
(1998) 02 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21283 of 1996 and Batch

J. Sameerana

APPELLANT

Vs

A.P. State Council for Higher Education and Others

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 18, 19, 2(12, 20, 20A
Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of
Capitation Fee) Act, 1983 — Section 15, 3
Andhra Pradesh Unaided Private Engineering Colleges (Establishment, Management
and Admission) Rules, 1992 — Rule 10, 3, 4, 5, 6
Constitution (Thirty-Second Amendment) Act, 1973 — Article 371
Constitution of India, 1950 — Article 14

Citation : (1998) 2 ALD 460 : (1998) 2 ALT 113 : (1998) 2 APLJ 22

Hon'ble Judges : T. Ranga Rao, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. Gummala Vinaya Kumar, for the Appellant; Advocate-General,
Government Pleader for Education and Mr. T.S. Harnath for EAMCET
(Engineering), for the Respondent

Judgement

B. Subhashan Reddy, J.—These writ petitions raise important questions of law regarding the correctness of allocation of seats in private Engineering Colleges in the State of Andhra Pradesh.

2. While the petitioners in W.P. Nos.21283 and 21894 of 1996 had appeared for EAMCET-96 examination, the petitioners in W.P.No.34392/97 had appeared for EAMCET-97 examination. The fact that the petitioners had appeared for such examination of EAMCET-96 and EAMCET-97 and respective ranks secured by them are not in dispute.

3. Though EAMCET examination comprises Engineering, Agricultural and Medical Courses, the relevant subject in these writ petitions is Engineering. There are several Private Engineering Colleges run by the private bodies which are larger in number than Governmental Engineering Colleges run by the Universities. Dispute

is with regard to mode of allocation of seats in the said private Engineering Colleges. While the Government is following the ratio of 42:36:22 respectively for Andhra University area, Osmania University Area and Sri Venkateswara University Area, after pooling all the seats, the petitioners seek reservation of 85% to the local candidates in respect of local areas. This is the crux of the problem which needs resolution by this Court.

4. While there are more Universities than 3 in the State of Andhra Pradesh, broadly, they are referred to as Andhra University Area, Osmania University Area and Sri Venkateswara University Area and they are shortly called AU area, OU area and SVU area. In the context of local area, AU area comprises of the districts of Krishna, Srikakulam, Visakhapatnam, West Godavari, East Godavari, Guntur and Prakasam; OU area comprises of the districts of Adilabad, Hyderabad (erstwhile Hyderabad District split into Hyderabad and Raichur districts) Karimnagar, Khammam, Mahabubnagar, Medak, Nalgonda, Nizamabad and Warangal; and SVU area comprises of the districts of Anantapur, Cuddapah, Kurnool, Chittoor and Nellore.

5. Hitherto, the private Engineering Colleges were collecting capitation fees for admitting the students. The Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fees) Act, 1983 abolished the capitation fees system. Consequently, the power hitherto exercised by the management of private Engineering Colleges to admit the students according to their own preference has been done away with. Admissions into Engineering Colleges, be it governmental, aided or un-aided, minority or otherwise, are governed by the provisions of A.P. Professional Educational Institutions (Regulation of Admission into Under-Graduate Professional Courses through Common Entrance Test) Rules, 1993 issued in G.O. Ms.No.184, Education Department, dated 20-8-1993 read with G.O.Ms.No.227 dated 22-7-1994. The said rules have been framed in exercise of the rule making power under Sections read with Section 15 of the above Act of 1983. The above Act is hereinafter referred as "the State Act, 1983" and the above rules as "the State Rules, 1993". Even though the validity of the State Act, 1983 is upheld, in view of the decisions rendered by the Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, and 4 cases of *T.M.A. Pai Foundation and others Vs. State of Karnataka and others*, *Dr. T.M.A. Pai Foundation and others Vs. State of Karnataka and others*, *T.M.A. Pai Foundation and others Vs. State of Karnataka and others*, a scheme was evolved by the Supreme Court which has become the law of the land, and adopted by the State of Andhra Pradesh.

