

(1986) 04 KAR CK 0012

In the Karnataka High Court

Case No : W.A. No's. 694 and 1916 of 1985 and W.P. No. 10849 of 1985

Dr. T.M.A. Pai Foundation

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-04-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 30

Citation : (1986) ILR (Kar) 1962 : (1986) 2 KarLJ 313

Hon'ble Judges : Puttaswamy, J;Mahendra, J

Bench : Division Bench

Advocate : S.G. Sundaraswamy, for the Appellant; Chandrasekharaiah, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mahendra, J.—As the questions that arise for determination in these cases between the same parties are either common or interconnected, we propose to dispose of them by a common order.

2. One Dr. T. M. A. Pai of Dakshina Kannada District, a Medical Practitioner by profession but a great humanist and educationist with a passion for social service started a society called "Academy of General Education Udipi" (Academy) in 1942, with the "main object to establish and maintain educational institutions of different types and then help the educational and cultural advancement of the Country" and with this object in view started several vocational centres and a Second Grade College at Udipi. The Academy was purely an educational organisation to help the Government and the Country in carrying on the important task of nation building. The Academy was considerably agitated over the problem of medical education in the Country and as the number of Medical Colleges in the Country then was insufficient to meet the growing demand for medical education resulting in hundreds of aspiring youth-men and women, being denied admission to the medical institutions while the Country was in need of more and more trained Doctors, the Academy decided to start a Medical

College at Udipi called the Kasturba Medical College and applied to the then Government of Bombay to affiliate the College to Karnataka University in the year 1951. The Academy requested the then Government of Madras for financial aid, grant of land and for permission to use the Government Hospitals at Mangalore and Udipi for clinical training of the students of the proposed College. The then Government of Madras accorded permission for the use of the Wenlock Hospital and Lady Goschen Hospital at Mangalore for the clinical training of the students of the proposed College at Udipi. The Academy also created a separate Trust called "The Kasturba Medical Trust" for managing the Kasturba Medical College, Udipi. After some correspondence and on the Academy accepting certain conditions, the Government of the then State of Bombay sanctioned the affiliation of the Kasturba Medical College, Manipal, to be started at Udipi by the Academy, to the Karnataka University by its order dated 18-6-1953. In the K.M.C. Manipal, facilities for pre-clinical portion of the medical education was provided and the facilities for clinical portion of the medical education was provided in the two Government Hospitals at Mangalore.

3. By about the year 1977, the Academy built a Hospital attached to the K.M.C. Manipal and provided clinical facilities at Manipal to the students of K.M.C. Manipal. At about the same time the Academy made arrangements for providing pre-clinical facilities at Mangalore also named the institution, Kasturba Medical College, Mangalore, and wanted the clinical facilities for the students of K.M.C. Mangalore at the Government Hospitals at Mangalore. Ever since the KMC Mangalore came into existence disputes have arisen almost every year about the K.M.C. Mangalore availing the clinical facilities in the Government Hospitals at Mangalore but they have been resolved on an ad-hoc basis by the interim orders made by this Court in Writ Petitions filed by the K.M.C. Mangalore and others. A detailed reference to the disputes for all the years, except for the academic year 1985-86 is not very necessary for deciding the controversies in these cases. But before that, it is however necessary and useful to trace another development.

4. Dr. T.M.A. Pai the founder of the Academy died on 29-5-1979. Under a Deed of Trust dated 17-2-1981 one of his sons T. Ashok Pai and one H. V. Kamath created a Trust called "Dr. T.M.A. Pai Foundation" (Foundation). One of the avowed objects of the Foundation is to start and promote the advancement of educational activities for the benefit of students speaking "Konkani" language, promote the Konkani Language and the culture of Konkani speaking people. The Foundation took over the K.M.C. Mangalore, which was till then run by the "Academy" under a Registered Deed dated 18-2-1982, whereafter the Foundation owns and administers the K.M.C. Manipal and K.M.C. Mangalore.

5. For the academic year 1984-85 Government made an order on 8-8-1984 fixing the total number of "intake" seats for K.M.C. Mangalore at 130 and earmarking 50% of the seats as Government seats. In Writ Petition No. 13649 of 1984 the Foundation, the K.M.C. Mangalore and four of the Trustees challenged the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984,

and the order of the Government dated 8-8-1984. On 23-11-1984 Rama Jois, J ; disposed of the said Writ Petition with the following order :

i) that the K.M.C. Mangalore is entitled to the protection under Article 40(1) of the Constitution but has no right to get from the Government clinical facilities at Wenlock Hospital, Mangalore ;

ii) so long as the College is not receiving any financial aid Government has no right to ear-mark certain number of seats as Government seats ;

iii) in fixing the intake at 130 Government has not violated Article 14 but is open to the petitioners to approach the Indian Medical Council for increasing the intake ;

iv) the petitioners can only secure clinical facilities from the Government by mutual agreement in this case though there is no agreement the fact remains that certain number of seats have been ear-marked as Government seats all these years and accepted the submission made on behalf of the Government that if the institution does not agree to the ear-marking of the seats for Government, it is open to the Government to withdraw the clinical facilities as in his opinion Article 19(1)(g) or 30 do not compel the Government to provide clinical facilities and

(v) the fixing of the Government seats as 65 for K.M.C. while as 20 to the other colleges violate Article 14 and allowed the Writ Petition in part.

Aggrieved by the said order to the extent the same did not grant the reliefs sought by them, the petitioners in the said Writ Petition filed Writ Appeal No. 694 of 1985.

6. While the above appeal was pending before this Court, the Chairman of the Governing Council of K. M. C. Mangalore, received a communication dated 5-7-1985 (Annexure-C) from the State Government which reads thus :

"Sub : Withdrawal of clinical facilities.

I am directed to state that the question of discontinuance of clinical facilities from the ensuing year onwards in respect of new batches is being examined by the Government. You are informed not to admit any students for the ensuing batch to Mangalore Section of Your College presuming that clinical facilities would be provided by the Government in respect of Mangalore Section of your Medical College. You may also make this known to those seeking admission to the said section of your college,"

Even this innocuous communication was also challenged by the Foundation, K.M.C. Mangalore and two of the trustees in Writ Petition No. 10849 of 1985 in which they sought for the following reliefs :

(i) Stay the operation of the directions contained in the letter dated 5-7-1985 Annexure-C.

(ii) Directing the Respondent, their servants and agents not to discontinue or interfere with clinical facilities provided to the Kasturba Medical College, Mangalore-second petitioner herein, in the Government Hospitals as hitherto ;

(iii) Restrain Respondent, their servants and agents from interfering with the admissions to the First Year MBBS and Post Graduate Courses in the Kasturba Medical College, Mangalore, second petitioner ;

(iv) To grant such other reliefs as this Hon"ble Court deems fit to grant, in the circumstances of the case ;

They also prayed for an interim order to

(a) Stay the operation of letter dated 5-7-1985 (Annexure-C)

And

(b) Direct Respondent not to interfere with the continuation of the clinical facilities provided to the Kasturba Medical College, Mangalore, as hitherto and with the admission of students to the First Year M.B.B.S. and Post Graduate Courses in the Kasturba Medical College, Mangalore.

