

(1984) 11 KAR CK 0001
In the Karnataka High Court
Case No : W.P. 13649 of 1984

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

APPELLANT

Vs

State of Karnataka.

RESPONDENT

Date of Decision : 23-11-1984

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (1985) 1 KarLJ 418

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioners. Dr. T.M.A. Pai Foundation and others, have presented this writ petition questioning the constitutional validity of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act. 1981 and the Government Order dated 8-8-1981. under which the total intake of Kasturba Medical College. Mangalore. as also the number of seats earmarked as Government seats in the said college have been fixed.

2. As far as the constitutional validity of the Act is concerned, the matter is covered by the order of this Court in BABUJI EDUCATIONAL ASSOCIATION v. STATE OF KARNATAKA (1) W.P. No. 12324/ 1984. D.D. 3-9-1984., and Dr. T.M.A. PAI FOUNDATION v. STATE OF KARNATAKA (2) W.P. No. 12597/1984, D.D. 10-9-1984. Therefore, it is unnecessary for me to consider the said matter in detail, as the judgements rendered in those writ petitions govern the case of the petitioners also in so far it relates to the matters covered by those judgments.

3. The particular challenge made in this writ petition is to the total intake fixed for the college and earmaking of fifty percent thereof as "Government seats". The plea of the petitioners relating to this challenge is concerned, is as follows:

(i) The 2nd petitioner-college has been established and administered by a linguistic minority, namely, Konkanis. Therefore their rights are protected under Clause (1) of Article 30 of the Constitution. The State Government has no power to earmark certain number of seats as Government seats.

(ii) Even otherwise, as the 2nd petitioner-college does not receive any financial aid from the Government, the petitioners as owners of the collage have the right to regulate the admission to the college and the Government cannot take to itself the right to make selection for any of the seats. The impugned order amounts to an infringement of the right of the petitioners under Art. 14 and 19(1)(g) of the Constitution.

(iii) Even assuming that the Government could fix certain number of seats as Government seats for the reason that the 2nd petitioner-college has secured hospital facilities from the Government Wenlock Hospital, Mangalore, the fixation of 65 seats, i.e., 50 per cent of the total seats as Government seats in the 2nd petitioner-college is patently discriminatory for the reason that in respect of each of the three other private medical colleges who are also depending upon Government Hospitals for hospital facilities, the State Government has fixed only 20 out of 130 seats as Government seats.

(iv) The total intake for the college during the last academic year was fixed at 140. During the current academic year, it has been fixed at 130. The said fixation is arbitrary for the reason, the affiliation committee of the Mangalore University as well as the Medical Council of India have opined that the total intake of the college could be fixed at 140. Therefore, the reduction of total intake from 140 to 130 is arbitrary and therefore violative of Article 14 of the Constitution.

4. As against this, the plea of the State is as follows:

(i) The petitioners cannot claim the right guaranteed under Article 30(1) of the Constitution as Dr. T.M.A. Pai Foundation can be said to be having only the administrative control of the college, but not the ownership. Consequently, the petitioners also cannot question the validity of the earmarking of 50% of the seats as Government seats as it is competent for the Government to do so under the provision of the Act. Such reservation was also not violative of Articles 14, 19(1)(g) and 21 of the Constitution as alternatively pleaded by the petitioners.

(ii) The 2nd petitioner-college has sought for and taken hospital facilities at Government Wenlock Hospital, Mangalore. Therefore, the Government has the right to impose the condition that certain number of seats must be made available to the Government.

(iii) As far as the total intake is concerned, even the Medical Council in its latest letter addressed to the Government had expressed the view that unless certain defects pointed out in the inspection report of 1983 were removed, the intake cannot be raised from 130 to 140. Therefore, the contention of the petitioners that fixation of the total intake at 140 was arbitrary and untenable.

(iv) The plea of the petitioners that there has been discrimination in fixing the Government seats in respect of 2nd petitioner-college vis-a-vis other three colleges is untenable as the Government is spending one crore of rupees per annum on the Wenlock Hospital at which the 2nd petitioner-College is getting

hospital facilities, whereas the expenditure in respect of the hospitals at which the three other private medical colleges are receiving hospital facilities is much less.