6. Under the State Rules, 1993, which govern the conduct of EAMCET and regulation of admissions, 50% are the free seats and other 50% are the payment seats. 5% of the total intake of the seats forming 10% of payment seats are reserved for Non Resident Indians (NRIs). The other 40% of payment seats are for the locals in the State. In so far as the minority institutions are concerned, having regard to the constitutional provision, 50% are reserved for the students

from minority community and out of the same 25% are the free seats and 25% are the payment seats. Again in the balance of 50%, which have to be filled up regardless of, minority status, 25% are free seats and 25% are payment seats. The proportion for NRIs has to be maintained even in minority institutions as stated above. Further, NRIs need not undergo EAMCET test and a separate criterion has been prescribed for them.

7. Article 371D was inserted into the Constitution in view of the Constitution (32nd Amendment) Act, 1973, which came into effect from 1-7-1974. It may not be necessary for us to trace the history of the above Constitutional enactment, for, the same was time and again stated, the latest being the Full Bench judgment of this Court in Devarakonda Rajesh Babu Vs. Nizam Institute of Medical Sciences and Others, . Suffice it to say that the same was brought into effect for making provisions for equitable opportunities for people of different areas of the State of Andhra Pradesh in the matter of admission to educational institutions and public employment. Subject here is the admission to educational institutions and public employment is a question apart. The constitutional validity of Article 371D was upheld by series of judgments, both Supreme Court and this Court, excepting Clause (5) thereof which has been struck down by the Supreme Court in P. Samba Murthy v. State of AP. AIR 1987 SC 663. The said provision contained under Article 371-D has been made with special reference to State of Andhra Pradesh and as such, over-riding effect is given in Clause (10) thereof for any law made therein over any other law or even other constitutional provisions. The Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (hereinafter referred to as "the Presidential Order") is a law made in exercise of the powers conferred under clauses (1) and (2) of Article 371D of the Constitution. In consonance with clause (10) of Article 371D, Para 9 of the Presidential Order also gives over-riding effect over any other statute, ordinance, rule, regulation or other order (whether made before or after the commencement of this Order) in respect of admission to any University or to any other educational institutions subject to the control of the State Government. Local areas have been defined in Paragraph 3 thereof which conforms to the respective local areas as AU area, OU area and SVU area mentioned in Paragraph 4 above. The definition of local candidates is contained in Paragraph 4 of the Presidential Order and the word "educational institution" is explained meaning University or any educational institution recognised by the State Government, a University or other competent authority. We are not called upon to decide as to what is a local area and who is a local candidate. They are not matters of dispute. The dispute is with regard to application of law in the matter relating to apportionment of the seats in Private Engineering Colleges. While Paragraph 5(1) of the Presidential Order reserves admission to 85% of available seats in every course of study provided by the Andhra University, the Nagarjuna University, the Osmania University, the Kakatiya University or Sri Venkateswara University or by any educational institution (other than a State-wide University or a State-wide educational institution) in favour of the local candidates in relation to local area

in respect of such Universities or other educational institutions, Rule 8(1)(a) of the State Rules, 1993 adopts the above reservation in Paragraph 5(1) of the Presidential Order only to Government/University Engineering Colleges. For Private Engineering Colleges, the seats are pooled-up course-wise and distributed among three regions of the State categorised above as AU area, OU area and SVU area in the ratio of 42:36:22 respectively as provided under sub-rule (5) of Rule 7 thereof. Sub-rule (5) of Rule 7 of State Rules, 1993 reads :

"The seats in all the private professional institutions shall be pooled-up course-wise and distributed among the 3 local areas of the State specified in sub-rule (1) of Rule 8, namely, Andhra University area (Andhra), Osmania University area (Telangana) and Sri Venkateswara University area (Rayalaseema) in the ratio of 42:36:22 respectively and 50% of the pooled-up seats shall be the free seats and the balance of 50% shall be the payment seats. 10% payment seats (i.e. 5% of the total intake) in each branch shall be reserved for Non-Resident Indians (NRIs)"

8. Everything revolves around the applicability of the Presidential Order or otherwise, as in the event of the Presidential Order being attracted to the admissions in the Private Engineering Colleges in the State of Andhra Pradesh, per force, 85% of the available seats have to be reserved for the local candidates in respect of local areas and consequently, the entire mode of selection into Private Engineering Colleges has to be made in the same manner applicable to governmental/University Engineering Colleges as provided in Rule 8(1)(a) of the State Rules which is in consonance with Paragraph 5(1) of the Presidential Order and the provision contained in Rule 8(1)(c) of the State Rules, 1993 becomes nonest and inoperative. Otherwise, the present system of admission will hold good.