On 16-7-1985 Chandrakantraj Urs, J: issued Rule nisi directed emergent notice and granted "Interim order as prayed for".

7. On 5-8-1985 Government issued a notification (Annexure-D) fixing the intake of seats to the K. M. C. Mangalore and earmarking 30 seats as Government seats in this College. The Petitioners in Writ Petition No. 10849 of 1985 filed I.A. Nos I and II on 19-8-1985 for an amendment to include a prayer to quash the aforesaid notification and to stay the operation of the same. These I. As. came up for orders on 22-8-1985 before Chandrakantaraj Urs, J : and his Lordship made an order in these words :

"Heard Counsel for applicant-petitioner. I.A.I is allowed. No interim order as the petitioner is either free to give the seats required by Government or refuse the same. If selections are made by either, they do so at their own risk. The Respondent may file their return within 10 days from today. Post W.Ps for hearing on 2-9 1985."

Aggrieved by the said order the respondent in this Writ Petition has filed Writ Appeal No. 1916 of 1985.

8. On 19-9-1985 Chandrakantaraj Urs, J : has referred Writ Petition No. 10849 of 1985 for disposal to a Division Bench. This is how all these cases have been posted before us.

9. In the course of this order, we have referred to the appellants in Writ Appeal No. 694 of 1985, who are the respondents in Writ Appeal No. 1916 of 1985, who are also the petitioners in Writ Petition No. 10849 of 1985 as the Petitioners and the respondent in Writ Appeal No. 694 of 1985 and Writ Petition No. 10849 of 1985 who is the appellant in Writ Appeal No. 694 of 1985 as the respondent.

10. Sri S.G. Sundaraswamy, learned Advocate appeared for the petitioners. Sri Chandrasekhariah, learned Additional Government Advocate appeared for the respondent.

11. The petitioners have challenged the orders made by Government or actions proposed to be taken against them on the three grounds and they are ;

(i) The Foundation has established the Medical College and has been running the same on an unconditional earmarking given by the Government of the then State of Madras to give clinical facilities and the Government of Karnataka is therefore estopped from withdrawing or withholding the same.

(ii) The Foundation representing a minority (Linguistic) has established and is administering an Educational Institution of its choice K.M.C. Mangalore, and has therefore a right to select and admit students of its choice to the Medical College and the order of the Government withdrawing the clinical facilities interferes with the absolute right to manage guaranteed to them under Article 40(1) of the Constitution of India because without the clinical facilities, it is not possible, to run the Educational Institution-K.M.C. Mangalore.

(iii) The withdrawing of the clinical facilities is highly arbitrary and is violative of Articles 14 and 19(1)(g) of the Constitution.

12. The respondent in refuting the grounds urged by the petitioners has inter-alia urged that :

(i) The petitioners have on incorrect and incomplete facts mislead the Court and obtained interim orders and have therefore disentitled themselves from getting any relief.

(ii) The assurance given by the Government of Madras to the Academy to provide clinical facilities was conditional and lapsed on the establishment of a Hospital attached to the K.M.C. Manipal. This assurance does not enure to the benefit of the K.M.C. Mangalore. Government of Karnataka has not given any assurance to provide clinical facilities to the K. M. C. Mangalore. The principle of promissory estoppel is not attracted to the facts of this case.

(iii)(a) The Foundation has not established the K.M.C. Mangalore and is therefore not entitled to the protection guaranteed under Article 40(1) of the Constitution.

(iii)(b) A student admitted to a Medical Course has to study pre-clinical subjects and clinical subjects. The K.M.C. Mangalore provides from the year 1977 for the study of pre-clinical subjects in the College and for the study of clinical subjects in the College Hospital. K. M. C. Mangalore, established by the Foundation only provides for the study of pre-clinical subjects and not clinical subjects as there is no College Hospital. K.M.C. Mangalore does not therefore provide for the study of the complete Medical Course which includes pre-clinical subjects and clinical subjects, A student admitted to K.M.C. Mangalore can only study a part of the Medical Course and not the full Medical Course. What the Foundation has

established at Mangalore-K.M.C. Mangalore-therefore provides for the study of a part of the Medical Course and is not a Medical College providing for the study of the Medical Course in its entirety, extending to 4 1/2 years including pre-clinical and clinical studies. The foundation has not established "a Medical College" and cannot therefore claim any rights under Article 40(1) of the Constitution. The State has not interfered with the rights of the Foundation to establish and administer an educational institution of its choice under Article 40(1). The Foundation wants the Government of Karnataka to join in establishing a fullfledged Medical College at Mangalore. The Government can consider the desirability of its participating in establishing a Medical College at Mangalore - as a Joint Venture, only after the terms and conditions are agreed between the parties and if it is in the larger interest of the State. The petitioners cannot compel, the State to share the responsibility of establishing a Medical College at Mangalore and provide clinical facilities on their own terms.

(iv) The State has not subjected the petitioners to any hostile and discriminatory treatment and in declining to permit the Government Hospitals for the training of the students of K.M.C. Mangalore, the State has not violated Articles 14 and 19(1)(g).

13. Sri Sundarswamy elaborated all the three grounds relying on a number of rulings. Sri Chandrasekharaiah refuting them has elaborated the grounds urged by the respondents relying on a number of rulings.

14. We will first examine whether the petitioners by their conduct have disintitiled themselves from getting any relief as urged by the respondents.

15. The petitioners have stated at Page-15 of the Writ Petition that the impugned letter Annexure-C "affects not only the linguistic minority but also a large number of students presently studying in the College and for whom the College is duty bound to see that they complete their course. The admissions for the present academic year cannot be made if no clinical facilities are continued. Even the students presently studying in the College will have to be turned out and the teaching and non-teaching staff employed in the second petitioner-college will have to be retrenched".

16. In para 21 at page 20 of the Writ Petition it is stated "Those facilities were given uninterrupedly and unconditionally all along, even by the successor Government, namely the Government of Karnataka. It is because of this promise of clinical facilities that the College was built equipped and run" and after stating the petitioners have invested huge amounts it is further stated "the College has taken up this responsibility of admitting 287 students for the Academic Year 1985-86 and 800 students are yet to complete their course. Such being the position, the principle of promissory estoppel fully operates against the Government", In para 22 of the Writ petition it is stated "the result is that none of the existing students in the College will be able to get any clinical facilities to complete their education which was begun four years ago in the case of the final

year batch".

17. In para 25 of the Writ Petition it is stated that "As submitted earlier there are 800 students in the College studying in the First Year to the Final Year of M.B.B.S. and in the Post Graduate Course. Without clinical facilities, they will all have to abruptly discontinue or terminate their medical education. Selection of students have already been made for admission to the First Year M.B.B.S. Course and the Post Graduate Course during the current Academic Year in the 2nd Petitioner College. Discontinuance of clinical facilities all of a sudden and the direction to stop admissions from the current year onwards is virtually to ask the institution to close down. That would not only be ruinous to the petitioners but also affects the careers of hundreds of medical students, who on the faith of availability of these facilities took up the course and have expended time and money to receive education."