(v) There has been an understanding between the Government and the petitioner amounting to an agreement, according to which the management of the 2nd petitioner-college has to surrender fifty per cent of the seats to be filled up by the Government which are called "Government Seats". This practice has been prevailing since the starting of the 2nd respondent-college at Mangalore during the academic year 1977-78. In particular, during the two academic years 1981-82 and 1982-83 the number of Government seats were 65 and for the year 1983-84 it was 52.

5. As regards the first question, namely, the claim of the petitioners that they are entitled to the protection guaranteed under Article 30(1) of the Constitution is concerned, it should be pointed out that it is the same management which claimed the right guaranteed under Article 30(1) of the Constitution in W.P. 12597/84, in respect of an engineering college under its management. On consideration of all the facts and circumstances of the case, the claim of the petitioners that they are a linguistic minority and therefore entitled to the protection of Article 30(1) of the Constitution was upheld. The Writ Appeal filed by the State against the said order was rejected by the Division Bench.

6. Learned Counsel for the State however submitted that by virtue of the Trust Deed through which the Manipal Academy entrusted the management of the college to the 1st Petitioner, the latter did not become the owner of the college as it did not amount to transfer of ownership of the property of the Kasturaba Medical College to the 1st Petitioner-foundation and this aspect had not been pleaded before this Court in the said writ petition and therefore the matter requires reconsideration.

7. In the order made in W.P. 12597/1984. it has been held that the petitioners were entitled to the right guaranteed under Article 30(1) of the Constitution on the ground that they had both the ownership and administration with them. That order has been confirmed in writ appeal. Therefore, the respondent cannot seek reconsideration of that order in the petition. Therefore, I have got to proceed on the basis that the 2nd petitioner-college is an institution established and administered by a linguistic minority, viz., Konkanis. Further, as far as the challenge to the Government seats is concerned, the case can be decided even without reference to Art. 30(1) of the Constitution for the reason that in W.P. No. 12324 of 1984 and connected cases in which the petitioners were all non-minority institutions, I have held that having regard to the right guaranteed to them under Art. 14 and 19(1) and 21 of the Constitution, they had the right to establish and administer colleges of their choice and so long they were not receiving any financial aid from the Government, the Government had no right to earmark any of the seats in those colleges as Government seats. I have also held, that part of Section 4 of the Act which authorised the Government to

declare certain number of seats in private unaided colleges as Government seats, was unconstitutional. From this it follows that even on the basis that Article 30 cannot be invoked by the petitioners, the Government has no power to declare any of the seats in the 2nd petitioner college as Government seats as it is unaided private college. However, there is. in this case the plea taken by the State that in view of the dependence of the 2nd Petitioner-college on the Government Hospital for hospital facilities and as there was an implied agreement reached between the petitioners and the Government, that the Government could insist on certain number of seats being earmarked as Government seats, which I shall consider later.

8. First, I shall proceed to consider the question relating to total intake. The petitioners have stated that both the affiliation committee nominated by the Mangalore University as also the Medical Council of India had recommended that the total intake of the 2nd Petitioner-college should be fixed at 140 having due regard to the facilities available at the said college and that during the last academic year also the intake was fixed at 140 and therefore the reduction of intake was arbitrary.

9. If the above facts are correct, there would have been considerable force in the above contention of the petitioners. The learned Government Advocate has produced a copy of the letter dt. 17-11-1984 addressed by the Medical Council of India to the Secretary, Health and Family Welfare Department of the State Government. In the said letter, the Medical Council has made it clear that the intake of 2nd petitioner-college could be permitted to be raised to 140 only after the defects pointed out in the inspection report of 1983 were removed. In view of this letter the contention of the petitioner that the Medical Council has already recommended for the fixation of the intake of the 2nd petitioner-college is untenable.

10. Learned Counsel for the petitioners submitted that as far as the Mangalore University is concerned, it had recommended that the intake should be 140. But having regard to the fact that it is the Medical Council of India which is the statutory body constituted for ensuring standards in medical education, the last word should be of the Medical Council. Therefore, the petitioners could claim that the intake should be fixed at 140 after they secure the necessary certificate from the Medical Council of India that the defects pointed out in the inspection report have been removed. Therefore, I negative the claim of the petitioner for the present leaving liberty to the petitioners to re-agitate the question, if the intake is not increased, even after securing necessary clearance from the Medical Council of India.