9. Mr. Gummala Vijaya Kumar, the learned Counsel appearing for the petitioners in Writ Petitions 21283 and 21894 of 1996 strenuously contended that all the Private Engineering Colleges are subject to the control of State Government and made pointed reference to the several provisions of the Education Act, 1982 and the rules made thereunder including that of the State Act, 1983 and the Presidential Order and cited judgments mainly relying upon *B. Ajay Kumar v. Government of A.P.*, AIR 1984 AP 194. He reiterated the contentions raised in the writ petitions that it is the Presidential Order which is applicable and as the private Engineering Colleges are non-State-wide educational institutions and are subject to the control of the State Government, the admissions of students to the said Engineering Colleges in the context of proportion of reservation of seats, should be governed by Para 5(1) of the Presidential Order and not the State Rules of 1993. On the other hand, the learned Advocate-General, appearing for the State, submits that the Presidential Order is not applicable to the Private Engineering Colleges and that admissions made in accordance with State Rules, 1993 are valid and no interference is called for from this Court. He also submits that the Private Engineering Colleges do not come within the purview of the

Presidential Order for two reasons i.e. (i) they are not referred to in the Presidential Order; and (ii) that they do not get any aid from the State Government and are not subject to the Control of State Government excepting for admissions. The said argument is adopted by Mr. T.S. Harnath, the learned Counsel appearing for the 7th respondent. The above learned Counsel for the respondents also submitted that this ratio of 42:36:22 is advantageous to the petitioners and that no injustice or hardship is caused to them and that no grievance can be made for the issuance of Writ/s as sought for.

10. This Court is the interpreter of the Constitution and will interpret accordingly and not according to the advantages or disadvantages of the parties concerned. In fact, such a conception is alien to the functions of this Court. When the matter comes before the Court, the Court has to interpret the provisions of Constitution and the other provisions of law truly and correctly regardless of the consequences.

11. The Presidential Order mandates the area reservation, ear-marking 85% of the available seats in every course of study provided by non-State-wide University/ educational institution for admission in favour of the local candidates in relation to the local area in respect of such University/educational institution. That is contained in Paragraph 5(1), but is hedged with a condition that such educational institution shall be subject to the control of the State Government. While Statewide educational institutions subject to the control of State Government are defined in Paragraph 2(e) and specified in schedule annexed thereto, non-State-wide educational institutions have not been so defined or specified. As such, it has to be understood that excepting what is stated in the schedule appended to the Presidential Order, the other educational institutions in the State of Andhra Pradesh are non-State-wide educational institutions. In the circumstances, we hold that all the Private Engineering Colleges which are now functioning in the State of Andhra Pradesh are non-State-wide educational institutions. But, that alone is not sufficient. The said Private Engineering colleges should be subject to the control of the State Government and now, we proceed to consider as to whether the said requirement is satisfied so as to come within the ambit of the Presidential Order.

12. The expression "control" is of very wide amplitude. It connotes superintendence, authority to direct, restrict or regulate. Power to give or refuse assent is a mode of control. Prohibiting doing a thing is also a mode of control. Power to regulate is a control which includes interference on the part of the authority with the decision of individual/ body. The test of control is the right to exercise the control, not the exercise of it daily and in the ordinary routine. The word "control" is so comprehensive to include every form of control, actual or legal, direct or indirect, negative or affirmative, check or counter-check, curb, hold in restraint, to govern, regulate and rule to have authority.