18. The very letter which is challenged in this Writ Petition, Annexure-C only states that the question of discontinuance of clinical facilities from the ensuing year onwards in respect of new batches is being examined by the Government and petitioner 2 was informed not to admit any students for the ensuing batch to Mangalore Section of the College presuming that clinical facilities would be provided by the Government in respect of Mangalore College and the students also be informed of this proposal. The letter is very clear that the withdrawal of clinical facilities was for the ensuing year onwards in respect of new batch of students to be admitted from the year 1985-86. The letter further states that only those who seek admission for the academic year 1986-87 will not be provided clinical facilities. This letter does not say that the clinical facilities for the students who have joined in the previous academic years would also be withdrawn. Even if the students are admitted for this academic year they need clinical facility only after 18 months and not before. They would have also been informed about the non-availability of clinical facilities to them and if still they had joined the College it cannot be said that they joined the College on an assurance by Government that clinical facilities would be provided to them as well. Government have not informed the petitioners that the clinical facilities would be withdrawn to the students who have joined that College earlier. That being so, by this proposal of the Government in Annexure-C the students already studying are in no way affected.

19. But still the petitioners have stated that the letter affects a large number of students presently studying in the College, they will have to be turned out, that the College has taken up the responsibility of admitting 287 students for the academic year 1985-86 and 800 students are yet to complete their studies, none of the existing students in the College will be able to get clinical facilities to complete their education which began four years ago. In the case of final year students all the 800 students studying for the M.B.B.S. and the Post-Graduate Course students without clinical facilities have to abruptly discontinue or terminate their education and the letter affects the careers of hundreds of

medical students who on the faith of availability of these facilities took up the course and have expended time and money to receive education. These statements are not correct statements. Even after the learned Government Advocate pointed out that the petitioners have made these statements which are false in an attempt to support their case and to obtain interim orders, the petitioners have not offered any explanation. We are satisfied that the petitioners have made these incorrect statements which are not true in their anxiety to give an impression that this letter prejudicially affects 800 students who are already studying in the College and the Government is refusing clinical facilities to them also to persuade the Court to grant the interim order staying the operation of the letter Annexure--C dated 5-7-1985 and direct respondents not to interfere with the the continuation of the clinical facilities provided to the K.M.C. Mangalore, as hitherto and with the admission of students to the First Year MBBS and Post Graduate Course in the K.M.C. Mangalore.

20. We have on these facts no hesitation in holding that the petitioners have made incorrect and incomplete statements and also statements which are not true and have not come to Court with clean hands as argued by the learned Government Advocate. Even otherwise, we are firmly of the view that the learned Judge was not justified in granting an ex parte interim order that went beyond the terms of main Writ Petition and creating an irretrievable situation in favour of the petitioners and against the just claims of the State.

21. But at this stage, we consider it inappropriate to interfere with the same though the facts of the case did not justify or warrant any interim order being made, at any rate, without hearing the respondents. Even though this conclusion justifies us, not to examine the merits, we propose to fully examine the same, which we now proceed to do.

22. The Academy approached the Government of the then State of Madras for assistance to start a Medical College at Udipi and the Government of Madras according to the petitioners, while expressing their inability to provide financial assistance offered land at Udipi and clinical facilities at the Government Hospitals at Mangalore and have relied on Annexure-A, copy of the letter of the Government of Madras dated 25-9-1952 to the Registrar of the Academy, Dr. T.M.A. Pai and Annexure-B, copy of the order of the Government of Madras dated 20-12-1954.

23. According to the petitioners, on the promise or assurance given by the Government of Madras to provide clinical training, the Academy set up the College at Manipal. In order to make the Hospital at Mangalore a Teaching Hospital, Government increased the bed strength and provided other facilities like additional Radiological Equipment etc., the Trust on the request of the Government contributed Rs. 32, 500/- towards additional expenses and has also supplied beds, cots etc. The Foundation is also making available special diagnostic facilities to the Hospital. Because of this assurance a College was built and equipped, investing about Rs. 15 Crores and the College has taken up the

responsibility of admitting 287 students for the academic year 1985-86 and 800 students are yet to complete their studies. The Government of Karnataka as the successor Government to the Government of Madras is bound by the assurance or promise given by the Government of Madras to the Trust and the principle of promissory estoppel operates against the Government of Karnataka. According to the petitioners, the clinical facilities cannot therefore be discontinued for non-compliance with the illegal and unconstitutional demand to surrender 50 per cent of the seats because the petitioners as also hundreds of students have altered their position to their prejudice and none of the existing students in the College will be able to get any clinical facilities to complete their education which began four years ago.

24. The Madras Government, according to Sri Sundaraswamy, agreed or promised to provide clinical facilities unconditionally and in support of this submission he placed reliance on Annexure-A, the communication of the Madras Government dated 25-9-1982. Annexure-A reads thus;

"Sub : Medical Colleges - Kasturba Medical College at Udipi -- Grant-in-aid-alienation of land etc., order passed.

Ref : Your letter dated 19th August, 1952.

I am directed to state that the Government have examined your request very carefully and they regret that they are unable to give any financial assistance to the proposed institutions at this stage in the present condition of the State's finance. They will, however, be prepared to alienate the Government vacant lands in Udipi in favour of the proposed Medical College, when specific proposals for the same are received and to permit the Government Hospitals at Mangalore and Udipi being used for the clinical training of the students of the proposed college. I am also to say that the Government will not be in a position to give any further help to the Academy of General Education, and that all financial responsibility in respect of the college should rest on its sponsors and their friends."

This was followed by an order Annexure-B dated 20-12-1954. Government of Madras considered in consultation with the Director of Medical Services, the proposal made by the authorities of the proposed College at Manipal for the training of the students at Mangalore and passed the order Annexure-B. By this order the Government of Madras arranged to provide clinical facilities to the students of the K.M.C. Manipal. A reading of Annexures "A" and "B" only shows that the Government of Madras agreed to provide clinical facilities to the proposed College at Udipi and also took the necessary steps like upgrading the Hospital as a Teaching Hospital for providing clinical facilities to the students of K.M.C. Manipal.

25. A first reading of Annexures "A" and "B" may appear to support the case of the petitioners that no conditions are imposed by the Government of Madras for providing clinical facilities. Annexure "A" is in reply to a letter dated 19-8-1952

from the Academy of General Education and the subject referred to is "Medical College-K.M.C. at Udipi - Grant-in-Aid - alienation of land etc.,". The other order Annexure "B" also states that the Government considered the proposals of the authorities of the College, Udipi and a reference is made to about 5 letters written by the Kasturba Medical College, Udipi and 6 letters written by the Director of Medical Services. It is likely these letters by the Director of Medical Services are in reply to the letters from the K.M.C. Udipi, in which proposals were made. If the petitioners could produce Annexures "A" and "B" it is not possible, to understand why they have not produced the entire correspondence between the parties at the relevant time. If these papers had been produced it would have thrown considerable light as to the proposal made by the Foundation which were considered by the Madras Government.

