

(1995) 05 SC CK 0072

In the Supreme Court Of India

Case No : Civil Appeal No's. 45-50 of 1995

Institute of Human Resources Development and others etc.	APPELLANT
Vs	
T.R. Rameshkumar and others etc.	RESPONDENT

Date of Decision : 12-05-1995

Acts Referred:

Constitution of India, 1950 — Article 15(4)

Citation : AIR 1995 SC 1587 : (1995) 5 JT 181 : (1996) 1 PLJR 48 : (1995) 3 SCALE 619 : (1995) 4 SCC 211 : (1995) 1 SCR 447 Supp : (1995) 2 UPLBEC 1231

Hon'ble Judges : Sujata V. Manohar, J;S. C. Agrawal, J

Bench : Division Bench

Advocate : Altaf Ahmed and V.R. Reddy, Additional Solicitor Generals, V.K. Beran, Genral, Soli J. Sorabjee and F.S. Nariman, for the Appellant;

Final Decision : Allowed

Judgement

Sujata V. Manohar, J.—Applications for intervention are allowed.

2. These appeals relate to two colleges set up in the State of Kerala one started by the Institute of Human Resources Development for Electronics (hereinafter referred to as IHRDE) located at Chengannur and the other started by Lal Bahadur Sastri Engineering Research and Consultancy center (hereinafter referred to as LBS center) located at Kasargod, a backward area in the State of Kerala in the erstwhile Malabar District. These two colleges have been set up as self-financing institutions by the above two Societies under the control of the Government of Kerala. Does the scheme framed by this Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., apply to these colleges?

3. The State of Kerala has an enviable record in the field of education. The financial position of the State, however, is not strong enough for it to make an investment in the two new Engineering Colleges - so the State claims. It is submitted on behalf of the State that the decision to start these two self

financing colleges was arrived at in view of the growing demand in the State for highly qualified technical personnel in the areas of Electronics and Computer Science. At present, the higher educational facilities in technical subjects including Engineering available within the State are hardly sufficient to absorb even those who secure a high first class in the school leaving examinations. The State has only nine Engineering Colleges, six are Government Colleges and three are aided colleges. In contrast, the neighbouring States of Maharashtra, Karnataka, Tamil Nadu and Andhra Pradesh have 62, 55, 42 and 31 Engineering Colleges respectively. In the absence of facilities for higher technical education within the State a large number of students from Kerala are required to migrate to neighbouring States to seek admission in Engineering Colleges there, incurring heavy expenses. Many seek admission to private Engineering Colleges outside the State spending large amounts in terms of fees, donations etc.

4. It is claimed by the appellants that the Government of Kerala spends 85% of its education budget on higher education. Nevertheless, this outlay is inadequate to provide modern equipment, qualified faculty members and training facilities even in the existing Government Engineering, Medical and other Technical Colleges and Institutions. The State is not, therefore, in a position to provide for setting up of new Engineering Colleges. In view of this position, the Government of Kerala by G.O. (MS) 191/92/H.Edn. dated 24.12.1992 decided to start two self-financing Engineering Colleges from academic year 1993-94. A detailed report from the Institute of Human Resources Development for Electronics and the Lal Bahadur Sastri Engineering Research and Consultancy center was called for in this connection.

5. On the basis of the reports submitted by these two institutions the Government issued G.O. (MS) 68/93/H.Edn. dated 25.5.1993 fixing the guidelines for establishment of two self-financing Engineering Colleges and for admission of students to these two colleges. It was decided that the college to be established by IHRDE will impart instructions for B.Tech. Course in computer Engineering and Electronic Engineering with an intake of 120 students in each branch. The college established by the Lal Bahadur Sastri center would impart instructions for B.Tech. Course in Computer Science and Engineering, Electronics and Communication Engineering, Electrical and Electronics Engineering and Mechanical Engineering with an intake of 60 students in each branch. As per the scheme being operated at present, 75% of seats in these colleges are to be filled up on the basis of open merit applying the existing reservation principles prevailing in the State of Kerala. 10% of the seats are to be filled up by Scheduled Caste and Scheduled Tribe candidates and the remaining 15% of the seats are to be filled up by children of non-resident Indians. Open merit seats and seats reserved for Scheduled Caste/Scheduled Tribe Candidates are to be filled up on the basis of marks obtained at the common entrance examination which is being conducted by the Commissioner for Entrance Examinations, Trivandrum. The seats for the NRI quota are also to be filled up on the basis of merit. Since the two colleges do not receive any financial help in the form of any grant from the Government and

are self-financing institutions, tuition fee has been fixed for all students at Rs. 12,500 per year. However, in the case of Scheduled Castes and Scheduled Tribes the tuition fee is fixed at half the above amount i.e. Rs. 6,250 per year. The students who are selected for admission are also required to give an interest free deposit of rupees one lakh refundable on completion of four years from the date of deposit or on completion of the course to which the student is admitted, whichever is later. Candidates belonging to Scheduled Castes and Scheduled Tribes, however, are exempt from payment of this deposit. Candidates selected against the NRI quota are required to pay US Dollars 5,000 as development charges which are non-refundable.

