

(2008) 07 KAR CK 0070

In the Karnataka High Court

Case No : W.A. No's. 1032 and 1046 of 2007 and W.P. No's. 7019 and 7469 of 2007

Karnataka Religious and Linguistic Minority Professional
Colleges Association (R)

APPELLANT

Vs

Dr. P.G. Parvathi and Others
 The Principal, Oxford
Dental College and Research Centre Vs Dr. P.G. Parvathi and
Others
 Dr. P.G. Parvathi, Dr. Hariprasad Rao Raju
Naidu and Dr. T.R. Shyam Prasad Shetty Vs The State of
Karnataka and Others
 Dr. Sitaram Prasad Kasina Rao
Vs The Karnataka Religious and Linguistic Minority
Professional Colleges Association and Rajiv Gandhi University
of Health Sciences

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Karnataka Education Act, 1983 — Section 2 (21)

Citation : (2009) ILR (Kar) 216

Hon'ble Judges : Cyriac Joseph, C.J;B.S. Patil, J

Bench : Division Bench

Advocate : P.S. Rajagopal, in W.A. Nos. 1032 and 1046/2007, Goutham, Rajeswar and Narayana Rao, in W.P. No. 7019 and 8094/2007 and T.P. Rajendra Kumar Sungay, in W.P. No. 7469/2007, for the Appellant; D.N. Nanjunda Reddy for T.P. Rajendra Kumar Sungay, for C/R1 in W.A. Nos. 1032 and 1046/2007, Shivarudra, for C/R-2 in W.A. Nos. 1032 and 1046/2007, Goutam and Rajeswar for C/R-3 in W.A. Nos. 1032 and 1046/2007 and C/R-12 in W.A. No. 1032/2007, B.V. Nagarathna, for R-9 in W.A. No. 1032/2007, for R-7 in W.P. Nos. 7019 and 8094/2007 and for R-2 in W.P. No. 7469/2007, T.P. Rajendra Kumar Sungay, for C/R10 in W.A. No. 1046/2007, Manohar, GA for R-1 and R-2 in W.P. Nos. 7019 and 8094/2007, V.A. Mohan Rangam, for R-3 in W.P. Nos. 7019 and 8094/2007, P.S. Rajagopal, for R-4 to 6 in W.P. Nos. 7019 and 8094/2007 and for R-1 in W.P. No. 7469/2007, Santhosh S. Nagarale and Vijay Kumar A. Patil for R-8 to R-36 in W.P. Nos. 7019 and 8094/2007, N.K. Ramesh, for R-3 in W.P. No. 7469/2007, for the Respondent

Judgement

B.S. Patil, J.—In these Writ Petitions, 5 students have approached this Court

asserting common facts and raising common questions of law. Hence, all these petitions are heard together and are disposed of by this common judgment. In fact, these Writ Petitions were listed before the learned Single Judge of this Court and an Interim Order directing provisional admission of the students for the various Post Graduate courses in Dental Sciences has been passed on 31.05.2007. Challenging the said Interim Order, the Karnataka Religious & Linguistic Minority Professional Colleges Association and as also the Principal, Oxford Dental College and Research Centre, Bangalore filed two separate Writ Appeals, in W.A. No. 1032/2007 and 1046/2007. In the course of hearing of the said Appeals, it was felt that the questions raised for consideration in the Writ Appeals virtually result in considering the questions raised in the Writ Petitions. Hence, for the purpose of effective and final adjudication of the controversies raised before the Court, the Writ Petitions were ordered to be heard along with the Writ Appeals. Therefore, the Writ Petitions are before us for consideration.

2. In W.P. No. 7019/2007. there are 3 petitioners, whereas W.P. 7469/2007 & 8094/2007 are filed by individual students. These 5 students had appeared for the Post Graduate Common Entrance Test (for short "PGCET-2007") for admission to P.G. Dental Courses in the Religious & Linguistic Minority Professional Colleges in Karnataka. The Karnataka Religious & Linguistic Minority Professional Colleges Association (for short "the Association") which is arrayed as respondent No. 4 in W.P. No. 7019/2007 has conducted the examination. It has 5 Minority Educational Institutions as its members which include both Medical and Dental Colleges situated in the State of Karnataka. They are (1) Al-Ameen Medical College, Bijapur (2) Al-Ameen Dental College, Bijapur (3) Bangalore Institute of Dental Sciences, Bangalore (4) Coorg Institute of Dental Sciences, Virajpet & (5) The Oxford Dental College, Bangalore. In these cases, we are concerned with the Dental Colleges only as admissions to Post-Graduate Dental Courses for the academic year 2007-08 are under challenge.

3. As the grievances of all the petitioners are common, we are dealing with the facts and circumstances in W.P. No. 7019/2007 for the sake of convenience.

4. The case of the petitioners stated in nutshell is that they belong to the Telugu Linguistic Minority residing in the State of Karnataka. They were eligible and qualified for appearing for the Common Entrance Test - 2007 conducted by the Association. The Association is an Association formed by the Religious & Linguistic Minority Professional Colleges and the two Colleges with which we are concerned, viz., (1) The Oxford Dental College & Research Centre, Bangalore, 10th Milestone, Bommanahalli, Hosur Road, Bangalore - 560 068 and (2) Bangalore Institute of Dental Sciences & Hospital, No. 5/3, Hosur Main Road, Bangalore are Institutions established by the Telugu Speaking Linguistic Minority Community in Karnataka. In that capacity they have enjoyed the protection conferred under Article 30(1) of the Constitution of India and it is in furtherance of the same, that the State Government from time to time recognised their status as Educational Institutions established by Linguistic Minority and extended

all the available benefits on condition that they admit, for the relevant years, students belonging to the said Linguistic Minority Community to a specified extent. It is in this background that the Association formed by these Linguistic and Minority Professional Colleges have conducted the Common Entrance Test for the purpose of selecting eligible students for admissions to various Post Graduate courses. It is further contended by them that the Association was conducting the Common Entrance Test giving special preference to the candidates belonging to the Religious & Linguistic Minority. After the test was conducted, the date of Counseling was announced which was scheduled on 15th April 2007. While announcing the same, it was made clear by the Association that based on inters merit of the candidates first choice would be given to candidates belonging to Religious or Linguistic Minority and if any seats were left vacant, they would be passed on to the candidates belonging to General Category and the Seat selections for the said category would also be based on inters merit. The publication issued in this regard notifying the date of counselling and containing the instructions for participation in Centralised Single Window Seat Selection process is produced at Annexure "N".

5. It is the case of the petitioners that the Association had announced the calendar of events for the P.G. Common Entrance Test - 2007 and conducted the Entrance Test On 18.02.2007. Although the brochure issued by the Association stipulated that the final merit list would be published on 27.02.2007 the time schedule was not adhered to. The key answers were published on 19.02.2007. Objections were filed by some of the petitioners to the said key answers as some of them were wrong. The final merit list was never published and as such, they were not aware of the ranks of other candidates. They could only know their ranks by toggling on to the website. The four petitioners, viz., Dr. P.G. Parvathi, Dr. G. Hariprasad Rao, Dr. T.R. Shyamprasad & Dr. Balakrishna were respectively assigned rank No. 24, 45, 67 & 56. As per the notification - Annexure "N", the counselling took place on 15.04.2007. However, the counselling was not conducted in a transparent manner. There was no display of merit list. The candidates were not given any information of the availability of seats. Only those persons whose names were called out at random were taken to a private room and they were selected. The Association conducted the counselling only for the sake of formality. Contrary to the declared rule of filling up the seat first by candidates belonging to Linguistic or Religious Minority and thereafter passing on the unfilled seats to the General Category, the Association filled up the seats purportedly by the General Category candidates whose merit itself was doubtful. They further contend that in all 45 seats were offered to the candidates belonging to Religious and Linguistic Minority and although Dr. P.G. Parvathi and Dr. G. Hariprasad Rao had secured Rank No. 24 & 25, it was understandable how they were not allotted any seats. They have further alleged that as could be seen from the merit list, similar ranks were given to several candidates which has resulted in manipulation of the merit list. It is further contended that in the counselling conducted by the COMED-K. which is an Association of Private

Medical. Engineering & Dental Colleges to fill up 15 Telugu Minority Seats, a candidate who had secured 564th rank was successful in securing the seat, whereas in the counselling conducted by the Association, even a candidate who had secured 24th rank could not secure the seat although there were 45 seats. In support of their contention that the Entrance Test conducted was not transparent, they have further asserted that the candidate who secured 5th rank in the PGCET conducted by the 3rd respondent - Rajiv Gandhi University of Health Science was given 33rd rank in the Entrance Test conducted by the Association herein. Similarly, one Dr. Thomas Varghese who had secured 3rd rank in the Entrance Test conducted by the Association (respondent No. 4 in W.P. No. 7019/2007) had secured rank above 1000 in the Post Graduation Entrance Test conducted by the 3rd respondent Rajiv Gandhi University of Health Sciences. It is thus submitted by the petitioners that the test conducted and the results announced were neither dependable nor transparent.