13. In B. Ajay Kumar v. Govt. of A.P. AIR 1984 AP 194 (supra) G.O.Ms.No.312 issued by the Government exempting Private Engineering Colleges from

application of the Presidential Order was set at naught repelling the contention of the respondents "and it was held that" the Private Engineering Colleges as existed then within the purview of the Presidential Order on the ground that they were subject to the control of the State Government. In the said case, a reference was made to the provision of State Act of 1983 and the rules framed thereunder to come to the conclusion that the Private Engineering Colleges were subject to the control of the State Government, A.P. Education Act, 1982 and several rules framed thereunder were not brought to the notice of the Court. The comparative study was between the Presidential Order and the provisions of the State Act, 1983. Even then, it was held that the Private Engineering Colleges were subject to the control of the State Government and as such, the Presidential Order was applicable. Private Engineering Colleges are not only governed by the State Act of 1983, State Rules of 1993 and the amended rules, but are also governed by the provisions of A.P. Education Act, 1982 (hereinafter referred to as "the Education Act") and the various rules and regulations framed thereunder. Section 2(44) defines "technical education] as any course of study in Engineering, technology or in any other subject which may be notified by the Government in that behalf. Competent authority is one defined u/s 2(12) and in the case of the Private Engineering Colleges, it is the Director of Technical Education, as notified in G.O.Ms.No.16, dated 16-1-1986. A Private Engineering College cannot be set up by an individual, but can be set-up only by a registered body of persons like association etc. Even the said body of persons like association or even the authorities like local authority, Wakf Board etc. cannot establish Private Engineering College, as a matter of course and according to their will. Section 18 contemplates the Government of providing adequate facilities for imparting general education, technical education, special education and teacher education in the State by (a) establishing and maintaining educational institutions (by itself), (b) permitting ay local authority or a private body of persons to establish educational institutions and maintain them according to such specifications as may be prescribed; and (c) taking, from time to time, such other steps as may consider necessary or expedient. Section 19 classifies educational institutions into three categories as (a) State institutions, that is to say, educational institutions established or maintained and administered by the Government; (b) local authority institutions, that is to say, educational institutions established or maintained and administered by a local authority; and (c) private institutions, that is to say, educational institutions established, maintained and administered by any body of persons, registered in the manner prescribed. u/s 20, the competent authority shall, from time to time, conduct a survey as to identify the educational needs of the locality under its jurisdiction and notify in the prescribed manner through the local newspapers calling for the applications from the educational agencies desirous of establishing educational institutions and pursuant to the said notification, any educational agency including local authority or registered body of persons intending to (a) establish an institution imparting education or open new courses has to make an application within such period and in such manner and to such authority as may

be notified for the grant of permission therefor. Before such permission is granted, such educational agency has to satisfy the authority concerned (i) that there is need for providing educational facilities to the people in the locality; (ii) that there is adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority; (iii) that the institution is proposed to be located in sanitary and healthy surroundings. Further the enclosures to such application are title deeds relating to the site for building, play ground and garden proposed to be provided, plans approved by the local authority concerned, which shall conform to the rules prescribed therefore and documents evidencing availability of the finances for constructing the proposed building and assurance that within the periods specified by the authority concerned in the order granting permission, to appoint teaching staff qualified according to the rules made by the Government in that behalf and also to satisfy the other requirements laid down by the Government and the rules and the orders made thereunder, "failing which it shall be competent for the said authority to cancel the permission. Sub-section (4) of Section 20 contains a penal provision that if any person contravenes the provisions of Section 20, is punishable with imprisonment, minimum of which is six months and maximum three years and also fine, minimum of which is Rs.3,000/-and the maximum is Rs.50,000/-. While Section 20A expressly prohibits individuals to establish educational institutions, Section 21, empowers the competent authority to grant recognition in respect of any educational institution permitted to be established u/s 20, subject to such conditions as may be prescribed in regard to accommodation, equipment, appointing of teaching staff, syllabi, text-books and other matters relating thereto. The said recognition can be withdrawn under sub-section (2) of Section 21, if the manager of private educational institution, who has got to be appointed by the management, (a) fails to fulfil all or any of the conditions of recognition, or fails to comply with the orders of the competent authority with regard to accommodation, equipment, syllabi, text-books, appointments, punishment and dismissal of teachers; (b) denies admission to any citizen on grounds only of religion, race, caste, language or any of them; (c) directly or indirectly encourages in the educational institution any propaganda or practice wounding the religious feelings of any class or citizens of India or insulting the religion or religious beliefs of that class; (d) employs or continues to employ any teacher whose certificate has been cancelled or suspended by the competent authority after due enquiry or who has been considered by the competent authority after due enquiry to be unfit or undesirable to be continued or arbitrarily removes a teacher or failed to comply with the orders of the competent authority in that regard; (e) fails to remedy the defects in the instructions or contribution or the deficiencies in the management or discipline within such time as may be specified therefore by the competent authority; and (f) contravenes any of the provisions of the Act and the Rules and orders made thereunder. Apart from withdrawal of recognition for the enumerated reasons mentioned above, sub-section (3) of Section 21 empowers the Government to withdraw recognition by issuing notification in that regard, in public interest. Sub-