26. But, however, the Learned Government Advocate, has made available the records transmitted by the Government of Madras. We find in the records a printed address presented on 11-9-1952 by the Academy to the Minister of Public Health, Government of Madras. In this Address presented, the Academy has referred to their decision to start a Medical College, their applying for affiliation to the Karnataka University and has further stated-"The Academy, therefore, intends to start the Kasturba Medical College affiliated to the Karnataka University for the M.B.B.S., Degree Course in June next at Manipal. For the present the existing buildings at Manipal with some adjustments if necessary will be utilised to house the College and the Hostels, and at the same time we shall put up the necessary new buildings for the same purpose at Manipal. And our idea for the present is to make use, with the permission of the Madras Government, of facilities available at the Government Wenlock Hospital and Lady Goschen's Women's Hospital at Mangalore for clinical work, and at the same time slowly build up the necessary Hospitals at Udipi."

27. The Registrar of the Academy in its letter dated 19-9-1952 to the Registrar, Karnataka University, Dharwar, while pointing out that the Academy has deposited Rs. 50,000/-, assured the University that the other conditions laid down by the University would be fulfilled as expeditiously as possible and has further stated--"I am happy to state that our efforts to persuade the Madras Government to permit the use of the Government Hospitals in Mangalore for the purposes of the clinical training of our students have been met with sympathetic encouragement by the Honourable Minister for Health when he was on a brief visit to this place recently. He has asked us to go ahead with the starting of the Medical College. In this connection, we have also the assurances from the Honourable Minister and the Government of Madras that they will increase the beds in the Government Wenlock Hospital and Lady Goschen Hospital at Mangalore in order to provide increased facilities for the students of the Medical College, Further, the Honourable Minister has assured us that the Government land at Ajjarkad will be alienated to the Academy for the purpose of constructing a Hospital for the College."

28. A reading of this Address presented on 11-9-1952 by the Academy to the Minister of Health, Government of Madras, the letter dated 19-9-1952 by the Academy to the University of Karnataka, letter by the Madras Government to the Academy, Annexure-A dated 25-9-1952 and the order of the Government of Madras Annexure-B dated 20-10-1954 only show that the Academy had provided for constructing a Teaching Hospital attached to K.M.C., Manipal and as that would take some time the Academy proposed to the Government of Madras to permit the use of the Government Hospitals for the Clinical Training of the students of the K.M.C. Manipal and the Government accepted this proposal in Annexure-A and upgraded the Government Hospitals at Mangalore as Teaching Hospital.

29. Even after these two documents were referred for our consideration by the learned Government Advocate, the petitioners have not produced any other documents to show that the proposal made by the Academy was not as disclosed by these two documents. That apart the petitioners did not dispute the correctness of what is stated in these two documents. It therefore follows that the request or proposal made by the Academy to the Government of Madras was to provide clinical facilities at Mangalore to the students of the proposed Medical College at Manipal as a temporary measure, till a Teaching Hospital as part of the proposed College at Udipi is constructed and the Government of Madras considering this proposal agreed to permit the use of the Government Hospitals at Mangalore for providing the clinical training to the students of the proposed Medical College at Manipal and that too till the arrangements are made by the College authorities for the clinical training of the students in the College Hospital at Manipal.

30. The petitioners have not produced any material to establish the contribution of Rs. 32,500/- to the cost of equipment additionally provided in the Radiological Department or supply of beds, cots etc. Even if this is assumed as true, the contribution made by the Academy is only negligible when compared to the advantage derived from using these Hospitals for giving training in clinical subjects to the students of K.M.C. Manipal. Permitting the use of the Hospitals for clinical facilities cannot be said to be advantageous to the Government. Even if the K.M.C. Manipal provided diagnostic and laboratory facilities to the Hospital at Mangalore they are only estimated at Rs. 50 Lakhs per year. It cannot be forgotten and is admitted by the petitioners that without a Hospital for providing clinical facilities a Medical College cannot exist. If that is so, what the petitioners give or contribute to the Hospitals is not comparable to what they get in return by clinical facilities. However, this has no relevance in considering the question of estoppel pleaded by the petitioners which we now propose to examine.

31. As already noticed the Government of Madras agreed or assured the Academy, to permit the use of the Hospitals at Mangalore for clinical training of the students of the K.M.C., Manipal, till arrangements are made at Manipal for giving clinical training in the College Hospital. The Government of Madras did not

agree or assurance to permit the use of the Hospitals at Mangalore by the students of the K.M.C. at Manipal for all time to come and unconditionally. The assurance or promise by the Government of Madras to the Academy is only to the students of K.M.C. Manipal and does not enure to the benefit of the students of other institutions including the K.M.C. Mangalore, even if they are run or managed by the same Academy. The Government of Madras have at no time agreed to provide clinical facilities to the students of any other Medical College to be started by the Academy.

32. By the year 1977 the Academy was able to provide clinical facilities to the students of K.M.C. Manipal in the, Hospital attached to that College. Therefore, it was not necessary for the students of K.M.C. Manipal to go to the Hospitals at Mangalore for clinical training. On the Academy providing clinical facilities to the students of K.M.C. Manipal in the College Hospital itself the Government was not required to provide clinical facilities at Mangalore. In other words the assurance or promise given by the Government to the Academy to permit the use of the Hospitals at Mangalore by the students of K.M.C. Manipal for their. Clinical training came to an end or lapsed with effect from the day K.M.C. Manipal became a full fledged Medical College having its own Hospital.

33. It is the petitioners case that from" the year 1977, apart from the K.M.C. Manipal they are having another College at Mangalore - K.M.C. Mangalore, and the Government of Karnataka is providing clinical facilities to the students of this College at the Government Hospitals at Mangalore. Even according to the petitioners, the clinical facilities are provided to K.M.C. Mangalore because of or pursuant to the assurance given or promise made by the Government of Madras and there is no separate agreement with the Government of Karnataka in this regard. As we have already noticed the assurance or promise to permit the use of the Government Hospitals at Mangalore for clinical training was to the students of the proposed College at Udipi i.e., K.M.C. Manipal and not to the students of any other College. The said agreement or promise lapsed in the year 1977 itself. The Foundation cannot claim for the students of K.M.C. Mangalore which is a separate and a new institution, the benefit of the assurance given or promise made to the students of K.M.C. Manipal, and insist on getting clinical training to the students of the K.M.C, Mangalore in the Government Hospitals at Mangalore.

34. But the fact remains that Government has provided clinical facilities to the students of K.M.C. Mangalore since 1977. But every year Government has asserted its right to select students for admission to a certain number of seats, the K.M.C. Mangalore, challenged the same in this Court and by the interim orders made in those cases, from time to time, Government was permitted to select a certain number of seats for admission in K.M.C. Mangalore, are admitted facts. These facts only show that both the K.M.C. Mangalore and the Government are asserting their rights and disputing the right of the other ever since the K.M.C. Mangalore was started.