11. Coming to the question of fixing of Government seats, learned counsel for the petitioner relied on Article 30(1) of the Constitution and submitted that even as a consideration for extending the hospital facilities at the Government hospitals; though he was not admitting that it was so in this case; the Government could not earmark any seats in the 2nd petitioner college as

Government seats. In support of his submission, learned counsel for the petitioners relied on the judgment of the Supreme Court in *SIDHRAJ BHAI v. STATE OF GUJARAT* AIR 1963 SC 540. In particular he relied on paragraph 16 of the judgment. He pointed out that the Supreme Court had held that reservation of 80 per cent of the seats in favour of candidates sponsored by the State Government in a minority institution though receiving aid from the Government, was held to be invalid as violative of Article 30(1) of the Constitution.

12. Article 30 itself incorporates a special provision prohibiting discrimination in the matter of financial grant against a minority institution Article 30(1) and (2) reads:

"30. RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS:

(1) All minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice.

xxx xxx xx (2) The State Shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

Under clause (1) a minority is given the right to establish and administer educational institution of its choice. Founding fathers of the Constitution considered the necessity of incorporating clause (2) to exclude the possibility of denying of grant-in-aid by the State to an institution established by a minority even when sought for, while extending the grant to non-minority institutions. Therefore, it is clear that if a minority institution seeks the grant in terms of grant-in-aid code, the Government cannot deny it on the ground that it was a minority institution.

13. First of all, the ratio of the decision in *SIDHRAJ BHAI'S* case-(3), is not apposite to this case, for, this is not a case in which there has been any discrimination in the matter of grant-in-aid as admittedly the 2nd petitioner has not sought for grant-in-aid.

14. Secondly, the question which arises in this petition is, even though the petitioner is entitled to claim the right guaranteed under Article 30 whether such right includes the right to secure hospital facilities at a Government hospital and whether the imposition of any condition like reserving of certain number of seats as Government seats as a condition for extending hospital facilities would be violative of Art. 30. In my view, Art. 30 confers no such right. A minority has undoubtedly the right to establish and administer any college of its choice subject to complying with valid conditions imposed by law. In exercise of that right it could also establish a Medical College. It is true that there can be no medical college without hospital facilities of the standard prescribed by the Medical Council. Therefore, the concerned minority has to establish a hospital also in order to establish a Medical College in exercise of the right guaranteed

under Art. 30. But the right guaranteed under Article 30 does not impose any obligation on the Government to extend hospital facilities in a Government Hospital. Therefore, even though the petitioners are entitled to the right guaranteed under Art. 30, they have no right to secure hospital facilities at Government Wenlock Hospital, Mangalore.

15. From this it follows that the petitioners could secure hospital facilities from the Government only by mutual agreement. The plea of the Government is that there has been an implied agreement to the effect that the petitioner should allow certain number of seats to be filled up by the Government and it was in view of that the Government has extended hospital facilities to the 2nd petitioner-college.

16. It is true, as pointed out by the counsel for the petitioner, that the impugned order was made under the provisions of the Act and in doing so, it purported to exercise its power given to it under the Act. But the circumstances under which the earmarking of certain number of seats in the private medical colleges as Government seats came into existence, long before the date on which the impugned Act was enacted, has been explained by the learned Government Advocate. He also produced the proceedings of the meeting held in the Chamber of Health Minister on 7-6-1979.

In the said meeting, the representatives of all the private medical colleges, including the 2nd petitioner college, were present. The relevant part of the proceedings read:

"3. This matter was discussed at length and Director of Medical Education as well as other officers present opined that this formulate, if accepted will enhance the number of non-capitation fee seats for 68 per 100 and at the same time the overall budgetary frame work of the College will also not be affected adversely. But for this the representatives of the colleges stated that as there must be some scope. for development of the Institution also, the said formula becomes difficult for acceptance. The matter was discussed at length and after the thorough consideration of the matter it was decided that the following formula will be accepted for distribution of seats in the private medical colleges from the year 1978-79.

Accordingly, the distribution of seats per 100 seats will be as follows:

Total No of seats-100

No. of seats 50 for the students of Karnataka without capitation fee (selection to be made on merit)

10 Seats at the discretion of the management

15 Seats for the students of outside Karnataka with a capitation fee of Rs. 50000/-(preference being given to Karnataka students)

25 No. of Seats for Indians/non-Indian residents/foreign students with a

capitation fee of Rs. 1,25,000/-

Further it was agreed- a) Regarding 50 seats (Karnataka Students) without capitation fee, the selection will be made by the Selection committee constituted for Government College."

