

(1994) 04 SC CK 0067

In the Supreme Court Of India

Case No : Writ Petition 317 of 1993, Writ Petition (Civil) 555, 596, 660, 482, 407 of 1993, Special Leave Petition (Civil) 14437 of 1993, Writ Petition (Civil) 737, 613, 626, 627, 392, 399, 702, 628, 738, 746,

Dr. T.M.A. Pai Foundation and others

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 05-04-1994

Acts Referred:

Constitution Of India Art 14,21,30,32

Citation : AIR 1994 SC 2372 : (1994) 3 JT 194 : (1994) 2 SCALE 476 : (1994) 2 SCC 734 : (1994) 2 UPLBEC 779

Hon'ble Judges : KULDIP SINGH, S. C. AGRAWAL, S. MOHAN, B. P. JEEVAN REDDY, A. S. ANAND, S. P. BHARUCHA, FAIZAN UDDIN JJ.

Bench : Full Bench

Advocate : A. K. SRIVASTAVA, A. MARIARPUTHAM, A. N. JAYARAM, A. S. BHASME, A. T. M. SAMPATH, ALPANA PODDAR, ANIL B. DIVAN, ARUN SHARMA, ARUNA MATHUR, ASHOK GROVER, B. K. PRASAD, B. N. AGRAWAL, B. PARTHASARATHI, B. SIVASUBRAMANIAM, B. V. ACHARYA, B. V. BALARAM DAS, B

Final Decision : Allowed

Judgement

1. In these matters relating to admission to professional courses in medicine, engineering, pharmacy, nursing, etc. in educational institutions which are claimed to be Minority Educational Institutions, the petitioners have questioned the applicability of the scheme framed by this Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , as well as the applicability of the Rules and Orders made by several State Governments on the basis of the said decision. By order dated October 7, 1993 [reported in T.M.A. Pai Foundation and Others (II) Vs. State of Karnataka and Others, passed by the Constitution Bench three questions were referred for consideration by a larger Bench. In pursuance of the said order, this Bench has been constituted. When the matters were taken up on March 16, 1994, the Court felt that it was necessary to reframe the first two questions. The hearing of the matters was,

therefore, adjourned to March 18, 1994, on which date the questions requiring consideration by this Bench have been reframed to highlight the several aspects of the claims put forward by the petitioners. The claim of being a "minority" - whether based on religion or language - and the claim of being a "minority educational institution" put forward by the petitioners cannot be pronounced upon without first ascertaining what the said expressions cannot and signify. Having regard to the importance of the questions involved we consider it appropriate to issue notice to the Attorney General of India as well as the Advocates General for the States. It would, therefore, not be feasible to take up the hearing of these matters before the Court closes for the long vacation. Since the process of selection of candidates for admission for the next academic session is the commence soon, it is necessary to pass an interim order governing admission to the professional courses in minority educational institutions for the next academic session.

2. For admission in the last academic session 1993-94, an interim order in the following terms was made by a Bench comprising Hon'ble the Chief Justice and one of us (Justice B.P. Jeevan Reddy) on May 14, 1994 in Writ Petition Nos. 350 and 355 of 1993 :-

1. We have heard Shri Soli J. Sorabjee, learned senior counsel for the petitioners in these two writ petitions. Issue rule.

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

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

(ii) The remaining fifty percent of the intake may be regulated by the petitioners to admit candidates belonging to the particular religious or linguistic minority. However, 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 at 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 the 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 the modes and apply it uniformly. Candidates so selected on the basis of merit amongst the minorities shall, however, abide by such condition in the matter of payment of tuition and other fee as may be permitted by the State Government.

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

4. This order shall, however, not stop the petitioners from urging all other contentions raised in the writ petition, as, indeed, this interim interlocutory order is made on the consent of the petitioners and without prejudice to all the contentions.