35. Sri Sundaraswamy relied on Union of India -v.- Anglo Afgan Agencies, AIR 1968 SC 718; Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ; The Gujarat State Financial Corporation -v.- Lotus Hotels Private Limited AIR 1982 SC 848 and Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., ; in support of his contention that principles of promissory estoppel is operative against the Government.

36. The true principle of promissory estoppel as expounded in the very cases relied on by Sri Sundaraswamy and other cases which have reiterated them is that when one party has by his word or conduct made, to the other, a clear and unequivocal promise or presentation which is intended to create legal relations or effect a legal relationship to arise in future, knowing or intending that it would be acted upon by the other party, to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. Applying these principles to the facts found in those cases the Court held that the doctrine of promissory estoppel operates against the authorities and granted relief.

37. In the case before us the promise or assurance given by the Madras Government to permit the training of the students of the K.M.C. Manipal, in the Government Hospitals at Mangalore lapsed and Was only effective till the K.M.C. Manipal provided for training of its students in the College Hospital at Manipal. The promise or assurance given by the Madras Government to the Academy does not enure to the benefit of K.M.C. Mangalore. It is not the case of the petitioners that the Government of Karnataka has given them any assurance or promise to permit the training of the students at the Government Hospitals at Mangalore, for their proposed College at Mangalore and on the basis or pursuant to such assurance or promise the petitioners have in any way altered their position to their prejudice or disadvantage.

38. On the facts established in these cases before us, the petitioners cannot invoke the doctrine of promissory estoppel.

39. The Foundation the first petitioner took over the Manipal Institute of Technology under a Trust Deed dated 8-7-1983 and on becoming the owner is administering the Manipal Institute of Technology. In Dr. T.M.A. Pai Foundation Vs. State of Karnataka, filed by the Foundation and others, one of the questions that came up for consideration was "Whether the Foundation after acquiring the Institute of Technology is entitled to the protection under Article 40(1)." Rama Jois, J: held that the Institute of Technology is an educational institution established and maintained by a minority and is entitled to the protection under Article 40(1) of the Constitution. The State's appeal against the said decision of Rama Jois, J : having been dismissed by a Division Bench of this Court has been carried in appeal to the Supreme Court. Following the said decision Rama Jois, J:

has held that K.M.C. Mangalore is also a minority institution established by the Foundation and is entitled to the protection guaranteed under Article 40(1) of the Constitution. We are of the view that because of the decision in T.M.A. Pai Foundation case⁶ it is not open to the Learned Government Advocate to Contend that the Foundation has not established K.M.C. Mangalore and is not entitled to the protection under Article 40(1) of the Constitution of India and we reject the same.

40. We will next consider the right of a minority to establish and administer educational institutions of its choice. Article 40 of the Constitution of India guarantees this right of the minorities and 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.

(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."

41. The Supreme Court has examined the scope and ambit of Article 40 of the Constitution of India in a large number of cases commencing from Kerala Education Bill Case, AIR 1958 SC 956.

42. Article 40(I) as is clear from the language is wide enough to include or cover both pre-Constitution and post-Constitution institutions. Article 40(1) confers on the minorities (Religious or Linguistic) two rights which are separated in point of time. The first right is the initial right to establish institutions of their choice. Establish means the bringing into existence of an institution and it must be by a minority, either by a single individual or the minority at large for the benefit of the minority. The second is the right to administer or manage an educational institution which consists of four principal matters. First is the right to choose its managing or governing body because the founders of a minority institution have faith and confidence in their own committee or body consisting of persons selected by them to mould the institution as they think fit and in accordance with their ideas of how the interest of the minority in general and the institution in particular will be best served. Second is the right to choose its teachers because the institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students because the minority institutions want to have the right to admit students of their choice, subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution. The right under Article 40(1) is not subject to any reasonable restrictions but is absolute and is intended to be a real right in the matter of setting up or establishing an institution of the minority's choice and administering such an institution. This right cannot be whittled down by the so called regulatory measures conceived in public interest or the interest of the

nation and not in the interest of the minority or the institution. Article 40(2) enjoins on the State in granting aid to educational institutions not to discriminate against any educational institution on the ground that it is under the management of minority.

43. All the minorities have therefore a right to establish and administer educational institutions of their choice and any law or executive action or direction, which seeks to infringe in substance this right under Article 40(1) or involves the abridgment of the right guaranteed under Article 40(1), to that extent is void. The exception to this right which cannot be denied to the State is that which is not part of administration or management of the institution.

44. The minority institutions cannot be allowed to fall below the standards of excellence expected of an educational institution and cannot therefore refuse to follow the general pattern without touching the right of management. The State can compel them to keep pace with the others. There is no fundamental right of a minority institution for affiliation. The affiliation must be a real and meaningful exercise for minority institutions in, the matter of imparting general secular education. Therefore a Law which provides for affiliation on terms, which will involve the abandonment or abridgment of the rights of the minorities to establish and administer institutions of their choice offends Article 40(1). Affiliation to a University consists of two parts. One part relates to the establishment of the educational institutions and the second part relates to the administration of educational institutions. The Supreme Court in *Rev. Sidhajbhai Sabhai and Others Vs. State of Bombay and Another*, has held thus :

"The right established by Article 40(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19 it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulatory measures conceived in the interest not of the minority educational institutions, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution the right guaranteed by Article 40(1) will be but a "teasing illusion," a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test - the test of reasonableness and the test that it is regulative of the educational character of the institution-and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

45. The right to administer is not an absolute right but. is subject to the

regulatory measures for maintaining the educational characters and contents of minority institutions and also for ensuring orderly efficient and sound administration because right to administer is not a right to maladministration. The regulatory measures should not displace the management, should not restrict the rights of administration but should facilitate and ensure better and more effective exercise of right to manage. These principles emerge from the following rulings of the Supreme Court Kerala Education Bill, 1957; The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others, ; Katra Educational Society Vs. State of Uttar Pradesh and Others, ; Rev. Father W. Proost and Others Vs. The State of Bihar and Others, ; State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., ; The Right Rev. Bishop S.K. Patro and Others Vs. The State of Bihar and Others, ; The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, ; Lily Kurian Vs. Sr. Lewina and Others, and All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others,

46. In Kerala Education Bill case⁷ clauses 14 and 15 in the Kerala Education Bill 1957 authorised Government to take over any aided School under certain circumstances. The Schools were recognised on condition that they submitted to these clauses. The Supreme Court held these clauses amounted to appropriation of the Schools and amount to surrender of the right to manage under Article 40(1).

47. In Proost Case¹¹ Section 48-A of the Bihar University Act which provided inter-alia that appointments, dismissals, removals, termination of service, by the governing body of the College were to be made on the recommendation of the University Service Commission and subject to the approval of the University. The other provision required that the Commission would recommend to the governing body names of persons in order of preference and in no case could the governing body appoint persons not recommended by the University Service Commission. The provisions took away the autonomy of the governing body of the College established by a minority and vested the same in the University. This attempt to take away the autonomy of the College and vesting the administration of the College was an attempt to whittle down the protection under Article 40(1) of the Constitution and therefore held to be bad.