6. The petitioners (in W.P. No. 7019/2007) filed a complaint before the police on 15.04.2007 alleging illegalities in the counselling held. Representation was also addressed to the Governor of the State. The alleged irregularities committed during the course of the counselling were also brought to the notice of the State Government, the Director of Medical Education and Rajiv Gandhi University of Health Sciences by representation-Annexure-T, A representation-Annexure-U was also addressed to the Chairman, Overseeing Committee for Examination, CET Cell, Malleswaram, Bangalore in that regard. Similar representation is also given by the petitioners in the other writ petitions. The grievance made in the said representation, as can be seen from Annexure-U is that, contrary to the declared rule of filling up seats for the Post Graduation Course in Dental Sciences first by Linguistic/Religious Minority and thereafter passing on the unfilled seats to the general category, the Association and its member-colleges had filled up all the seats by picking up general category students whose merit was doubtful. It was further alleged therein that the petitioners suspected foul play and large scale unfair practice in the entire examination process and that students who had secured high ranks were given single preference of the course of study and college of study which pointed out the fact that such students were certain to get the seat in the college. It was also alleged that the counseling was not done in a transparent manner and there was no display boards, as a result, only chosen few were called separately and counselled.

7. The petitioners have further alleged that genuine and meritorious students who had obtained top ranks in both the COMED-K (conducted by the Association of Private Medical and Dental Colleges) and PGCET (conducted by the Rajiv Gandhi University of Health Sciences) wherein, more than 2500 to 3000 students appeared had secured very low ranks in the examinations conducted by the Association in which only about 300 students had appeared which clearly establishes that the entire selection process right from conducting the Common Entrance Test till the allotment of seats was only an eye wash under the banner of minority status which amounted to cheating the public and the students.

8. Based on the complaint given, the 7th respondent-One Man Regulatory Committee, passed orders dated 17.4.2007 and 21.4.2007 produced vide Annexure-"W" & "W-1". As per the communication dated 17.4.2007, it was informed to the Chairman, Karnataka Religious and Linguistic Minority Private Colleges Association, Bangalore to keep the results of the counseling held on 15.4.2007 by the Association in abeyance until further orders. This was done upon detailed discussion of the matter pertaining to the complaint received from the students regarding the admission to the Post-Graduate Programmers in Dental and Medical Discipline wherein the Chairman, Secretary and Treasurer and members of the Association were present. The Association was directed to produce certain relevant documents for examination and verification. These documents included the details regarding the number of Religious and Linguistic Minority Candidates present at the time of examination and also at the time of counseling and the criteria applied for considering the eligibility and also the number of minority students admitted in the various branches in each of the institutions with their ranks and domicile status. By another communication dated 21.4.2007, Annexure-"W1", the. One Man Regulatory Committee informed the Vice-Chancellor, Rajiv Gandhi University of Health Sciences, that the select list was stayed subject to the verification of the entire matter and hence the admissions, if any, made of the selected candidates may not be approved till further orders. In fact the One Man Regulatory Committee consisting of Dr. N.R. Shetty informed the Vice-Chancellor vide Annexure-"W1" letter that he had constituted a Committee of two members headed by Sri. Gurumurthy alongwith Dr. Nagesh, Principal of R.V. Dental College for verification of the documents which were required to be submitted by the Association on 23.4.2007. However, it transpired that neither the Association, nor its member colleges produced the relevant documents called for by the One Man Regulatory Committee. But, they have filed a writ petition before this Court challenging the authority and jurisdiction of the One Man Regulatory Committee in W.P. No. 7264/2007. Though the Association had sought for an interim order seeking stay of the order passed by the One Man Committee keeping the select list in abeyance, no interim order as such is granted by this Court, but the said matter is still pending consideration.

9. It is relevant to point out here that the Oxford Dental College, the Bangalore Institute of Dental Sciences and as also the Coorg Institute have claimed minority status for the purpose of holding separate examination in terms of the judgment rendered by the Apex Court in P.A. Inamdar v. State of Maharashtra reported in 2005(6) SCC 537. But, in so far as admission of the students belonging to the minority communities is concerned, they have not chosen to give preference to the students belonging to minority community. The respondent-Institutions are seeking shelter under the Consensual Agreement entered into by them with the State Government.

10. The petitioners allege that this action of the respondent-Institutions is contrary to the law laid down by the Apex Court in P.A. Inamdar's case and

hence the entire process adopted is bad in law. The agreement entered into between the Association and the State Government is also attacked contending that it does not contain the date nor does it refer to the requirement to admit any specific percentage of students belonging to minority community. They have also contended that the selection of Telugu speaking people who were not domiciled in Karnataka with an intention to show that candidates belonging to minority communities were also given admission, is in violation of the law laid down by the Apex Court. It is their further case that no selection process was conducted in the counseling held on 15.4.2007 for candidates over and above SI No. 28, as the same was deferred and finally stayed by the One Man Regulatory Committee and therefore, the selection of candidates mentioned from SI. No. 29 onwards in the merit list published by the Association was liable to be quashed as no counseling was held for them and the allotment of seats in their favour had been made after the 7th respondent-One Man Committee passed an order on 17.4.2007 keeping the entire merit list published by the Association in abeyance. On these allegations, the petitioners have sought for the following reliefs:

(i) Writ or direction to hold that the counseling conducted by the Association to the Post Graduate Dental Courses in pursuance of the Calendar of Events published vide Annexure-"J" was illegal;

(ii) To direct respondents 4 to 6 to make admissions to the Post Graduate Dental Courses in question by giving preference to the petitioners who belonged to Telugu Minority domiciled in Karnataka;

(iii) To issue a direction to respondents 3 & 7 not to approve the admissions made by respondents 4 to 6 for the 1st Year Post Graduate Dental Courses for which the petitioners had applied pursuant to the counseling conducted by the Association on 15.4,2007.

11. By an application seeking amendment of the Writ Petition, the petitioners have also sought for a declaration that admission of students viz., respondents 8 to 36 to the 5th respondent-Institution as illegal and contrary to law. Similarly, the Consensual Agreement entered into between the Association and the State Government regarding admission to the Post Graduate Courses in professional colleges for the academic year 2007-08 is also sought to be declared as contrary to law laid down by the Apex Court in P.A. Inamdhar's case and consequently all proceedings taken place pursuant to the said Consensual Agreement is sought to be declared as void.

12. Petitioners had sought for an interim order. The learned Single Judge has granted an interim order directing the respondent-Institutions to give admissions to the petitioners subject to the result of the writ petition. Relevant portion of the said order is extracted hereunder:

...There is no dispute that the object with which minority institutions were established was to promote professional education in this State for the benefit of the Telugu speaking students and for the development of Telugu language and

Telugu culture and the State Government did recognise the Institutions as such, subject to the condition that the students to be admitted in the institutions must be from the Telugu speaking group living in the State of Karnataka. Even according to the 1st respondent, the very aim and object of the institutions is to aid the Telugu speaking minority in the State and to promote Telugu culture. It was thus incumbent on the part of the Institutions to ensure that the students from Telugu speaking minority, domiciled in the State, were granted admission.

The 1st respondent having placed no material whatsoever as to whether the students admitted to belong to Telugu speaking minority in the State of Karnataka (domiciled), it can only be said that the Institutions have failed to ensure compliance of the very object for which they were constituted, and to the detriment of Telugu speaking minority candidates who are residents of the State of Karnataka. The petitioners have placed material prima facie to establish that they belong to the Telugu speaking minority domiciled in the State, entitled to a seat each in the minority institution, in preference to those selected and admitted.