section (4) of Section 21 prohibits the educational institution which has not been recognised or the recognition of which has been withdrawn, to send up candidates for examinations in courses of study conducted under the Act.

14. Rules have been framed in this regard titled Andhra Pradesh Unaided Private Engineering Colleges (Establishment, Management and Admission) Rules, 1992 issued in G.O.Ms.No.198, dated 20-5-1992. It is needless to mention that there were previous rules governing the situation and the above rules have been framed in supersession of the earlier rules. The said rules permit only a society which is registered as an association under the relevant law or a religious or charitable trust registered under the Indian Trust Act or Wakfs Act or A.P. Charitable Hindu Religious Institutions and Endowments Act and impose several conditions as specified in Rule 3. The committee under Rule 4 comprising of Director of Technical Education, and eminent person in the field of Engineering nominated by the Government and the Vice-Chancellor of J.N.T.U. University will scrutinise the applications and forward them to Government and ultimately the Government is the final authority to decide for grant of permission. Rule 5 obligates the educational society to make its own arrangement to obtain affiliation from the concerned University and recognition from AICTE. It is specifically mentioned in Rule 6 that no financial aid will be given by the Government and that management of the educational society shall appoint a committee for the management of the college consisting of 9 members and among them, will be two nominees of Government and one nominee of the affiliating University. Under Rule 8, the qualifications for the teaching staff, workload and the teacher-student ratio shall be as per the standard laid down by the Government/ AICTE/concerned University. Rule 9 contemplates of selection of staff for appointment by a committee constituted by the managing committee subject to such conditions as may be prescribed from time to time. Rule 10 enables the Government to review the functioning of the college every year or at such other intervals as may be considered necessary and to issue directions for the proper functioning or improvement in the functioning of the college. Violation of the said directions will entail in cancellation of permission to run the institution. There are several other conditions like, college once established at a place cannot be shifted to another place, admissions can be only to the number of seats authorised and not in excess thereof and that ownership and management of the college shall not be changed without the prior permission of the Government, that fees structure shall be as specified by the Government by an order from time to time and then admission shall be only according to the State Act of 1983 and the rules framed thereunder.

15. There are several other kinds of control like the duty of management to appoint the manager, liability of the said manager, prohibition against closing down the institution without sufficient notice to the Government and dealing of the properties on such closure and also restrictions on alienation of property of private institutions including the liability of the manager to repay the debts incurred in certain cases. There is a power of verifying the accounts, demand

audit, make inspection and call for returns from the Private Engineering Colleges and also power of taking over management of educational institutions in public interest and also "control" in the matter of disciplinary action against the employees of private institutions including the appellate powers and the safeguard against such disciplinary powers and retrenchment by imposing a requirement of prior permission of the Government. There is also control with regard to payment of salary and allowances of employees of private institutions and there are regulations in that regard. Penal provision is contained for violation of any of the provisions of Chapter 14, apart from the general penal provision contained u/s 87. There is a power of revision to the Government, as also powers to give directions. The above powers of control are contained in several provisions like Sections 24, 25, 26, 27, 28, 29, 31, 48, 49, 50, 51, 60, 64, 67, 72, 74, 79, 80, 81, 82, 83, 84, 84-A, 85, 86, 87, 90 and 92. There are also various rules framed in that regard for effectual implementation of the control envisaged in the above statutory provisions. A.P. Educational Institutions (Inspection and Visits) Rules, A.P. Educational Institutions (Inspection, Accounts and Returns) Rules; A.P. Educational Institutions (Taking-over Management, Requisitioning and Acquisition) Rules, A.P. Private Institutions Employees (Disciplinary and Appeal) Rules, A.P. Private Educational Institutions Employees (Conduct) Rules, are some among them. Even for minority institutions, rules like A.P. Minority Educational Institutions (Establishment, Recognition and Regulation) Rules and Recognition, and Issuance of Certificate for Minority Educational Institutions Rules, have been framed in the nature of exercising control.