48. In Patro's case the State of Bihar requested the Church Missionary Society School, Bhagalpur, to constitute the Managing Committee in accordance with an order of the State. The Court held that the State could not require the School to constitute the managing committee in accordance with their orders and interfere with the management and the School can claim protection under Article 40(1).

49. In D.A.V. College, Vs. State of Punjab and Others, Clause 17 of the Statute framed by the Gurunanak University provided that the staff initially appointed shall be approved by the Vice-Chancellor and subject changes should be reported to the University for the Chancellor's approval. These provisions are held to interfere with the right to administer the educational institutions guaranteed

under Article 40(1).

50. In *Mother Provincial case*¹² Sections 48 and 49 of the Kerala University Act, 1969, has the effect of displacing the administration of the College and giving it to a distinct Corporate Body which was in no way answerable to the institution and was to administer the College in accordance with the provisions of the Act, Statutes, Ordinances, Regulations, Bye-laws and Orders made under the Act. The power and functions of the Governing Body, the removal of the members and the procedure to be followed, were all to be prescribed by the Statutes. Certain provisions enabled political parties to come into the picture of administration. The minority thereby lost the right to administer and manage the institution it established and the provisions of the Act vested the management and administration with the bodies with mandate from the University. These provisions interfered or infringed with the right to administer or manage an institution established by the minority and therefore held to interfere with the right guaranteed under Article 40(1).

51. In *Sree Jain Swetamber Terapanthi Vidyalaya and Another Vs. The State of W.B. and Others*, the West Bengal Board of Secondary Education set aside the election of the members of the Committee from the Guardians Constituency as not being valid and directed appointment of an ad-hoc committee or administrator to run the administration of the school as well as to complete the reconstitution of the Managing Committee in accordance with the Rules and by another order rejected the prayer for special constitution as regards the reconstitution of the Managing Committee. The Court held that the order rejecting the prayer for special Constitution of the managing committee was wholly illegal and bad and Rule 8 of the Rules framed for management of Recognised Non-Government Institutions (Aided or Unaided), 1969 is not applicable to the Institutions in as much as it purports to interfere with the fundamental freedom guaranteed to the minorities to administer the educational institutions of their choice under Article 40(1).

52. In *St. Xaviers College Case*¹⁴ Section 51A(1)(b) of the Gujarat University Act, 1949, provides that no member of the teaching, other academic and non-teaching staff of an affiliated College shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges and given a reasonable opportunity of being heard and until (1) he has been given a reasonable opportunity of making representation on any such penalty proposed to be inflicted upon him, and the penalty" to be inflicted upon him is approved by the Vice-Chancellor or any other officer of the University authorised by him. The power conferred on the Vice-Chancellor under Clause (b) conferred on him arbitrary power and takes away the right of the administration of the minority institution. Section 52A(1) provides for a reference of any dispute between the governing body and any member of the teaching, other academic and non-teaching staff of an affiliated College which is connected with the conditions of service of such member, to a Tribunal or Arbitrator consisting of one member

nominated by the Governing Body of the College, one member nominated by the member concerned and an Umpire appointed by the Vice-Chancellor. The reference to arbitration displaces the disciplinary authority of the governing body, introduce an area of litigious controversy inside the institution and vitiate the atmosphere of the institution and interferes with the right to manage or administer an educational institution. The Court therefore held that these provisions are not applicable to minority institutions.

53. In Lilly Kurian's case¹⁵ Ordinance 33(4) framed under the Kerala University Act, 1957, gave a right to appeal to a teachers to the Vice-Chancellor against certain orders of the management in disciplinary matters. The effect of a right of appeal to an outside authority is an encroachment of the right of a minority institution to enforce and ensure discipline and in effect it takes away the disciplinary power of the minority institution not in the interest of the institution and therefore the Court held it to be violative of Article 40(1).

54. In All Saints High School's case¹⁶, Section 3(1) & (2) of the Andhra Pradesh Recognised Private Educational Institutions Control Act, 1975, provide for the control of removal, dismissal, reduction in rank or termination of teachers in private educational institutions. Section 4 provides for an appeal by the teacher who is dismissed, removed or reduced in rank or whose services are terminated otherwise or by one whose conditions of services are interfered, to such authority or offices prescribed. These provisions violate the guarantee under Article 40(1) to administer the institution and therefore held not applicable to minority institutions.

55. The management or governing body has a right to admit students of its choice to the institution it is administering or managing, subject to their satisfying the academic or other regulations. In *R. Chitralekha and Another Vs. State of Mysore and Others*, this right is recognised in these words : "If the State Government can run a College it cannot be denied the right or the power to admit such qualified students. This is a power which every private owner of a College will have." A minority also has a right to admit students of its choice to the educational institutions established and administered by it.

56. In *Sidharaj Bhai's case*,⁸ on which very strong reliance was placed by Sri Sundaraswamy, the question was whether a threat of withdrawal of recognition and grant to the College could be used to compel the minority Teachers Training College to admit nominees of the Government. A Teachers Training College run by a minority was getting from the Government Rs. 8000/- per year as grant-in-aid. The College was also recognised by the Government. On an order being issued by the Government that from the academic year 1955-56, 80 per cent of the seats in the Training Colleges for Teachers in non-Government Training Colleges should be reserved for teachers nominated by the Government the Educational Inspector called upon the Principal of the College not to admit in excess of 20 per cent of the total number of seats without permission. The College was also told by him that the refusal to admit Government nominated

teachers would result in the stoppage of grant and withdrawal of recognition. These threats were issued in exercise of the power under Rule 5(2) of the Rules for Primary Training Colleges and Rules 11 and 14 for recognition of Private Training Institutions. The Court held that "in so far as these rules relate to reservation of seats, under the Orders of the Government and the directions regarding reservation of 80 per cent seats and the threat to withhold grant-in-aid and recognition of the College infringe the fundamental freedom under Article 40(1)."

57. In *Rt. Rev. Msgr. Mark Netto Vs. State of Kerala and Others*, the management of a Roman Catholic High School applied for permission to admit girls also into their Boys School. In the same locality facility was available for admission of girls in the Muslim Girls High School. The grant of permission was opposed by the Muslim Institution. If the permission to admit girls was refused to the management, it would come within (he region of interference with the administration guaranteed under Article 40(1) and therefore it was held that the permission cannot be refused.

58. In *Khan Abdul Hamid Abdul Rasak Vs. Mohamad Haji Saboo Siddik Polytechnic and Others*, by a rule Government prescribed that certain number of seats should be reserved for backward classes etc. This is held to violate the right guaranteed to a minority under Article 40(1).

59. In *The State of Bombay Vs. Bombay Education Society and Others*, and *D.A.V. College Bhatinda v. State of Punjab* it has been held that the right of minorities to establish and administer the educational institutions of their choice Deludes the right to have the choice of the medium of instructions and any attempt to impose a script not their own cannot be allowed as it violates Articles 29(1) & 30(1).