It is in this background that this Court is left with no other alternative but to direct the 1st respondent and the managements of The Oxford Dental College and Bangalore Institute of Dental Sciences to forthwith make provisional allotment and admission in favour of the petitioners, in the following manner, since today is the last date fixed for admission to Post Graduate course:

College	Subject	SI	Name
		No.	No.
		W.P.	No.
7109/2007:			
1. Dr. P.G. Parvathi	Oxford Dental College	Orthodontics	
		2. Dr.	
Hariprasad - do -	Prosthodontics or Conservative Dentistry &	Endodontics	
		3. Dr.	
Shamprasad - do -	Conservative Dentistry &	Endodontics	
		In W.P. No.	
8094/20071			
1. Balagangadhar	Oxford Dental College	Oral Surgery	Tilak
		In W.P. No.	
7469/20071			
1. Dr. Sitaram Prasad	Bangalore Institute of Oral Pathology	Kasina Dental Sciences	

The above two Institutions are directed to collect admission fee, tuition fee, etc, from the petitioners and permit them to attend the classes from 01.06.2007 onwards. The selection and admission of the students to the Post Graduate course, including the provisional admission, to the aforesaid two colleges are subject to the result of these writ petitions.

13. The Association and the respective colleges and as also the State

Government have filed their statement of objections. In the statement of objections filed by the Association, it is contended that the selections were made as early as on 15.4.2007 and selected students had been admitted to M.D.S. Course by the member colleges on or before 21.4.2007 which was the last date fixed for admission by the Rajiv Gandhi University of Health Sciences and hence the writ petitions filed were misconceived and could not be considered as they were not maintainable. They have placed heavy reliance on the Consensual Agreement entered into by the State Government which provides that out of the total intake, 80% of the seats remained with the Managements of the Institutions and out of the same, 80% of them were required to be filled up by admitting candidates from the general merit by conducting entrance test as was done in all the previous years and the remaining 20% could be filled up by NRI/ NRI Sponsored Institutional preference and if no candidates were available in any of this category, they could be filled by general category candidates drawn out of the merit list of the entrance test conducted by the Association. It is their case that as per the agreement entered into with the State Government, they were required to fill up the posts by conducting a merit based entrance test without any preference to the minority communities. It is in this background that they justify their stand that the examinations were held and common merit list was drawn up based on which counseling was conducted and the meritorious students were given admission. It is further contended by them that the petitioners who have participated in the counseling on the basis of the merit assigned to them as per the results of the entrance test cannot turn around and question either the conduct of the entrance test or the marks awarded to them or the place assigned to them in the merit list.

14. In so far as the directions issued by the One Man Regulatory Committee, they have contended that the same has been challenged by the Association in W.P. Nos. 7264/2007, as the said One Man Regulatory Committee had no jurisdiction whatsoever to issue the directions. They have also contended that although they have adopted merit as the basis, more than 50% of the seats have gone to the Telugu speaking students, particularly in the two colleges, viz., the Oxford Dental College & Research Centre, Hosur Road, Bangalore, and the Bangalore Institute of Dental Sciences & Hospital, Bangalore.

15. The colleges have filed separate Statement of Objections reiterating the stand taken by the Association. They have particularly emphasised that they were established by the Linguistic Minority of Telugu speaking people domiciled in Karnataka and as per the provisions contained u/s 2(21) of the Karnataka Education Act, 1983, the expression "Minority Educational Institution" is defined to mean "a private Educational Institution of its choice established and administered by a minority whether based on religion or language, having the right to do so under Clause (1) of Article 30 of the Constitution of India". In support of their claim that their status as "Minority Institution" has been approved, the Institution, particularly the Oxford Dental College, Bangalore has produced two Government Orders dated 12.10.1995 and 30.07.2002 at

Annexures "R-1" and "R-2" whereunder the status of "Minority Educational Institution" is extended to them prescribing that the students they admit should be Telugu speaking group living in Karnataka. In so far as the obligation to admit Telugu speaking students in their Institution by giving them special preference, the respondent - Institutions have contended that as per the decision rendered in Islamic Academy of Education and Another Vs. State of Karnataka and Others, in the matter of admission to Post-Graduate Courses in the Minority Professional Educational Institutions merit will have relevance at that level as the services of the Doctors coming out from the Institute of Professional Excellence were required to be made available to the entire country and not to any particular class or group of people. It is contended by them that this position of law declared in Islamic Academy's case is reiterated at paragraph 106 of the Judgment of the Hon'ble Supreme Court in P.A. Inamdar and Ors. v. State of Maharashtra and Ors. In this connection, they have placed reliance on the law declared at paragraph 126 of the Judgment in P.A. Inamdar's case. It is their further case that even prior to P.A. Inamdar's case, the Apex Court in Dr. Narayan Sharma and Another etc. Vs. Dr. Pankaj Kr. Lehar and Others etc., , was pleased to hold that admission to Post Graduate Courses should be strictly based on merit.

16. It is further contended by them that the right guaranteed under Article 30 of the Constitution of India to establish and administer Educational Institutions of their choice is different from the rights claimed by the students belonging to Minority to seek admission and that the right of admission into an Educational Institution is a right that an individual citizen has as a citizen and not as a member of any community or class of citizens. In this regard, reliance is placed on the decisions of the Apex Court rendered in Usha Mehta and Others Vs. State of Maharashtra and Others, reiterating in the decision in the case of The State of Bombay Vs. Bombay Education Society and Others, .

17. In the Statement of Objections filed by the 5th respondent (the Principal, Bangalore Institute of Dental Science & Hospital, Hosur Road, Bangalore), it is urged at paragraph 17 that the hand bill/information dated 15.04.2007 (Annexure-N), on which the petitioners have placed reliance did not contain any terms stating that students belonging to Telugu Minority Group domiciled in the State of Karnataka will be the basis for selection. They farther reiterate that even if there is any ambiguity in the Notification, the same was removed before commencement of Counselling by announcing that the seat selection would be purely based on merit and no rights could be claimed on the basis of the Hand Bill or the information - Annexure "N" They have further stated in paragraph 21 that in obedience to the Interim Order dated 31.5.2007 passed by the learned Single Judge and without prejudice, the provisional allotment orders were issued by the Association and one Dr. Sitaram Prasad Kasina, petitioner in W.P. No. 7469/2007, was allotted admission to M.D.S. Course in Oral Pathology, but there was no such course in the College and the said Dr. Sitaram Prasad Kasina himself did not report to the college.

18. In so far as the 5th respondent - Oxford Dental College, Bangalore was concerned, it is stated by them in the Statement of Objections that the Association issued a Provisional Allotment Order vide Annexure R-11 on 31.05.2007 pursuant to which the petitioners - students were called upon by the College on 01.06.2007 and without prejudice to their rights, the Institution has permitted them to attend the classes from 01.06.2007. They have further stated that as the last date for admission fixed by the Rajiv Gandhi University of Health Sciences was 20.04.2007, the petitioners were not entitled to any reliefs, much less the reliefs sought in the Writ Petitions.

19. The selected students who are arrayed as party-respondents 8 to 36 in W.P. No. 7019/2007 have filed their Statement of Objections supporting their selection and contending interalia that under Article 30 of the Constitution of India a right is guaranteed to the Minority Community to establish and administer educational institutions of their choice and it does not give any right to any student belonging to minority to lay preferential claim for admission to such Institutions. They have further contended that in respect of admission to Post Graduate Courses in Professional Colleges merit alone shall be the criteria and that they were all given admission based on their merit. They have also contended that neither in the brochure nor in the advertisement, any preference to the minority is intimated and at all relevant point of time it was made clear that the admissions would be purely based on merit and that the petitioners, having applied in response to the advertisement and on the basis of the brochure, could not insist on any such preference merely because they claim to be persons belonging to Telugu Speaking Linguistic Minority domiciled in Karnataka. They have produced copy of the advertisement published in the Newspapers on 10.01.2007 inviting applications from eligible candidates for admission to M.D.S. Courses in Medical and Dental Sciences for the academic year 2007-2008 in the member colleges at Annexure-R1 which according to them did not state any preference being given to any students belonging to minority community. They have also produced the intake details at Annexure-R2 to show the intake of the different member colleges of the Association in respect of different specialities. They have further contended that before the commencement of counselling, it was announced that candidates would be allowed seat selection and would be allotted seats strictly in accordance with merit determined by the marks secured in the Post Graduate Entrance Test. They have also urged that they were not initially impleaded as respondents in the writ petition filed by the petitioners and for the first time an application was made by the petitioners to implead the admitted candidates on 13.06.2007 and it was only thereafter that this Court ordered impleadment of respondents 8 to 36 and if the challenge directed against their selection were to be entertained at such belated stage, it would push these respondents to serious difficulties.