3. Thereafter the matter was considered by the Constitution Bench in its order dated August 18, 1993 [reported in 1993(4) SCC 112]. In that order the writ petitions placed before the Bench were categorised into five categories, namely, (1) unaided minority educational institutions, (2) minority educational institutions which are in receipt of State funds by way of aid, (3) minority educational institutions in respect of which it is not clear from the averments in the writ petitions whether they are aided or unaided institutions, (4) writ petitions challenging the correctness and applicability of Unni Krishnan filed by educational institutions which do not claim to be minority educational institutions, (5) writ petitions which do not fall in any of the above categories. It was directed that the order dated May 14, 1993, would not apply to educational institutions falling in categories (4) and (5) and the institutions referred to in paragraph 18 of the order dated August 18, 1993. The order dated May 14, 1994, was made applicable to the institutions falling in categories (1), (2) and (3) with the modification that following paragraphs were added in continuation of the said order:

(5) In continuation of para (3) it is made further clear that whether any of petitioner-institutions is a MEI or not is a matter for the Government to verify and determine. We do not - more particularly at this stage - made any pronouncement in that behalf. This order shall be applicable only to those institutions which are found to be MEIs on verification by the Government and not to those who are not found to be MEIs on such verification.

(6) The 50% seats to be filled up by the candidates selected by the agencies of the State Government on the basis of a competitive examination/test as well as the remaining 50% seats to be filled in accordance with Clause (ii) of para (2) of the said order shall be equally distributed between free seats and payments seats. In other words, out of the 50% seats to be filled up by government, half will be payment seats and half will be free seats. Similarly, out of the 50% of the seats to be filled up by the Management in accordance with para 2(ii) of the said order, half shall be payment seats and the other half free seats. The NRIs, if any admitted to an extent not exceeding 5% of the total seats shall be out of payment seats to be filled under para 2(ii).

(7) After completing the admissions each of the colleges shall submit to the competent authority, to the University to which it is affiliated and to the Government concerned statements containing full particulars of the students admitted under Clause (ii) of para (2) of this order. Such statements shall contain as full a particulars as possible. The authorities to which the statements are submitted shall verify the correctness of the statements and, if they find any irregularity, they shall call upon the college concerned to rectify the same. They

shall also bring any such violation to the notice of this Court by way of any interlocutory application. Any such irregularity if proved may entail serious consequences.

4. Separate directions were, however, given in respect of institutions referred to in Writ Petitions Nos. 284 and 482 of 1993. With regard to Writ Petition No. 284 of 1993 it was observed that in the said writ petition the petitioner has claimed that no capitation fee is charged from any student and the fee charged is not more than (in some cases less than) the fees charged in the government colleges and that the admission to these institutions is made on the basis of an All-India Common Entrance Test separately conducted by the petitioner and admissions are made on the basis of merit as determined in the said test, and further that in view of the reputation of these institutions, thousands of students apply for and appear in the entrance test every year. It was also observed that this fact was not disputed by the learned Advocate General for the State of Karnataka. Similarly as regards Writ Petition No. 482 of 1993, it was observed that according to the petitioner in that case the medical college run by it at Vellore in the State of Tamil Nadu is a well-reputed institution, admission to which is made on the basis of All-India entrance test conducted by the petitioner and that the admissions are made on the basis of merit and the fees charged by it is not more than the fees chargeable in similar governmental institutions and that there has never been any complaint about the working of this institution and it was observed that this fact was not disputed by Shri Sitaraman, learned Counsel for the State of Tamil Nadu. In the order dated August 18, 1993, the following directions were given in respect of the institutions covered by the aforesaid Writ Petitions Nos. 248 of 1993 and 482 of 1993:

Having regard to the above circumstances, we permit the petitioners in the above two writ petitions to admit students to their colleges on the basis of entrance test conducted by them and on the same basis on which admissions were made by them in the said colleges in the previous academic year. After completing the admissions, the petitioners shall furnish full particulars of the students admitted, the categories, if any, whereunder they were admitted and all other particulars relating to their admission. This information should be furnished to the competent authority, to the University to which the said colleges are affiliated and to the Secretary, Education Department, Government of Karnataka/Tamil Nadu. The said authorities shall verify whether the admissions have been made by the petitioners in accordance with the directions given herein. In case of irregularity, any of the said authorities shall be entitled to call upon the petitioner to rectify the said irregularity. It shall also be open to the competent authority, University and the Government of Karnataka / Tamil Nadu to bring any such irregularity to the notice of this Court by way of an interlocutory application for appropriate orders in that behalf. It is made clear that any violation of the directions given herein by the petitioners shall entail serious consequences inasmuch as the above orders are made based upon their representations and even before a counter-affidavit has been filed by the respective respondents in

view of the urgency expressed by them.