6. The college run by IHRDE is affiliated to Cochin University of Science and Technology while the college run by Lal Bahadur Sastri center is affiliated to the University of Calicut. Both these institutions are societies registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, XII of 1955. Both the societies are established by the Government of Kerala and are fully controlled by the Government of Kerala. The two colleges can, therefore, be considered as self-financing colleges started by the Government of Kerala. This position has been clarified by G.O. MS.91/94/H.Edn. dated 8.6.1994 which states that IHRDE and LBS center for Science and Technology are autonomous bodies fully owned by the State Government. The Government is, therefore, pleased to order that these two self-financing Engineering Colleges set up by these bodies at Chengannur and Kasargod respectively will be treated as Government colleges and the Government undertakes to give them financial support in future if the necessity arises.

7. The assailants have sought to justify a departure from the scheme set up in Unni Krishnan by pointing out that the scheme in Unni Krishnan is designed for private colleges. These two colleges, however, are not private educational institutions set up for the purpose of profit-making. The State has been compelled to go in for self-financing institutions in view of financial stringency. The appellants have also submitted that the State already runs (as of now) six Government and three aided Engineering Colleges which provide 2391 seats which are "free seats" available to all candidates on merit. The tuition fees charged in these nine institutions is Rs. 495/- per annum. As against these 2391 seats available in nine colleges, two new colleges will provide an additional 480 seats on payment basis. Since the Government already runs or aids a number of institutions where all the seats are "free" seats, they should be permitted to start two colleges with "paid" seats. The ratio between "free" and "paid" seats is far more favourable to "free" seats than the 50:50 ratio laid down in Unni Krishana. Hence it is urged that the appellant should be permitted to make a departure from the scheme in Unni Krishnan which requires a self financing institution to provide 50% free seats and 50% seats on payment basis. It is also pointed out that while students occupying payments seats in Engineering Colleges are charged Rs. 46,800 as fees, at present, under the scheme as propounded here the fees per head come to only Rs. 12,500. The other plus point of the scheme

as propounded is that the State, in discharge of its obligation to make special provisions for backward classes under Article 15(4) of the Constitution, has also provided for reservation of 10% of these seats in favour of Scheduled Caste and Scheduled Tribe candidates who will only pay half the prescribed fees and will not have to pay any deposit. This is done looking to their socio-economic backwardness. In the open merits seats also the reservation policy of the State in respect of such seats will operate. Such a provision does not find a place in the scheme under Unni Krishnan.

8. In the course of hearing the appellants have agreed to modify their scheme by reducing the NRI quota to 10%, and increasing the open merit seats to 80%. The appellants have also agreed to institute freeships or scholarships to be made available to 10% of the students admitted in these two colleges which will be awarded on the basis of merit-cum-means. For this purpose a scholarship fund shall be instituted with a corpus of Rs. 10 lakhs by each institution every year for four years. This will be introduced from 1995-1996. Loan facilities will be made available from nationalised banks to be needy students for getting amounts to meet their educational expenses including the payment of deposit. It is further stated that the capital revenue loss to the extent of Rs. 6 lakhs each year arising from the reduction of the NRI quota will be made good by generating additional revenue by the college through consultancy, conduct of short-term courses etc. by using the available infrastructure.

9. Can such a departure from Unni Krishnan be permitted? The basic difference between institutions governed by the scheme in Unni Krishnan and the present institutions is that these institutions are controlled by the State and, therefore, their working and utilisation of funds are under the control of the State. The essence of Unni Krishnan on the other hand, can be summed up in one sentence: There should be no commercialisation or profit taking by private educational institutions. This Court was very concerned about the high fees charged by private technical educational institutions. They earned large profits which were not utilised in providing adequate infrastructure or teaching facilities in these institutions. Most private colleges provided sub-standard training, making no improvements in their equipment, teaching staff or teaching aids. They simply pocketed large profits made from heavy fees charges to students. It was to stop this exploitation of students that the scheme was framed. In terms, the Unni Krishnan scheme provides that it will not be applied to Government Institutions. It is true that unni Krishnan did not contemplate self-financing institutions set up by or sponsored by the Government. But looking to the confidence reposed by Unni Krishnan in the Government in fixing proper fees even for private self-financing educational institutions, it is clear that the scheme of Unni Krishnan applies only to purely private educational institutions which are self-financing. It is designed to ensure that they do not make undue profits or exploit students. Unni Krishnan, however, is not against self-financing educational institutions. On the contrary, it has recognised the need for self-financing educational institutions to augment the efforts made by the State in setting up educational institutions in

the field of technical education. It has observed (in paragraphs 193, 194 and 196) :