20. The Association and respondents 5 and 6 colleges in W.P.No.7019/2007 have filed additional statement of objections after the petitioners filed an application seeking to amend the writ petition to raise certain additional grounds and

seeking additional reliefs. In paragraph 5 of the additional statement of objections, the details of the total number of seats as per the intake fixed in the 4 member colleges of the Association is given, out of which the number of Government seats and Management seats stipulated pursuant to the Consensual Agreement is mentioned. The table below shows the same,-

Sl.	Name of the College	Total Govt. seats	Management seats	No. seats as under the Consensual Agreement	seats under the Consensual Agreement	Per intake
1.	Al-Ameen	4	1			
2.	Bangalore Institute of Dental Science	12	2	10		
3.	Coorg of Dental Sciences	23	4	19		
4.	Oxford Dental College	36	7	29		
	total	75	14	61		

21. It is further stated in the statement of objections that merit alone shall be the criteria for admission to Post Graduate Courses in professional colleges and that there cannot be any compulsion on an unaided minority professional college to admit students even though they were less meritorious. They have further asserted that a minority education institution has discretion to admit minority students in certain cases to the exclusion of all others if it so desires. But, there is no right in the minority students to insist on being admitted only on the ground that they belong to minority. They have also contended that if the petitioners' contention were to be accepted, it would result in erosion of academic standards.

22. The One Man Regulatory Committee has filed statement of objections wherein it is stated that certain students made representation alleging irregularities in the process of counselling contending that eligible students had been declined seats and the counselling process was abruptly stopped on account of pandemonium. On the basis of the said complaint, the Committee requested the Office Bearers of the Association to appear before it on 17.04.2007 and 4 Office Bearers of the Association appeared and after detailed discussion, it was decided that the results of the counselling held by the 1st respondent-Association on 15.04.2007 must be kept in abeyance until further orders. The Association was directed to produce certain documents for verification. However, the Association did not produce any such documents. But, it has challenged the jurisdiction and powers of the One Man Regulatory Committee by filing a separate Writ Petition.

23. The One Man Regulatory Committee has further specifically stated in paragraph 15 of their Statement of objections that in the Consensual Agreement entered into between the COMED-K and the State Government which has been approved by the Hon'ble Supreme Court of India, the 2nd respondent-

Committee had been authorised to oversee the admissions made by the COMED-K to not only the non-minority colleges but also the minority colleges coming under the COMED-K. A copy of the said Consensual Agreement entered into between the State Government and the COMED-K is produced along with the Statement of objections filed by the 7th respondent-One Man Regulatory Committee as Annexure-R5.

24. We have heard the learned Counsel for the parties and perused the materials made available. Learned Counsel appearing for the petitioners-students and the respondent-Institutions addressed elaborate arguments and have cited several judgments.

25. Upon consideration of the respective plea taken up by the parties and in the light of the contentions raised by the learned Counsel for the parties, the questions that arise for consideration in these petitions are:

i) Whether the respondent-Institutions are under a legal obligation to give admissions on preferential basis to candidates belonging to their Linguistic Minorities?

ii) Whether the petitioners have any right to claim admission for the Post Graduate Courses in Dental Sciences on the ground that they belong to Linguistic Minority?

iii) Whether the Common Entrance Test conducted by the Association of the Minority Colleges is fair, transparent and merit based?

iv) Whether the process of admission followed by the respondent-Institutions is merit based and non-exploitative and is in accordance with law?

v) Whether the petitioners can maintain the challenge made for setting aside the Consensual Agreement and the admissions made by the respondent- Institutions?

Questions 1 and 2:

26. The first question regarding the obligation of the respondent-Institutions to give admissions to the candidates belonging to their minority communities and the second question pertaining to the right of the petitioners to claim admission are required to be addressed together as they are inter-related. Learned Counsel for the petitioners have contended that the protection given under Article 30(1) of the Constitution of India is in effect and substance protection to the minority communities and the purpose and object behind the said protection will get frustrated if it is held that a minority educational institution established as such and entitled to the fundamental right under Article 30 of the Constitution is not under any obligation to admit any students belonging to their community. On the other hand, the contention of the respondent-Institutions is that Article 30(1) does not confer any Fundamental Right on a candidate belonging to minority community to seek admission as of right in any institution much less a professional Institution as the provisions contained under Article 30(1) only

provide protection and right to the minority institutions and not to the persons belonging to minority community seeking admission. As this question is of considerable importance and has far reaching consequences and repercussion, the learned Counsel for both the parties were permitted to address arguments elaborately. Both the sides placed heavy reliance on the following judgments rendered by the Apex Court to support their respective contentions,-

(1) T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,

(2) Islamic Academy of Education and Another Vs. State of Karnataka and Others, . and

(3) P.A. Inamdar and Ors. v. State of Maharashtra and Ors. (2005) 6 SCC 537.

The judgment rendered by the Apex Court in P.A. Inamdar's case clarifies the judgment rendered in Pai Foundation's case and also the effect of the judgment rendered and the observations made in Islamic Academy. It is therefore necessary and appropriate to refer to the observations made with regard to the rights of the Minorities in the judgment rendered by the Apex Court in P.A. Inamdar's case. The relevant paragraph for this purpose are paragraphs 91, 92, 93, 96, 99, 101, 132, 135 and 138. It is stated in paragraph 93 of the judgment by the Apex Court that Article 30(1) of the Constitution though styled as a right is more in the nature of protection for minorities. The Apex Court has categorically stated in paragraph 93 as under:

...The only restriction on the free will of the minority educational institution admitting students belonging to a non-minority community is, as spelt out by Article 30 itself that the manner and number of such admissions should not be violative of the minority character of the Institution.

27. It is therefore clear that while the minority educational institutions have a right to admit students of their own choice including students of non-minority community, this right is clogged with restrictions when it makes admission of students belonging to a non-minority community. The manner and number of such admissions, it is held, shall not be violative of the minority character of the institution. Thus, it is discernible from these observations made by the Apex Court that if a minority institution claiming right or protection under Article 30 of the Constitution does not admit any student belonging to their minority, then it violates its minority character. If it violates the minority character of the institution, the natural and inevitable consequence is that it will be denuded of its minority status and cannot any longer claim the protection and right as a minority institution. Further, in paragraph 101, the Apex Court dealing with the question of trans-border operation of Article 30(1) and referring to the law laid down in Pai Foundation in this regard has raised the following question

what would happen if a minority belonging to a particular State establishes an educational institution in the State and administers it for the benefit of members belonging to that minority domiciled in the neighbouring state where that

community is in majority? Would it not be a fraud on the Constitution?.

Answering these questions, the Apex Court has in the same paragraph (101) referred to paragraph 28 at page 587 of *Pai Foundation, wherein St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.*, is referred as under,-

Their Lordships had ruled that Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and no ill-fit or camouflaged Institutions should get away with the Constitutional protection.

Thus, the question raised regarding the obligation of the Institutions to prefer candidates belonging to their minority need not detain us for long as it stands answered in no uncertain terms in *Pai Foundation's* case where the need for preserving the minority character so as to enjoy the privilege of protection under Article 30(1) is enunciated. It is necessary for the institution to admit students belonging to their minority community to enjoy the status of Minority Institution, otherwise, the said status would be lost.

28. Another important aspect that is clarified in *P.A. Inamdar's* case is that aided minority linguistic educational institutions are held entitled to admit students belonging to linguistic minority to a reasonable extent only, to ensure that its minority character is preserved and that the objective of establishing the Institution is not defeated. If so, such an Institution is also under an obligation to admit bulk of the students fitting into the description of minority community residing in the State in which the Institution is situated. It necessarily follows from the law laid down in *T.M.A. Pai Foundation* as understood, clarified and reiterated in paragraph 101 of the Judgment of the Apex Court in *P.A. Inamdar* that a Minority Institution must primarily cater to the requirement of that minority of that State, else, its character of minority institution is lost. What further follows from these observations is that the minority character of an Institution is essential and as long as the benefit is extended to the minority community of the particular State, the Institution enjoys the protection or else the protection extended is lost.

29. As a necessary corollary to the above, it shall follow that if an Institution claiming minority status and protection of its rights as such ignores the interest of the minority and makes admission by opening up admissions to the All India level as an open competition, then it is no longer entitled to claim the status of minority Institution although its intention may be to proceed purely on the basis of merit catering to the needs of the meritorious candidates all over the country. Therefore, if the students of the group residing in that State in which the Institution is located are not at all admitted in any measure, small or large, such Institutions lose the characteristic of a Minority Institution as there will be no difference between this Institution and any other General Institution established by a non-minority community.