60. In all these cases the minorities have established an institution of their choice in exercise of their first right. Thereafter when they were administering such institutions in exercise of their second right there were attempts to interfere with their right of administration. These decisions show how and when there is taking away or abridgment of their second right of administration of a minority in regard to :

- (i) Choice of a Governing Body.
- (ii) Appointment of Teachers.
- (iii) Disciplinary Jurisdiction,
- (iv) Right to selection and admit students, and
- (v) The medium of instruction.

61. *Sri Sundaraswamy* argued that the Government wants 50 per cent of the intake of seats fixed for the academic year 1985-86 to be reserved for Government Nominees and has threatened to withdraw the aid, viz., clinical

facilities in the event of non-compliance with this demand resulting in the interference with the right of the minority institution to admit students its choice under Article 40(1).

62. When a minority establishes an educational institution of its choice and administers such an institution in exercise of its right guaranteed under Article 40(1), if the State declines to give aid or withdraws it on the institution refusing to agree to give seats to Government as demanded, it amounts in substance the denial of the right of a minority to administer an educational institution of its choice and such an action of the State is not in the interest of the minority or the institution it has established and the right guaranteed to a minority under Article 40(1) will be but a "teasing illusion", a promise of unreality.

63. It is the case of the petitioners that they have "established" a Medical College and are administering the said medical college and the action of the Government infringes their right guaranteed under Article 40(1). This claim is seriously contested by the State and it therefore becomes necessary to ascertain whether first petitioner the "Foundation" a Trust founded by the petitioners 3 and 4 Konkani Speaking Persons belonging to a linguistic minority has "in exercise of its right guaranteed under Article 40(1) established a "medical college" and has been "administering such a College". It is only after an educational institution is established the second right to administer it can be exercised. A minority therefore will have the right to administer educational institutions of its choice provided they have established such institutions. This second right to administer an educational institution is therefore not available when a minority has not established that institution in exercise of its first right under Article 40(1).

64. In *S. Azeez Basha and Another Vs. Union of India (UOI)*, the Supreme Court has held :

"*** **

The Article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it-----"

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"The two words in Article 30(1) must be read together and so read the Article gives the right to the minority to administer institutions established by it. If the educational institution has not been established by a minority it cannot claim the right to administer it under Article 30(1). We have therefore to consider whether

the Aligarh University was established by the Muslim Minority ; and if it was so established, the minority would certainly have the right to administer it-

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The meaning of the expression "to establish" came up for consideration in this case. The Supreme Court after referring to the meaning given to this word held "we are of opinion that for the purpose of Article 40(1) the word means "to bring into existence" and so the right given by Article 40(1) to the minority is to bring into existence an educational institution and if they do so, to administer it. The Court next examined who brought the Aligarh University into existence and held that the Aligarh University was neither established nor administered by a minority community but was established by the Aligarh Muslim University Act, 1920.

65. A Science College should necessarily have a Building, Teaching and Non-Teaching Staff, Furniture, Library, Laboratory etc. There cannot be a Science College without a Building or without the Teaching or Non-Teaching Staff or without Furniture or without a Laboratory. All put together go to constitute a Science College and without one or the other there cannot be a Science College. Therefore, establishing or to bring into existence a Science College necessarily means that all these are provided for and without one or the other there cannot be an establishment or bringing into existence a Science College.

66. Every student after admission to the medical course is required to undergo a period of Certified study extending over 4 1/2 Academic Years followed by one year's compulsory internship. The first 18 months is occupied in the study of Phase-I (Pre-Clinical) Subjects. After passing all the Phase-I (Pre-Clinical) Subjects the student has to devote himself for the remaining 3 years to Clinical Subjects. During the first 18 months of this period, Pre-Clinical Subjects will be taught to him with the Clinical Subjects collaterally. The Undergraduate Medical Education in Clinical Subjects is primarily based on Out-Patient Teaching and Emergency Departments. Bed-side Clinics will have to be organised with a view to improve his skill and competence in handling of the patients. He has to study Clinical Subjects like Medicine, Surgery including Orthopaedics, Obstetrics and Gynaecology, Pediatrics, Ophthalmology, E N.T. Community Medicine etc. The student will have to be given clinical postings in addition to work at the Out Patient Department in order to expose him to a General Practitioner Out patient Systems. Hospital posting should start from the first term. In order to make the student practice what is being taught he has to be involved along with the Professors of the various disciplines of the Hospital and the other authorities concerned.

67. A "Medical College" should therefore necessarily have a Building, Teaching and Non-Teaching Staff, Furniture, Laboratory, Library and a Teaching Hospital. A student after admission to the Medical Course extending for over 4 1/2 years spends only the first 18 months outside the Hospital where he studies the Pre-

Clinical Subjects. After passing in all the Pre-Clinical Subjects the remaining 3 years of the Medical Course extending to 4 1/2 years he mostly spends, in the Teaching Hospital and not in the Class Rooms. It may be when a Medical College is started there may not" be a need for the Teaching Hospital for the first 18 months because it is only thereafter the first batch of students are required to study Clinical Subjects in the Teaching Hospitals. It therefore follows that each one of these viz., a Building with the necessary Furniture, Staff both Teaching and Non-Teaching, Laboratory, Library and a Teaching Hospital go to constitute a Medical College and there cannot be a Medical College without one or the other. If one says he has established a "Medical College" it necessarily means that he has provided all these constituents that go to make a Medical College. It may be that it may not be practicable for anyone individual, Association or Denomination, by himself or itself to take upon the responsibility of establishing a Medical College with all the constituents. In such a case, the establishment of a Medical College may be by a joint venture-in partnership. What one should contribute and the terms subject to which they come together to establish "The Medical College" depend on the agreement between the parties.

68. In this case before us it is not disputed but in fact admitted by the petitioners "that a Medical College cannot exist without a Hospital providing clinical facilities", and "No Medical College can be started without clinical facility". That being so, providing clinical facilities being a necessary constituent in the establishment of a Medical College, without this facility the Medical College is not complete. There cannot therefore be a Medical College for admitting students for the M.B.B.S. Course without an attached Teaching Hospital, to provide clinical training to the students of that College.

69. It is because of this the Academy when it proposed to start a Medical College at Manipal approached the Government of Madras to join the Academy in establishing the Medical College and permit the students to undergo clinical training in the Government Hospitals at Mangalore. Now that the K.M.C. Manipal is having a Teaching Hospital attached to the College since 1977 it is an educational institution - a full fledged Medical College established by the Academy at Manipal.