193 : Notwithstanding the fact that education is the second highest sector of budgeted expenditure after defence, the outlay on education is woefully inadequate to meet the needs of the people. whereas many other countries spend six to eight per cent of their Gross National Product on education, our expenditure on education is only three per cent of the Gross National Product. Seventy-five to eighty per cent of the expenditure goes in paying the salaries of the teachers and other connected staff. These are the statements made in the Government of India publication Challenge of Education-A Policy Perspective referred to hereinbefore. Even so, on account of lack of proper supervision, lack of self-discipline and commitment, the quality and standard of instruction in most of the Government schools and colleges - except the professional colleges - is woeful. This has provided an occasion and an opportunity to private educational institutions to fill the void, both in terms of meeting the need and more particularly in the matter of quality of instruction. Because, the State is in no position to devote more resources and also because the need is constantly growing, it is not possible to do without private educational institutions....

194. The hard reality that emerges is that private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are in no position to meet the demand - particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most important functions of the Indian State it has no monopoly therein. Private educational institutions - including minority educational institutions - too have a role to play.

196. So far as unaided institutions are concerned, it is obvious that they cannot be compelled to charge the same fee as is charged in Governmental institutions. If they do so voluntarily, it is perfectly welcome but they cannot be compelled to do so, for the simple reason that they have to meet the cost of imparting education from their own resources - and the main source, apart from donations/charities, if any, can only be the fees collected from the students. It is here that the concepts of 'self-financing educational institutions' and 'cost-based educational institutions' come in. This situation presents several difficult problems. How does one determine the 'cost of education' and how and by whom can it be regulated? The cost of education may vary, even within the same faculty, from institution to institution. The facilities provided, equipment, infrastructure, standard and quality of education obtaining may vary from institution to institution. The court cannot certainly do this. It must be done by Government or University or such other authority as may be designated in that behalf....

10. The entire scheme in Unni Krishnan is designed for private educational institutions. The contention of the respondent that the two colleges in question should also be considered as private Engineering Colleges because they are run

by two Societies registered under the Travencore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, cannot be accepted in view of the Government Order dated 8.6.1994. The material which is produced before us clearly shows that these two societies are fully controlled by the State of Kerala. The fees which have been fixed in the present case are also fixed by the State Government which has given budget details relating to these two colleges. The appellants have sought exemption from providing 50% free seats in the light of the fact that the State already runs of aids nine Engineering Colleges which are financed by it and which provide 2391 free seats. What is more important, it is pointed out that if the financing of the colleges is spread over all the available seats, the fees required to be charges would be much lower than if the expenses have to be covered by the fees from only 50% of the seats. In consequence, the fees charges are substantially lower than fees charged for payments seats in other Engineering Colleges-thus benefiting a large number of students who may not be in a position to pay the higher fees charged by private engineering colleges, but may be in a position to pay the substantially lower fees charges in these two colleges.

11. We find considerable merit in this submission. In the first place, the question of desirability or otherwise of the Government starting self-financing educational institutions will depend on many circumstances including the financial capacity of the State. Looking to the circumstances which have been pointed out in the present case, the appellants have made out a good case for being permitted to start two self-financing engineering colleges controlled by the State. In fact, control by the State should be considered as a plus point in the light of the considerations which moved this Court in Unni Krishnan's case because it would be a safeguard against commercialisation and exploitation. To ensure this we direct that the State fixes the fees of these two colleges every year after taking into account the financial needs of the colleges and the accounts of these two Societies and Colleges which should be audited in the same manner as other State-run institutions.