30. The underlying purpose and intent of Article 30(1) is a protective measure for the benefit of religious and linguistic minority which cannot be understood in

a restricted manner to give protection to a single individual belonging to that linguistic minority who establishes the Institution to administer and manage its affairs as per its choice. The educational institutions of that community shall cater to the needs of the community to which it professes to belong and for whose protection it is established.

31. It is not the case of the respondent-Institutions in the instant case that they are not claiming the status of minority institution. In fact, the Institutions which are parties to the Writ Petitions have formed an Association, which is arrayed as respondent No. 4 and the said Association claiming as an Association representing the minority educational institutions has entered into a Consensual Agreement with the State Government whereunder it is permitted to conduct its own Common Entrance Test for selecting the candidates for admission to various Educational Institutions. In exercise of its right as a representative Association of minority educational institutions it has agreed to fill up 80% of the permitted intake in Post Graduate courses on its own by conducting such an Entrance Test. Whereas 20% of the Seats have been agreed to be filled up as Government Seats which are to be allotted by the State Government after conducting necessary Entrance Test by the State Government itself. It is also relevant to note here that in respect of other Medical Colleges which have not claimed such a minority status, similar Consensual Agreements have been entered into whereunder though the Association of such private Unaided Medical Colleges have been permitted to conduct a Common Entrance Test of their own, they have agreed to surrender 33% of the seats to the State Government to be filled up by the State Government itself by way of Common Entrance Test conducted by it and by providing necessary reservations to different categories of candidates. It is thus clear that the respondent-Institutions have claimed and assumed the status of Minority Educational Institutions and the State Government has conceded the same in their favour. Once such a status is claimed and the Institutions secure protection under Article 30(1) of the Constitution of India, they are required to admit students belonging to their group residing in that State atleast to a certain extent so as to protect their minority status. Otherwise, it will be violative of the minority character of the Institution itself.

32. In paragraph 99 of the decision in P.A. Inamdar's case, the Apex Court refers to the Constitution Bench decision in State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., wherein Chief Justice Hidayatullah speaking for the Constitution Bench, observed thus:

It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be

turned away to enjoy the protection.

It is thus clear that to enjoy the protection as a "Minority Educational Institution" the benefit must also be to the minority community. In addition to the minority community, others from other minority or majority communities can take advantage of the said Institutions.

33. This aspect becomes further clear if we refer to paragraph 27 of the judgment in P.A. Inamdar's case wherein the Apex Court in the light of the orders of reference and issues that arose for decision, set out the questions which arose for decision. The first of the questions that is framed is as under:

(1) To what extent can the State regulate admissions made by the unaided (minority or non-minority) educational institutions? Can the State enforce its policy of reservation and/or appropriate to itself any quota in admissions to such institutions?

The answer to this question is found in paragraph 132 of the said judgment, which reads as under:

132. Our answer to the first question is that neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority Institutions are free to admit students of their own choice Including students of non-minority community as also members of their own community from other States, both to a limited extent only and not In a manner and to such an extent that their minority educational Institution status is lost. If they do so, they lose the protection of Article 30(1).

34. The Management of the Minority Educational Institutions have produced Government Orders vide Annexures "R-1" and "R-2". Annexure "R-1" is the Government Order passed on 12.10.1995 granting Linguistic Minority status to the Oxford Dental College, Bangalore run by Children's Education Society, Bangalore for the academic years 1995-96. The said status is granted subject to the condition that the students they admit should be Telugu speaking group living in the State of Karnataka. A perusal of the preamble of this Government Order makes it clear that the question relating to the minority status of the Oxford Dental College, Bangalore which is one of the Institutions involved in this case, came to be determined pursuant to an Interim Order dated 18.08.1993 passed by the Supreme Court whereunder 50% of the admission to the Minority Institutions were permitted to be regulated by such Institutions provided that majority of the candidates so admitted belong to the particular religious and linguistic minority. The Apex Court conceded the minority status of the Oxford Dental College and some others who had approached the Supreme Court, but made it clear that the State could question the said status of minority and enquire into the same. Accordingly, a Committee was constituted consisting of top Officers of the Government to examine the claim regarding the minority status of the Oxford Dental College, Bangalore. Based on the report of the

Committee, the status of minority institution was conferred to the said colleges subject to the condition that the students they admit should be from Telugu speaking group living in Karnataka. Of course, this order was made subject to the final decision of the Apex Court. Likewise, even the Government Order-Annexure "R-2" dated 30.07.2002 has been passed granting minority status to the Institutions run by the Children's Education Society for the academic year 2002-03, subject to the outcome of the matter pending before the Constitution Bench of the Supreme Court. It is made clear in the said Government Order that in each course conducted by the College 35% of the admission capacity shall be filled up from amongst the candidates belonging to minority community, viz., Telugu speaking group living in Karnataka. It is also made clear in the said Government Order that the Institutions shall publish in important daily Newspapers the availability of admissions to such minority communities. It is further clear from the Government Order that if these conditions and some others mentioned in the Government Order were not strictly followed, the minority status will not be continued for the year 2003-04.

35. The stand of the Principal of the Oxford Dental College, Bangalore in the Statement of Objections filed is that the Post Graduate Courses were started from the year 2003-04 and the Government having not issued any Government Order conferring minority status for the said year, in the light of Section 2(21) of the Karnataka Education Act, 1983, there was no such necessity for issue of any Government Order and hence there was no obligation to admit any students from the minority community. It is also pointed out that the seat matrix issued by the State and the Consensual Agreement reached recognises the status of the Institution as a minority Institution and does not require the Institution to make admissions by selecting any number of candidates from the minority community. This stand of the college shows that it need not admit any candidate belonging to Telugu Minority based in Karnataka but can still claim the protection as a minority institution. This stand is very unreasonable and is quite contrary to the purpose and intent behind Article 30(1) and the law laid down in P.A. Inamdar's case. Section 2(21) of the Karnataka Education Act, 1983 only defines what is a minority institution. It states that a Minority Institution is a private educational institution established and administered by a minority having a right to do so under Article 30(1) of the Constitution of India. But, whether an institution is established and administered by a minority is a question that has to be decided by the competent authority. Otherwise, anybody can claim such a status. It is in this connection that the Government Order produced by the 5th respondent College at Annexures "R-1" & "R-2" show that it has been conferred such a status of minority institution. Right from the year 1995, such a status is being recognised to the said college, by issuing Government Orders in this regard. Such being the case, the stand now taken by the 5th respondent by referring to Section 2(21) of the Karnataka Education Act, 1983 is wholly misconceived and untenable.

36. In the instant case, the respondent-Institutions have contended that the

Telugu speaking students from Andhra Pradesh have been given admissions as they had emerged meritorious. They contend that more than 50% of the seats have been given to the Linguistic minority. As already adverted to above, the Apex Court has clearly held that such persons who are not a linguistic minority residing in the State cannot be termed as Minorities entitled for the benefit.

37. It cannot be understood why the respondent Colleges have decided to ignore the interest of the Telugu speaking linguistic minorities of Karnataka while purportedly resorting to admissions only on the basis of merit. If the object was to strictly go by merit, it was not necessary to either seek minority status and claim protection or hold separate Common Entrance Test claiming as Institutions belonging to Religious or Linguistic minorities. Neither the Consensual Agreement nor the Seat Matrix issued could come in the way of the respondent-Colleges to earmark certain number of seats to Telugu minority in Karnataka. In fact, one would expect such an Institution to take up the cause of students belonging to their own community if the State Government required that admissions shall be made purely on the basis of general merit without giving any preference to the minorities. In the instant case, it is rather paradoxical to find that the so called minority institutions stoutly resist such benefits to them, while the State Government which has filed the Statement of Objections has taken a specific stand urging that the respondent-Colleges are bound to prefer candidates belonging to the Telugu minority in Karnataka on the basis of their inters merit. In the light of the discussion made above, it has to be held that the respondent-Institutions which have claimed the status of minority educational institutions are under a legal obligation to admit certain number of students belonging to their minority community as long as they claimed such minority right or protection.

38. This takes us to the other question as to whether the petitioners in this case have got a right to seek admission as candidates belonging to minority communities in the Post Graduate Course in the respondent-Institutions.