5. Dealing with Writ Petition No. 598 of 1993, the Court, after noticing that an agreement was entered into between the institution and the Government of Kerala according to which while 85% of the seats were to be filled by the Government and the remaining 15% of the seats were left for the management to fill up in its discretion, observed that since the basic principles in Unni Krishnan as well as the order dated August 18, 1993 is that merit shall be the guiding principle in the matter of admission, a plea for discretionary quota could not be countenanced and it was directed that the said Writ Petition shall also be governed by the order dated May 14, 1993, as modified by addition of paragraphs 5, 6 and 7.

6. By order dated October 7, 1993 [reported in T.M.A. Pai Foundation and Others (I) Vs. State of Karnataka and Others, , the Constitution Bench having regard to the fact that the year 1994 being a year of transition and adjustment and also in view of the orders of the Government of India permitting admission of foreign students to the extent of as much as 50% of the seats as well as the time that had already elapsed, permitted the private professional colleges to admit non-resident Indians and foreign students upto a maximum extent of 15% of the intake capacity of that year i.e. 1993, with the direction that the basis of the said selection would be as indicated in order dated May 14, 1993 [reported in Unnikrishnan P.J. and Others Vs. State of A.P. and Others, on the basis of merit leaving to the management of the college concerned to adjudge the merit of these candidates having regard to the relevant factOrs. It was further made clear that this was a special provision made only for that year. In the aforesaid order dated October 7, 1993, with reference to the minority educational institutions in the State of Kerala (such as those covered by Writ Petition No. 598 of 1993) it has been observed:

The system obtaining in Kerala appears to be altogether different which was unfortunately not brought to our notice on August 18, 1993. There are only two private engineering colleges in the State, said to be Minority Educational Institutions. The system obtaining in this State appears to be that the entire fees collected by these private engineering colleges has to be made over to the Government while the Government bears the entire expenditure for running the colleges. Under this system, the colleges were allowed to admit students of their own choice to the extent of 15%.

7. We have heard learned Counsel for the parties and we are of the view that except for the minority educational institutions in Kerala which are governed by the terms of the agreements with the Government of Kerala, the directions given by this Court with regard to admissions for the academic session 1993 can continue and govern admissions for the next academic session commencing in 1994. As regards the institutions in the State of Kerala which are governed by the terms of agreements with the Government of Kerala, the admissions to such institutions would be made in accordance with those agreements. It is, therefore,

directed that the admission for the academic session commencing in 1994 to the professional courses in the institutions which are claimed to be minority educational institutions shall be made on the following basis:

(i) In the institutions referred to in Writ Petitions Nos. 284 of 1993 and 482 of 1993 admission shall be made as per the directions given in the order dated August 18, 1993, for the academic session commencing in 1993.

(ii) In the institutions referred to in Writ Petition No. 598 of 1993 and similar minority educational institutions in the State of Kerala which are governed by an agreement with the Government of Kerala the admissions shall be made in accordance with the terms of those agreements. In respect of the seats which are left for management to fill in its discretion merit shall be the guiding principle. Since the entire expenditure of the colleges is borne by the State - the entire fees collected are also made over to the State - these colleges must be required to draw the students even with respect to the seats to be filled by the management from out of the State merit list, if any. In the absence of such list, they can themselves devise the method for such selection. We make it clear that regarding the character of these institutions -whether they are minority educational institutions - we express no opinion. That is a matter between the institutions and the Government of Kerala. It is enough to record that Sri Vellapally, learned Counsel for the State of Kerala, disputes the minority character of these institutions.

(iii) In rest of the minority educational institutions falling in categories 1, 2 and 3 indicated in paragraph 5 of the order dated August 18, 1993 admission shall be made in accordance with the directions contained in the order dated May 14, 1993 in Writ Petitions Nos. 350 and 355 of 1993 as modified by order dated August 18, 1993, but the directions would not apply to the institutions referred to in paragraph 18 of the order dated August 18, 1993. In this context, we would like to impress upon the managements of the concerned institutions that while assessing the merit of a candidate for admission the objective should be to promote the excellence of the institution as a vehicle of general secular education,

(iv) In so far as non-resident Indians and foreign students are concerned, the permissible limit would be only 5% of the total intake for a given year as per the direction contained in paragraph 6 of the order dated May 14, 1993 as modified by order dated August 18, 1993. The admission against these seats shall be made on the basis of merit but it would be open for the management of the institution to adjudge the merit of the candidates having regard to the relevant factOrs.

8. The matters be listed for hearing on July 20, 1994. Notice be issued to the Attorney General of India and the Advocates General for the States on the questions as reframed. Written submissions (in brief) should be submitted by learned Counsel by July 13, 1994.