the 50% payment seats. The said G.O. exempts the Non-Resident Indian students from appearing for the EAMCET-1997 examination as envisaged by the order of the Supreme Court second cited. The G.O. further contemplated that in the event the said quota of 5% is not claimed by the Non-Resident Indian students, then the unfilled seats of the said category shall be allotted by the Convenor of the EAMCET examination to other students on the basis of their rank.

6. In another order dated 7-10-1993 in W.P.No. (C) 317 of 1993 in T.M.A. Pai Foundation and Others (I) Vs. State of Karnataka and Others, , the Supreme Court observed dealing with the N.R.I. quota, as follows:

"In case, however, N.RJs/foreign students are not available to fill up all the seats within the said 15% 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 15% quota should be allottees from the Government or that they should have appeared for the joint entrance examination, if any, held by the concerned Government or authority."

On the basis of the said observation, the Government of Andhra Pradesh issued G.O.Ms.No.250 dated 6-11-1993 dealing with the procedure of admission pertaining to the N.R.I. quota. In Clause(c) of the said G.O., the Government of Andhra Pradesh directed that the unfilled seats of N.R.I. quota, can be filled up by the management without the students being allotted to the college by the Convenor, EAMCET.

7. From year to year, the Government of Andhra Pradesh has been issuing orders dealing with the subject, G.O.Ms. No-379 dated 05-10-1995 deals with the academic year 1995-96. G.O.Ms.No.243 dated 12-1-1996 deals with the academic year 1996-97. Once again, both the GOs reiterate that the left over seats of N.R.I. quota may not be allotted by the Convenor of EAMCET and the management can make admissions without reference to the Convenor, EAMCET.

8. Though with reference to the academic year 1997-98 no G.O. was issued at

the time of the filing of the Writ Petition, It is agreed by both the learned Counsel Sri B. Adinarayana Rao and Sri Seetfiarama Murthy, a G.O. has subsequently been issued substantially in the same lines as in the earlier GOs., (a copy of which is not placed before me by either of the learned Counsel.)

9. In the background of the above mentioned legal position, the case of the petitioner is: though the various Supreme Court orders and the orders issued by the Government of Andhra Pradesh from time to time permitting the managements of privately managed engineering colleges to admit students in the unfilled seats earmarked for Non-Resident Indian students, the private managements still have to go by the merit of the students in seeking to fill up the said seats.

10. On the other hand, the learned Counsel for the respondents Mr. Adinarayana Rao submits that when the matter is left to the "discretion" of the private management, insistence on the requirement of following merit of the competing candidates would run counter to the orders passed by the Supreme Court referred to above. In substance the issue is whether the management of private engineering colleges have an "absolute discretion" in the sense that they can allot the seats purely on the basis of their personal likes and dislikes.

11. It may be pertinent at this stage to analyse briefly the various judgements and orders passed by the Supreme Court in this regard. In Unni Krishnan "s case (supra), the relevant issue framed by the Supreme Court, in its majority judgment delivered by justice R.P. Jeevan Reddy is as follows :

"whether the grant of permission to establish and the grant of affiliation by the University imposes an obligation upon an educational institution to act fairly in the matter of admission of students?"

(para 115)

The Supreme Court after elaborate discussion came to the conclusion:

"Clearly and indubitably, the recognised/ affiliated private educational institutions, supplement the function performed by the institutions of the state. Theirs is not an independent activity but one closely allied to and supplemental to the activity of the State."

It was further held:

"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 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 to supplemental activity as well."

T2. Having come to the conclusions as mentioned above, the Supreme Court in order to achieve uniformity of procedure all over the country for the purpose of fulfilling the above mentioned constitutional obligations evolved an elaborate scheme.

13. Their Lordships at para 205 of the said judgement prefaced their scheme by saying:

"The idea behind the scheme is to eliminate discretion in the management altogether in the matter of admission."

Their Lordships also observed later that:

"there shall be no quota reserved for management or for any family, caste or community which may have established such college."

14. In the Background of the above mentioned observations and the scheme, the issue of providing reservation for Non-Resident Indian students could not be considered in Unni Krishnan's case. Therefore by an order dated 14-5-1993, the Supreme Court amended the scheme propounded earlier by creating a facility for the professional colleges to admit Non-Resident Indian students to the extent of 5% of their total intake of the college and Supreme Court also recognised that in view of the fact that such students are likely to come from different backgrounds from different countries. The Supreme Court left it to the management of individual professional college to decide the respective merits of the candidates in the process of selection, but the Supreme Court categorically stated in the order" "The Non-Resident Indian student shall be admitted on the basis of merit" The said order was modified later by the Supreme Court by its order dated 7-10-1993 in TM.A.Pai Foundation's case (supra).

15. In view of the peculiar circumstances existing for (hat particular academic year, the Supreme Court permitted professional colleges to admit Non-Resident Indian students of 15% of their intake capacity. For the first time in the said order, the Supreme Court observed as follows:

"In case however N.R,Is/foreign students are not available to fill up all the seats within the said 15% seats meant for them, it shall be open for the management to admit other students within the said quota. It \\vill not be necessary that the students admitted against the said 15% quota should be allottees from the Government or that they should have appeared for the joint entrance examination, if any, held by the Government or authority concerned.""

However this whole concession was meant to be available for only one year. This is made clear by the Supreme Court in the very next sentence that followed the above observations which reads as follows:

"It is made clear That this is a special provision made only for this year being an year of transition."

From the above, it can be seen that for the academic year 1993-94 in view of the peculiar circumstances prevailing at that stage, such a concession was given to the managements of private professional colleges. The Supreme Court never intended such concession to be a rule, but it was only an exception to the principle laid down in Unni Krishnan's case that the discretion of the management is to be eliminated in the matters of admission of students, which we have already noticed earlier.

16. However, for various reasons, the above mentioned concession was being extended from year to year by the Supreme Court by its orders and in pursuance of the said orders, the State of Andhra Pradesh has been issuing G.O.s., for each academic year permitting the managements of private professional colleges to fill up the unfilled seats in the 5% of Non-Resident Indian quota on their own without preference to the Convenor, EAMCET.

17. Coming to the present year, the Government by its G.O.Ms.No.428 dated 24-12-1997 did make a provision for the filling up of 5% of the seats in private engineering colleges by the respective managements for the academic year 1997-98. The Government Order is substantially on the same lines as the earlier Government Orders in this regard. The only point of difference: for all the earlier academic years, orders were issued after the Supreme Court accorded permission in respect of that particular academic year. In the case of the present G.O., there is no such order of the Supreme Court. Therefore, the Government Order categorically mentions:

"That this permission is subject to orders of the Hon"ble Supreme Court to be issued in this regard."

None of the parties was able to place any order passed by the Supreme Court with regard to the academic year 1997-98 before this Court. In the absence of any such order, in my view, the State Government's action in issuing G.O.Ms.No.428, dated 24-12-1997 would be plainly contrary to the ratio of Unni Krishnan's case as explained above.

18. For the various reasons mentioned above, the submission made by the respondents must fail and the writ petition is to be allowed.

19. Accordingly the writ petition is allowed but in the circumstances without costs.