39. In T.M.A. Pai Foundation's case, the Apex Court has observed at paragraph 149 that the right to administer under Article 30(1) of the Constitution includes within it a right to grant admission to students of their choice. But, when a minority institution is given grant-in-aid, Article 29(2) would apply. It is further observed in the said paragraph that as long as the aided minority Institutions permit admission of citizen belonging to the non-minority class to a reasonable extent based upon merit, it will not be an infraction of Article 29(2), even though the institution admits students of the minority group of its own choice for whom the institution was meant. What would be a reasonable extent would vary depending upon the type of institution and the nature of education that is being imparted in the institution. The Court further holds that variable percentage of admission of minority students depending on the type of institution and education is desirable, and indeed, necessary, to promote the constitutional guarantees enshrined in both Article 29(2) and Article 30 of the Constitution. If this is the position in respect of an aided minority institution, the unaided

minority institutions claiming protection under Article 30(1) have the obligation to ensure that variable percentage of admission of minority students depending on the type of institution and education which is highly desirable and indeed a necessity.

40. In the face of the above mentioned enunciation of law which is clarified and reiterated in P.A. Inamdar's case, it has to be said that it is necessity for a minority educational institution to make admission of candidates belonging to their own minority even for Professional Colleges. Of course, the inters merit among the minority candidate has to be taken into consideration. It cannot be said that the minority educational institution does not have any obligation to give such admission to the candidates belonging to the minority communities and that the right to give such admission is dependant upon the free will and choice of such minority institution. Neither the Consensual Agreement entered into by the Association of the Minority Education Institutions and the State Government nor the Seat Matrix issued by the State Government can have the effect of prohibiting or preventing the Association from admitting students belonging to minority community on the basis of inters merit. The conditions stipulated in Clause (a) of paragraph 2 of the Consensual Agreement stating that 80% of the Management Seats shall be filled by the General merit candidates by conducting Entrance Test by the Association as was being done in all the previous years since its inception, cannot be interpreted to mean that the Association was precluded from making admission in respect of minority candidates by following the merit. Such an interpretation will be contrary to the protection given to the minority communities under Article 30(1) of the Constitution. The 3rd respondent-Association cannot be permitted to take up such a contention. At any rate, the State Government itself in its statement of objections has made it clear that the minority institution was under an obligation to admit certain number of students belonging to their own community which would be in tune with and in conformity with the law laid down by the Apex Court in *Pai Foundation* and *P.A. Inamdar's* cases.

41. All the petitioners have taken the common entrance test conducted by the Association. They have secured 24th, 45th and 67th ranks in the test conducted. The Association has issued a publication containing instructions for participation in centralised single window seat selection process (in short "Counselling Announcement"). A copy of the same is produced at Annexure "N" by the petitioners in W.P. No. 7019/2007. The Association has notified its intention to hold a centralised counselling for seat selection process for admission to Post Graduate Medical and Dental Courses for the academic year 2007-08 in the colleges which are its members. The respondent-Colleges which are arrayed as party-respondents in these Writ Petitions are the member-colleges which are enumerated in the said announcement. The total number of seats available are also mentioned. The Centralised Counselling was proposed to be held on 15.04.2007 at 10.00 A.M. in St. Joseph Indian High School, Grant Road, Bangalore, In the column pertaining to certificates and documents to be

furnished compulsory at the time of registration and counselling (original + two copies each) at Sl. No. 8, the following requirement is stipulated

Religious or Linguistic Minority Certificate issued by the competent authority or any document in support of such minority.

In the column pertaining to "selection process", the following is mentioned

Based on the inters merit, first choice is for candidates belonging to linguistic or religious minority under which the institutions have been established. If any seats are left vacant, those seats would be passed on to candidates belonging to General Category. Seat selection process for this category is also on the basis of inters merit.

42. The petitioners claim that they all belong to Telugu speaking linguistic minority domiciled in the State of Karnataka. Along with the Writ Petitions, they have produced certain certificates to show that they belong to Telugu speaking minority residing in Karnataka. The respondents do not deny the publication issued as per Annexure "N". It is the case of the respondents (particularly the stand taken by the Bangalore Institute of Dental Sciences and Hospital-the 6th respondent), in the additional statement of objections filed in W.P. No. 7019/2007 as can be seen from paragraph 17, that the Hand ? Bill - Annexure-"N" did not say that the Telugu Minority candidates domiciled in the State of Karnataka will be the basis for selection, but on the other hand it also spoke of merit. It has further stated that this ambiguity was removed before commencement of counselling by announcing that the seat selection will be purely based on merit and no right can be claimed on the basis of the Hand-Bill or the information Annexure "N".

43. In the additional statement of objections filed by the respondents 4, 5 & 6 jointly in W.R No. 7019/2007, i.e., to say the Association and the other two Colleges, it is stated at paragraph 7 that the information given as per Annexure "N" in so far as it spoke about the preference being given to the candidates belonging to religious or linguistic minority was a bonafide error contrary to law, contrary to Consensual Agreement, contrary to invitation, contrary to application, contrary to Seat Matrix and contrary to the merit and it was not acted upon and it was announced to every candidate before announcement of the seat selection process that merit will be the sole basis for admission. This stand of the respondents is quite shocking and surprising. The courses for which admissions are sought to be made are Post Graduate courses in Medical and Dental Sciences. The Association has taken upon itself the task of conducting a Common Entrance Test. The magnitude of the task, its seriousness and implications must have been quite clearly known to the Association which is conducting the test and arranging the counselling. The communication or announcement of counselling, the terms and conditions and procedure to be followed forms a very important part of the admission process reflecting on the transparency of the process. Annexure "N" Communication which is not denied by the Association

and which is in fact admitted clearly stipulates that preference would be given to the candidates belonging to minority community. If the said publication is withdrawn or if any other announcement or information was published announcing different terms and conditions to the candidates, the same ought to have been done through a proper announcement made in writing so as to notify all the concerned about the revocation of the earlier announcement and the publication of new terms and conditions and the new selection process. Except a bare assertion made by the respondent institutions asserting that at the time of counselling it was made known to the candidates that the selection process would be solely based on merit, no other materials are placed before the Court. This shows a very casual and careless approach on the part of the Association which has undertaken such an important task of selecting candidates to the Post Graduate courses in Medical & Dental Sciences by conducting an entrance test.

44. The Apex Court in P.A. Inamdar's case at paragraph 143 and 144 dealing with the regulatory measures in the process of selection and in determining the fee structure has while approving the regulatory measures suggested in Islamic Academy's case to ensure fairness and transparency in the admission procedure has held that such a regulatory measure is necessary with a view to curb commercialisation of education, profiteering in it and exploitation of students. In paragraph 144 the Supreme Court has stated that the two Committees for monitoring admission procedure and determining fee structure as provided for in the judgment in Islamic Academy's case were permissible as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves. In paragraph 145 of the said judgment, the Court further proceeded to observe that unless the admission procedure and fixation of fees was regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb. In paragraph 146, the Apex Court went on to observe thus,-

...Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee structure.

45. The Apex Court has stated the position in no uncertain terms that a fair, transparent and non-exploitative procedure is required to be adopted by the educational institutions. The Court has characterised these requirements as triple tests. The Apex Court has further observed that in the event the institutions failed to maintain fairness, transparency and non-exploitative procedure (triple tests), the same can be taken over by the State Government and it is in this background that till necessary Regulations were framed, the Admission Committee was required to oversee the admissions. It is also further held that the agency which conducts the Common Entrance Test must be one which enjoys

the utmost credibility and expertise in the matter which would better ensure the fulfillment of the twin objects of transparency in merit.

136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline or education shaft have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several teste, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education Such institutions situated in one State or in more than one State may pin together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors, Such an agency conducting the common entrance test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfilment of twin objects of transparency and merit, CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation Holding of such common entrance test followed by centralised counselling or, in other words, single window system regulating admission does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen.

137. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefore subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing maladministration The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy an or any of the triple tests, indicated hereinabove can be taken over by the State subsisting its own procedure. The second question is answered accordingly.

138. It needs to be specifically stated that having regard to the larger interest

and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralised and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis. Till regulations are framed, the Admission Committees can oversee admissions so as to ensure that merit is not the casualty.

46. The enunciation of law and declaration made by the Apex Court makes it very clear that the process of admission and selection through the Common Entrance Test must enjoy utmost credibility and must fulfill the twin objectives of transparency and merit. In the instant case, the stand taken by the Association and its member Institutions is that at the last moment when counselling was to be scheduled on 15.04.2007, the students were informed that the process would be solely on merit basis and that no preference will be given to the minorities. This throws a serious doubt on the transparency of the process undertaken by the Association in the process of counselling and selection. Aggrieved by this process adopted by the Institutions, the students have complained to the authorities. They have produced representations dated 15.04.2007 addressed to the (1) Vice-Chancellor, Rajiv Gandhi University of Health Science, (2) The Director, Medical Education, Government of Karnataka and (3) The Secretary, Medical Education, Government of Karnataka, Bangalore, vide Annexure "J", wherein it is specifically alleged that contrary to the declared policy of filling of the seats first by Linguistic or Religious Minority and thereafter passing on the unfilled seats to the General Category, the Association filled up the seats by General Category, whose merit was doubtful. They have also given a complaint in this regard to the Overseeing Committee for the CET Examination on 17.4.2007.