16. As seen from the above, the control of the State Government is evident over the Private Engineering Colleges including that of minority institutions. We do not accede to the contention of the learned Advocate-General and Mr. T.S. Harnath appearing for the respondents that "control" should be an absolute and full control and not of the kind of control we have mentioned above. The words employed are "subject to control" and not "under the control". There is a marked difference between the "subject to control of the Government" and "under the control of the Government". The latter kind of control is inseparable adjunct and integral part of the Government and may also be the instrumentality of the State and such control should be deep and pervasive. But, such is not the case in the former kind of control which can be indirect also without being integral part of the Government. It need not be instrumentality of State also. In fact, the words "subject to" have been interpreted as "conditional upon" by the Supreme Court in *K.R.C.S. Balakrishna Chetty and Sons and Co. Vs. The State of Madras*, which was approved by the later Supreme Court Judgment in *V. Balasubramaniam and Others Vs. Tamil Nadu Housing Board and Others*, . The requirements for establishing, maintaining and administering the Private Engineering Colleges including the admissions thereto stated in the State Act, 1983 and the Education Act and various rules framed thereunder satisfy the test of the words "subject to the control of the State Government." This view is further fortified by the decision in *Unnikrishnan J.P. v. State of A.P.* (supra) wherein it was held that

activity of establishing educational institution is neither a trade, nor a business nor a profession within the meaning of Article 19(1)(g); that establishing an institution, employing teaching and non-teaching staff, procuring the necessary infrastructure for running a school or a college is not practising a profession and that it may be anything, but not practising a profession. It was held that imparting of education is not and cannot be allowed to become commerce and do not come within the expression either profession, occupation, trade and business and a law existing or future ensuring against it from being a profession, occupation, trade or business would be a valid measure within the meaning of clause (6) of Article 19. It was also held that right to establish educational institution does not carry with it right to recognition or affiliation and that affiliation/recognition is life-blood of private educational institution and the authorities granting affiliation/recognition are duty bound to insist on conditions ensuring inter alia fairness in the matter of admission. Scheme in the nature of guidelines for authorities granting affiliation/recognition was framed by the Supreme Court. It was held that clearly and indubitably, the recognised/ affiliated private educational institutions supplement the function performed by the institutions of the State. Their's is not an independent activity, but one closely allied to and supplemental to the activity of the State. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory - in the interest of general public - upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard, but also fairness and equal treatment in the matter of admission of students. Since the recognising/ affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. Affiliation/recognition is not there for anybody to get it grant is or unconditionally. No Government, authority or University is justified or is entitled to grant recognition/ affiliation without imposing such conditions. It was also held that the educational activity of the private educational institutions is supplemental to the main effort by the State and if Article 14 of Constitution applies, as it does without a doubt, to the State Institutions and compels them to admit students of merit alone, the applicability of Article 14 cannot be excluded from supplemental effort/activity and as such, the State Legislature was held not having power to say that a private educational institution will be entitled to admit students of its choice irrespective of merit or that it is entitled to charge as much as it can, which means free hand for exploitation and more particularly, commercialisation of education. But for sustenance and economic viability, the payment seats were ear-marked for 50% including 10% for NRIs and that too following the merit in that category and on allotment by the convener/committee constituted therefore. It is pertinent to mention that admissions which are regulated by State Rules, 1993 as amended later were challenged by the minority institution on the ground that it is not applicable to minority institution, but a learned single Judge of this