12. The appellants have provided for an interest free deposit of rupees one lakhs from each student (with exceptions set out earlier) to meet the costs of infrastructure and other permanent facilities. This kind of a deposit cannot be accepted as a permanent feature of the scheme. One can understand the need for such a deposit in the initial stages when proper infrastructure has to be set up and equipment purchased for technical colleges. The initial capital costs have to be met. But to accept that the students taking education in these institutions should bear for ever the burden of the entire cost of long-term capital expenditure would not be fair. It is, therefore, necessary and desirable that other funding should be sought in the form of grants, loans or voluntary donations from foundations or organisations that may benefit from the trained personnel produced by these colleges in order to finance the capital outlays in these institutions. Until, however, such finances become available, there may not be any option but to take a deposit from the students as proposed. We direct,

however, that the funds which become available as a result of these deposits should be specifically earmarked for ascertained requirements and projects and should be utilised only against those. The quantum of deposit shall be reviewed by the State every year looking to the requirements of the two colleges and it shall be refixed every year, though on no account shall it exceed the proposed amount of rupees one lakh. The State shall also frame a scheme to eliminate the taking of such a deposit over a period of time.

13. The NRI quota has already been reduced to 10%. The future NRI quota, however, shall be in accordance with the directions of this Court as may be given from time to time under Unni Krishnan. The additional features of the scheme which relate to reservation and fee concession are in accordance with the obligation cast on the State under Article 15(4) of the Constitution of India. Hence with the above modifications and observations, we approve of the scheme.

14. It has been strongly urged before us by the respondents that such a departure from the scheme in Unni Krishnan cannot and should not be permitted. In the first place, the scheme in Unni Krishnan does not strictly apply to the case which is before us. Nevertheless, we have applied the underlying principles of the scheme in Unni Krishnan to the scheme which is before us and have found that this scheme broadly meets the aims and objectives propounded in Unni Krishnan. This Court has itself not considered the scheme in Unni Krishnan as sacrosanct. It was required to be modified in a number of cases. Thus, for example, in *Dr. T.M.A. Pai Foundation and others Vs. State of Karnataka and others*, and *T.M.A. Pai Foundation and Others (II) Vs. State of Karnataka and Others*, , the minority educational institutions applied for and obtained a substantial modification of the scheme in view of their right to reserve 50% of the seats for the minority community. In *Unnikrishnan P.J. and Others Vs. State of A.P. and Others*, and *T.M.A. Pai Foundation and Others (II) Vs. State of Karnataka and Others*, , the NRI quota was varied looking to the exigencies of the situation. A special quota for NRIs was permitted during the period of transition. Looking to the very different background and the financial constraints of the State which has impelled the State to formulate the present scheme of the self-financing Engineering Colleges under the control of the Government, we do not see any reason to withhold sanction to the scheme subject to the modifications set out earlier.

15. It is also urged by the respondent that the two colleges do not admit students entirely on merit because a meritorious student who is higher on the merit list may not be able to secure admission if he is not in a position to pay the higher fees. This argument is fallacious. Admission to the open merit seats in these colleges is available entirely on merit. Undoubtedly, financial capacity to bear the higher fees will be a consideration which may compel an individual student to either accept or decline the offer of a seat. But this would be so even in a case where the fees are lower. There may be meritorious students who are so poor that they cannot afford even the low fees which are charged. But that is

not a ground for saying that the admission is not available on merit. For those who are financially handicapped, special facilities in the form of merit scholarships or freeships should be made available. We are happy that at least for 10% of such seats, a meritorious student who would have otherwise got admission, but for his inability to pay the fees, is going to be granted a freeship under the present scheme. We hope that such seats will increase in future as more funding becomes available. The difficulties of such students, however, should not come in the way of other meritorious students who would like to avail of technical education in these colleges and who, apart from being meritorious, are also in a position to pay somewhat higher fees in return for obtaining the facility of higher technical education in their home State. Undoubtedly, in a State which has a high record of educational achievements, where people have enjoyed good educational facilities for higher education at low cost, this kind of departure may cause some resentment. But the choice is between not having the colleges or having them on a self-financing basis. It is necessary in national interest that we have a sufficient number of technically trained personnel of the requisite calibre to work for the nation. In cases where merit and means combine there is no reason why self-financing educational institutions should not step in to meet the national requirement for such qualified personnel of good calibre.

16. The appeals are, therefore, entitled to succeed. The scheme as propounded by the appellants with the modifications we have set out earlier is sanctioned. The All India Council of Technical Education has accorded conditional approval to these two colleges by their letter dated 31st of March, 1994. The conditions so specified in the letter of 31st of March, 1994 shall be complied with by these two institutions. However, the condition that the approval granted by the All India Council of Technical Education is subject to full compliance with the scheme as prescribed by this Court in the case of Unni Krishnan is set aside in view of what we have said hereinabove. The appeals are accordingly allowed. There will, however, be no order as to costs.