47. The grievance of the petitioners that the counselling was not conducted in accordance with the norms published and a different method was adopted at the last moment is quite clear from Annexure-"N" and also from the very stand taken by the respondents in the statement of objections contending that the candidates were informed at the time of counselling that the selection would be based on merit and no preference would be given to the minority candidates. It is further seen that the One Man Regulatory Committee to whom the complaint was made, had after initiating proceedings ordered to keep the list of candidates selected by the respondent-Association in abeyance pending further consideration of the matter. However the jurisdiction and power of the One Man Regulatory Committee is questioned by the respondent-Institutions contending inter alia that it had no power or jurisdiction over admissions for Post Graduate Courses. The stand of the respondent-Institutions is that the selection and admission process is not amenable for scrutiny and verification by anybody. Since the jurisdiction and power of the Committee is the subject matter of a separate writ petition, it is unnecessary to go into these questions in this writ petition. However, this makes it necessary for this Court to find out the grievance made by the petitioners that the Association has not acted legally and in a transparent manner in making admissions.

48. The petitioners have challenged the entire selection and have sought for a direction to hold that the counseling conducted by the Association in the Post Graduate Dental Courses was illegal and also a further direction to respondents 4 to 6 to make admissions giving preference to the petitioners who belong to Telugu minority domiciled in the State of Karnataka. By way of an amendment, a direction is sought to declare that the admission of respondents 8 to 36 was illegal and the Consensual Agreement entered into by the Association and the State of Karnataka was void and bad in law. The wide ranging reliefs sought by the petitioners cannot be entertained at this stage. The petitioners have admittedly taken part in the Common Entrance Test which was conducted in the month of February 2007. They could have challenged the test conducted, if any malpractices had taken place, soon after the test was over. It is only when the petitioners were not selected in the Counselling conducted, they have approached this Court. They did not also seek these reliefs pertaining to the alleged illegal admissions of respondents 8 to 36 and about the illegality of the Consensual Agreement at the time when they filed the writ petition. In fact, these are reliefs incorporated in the amended writ petition. Grant of such relief would result in a situation where the admissions made to the entire academic year would be in jeopardy and there would be no way by which the process can be redone as the time factor is a most essential part in the academic course. Therefore, such reliefs sought in the writ petition cannot be granted.

49. Having regard to the fact that there is an obligation cast on the respondent-Institution and the Association to act in a transparent manner coupled with the fact that the respondent-Institutions being minority educational institutions have an obligation to cater to the needs of their minority communities, the petitioners are well within their right to approach this Court with the grievance that neither any preference was given to them though they belonged to Telugu Linguistic Minority residing in the State of Karnataka nor the process of counseling was transparent and fair. Therefore, the second question relating to the right of the petitioners to approach this Court to a limited extent of seeking reliefs in respect of their admission has to be conceded. It is seen that the respondents have not produced the Brochure containing the various conditions and norms for conducting the entrance test for Post Graduate courses in Medical and Dental Sciences. The Brochure produced by the petitioners at Annexure-J, does not contain any details regarding the norms. It only contains the calendar of events pertaining to the date of issue of application forms, last date for receipt of filled up applications, date of entrance test, date of publication of key answer, date of publication of final merit list apart from the intake details. The other materials which are part of the Brochure produced at Annexure-J do not deal with the norms and instructions. It does not say anything regarding the nature of the test to be conducted viz., whether it was to be based purely on merit or if the minority candidates were required to produce any certificate in that regard, With a view to show to the Court, the procedure that the Association of Private Medical Institutions had followed in this regard, the Counsel appearing for the

parties made available the Brochure for the Post Graduate Entrance Test for the Medical and Dental Courses for the year 2007, issued by the consortium of Engineering and Dental Colleges in Karnataka (COMED-K). It is seen from the said Brochure that there is a note containing the following:

(i) Minority status applicable to candidates of Karnataka origin only for admission to respective minorities status colleges, (ii) claims made by candidates as belonging to Karnataka origin or religious and linguistic minorities status etc., is not verified while sending PAT for COMED-K PGET 2007. However, if such a candidate qualifies for attending centralised counseling, it will be his/her responsibility to furnish the original documents issued by the competent authorities to the satisfaction of COMED-K authorities, failing which such candidate will be considered only under All India general merit.

50. It is thus seen that the Association has not issued any Notification in the form of a brochure containing such details. Brochure produced by the Association in W.P. No. 7469/2007 at Annexure-R3 does not disclose any such requirements and no details regarding norms and process to be followed for conducting the test and for selection is mentioned. It is therefore clear that while the COMED-K has made it very clear that minority status was applicable only to candidates of Karnataka origin for admission to the respective minority status colleges, nothing of that sort is forthcoming in the Brochure which is issued by the Association whose member colleges are exclusively established by minority communities. It is not mentioned in the said Brochure that no preference will be given to the candidates belonging to minority community and that all admissions will be based on general merit only. Such being the position, when a publication is issued at the time of counseling informing the candidates that students belonging to Linguistic Minorities would get first preference and if that process is not followed, the aggrieved students are entitled to approach this Court and contend that the process followed is illegal and non-transparent.

51. This takes us to the other questions raised at point Nos. III, IV and V regarding the transparency of the entrance test, whether, it was based on merit and was non-exploitative and also regarding the maintainability of the challenge made to the very consensual agreement and to the entire selection process and admissions made. Though several allegations are made by the petitioners regarding the nature of the test conducted and of the illegalities in the method and manner in which the merit list is published and the merit of the candidates is determined, we are not inclined to go into this question as the petitioners did not choose to approach this Court soon after the tests were conducted or the merit list was published. The merit list was published way back in the month of February 2007. Although the petitioners have contended that no such merit list was published on 27.02.2007 and that the list that was notified in the web-site contained only individual rankings and it was not a merit list, we are not inclined to enter into this aspect of the controversy. The writ petitions are filed in May 2007, whereas the merit list was published in February 2007. In that view of the

matter, the petitioners cannot maintain a challenge for the test conducted or the selection of other candidates. However, it has to be stated that the petitioners have approached this Court before the expiry of the last date for the admissions to be done after the second round of counseling which was fixed on 31.05.2007 in respect of admissions pertaining to the State quota students. The commencement of the academic session is stipulated as 31.05.2007. This is clear from the Notification issued by the Rajiv Gandhi University of Health Sciences on 11.04.2007 copy of which is produced at Annexure-E. Learned Single Judge has granted an interim order on 31.05.2007 directing the institutions to collect admission fee and tuition fee from the petitioners and permit them to attend classes from 01.06.2007 onwards by giving them provisional allotment and admission. Therefore, any exercise undertaken by this Court to examine the method and manner of counseling and selection done for admission would result in serious consequences on the students who are already admitted. At the same time, the fact that the respondent-institutions and the Association have not acted in a fair and transparent manner in adhering to the preference to be given to the candidates belonging to the minority community is clear. The Court has to therefore adopt a balanced approach confining the examination of the controversy to the interests of the petitioners only.

52. Although learned Counsel for the respondent-institutions and Association placing heavy reliance on paragraph 199 of the *Islamic Academic of Education v. State of Karnataka* contended that the view expressed by His Lordship Justice Sinha stating that at the Post Graduate level the minority institutions may not have much say having regard to the nature of the professional course which is a Post Graduate Course wherein the interest of the educational standards and the national interest are to be kept in mind in restricting admissions to minority communities and that the said view has been approved in P.A. Inamdar's case at paragraphs 18, 20, 103 and 106, on careful consideration of the judgment rendered in P.A. Inamdar's case and the view taken by his Lordship Justice Sinha in *Islamic Academy* case, we do not see that there is anything in the ratio laid down by the Apex Court which totally prohibits the minority educational institutions in providing certain amount of preference to the candidates belonging to their minority. Even if it is to be held that the minority institutions will have lesser say in respect of Post Graduate courses comparing the hierarchy of educational courses from nursery to the post graduate and super specialty level to a pyramid wherein at the bottom level (primary education) the institutions will have complete and large amount of freedom and as the courses of study advance and as they reach higher levels of education including professional education, the say of the minority institutions gets reduced and the merit deserves to be given more preference as pointed out in *Islamic Academy*, we do not see that any total restraint or restriction on the minority institution in giving minorities some preference is laid down. It cannot be construed or understood from these observations that there is a total prohibition on the institution from giving any amount of preference to the students of their community at Post Graduate level.

