

(2006) 07 JH CK 0091

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2102 of 2006

Dr. Harihar Prasad Pandey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Constitution of India, 1950 — Article 19(6), 30(1)

Citation : (2006) 4 JCR 317

Hon'ble Judges : N.N. Tiwari, J

Bench : Single Bench

Advocate : B. Poddar and S.N. Pd, for the Appellant; Saurav Arun, J.C. to A.G., for the Respondent

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—In this writ application the petitioner has prayed for issuance of an appropriate writ commanding upon and restraining the State-respondents from regulating/controlling the admission in Suryamukhi Dinesh Ayurved Medical College, Booty, Ranchi which is a private unaided institution and from compelling the college to fill up 40 seats of the college by the candidates chosen by the respondents for the Session 2006-07 on the basis of Jharkhand Combined Competitive Entrance Examination Board and not to disturb the College by unnecessarily interfering in the administration and management of the said College.

2. The petitioner's case is that the said College was established in the year 1980 and has been successfully imparting Degree course in Ayurvedic Medicine. The College does not receive any financial aid from the State and it is purely a private unaided institution. The College is running with the permission of the Central Council of Indian Medicine, Government of India, New Delhi which is the highest for granting permission to open and run Aurvedic and Homeopathy Colleges. The Central Council of Indian Medicine has been inspecting the said College periodically and the council has given clearance certificate to run the College. The

College selects the candidates for admission in every session for imparting Degree level education in Ayurvedic Science by holding a competitive examination, without any interference of the State Authorities. The College was affiliated to Kameshwar Singh Darbhanga Sanskrit University. After reorganization of the State of Jharkhand, the Human Resources Development Department, Government of Jharkhand by its Notification dated 27.8.2001 vested all the powers and functions of the said Kameshwar Singh Darbhanga Sanskrit University in the Vinoba Bhave University, Hazaribagh in the matter of registration, conduct of examination, prescribing courses of studies etc. for Ayurvedic and Homeopathy Colleges. The College is accordingly functioning under Vinoba Bhave University, Hazaribagh and the students are admitted and permitted to appear at the examination conducted through Vinoba Bhave University and they are awarded Degree from the said University. After creation of the State of Jharkhand, the Vinoba Bhave University, Hazaribagh granted permissions for taking admission of 40 students for the Session 2003-04 and also for the Session 2005-06. For the Session 2006-07 the Government has published an advertisement showing 40 seats of the College to be filled up by the State by candidates selected in Jharkhand Combined Entrance Competitive Examination, 2006. It has been so mentioned in the prospectus issued by the Jharkhand Combined Entrance Competitive Examination Board (Annexure-9). According to the petitioner, the State-respondents have no authority to regulate or control admission in the college which is a purely private unaided institution. It has been submitted that the respondents cannot interfere with the management of the College including in the process of admission of the students and they have no right to reserve the seats.

3. The State-respondents have filed a counter affidavit contesting the writ application. In paragraph 15, it has been specifically stated that the Government wants to fill up 40 seats on the basis of the result of the entrance test conducted by the Jharkhand Combined Competitive Entrance Examination Board. Out of 40 seats, 20 seats will be free seats and rest 20 seats will be payment seats and the said seats will be filled up totally on merit. In paragraph 17 of the counter affidavit, it has been stated that Government is not reserving all the 40 seats rather all the said seats will be filled up on the basis of the merit list published by Jharkhand Combined Competitive Entrance Examination Board and all the admissions will be made by the petitioner's Institute and not by the respondents.

4. Mr. B. Poddar, learned Sr. counsel appearing on behalf of the petitioner, submitted that in view of the decision of the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , the unaided institutions are entitled to autonomy in their admissions. It has been submitted that the right to establish and administer educational institutions also includes admission of the students. The College has been taking admission on the basis of its own merit based selection and there is complain of any arbitrariness on the part of the management of the College in admitting the students. The interference of the State-respondents by showing all the 40 seats as the State

seats, is wholly arbitrary, illegal and without jurisdiction.

5. Mr. Saurav Arun, learned J.C. to A.G., on the other hand, submitted that the State has absolutely no intention to interfere with the management or autonomy of the College rather State is concerned with maintaining uniform standard and for that purpose the name of the College was introduced in the prospectus of the Combined Jharkhand Competitive Entrance Examination, 2006. The seats shown as State seats in the prospectus should not be interpreted as an interference of the respondents in the management of the College.

6. On perusal of Annexure-10, it is evident that in the Prospectus of Jharkhand Combined Competitive Entrance Examination, 2006 the heading "Statement of total available seats in different Medical Colleges" which is Schedule 2 to the said Prospectus all the 40 seats of the College have been shown as State seats. Though the respondents have explained in the counter affidavit that the said seats are not the State seats, yet the respondents have not deleted the same from the Prospectus nor have made any statement that the same will be deleted by them. In the counter affidavit in paragraph 17, they have stated as follows : "The Government is not reserving all the 40 seats rather all 40 seats will be filled up by the candidates from the merit list published by Jharkhand Combined Competitive Entrance Examination Board and all admissions will be made by petitioner's Institute only and not by respondents".

7. In view of the decision of the Supreme Court in T.M.A. Pai's (supra), the State has got no authority to impose its own decision even in the matter of admission. In the instant case the College has been holding a competitive examination and selecting the candidates on the basis of the said examination and there is no complain of any discrimination or arbitrariness in the selection process of the College. The respondents failed to show any provision of law under which they can compel the College which is admittedly a private unaided institution to admit the students chosen by them or at their behest.

8. The Supreme Court in P.A. Inamdar and Others Vs. State of Maharashtra and Others, , in paragraph 122 of the judgment has held:

Neither in the judgment of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, in Kerala Education Bill AIR 1958 SC 956, there is anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the sets available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of

seats can also not be held to be a regulatory measure in the interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State Funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

9. In view of the said judgments of the Apex Court, the respondents cannot compel or impose upon the petition's college any seat for admission. The part of the Prospectus of the Jharkhand Combined Entrance Competitive Examination, 2006 at Schedule 2, showing the name of the college and 40 seats as "State seats" under the caption "Statement of Total Available Seats in different Medical Colleges", being violative of the law laid down by the Supreme Court, is held to be illegal and non est. This writ petition is, accordingly, allowed. No order as to cost.