Court repelled the said contention in *Dar-ul-Salam Education Trust v. Govt. of A.P.* 1997 (2) ALD 291 and the same was upheld by the Division Bench of this Court by judgment dated 7-4-1997 in W. A.No.317 of 1997. Mr. T.S. Harnath, the learned Counsel appearing for the Convener raised another contention that in view of AICTE Act, there is no significant role for the State Government and in this connection cites the judgment of the Supreme Court in *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, . In that case, dealing with AICTE Act, 1987, it was held that the provisions of the said Act will prevail over the State Act and that the State Act cannot lay down standards and requirements higher than those prescribed by the Central Act for technical institutions and cannot deny situations/seats to applicants on the ground that they do not fulfil such higher standards/ requirements. In the said case, though it was held that college under T.N. Private Colleges (Regulation) Rules, 1976 does not comprehend Engineering College, on the apprehension of amending definition of the college under Rule 2(b) thereof including the Engineering College also, adjudication was made. Unnikrishnan's case (supra) was also not brought to the notice of the Division Bench consisting of two learned Judges dealing with the said case. Further, the judgment in Unnikrishnan 's case and Adhiyaman 's case and also other judicial precedents and all the Acts i.e. AICTE Act, University Grants Commission Act and A.P. Universities Act, 1991 came to be considered by a Full Bench of this Court. In *M. Sambasiva Rao @ Sambaiah v. Osmania University*, Hyderabad 1997 (2) ALD 1 (FB) : 1997 (1) APLJ 282, surveying the entire case law, analysing them and also the statutory provisions, it was held that while approval of the Council under AICTE Act is necessary, affiliation by the University and recognition by the Government are also necessary and it may not be mandatory or compulsory for Universities or Government to accord affiliation and recognition merely because approval is accorded by the Council under AICTE Act. As such, each of the factors i.e. approval by the Council under AICTE Act, permission by the Government under the Education Act and affiliation by the University under U.G.C. Act, 1956 operate independently in different legislative fields and even if there is any overlapping in the functions of file State Government and the Council under AICTE Act, still lot of control is vested in the State Government as enumerated above and as such, the irresistible conclusion is that all the Private Engineering Colleges in the State of Andhra Pradesh are subject to the control of the State Government and for admissions into the said colleges, the provisions of the Presidential Order, namely, the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 is applicable. But admissions for the year 1996-97 have been completed long back and even for the year 1997-98 they are in the last stage, but still admissions are open as some seats are unfilled.

17. In view of the above pronouncement, all the admissions made will have to be disturbed which are in thousands and we do not want to upset and unsettle all those admissions because of the large repercussions to the student community and lot of time and risk involved therein for the acts already done. Hence, we

show equitable consideration for such admissions which have already been completed for the years 1996-97 and 1997-98 and we are not disturbing them. But, the Presidential Order shall be followed strictly and scrupulously from the next academic year onwards. We will be failing in our duty, if we do not also grant equitable relief to the writ petitioners who are only 3 in number, one of the year 1996-97 and two of 1997-98. The said writ petitioners shall be accommodated for this academic year viz. 1997-98, as they have been denied admissions for no fault of theirs. However, no student already admitted should be dislodged and the petitioners shall be accommodated in the vacant seats available (both free and payment) and their choice is limited to the available seats in the courses they wish to join.

18. In view of what is stated supra, we hold that :

(1) that the provisions of Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 is applicable to all the private Engineering Colleges in the State of Andhra Pradesh including the minority institutions;

(2) that admissions shall be made-only in accordance with Para 5(1) of the above Order by reserving 85% of the available seats in the respective local areas mentioned in Para 3 and for the local candidates mentioned in Para 4 thereof;

(3) that available seats shall be reckoned after making provision of 5% for NRI students;

(4) that such of the seats within the above 5% not filled with NRI students will again be treated as available seats for area reservation of 85% as in clause (2) above;

(5) that 50% of the available seats out of 85% shall be free seats and the rest 50% shall be the payment seats;

(6) that in minority institutions 50% of the available seats out of 85% shall have to be ear-marked for students belonging to minority community (maintaining the ratio of 1:1 in respect of free seats and payment seats) and the remaining 50% of available seats out of 85% shall be earmarked for others (maintaining the ratio of 1:1 in respect of free seats and payment seats); and

(7) that the balance of the seats shall be filled up without reference to the Presidential Order mentioned in Clause (1).

19. The writ petitions are allowed to the extent indicated above. No costs.