As we are not concerned with any super specialities in this case, we do not want to express any opinion in that regard. But, so far as the Post Graduate Courses in Dental Sciences with which we are concerned in this case, wherever there are more number of seats available for being filled up, a small percentage can be filled up by preferring students belonging to the minority community which has established the institutions. That will take care of the interests of the minorities and will also ensure that merited candidates will also get the opportunity. The ratio laid down in P.A. Inamdar's case and the view taken in Islamic Academy read together do not, in our opinion, come in the way of such limited preference for the minority community for admission to Post Graduate courses in Dental Sciences.

53. In the light of the above, we are of the clear view that the Association was not justified in not considering the case of the petitioners who claim to belong to minority community.

54. This takes us to the nature of relief to which the petitioners are entitled. As already held by us, the admissions made by the respondent-institutions cannot be annulled at this stage. However, we are of the clear view that the petitioners have suffered grave injustice on account of the illegal process adopted by the Association contrary to its own declared norms of preferring the candidates belonging to the Religious or Linguistic Minority first and thereafter admitting other students on the basis of merit. The mistake in this regard has to be passed onto the Association and its member institutions. We do not propose to go into the other allegations regarding the illegalities committed in the matter of holding the Common Entrance Test and as also in conducting the counseling. We express our displeasure over this sad state of affairs as a result of which the institutions and Association are getting out of any supervision and control by an authorised and competent authority in the process of selection adopted in making admission to the Post Graduate courses. The competency and jurisdiction of the One Man Regulatory Committee constituted by the State Government to verify and look into the alleged irregularities and illegalities committed in holding the Common Entrance Test or in admitting the students by conducting the Test, is a matter pending consideration in another Writ Petition before the learned Single Judge. Even otherwise, as the institutions have defied the directions issued by the One Man Regulatory Committee which had stayed the counselling and the selection of the students for admission to the Post Graduate Course by the Association and the stand of the institution before us is that all admissions have been completed and the last date for making admissions was over, the question whether the One Man Committee had jurisdiction to entertain the matter in respect of these admissions does not have much relevance for the reliefs sought by the petitioners. Particularly because we have held that the petitioners are not entitled for the reliefs for setting aside the selection and admission and of the Entrance Test conducted. However, the whole problem is cropped up on account of the wrong process adopted by the respondent-Colleges by switching over from the method of giving to the Linguistic Minorities to merit based admission. We

are of the view that in the peculiar and special facts and circumstances of the instant case, the admission of the petitioners except the admission given to Dr. Sitaram Prasad Kasina, petitioner in W.P. No. 7469/2007 deserves to be protected. The Institutions have to be restrained from making any further admission to these courses in the coming academic year for the courses, so that the students who are admitted as per the interim directions issued by this Court in the writ petition and who are prosecuting their studies shall be allowed to continue their studies. While issuing such a direction, we are conscious of the fact that the excess admission should not result in affecting the quality of training and education imparted in the courses. The Post Graduate course is spread over for a period of three years and in the course of training, the students have more rigorous practical training as they are required to attend the patients and undergo the training by virtually visiting the wards and attending to the patients. If the admission to the next academic year is prevented by the number of students who are admitted by virtue of the interim order granted in this writ petition, then in our opinion it will substantially maintain the strength of the students in the course if the three years course is taken as a unit. This is an inevitable consequence that has to be resorted to in the instant case, as this consequence is the creation of the Association and its Member institutions only. We cannot turn away the petitioner-students for no fault on their part.

55. We are of the prima facie view that the petitioner-students are required to be regarded as persons belonging to minority community. All of them have produced documents in support of their assertion in this regard. Although the Association and the institutions have denied this claim, this assertion of the petitioners has to be decided by the Rajiv Gandhi University of Health Sciences. The question whether the certificates produced by them in support of their status as students belonging to minority community are sufficient enough to confer such a status on them will be decided by the Rajiv Gandhi University of Health Science which is the authority to approve the admissions. At the time of approval of admission of these petitioners, the Rajiv Gandhi University of Health Science shall examine this aspect of the matter and take a final decision after satisfying itself in this regard.

56. Although the respondents have taken a contention that there are several other students whose merit also requires to be considered if they have to be accommodated under the quota of the minority community, we are not inclined to set aside the whole process of selection and admission made and issue any direction to redo the process. No other student has approached this Court claiming admission under the minority quota. Keeping in mind the all important aspect that the petitioners have been prosecuting their studies as per the interim order passed by this Court coupled with the time bound process involved in the professional course, any attempt made to reopen the admission and redo the process would affect the career of number of students admitted. Hence, we are not inclined to issue any such directions in this case. We are therefore confining the directions only to the petitioner-students who have approached this Court. By

virtue of the interim order passed by the learned Single Judge, petitioner-students except Dr. Sitaram Prasad Kasina have been admitted to the respondent-institution and have continued to prosecute their studies.

57. The Principal of Bangalore Institute of Dental Sciences has filed an affidavit in W.A. No. 1032/2007 dated 17.12.2007 stating that though Dr. Sitaram Prasad Kasina was allotted to the Bangalore Institute of Dental Sciences and was ordered to be given provisional admission in the said college as per the interim order dated 31.05.2007 passed by the learned Single Judge and although the provisional allotment order dated 31.05.2007 allotting the said Dr. Sitaram Prasad Kasina to Bangalore Institute of Dental Sciences for being admitted to MDS in Oral Pathology was issued, as there was no MDS course in Oral Pathology in Bangalore Institute of Dental Sciences, Dr. Sitaram Prasad Kasina was not given any admission and he never came to the Institute pursuant to the provisional allotment order passed. The Principal further asserts that he had passed an order dated 01.06.2007 informing Dr. Sitaram Prasad Kasina of the impossibility of implementation of the provisional allotment order due to nonavailability of the course at the Institute. It is further asserted in the affidavit that Dr. Sitaram Prasad Kasina had secured a seat in MDS Course in JSS Dental College, Mysore, for the academic year 2007-2008 and was pursuing his education at the said JSS Dental College, Mysore. This assertion made by the Principal of the College is not denied by the petitioner Dr. Sitaram Prasad Kasina by filing any counter affidavit. In these circumstances, Dr. Seetharam Prasad Kasina is not entitled for any relief in this writ petition.

58. We are inclined to adjust equities having regard to the peculiar facts and circumstances of the case by directing regularisation of the admissions of the other four petitioners, though such an admission may marginally exceed the intake fixed. The admissions made in excess of the intake for the current year (2007-08) shall be adjusted against seats available during the next academic years (2008-09/2009-10) and the concerned institutions shall not make admission against such seats, so that the total number of admissions for the two academic years does not exceed the sanctioned intake which the petitioners have been admitted. In taking this view, we place reliance on the judgment of the Apex Court in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, .

59. In the result and for the foregoing reasons, we hold that the petitioner-students, except Sitaram Prasad Kasina are entitled to regularisation of their admission to the Post Graduate courses in the respondent-institutions in the particular Specialities in which they had applied and in respect of which they have been given provisional admissions. However, the approval of their admissions by the Rajiv Gandhi University of Health Science would be dependent upon the satisfaction of the Competent Authority i.e., Rajiv Gandhi University of Health Science regarding the minority status of the said petitioner-students.

60. The respondent-University is directed to regularise the admissions of the

other four petitioners, though such an admission may marginally exceed the intake fixed. The admissions made in excess of the intake for the current year (2007-08) shall be adjusted against seats available during the next academic years (2008-09/2009-10) and the concerned institutions shall not make admission against such seats, so that the total number of admissions for the two academic years does not exceed the sanctioned intake.

60. Hence, the writ petitions are partly allowed. The respondent-University is directed to regularise the admissions of the petitioner-students except Sri Sitaram Prasad Kasina, on being satisfied with the minority status of the petitioner-students. It is further directed that the admissions of the four petitioners made in excess of the intake for the year 2007-08 shall be adjusted against the seats available during the next academic years (2008-09/2009-10) and the concerned institutions shall not make admissions against such seats so that the total number of admissions for the two academic years does not exceed the sanctioned intake. The writ petitions stand disposed of in the above terms.

62. In the light of the above order, the writ appeals filed against the interim orders do not survive for consideration. Hence, they are disposed of as infructuous. No costs.