The contents of the proceedings in that there was an agreement between the management of private unaided medical colleges in the State and the Government, for earmarking fifty percent of seats as Government seats in private medical colleges, with the object of preventing the collection of capitation fee from the students who were desirous of getting admission to the medical course, to that extent and that the selection to those seats should be made by a selection committee constituted by the Government. The Government Advocate also produced a letter dated-8-2-1984 addressed by the Medical Director of the 2nd petitioner-college to the Director of Medical Education. The said letter gives the number of Government seats earmarked for the 2nd petitioner-college and another college at Manipal during 1977-78 upto 1980-81 and for the 2nd petitioner-college during 1981-82 to 1983-84. The figures are as follows:

1977-78

1978-79

1979-80

1980-81

1981-82

1982-83

1983-84 -

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-

-

- 80

112

134

124

65

65

The proceedings of the Government and the above letter are not disputed by the petitioner.

17. The aforesaid proceedings and the above information show that since the inception of the college, certain number of seats out of the total intake of the 2nd petitioner college have been earmarked as Government seats. It is also not disputed that there can be no medical college without there being a hospital attached to it with the prescribed number of beds as prescribed by the Medical Council of India and as far as the 2nd petitioner-college is concerned, it has no hospital of its own, but it is depending upon the Government Wenlock Hospital for the hospital facilities which the Government has permitted the petitioner to be used.

18. Learned counsel, however, submitted, every year since 1979 the petitioner has been challenging the validity of Government seats before this Court, but the matter was being settled by increasing the intake and permitting more seats to be filled up by the management. He also submitted that in any event the petitioner is not precluded from challenging the number of Government seats if it was fixed in a discriminatory manner. He also maintained that the fixation of Government seats was never made a condition precedent for extending hospital facilities.

19. It is true that there was no agreement on those lines. Still the fact remains that certain number of seats in the 2nd petitioner-college have been earmarked as Government seats all these years and this was with the object of making those seats available to the students without the collection of capitation fee and subject to the condition that the selection would be made by the Government and that the Government has permitted the 2nd petitioner-college to have hospital facilities at Government Wenlock Hospital, Mangalore. If the petitioners do not agree to the earmarking of any of the seats as Government seats, as submitted by the learned Government Advocate, it is open to the Government to withdraw the hospital facilities as neither Art. 30 nor Art. 19(1)(g) compels the Government to extend hospital facilities. On these facts and circumstances, it appears to me that the petitioner cannot resist the earmarking of certain number of seats as Government seats so long it depends upon the Government hospital for hospital facilities. The question of discrimination in the matter of fixing Government Seats is however a different matter which I shall now proceed to consider.

20. The next question raised by the petitioners is that even on the basis that the Government could earmark certain number of seats as Government seats in all private unaided colleges depending on Government hospital for hospital facilities, it could not discriminate against the 2nd petitioner-college. The relevant part of the Government order earmarking certain number of seats as Government seats, is as follows: Name of the College No of Govt. seats Total intake

Kusturaba medical College, Mangalore 65 130

K.S. Ramaiah College, Bangalore 20 130

K.I.M.S., Bangalore 20 130

Dr. B.R. Ambdkar Medical College, Bangalore 20 130

It is not disputed that while the 2nd petitioner-college depends upon the Government Wenlock Hospital, Mangalore, for hospital facilities, M.S. Ramaiah College depends upon the Government K.C. General Hospital, Malleswaram, Bangalore, and Dr. B.R. Ambedkar medical college. Bangalore and K.I.M.S., Bangalore, depend upon the Government Bowring Hospital, Bangalore. Learned counsel for the petitioners submitted that when all the four medical colleges are depending upon the Government Hospital for hospital facilities, the State Government has fixed as many as 65 seats out of 130, as Government seats in respect of the 2nd petitioner-college, whereas the Government has chosen to fix only 20 seats in respect of the three other medical colleges and this was patently violative of Art. 14 of the Constitution.