70. As in this case before us, the Foundation has only provided for the study of Pre-Clinical Subjects for a period of 18 months, but has not provided a Teaching Hospital attached to the College for giving Clinical Training to the the students of K.M.C. Mangalore. The Foundation has only established a part of a Medical College which can only provide for teaching Pre-clinical Subjects or Phase-1 subjects for a period of 18 months only. It cannot therefore be said that the Foundation has established a "Medical College" for admission of students to the Medical Course-extending over 4 1/2 years-18 months study of pre-clinical Subjects and the remaining period for the study of Clinical Subjects. Sri Sundaraswamy has not been able to point out any law conferring a right on his clients to compel the Government to provide clinical facilities in the Government

Hospitals as of right and absolutely, to make the institution established, a Medical College:

71. Though Sundaraswamy, in our opinion, is right in his submission that "aid" by the Government need not necessarily be "financial aid" as argued by the learned Government Advocate, the term "aid" does not take within its meaning the participating in the establishment of an educational institution- a Medical College, by the providing clinical facilities even before the College is established by a minority or a non-minority. The grant of aid by the Government comes in only after an educational institution is established and when it is administered. The right to establish educational institutions of its choice and the right to administer such institutions do not include within its ambit the right to compel the State to participate in establishing an educational institution by providing one or more of the constituents that are necessary to complete the establishing the educational institution.

72. It is always open to the sponsors of the College and the Government to agree on the terms subject to which and the extent to which the Government is required to participate in the joint venture of establishing an educational institution. In the absence of any such agreement between the parties one of the parties, viz., the sponsors have no right to compel the Government to comply with its or their demands.

73. The State Government is therefore well within its rights if it decides to withdraw the permission for the training of the students of KMC Mangalore in the Government Hospitals at Mangalore in the absence of any agreement between the Government and the Foundation and the withdrawal of such permission does not in any way infringe the rights guaranteed to a minority under Article 40(1).

74. On the foregoing discussion, we hold that the claim of the petitioners for clinical facilities to the students of K.M.C. Mangalore, in Government Hospitals at Mangalore is clearly unfounded.

75. Article 14 strikes at arbitrariness in the State action and ensures fairness and equality alike to all similarly situate and the State should not be guided by any extraneous or irrelevant considerations. It is not the case of the petitioners that when the other minorities-Religious or Linguistic -proposed to establish Medical Colleges the State has come forward to participate in establishing the Medical College by permitting the training of students of such a College in the Government Hospitals and the petitioner though similarly placed is subjected to hostile treatment on extraneous or irrelevant considerations. When a Medical College is to be established not by the minority alone but it is necessary for the minority and the Government to participate in establishing the College, they will be participating, as partners in the joint venture and the terms and conditions subject to which the joint venture comes into effect depends on the mutually agreed terms. Even without any such mutual agreement one of the parties - the minority or the Government - cannot compel the other to participate in the

establishment of the College. In this case, even according to the petitioners, there is no agreement between the petitioners and the Government for establishing and running the K.M.C. Mangalore. The petitioners by themselves have not been able to establish and run the K.M.C. Mangalore. They want Government's participation in that behalf. Unless the terms and conditions subject to which Government agrees to participate in the joint venture the Government cannot be compelled to permit the Hospitals at Mangalore to be used for the clinical training of the students of K.M.C. Mangalore. In the absence of any agreement in this behalf the withdrawal of the permission for training of the students of K.M.C. Mangalore, in the Government Hospitals cannot be termed as arbitrary, unreasonable or whimsical. There is therefore no substance in the contention that there has been violation of Article 14.

76. As already noticed the Foundation has only established truncated institution - a Medical College providing for the study of Phase I (Pre-Clinical) subjects only extending for a period of 18 months. The Foundation has not established a Hospital attached to the College for training of the students in clinical subjects for the remaining three years of their study. The Foundation has therefore established a College for the study of the Phase-I Subjects only. The College established is therefore for providing a part of the 4 1/2 Years Certified Course of study for medical students. The Foundation has not established a Medical College for a student to undergo a period of Certified Study of 4 1/2 Years which includes the first 18 months for Phase-I Subjects and the remaining period for the Phase-II subjects. The Foundation has no right to get and the State is not under a duty to provide facilities for the training of students of the K.M.C. Mangalore at the Government Hospitals. It is only by agreement that such a facility can be provided. Admittedly there is no agreement in this regard. Government is therefore well within its power in the absence of any agreement, in declining to permit the use of the Hospitals for the clinical training of the students of the K.M.C. Mangalore. There is therefore no violation of Article 19.

77. We are satisfied that the petitioner's attempts appear to be to enlarge the scope and ambit of the protection guaranteed under Article 40(1) of the Constitution. It is no doubt true that any attempt to whittle down the right or the protection given to the minorities should not be allowed. But it does not necessarily mean that we must enlarge the protection flowing from the words employed in Article 40(1) and the rulings of the Supreme Court referred to above.

78. We now summarise our conclusions.

(1) The petitioners have made incomplete, incorrect statements and statements that are not true and have obtained interim orders on such pleas.

(2)(a) The promise or assurance given by the Government of Madras was only to K.M.C. at Mangalore and that too till the K.M.C. Manipal had its own Teaching Hospital as part of the College. This assurance or promise came to an end or lapsed on the Academy providing clinical facilities in the Teaching Hospital at

K.M.C. Manipal.

(2)(b) The assurance or promise given by the Government of Madras does not enure to the benefit of K.M.C. Mangalore and there is no duty cast on the Government of Karnataka to provide clinical facilities at the Government Hospitals to the K.M.C. Mangalore. The principles of promissory estoppel are therefore not attracted to the facts in these cases.

(3) A minority has a right to establish and maintain a Medical College and when once it is so established and maintained, the minority is entitled to the protection guaranteed under Article 40(1) of the Constitution.

(4) The Foundation has established an educational institution K..M.C. Mangalore, which provides for the study of Pre-Clinical Subjects only for a period of 18 months and is therefore entitled to the protection under Article 40(1) in respect of this educational institution it has established.

(5) The Foundation has established K.M.C. Mangalore, without a Teaching Hospital. K.M.C. Mangalore, without a Teaching Hospital, is no "Medical College" because students after admission to this College cannot undergo a period of study extending over 4 1/2 Years which includes the Study of Pre-Clinical or Phase-I Subjects for the first 18 months and the study of Clinical Subjects or Phase II Subjects. The Foundation has therefore not established and is not maintaining a "Medical College" and cannot therefore claim the protection under Article 40(1) of the Constitution for the College it has not established.

(6) There being no agreement between the petitioners and the Government of Karnataka to provide clinical facilities to the students of the K.M.C. Mangalore, the petitioners have no enforceable right to get and the Government of Karnataka is not under an obligation to provide the clinical facilities in Government Hospitals to the students of K.M.C. Mangalore. The Government of Karnataka is therefore within its rights if it does not permit the students of K.M.C. Mangalore to use the Government Hospitals for the clinical training of the students of K.M.C. Mangalore.

79. On the foregoing discussion, it follows the Writ Appeal No. 694 of 1985 and Writ Petition No. 10849 of 1985 are liable to be dismissed on merits. We, however, dismiss Writ Appeal No. 1916 of 1985 as it would be inequitable to interfere with the order of the Learned Judge at this stage. But we make it clear that the benefit of that order will be only for the previous academic year which has expired or is due to expire shortly and not for the subsequent years.

80. In the light of our above discussion, we dismiss Writ Appeal No. 694 of 1985, Writ Appeal No. 1916 of 1985 and Writ Petition No. 10849 of 1985.