21. All the four medical colleges are similarly situated as every one of them is a private medical college not receiving financial aid from the Government and every one of them depends on Government Hospital for hospital facilities. Therefore, unless, there is some rational basis to fix more number of seats as Government seats in respect of the 2nd petitioner-college and less number of seats in respect of the three other private medical colleges, the earmarking of more number of seats in respect of 2nd petitioner-college has to be held as violative of Art. 14. The relevant portion of the statement of objection in which the differentiation is sought to be justified reads: "It may be appreciated in this context that the Government Hospital at Mangalore is equipped with all the modern facilities. thus conforming to the specification of the Medical Council of India, besides, the bed strength is increased to 905. The Mangalore Government Hospital is thus provided with all facilities that are required of a teaching hospital. This has necessarily entailed the financial expenditure to the Government to the tune of about a Crore every year."

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5. With regard to the fixing up of less number of Government Seats to be admitted to the Colleges like M.S. Ramiah Medical College, Dr. Ambedkar Medical College and Kempegowda Institute of Medical Sciences, it is submitted that the expenditure for the Government in meeting the requirements of Clinical Facilities to these colleges, does not in any way comparable to the similar expenditure that is being spent on the Mangalore Hospital.

6. The K.C. General Hospital a: Bangalore attached to M.S. Ramaiah Medical College is provided with 313 beds, the expenditure being about 40.15 lakhs per year. With regard to Dr. Ambedkar Medical College and Kempegowda Institute of Medical Sciences, clinical facilities are provided at Bowring and Lady Curzon

Hospital with 700 beds with an expenditure of about 84.55 lakhs per year. Therefore, the discrimination complained of by the petitioners is not tenable in law."

From the above para, it may be seen that the only reason given is that the expenditure which the Government is incurring in respect of Government Wenlock Hospital, Mangalore, is to the tune of Rs. one crore per annum where as it is less in respect of hospitals from which the three other medical colleges are receiving hospital facilities.

22. In my opinion, the reason given hardly constitutes, a rational basis for subjecting these colleges to discriminatory treatment. As stated above, the following facts are undisputed-

(i) Each one of the four colleges is a private medical college not receiving aid from the Government.

(ii) The total intake of each of the colleges is 130.

(iii) Each of the colleges is depending upon a Government hospital for hospital facilities.

23. From these facts, it is clear that the hospital facility which each of the institution is securing is only for the purpose of imparting necessary instruction and training to equal number of students, i.e., 130 in each of the phases of the medical course. Therefore, the total amount which the Government spends on the hospital constitutes no rational basis for fixing the Government seats at 65 in respect of the 2nd petitioner-college and only 20 in respect of three other medical colleges. Excepting the above basis, no other rational basis is pointed out.

24. For these reasons, I hold that having regard to Art. 14 of the Constitution, the Government could have fixed only 20 seats as Government seats in respect of the 2nd petitioner-college also. Consequently the fixation of 65 seats as Government seats, has to be declared as discriminatory.

25. Learned counsel for the state submitted that as the petitioners have acquiesced in the fixation of Government seats at 65 in the earlier years, they are precluded from questioning its validity during this year.

26. As pointed out earlier the petitioners have been challenging the fixing of Government seats every year since 1979 before this Court and the matter was being compromised. This is not disputed by the Government Advocate. Whatever that may be, the submission is untenable. Art. 14 is an injunction to the State not to discriminate. The right to equality, flowing from such injunction, therefore cannot be lost by acquiescence. (See: BASHESHARNATH v. I.T. COMMISSIONER-AIR 1959 SC 149, Paragraphs 13 & 14.

27. Before concluding, it is necessary to advert to another submission made by the learned counsel for the petitioners, namely that there has been discrimination

in respect of fixing Government Seats in Post-Graduate course. Though amendment of the petition was sought for; to add that plea by the petitioners and the same was allowed, it appears to me that it constitutes entirely a separate cause of action and, therefore, I leave that question open to be agitated by the petitioners in a separate petition if they are so advised.

28. In the result, I make the following order:

(i) The writ petition is partly allowed.

(ii) The impugned Government order dated 18-8-1984 (Annexure-E) in so far it relates to fixation of 65 seats as Government seats in the 2nd petitioner-college is declared invalid subject however to the condition that the Government shall be at liberty to fill up 20 seats in the 2nd petitioner college as Government seats and that the petitioner shall admit the 20 candidates selected by the selection committee constituted by the Government.

(iii) The petition is dismissed in all other respects (iv) No costs.

Sri. V.C. Brahmarayappa, Government Advocate, is permitted to file his memo of appearance in 2 weeks.

Prepare a carbon copy of this order and furnish to the learned counsel for the respondent.