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In the High Court Of Kerala

Case No : Writ Petition (C) No. 18366 of 2013

K.M.C.T. Dental College		APPELLANT
	Vs	
State of Kerala		RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:
Constitution of India, 1950 — Article 19(6), 226, 30(1)

Citation : (2013) 3 KLT 671

Hon'ble Judges : M.L. Joseph Francis, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : George Poonthottam, for the Appellant; Roshan D. Alexander, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

K.T. Sankaran, J.—Since common issues arise in these Writ Petitions, they are being disposed of by this common judgment. W.P. (C) No. 18366 of 2013 is filed by K.M.C.T. Dental College, Manassery, Kozhikode, which is run by Kunhitharuvai Memorial Charitable Trust. W.P. (C) No. 18474 of 2013 is filed by the Chairman of N.R.I. Service and Educational Trust, which runs P.M.S. College of Dental Science and Research, Vattappara, Thiruvananthapuram. P.M.S. College of Dental Science and Research and K.M.C.T. Dental College are self-financing educational institutions. In these colleges, hundred seats each for B.D.S. (Bachelor of Dental Science) are provided.

2. In the matter of admission to B.D.S. Course, the petitioner Colleges were part of the Consortium of Self Financing College Managements and on the basis of seat sharing agreements with the Government, admissions were being made. Under such process, 50% of the seats were to be filled up on the allotment by the Government, 35% of the seats were to be filled up by the Managements and 15% of the seats were earmarked as N.R.I. quota to be filled up by the Managements. The fee structure was different for the candidates coming under 50% of the Government quota, 35% of the Management quota and 15% of the

N.R.I. quota. Fees were also fixed in terms of the agreement executed between the Government and the Consortium of Managements.

3. The petitioner Colleges (P.M.S. College of Dental Science and Research and K.M.C.T. Dental College) decided to leave the Consortium during this academic year and to have their own method of admission for B.D.S. Course in their Colleges. The petitioners were willing to execute separate agreements with the Government for seat sharing and in the matter of fixing of fee. They duly intimated the same to the Government ahead of time. Their demand was that in all the seats except N.R.I. quota seats, the fee must be uniform. That means, the candidates coming under the 50% Government quota seats and under the 35% Management quota seats will have to pay the same fee. It was pointed out that such an agreement was executed between the Government and the Kerala Christian Professional College Managements Federation, whereunder the tuition fee payable by all the students other than N.R.I. quota students shall be Rupees Four lakhs per annum for M.B.B.S. Course and Rupees Three lakhs per annum for B.D.S. Course. The petitioners expressed their willingness to enter into an agreement similar in terms as the one executed between the Government and the Kerala Christian Professional College Managements Federation (Ext. P7 in W.P. (C) No. 18474 of 2013). The petitioners did not get any reply as to whether the Government was willing or was not willing to enter into any such agreement. However, a letter dated 25.6.2013 was issued by the Principal Secretary to Government to the petitioner in W.P. (C) No. 18474 of 2013, which reads as follows:

In inviting attention to the reference cited, I am to inform that your request for uniform fee structure for B.D.S. seats cannot be accepted by Government.

4. Placed in this situation, the petitioners have filed these Writ Petitions, essentially for issuing a writ of mandamus directing the Government to include the petitioners Colleges for making the first round of options, to take a decision in the matter of representation submitted by the petitioners immediately, for issuing a writ of mandamus directing the Government not to interfere with the process of admission in the petitioners Colleges as per their prospectus and for a declaration that the petitioners are entitled to collect uniform fee from the students other than NRI candidates.

5. In paragraph 26 of W.P. (C) No. 18474 of 2013, it is averred thus:

26. Petitioner understands that thereafter the Government had entered into a seat sharing agreement with Dr. Somerwell Memorial Medical College, on the same terms as in Ext. P7.

6. On the basis of the submissions made at the time of admission, we directed the respondents to produce the agreement, if any, entered into between the Government and Dr. Somerwell Memorial Medical College as well as the Government Order, if any, issued pursuant thereto.

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7. On behalf of the first respondent, a statement is filed by the Deputy Secretary, Health and Family Welfare Department. In that statement, it is stated that as per the agreement entered into between the Government and the All Kerala Self Financing Dental College Management Consortium on 20.5.2013, 50% seats are to be filled up from the Government merit list and 50% seats are to be filled up by the Management. Out of the 50% management seats, 15% are NRI seats. 26% of the students admitted under 50% Government seats are earmarked for Socially and Educationally Backward Classes (SEBC) and they have to pay annual tuition fee of Rs. 44,000/-. The candidates belonging to SC/ST category, for whom 10% of the 50% of the Government seats are earmarked, will have to pay no fee and their fee will be paid by the Government later. The other candidates coming under the 50% Government seats have to pay an annual tuition fee of Rs. 1,50,000/-. The annual tuition fee for the candidates coming under the 35% Management quota was fixed at Rs. 4,25,000/- and for the 15% N.R.I. quota students the annual tuition fee was fixed at Rs. 5,00,000/- with an interest free refundable deposit of Rs. 3,00,000/-. It is stated in the statement that all private Self Financing Dental Colleges except P.M.S. College of Dental Science and Research, K.M.C.T. Dental College (petitioners in these Writ Petitions) and Kannur Dental College have entered into an agreement with the Government.

8. The respondents justify the fixing of uniform fee structure of Rupees Three lakhs for all the 85% seats in the professional colleges under the Kerala Christian Professional College Managements Federation. It is pointed out that the Federation was not in agreement for seat sharing for the past several years and only in 2012-2013, they agreed to have an agreement for seat sharing with the Government. Accordingly, the offer made by the said Federation was accepted. As regards Dr. Somerwell Memorial Medical College, it is stated in the statement that they do not have any Dental College. At the same time, from the agreement entered into between the Government and Dr. Somerwell Memorial Medical College Management (Ext. R1(b)), it is clear that the fee is uniform for 85% of the total seats leaving out 15% N.R.I. seats.

9. The petitioners were ready and willing to execute an agreement with the Government for seat sharing. Their only demand was that the tuition fee should be at uniform rate for all the students except those coming under 15% NRI quota. It was pointed out that such an offer was accepted by the Government in the case of Kerala Christian Professional College Management Federation and Dr. Somerwell Memorial Medical College. According to the petitioners, there was no justification for applying a different yardstick for the petitioners and giving preferential treatment to other managements.

10. In answer, the respondents stated thus in paragraph 7 of the statement:

7. There are altogether 1,150 B.D.S. seats in the State in Private Self Financing Sector which includes 100 seats each in K.M.C.T., P.M.S. College and Kannur Dental College. All the above colleges were in agreement with Government for fixing two different fee structure for Government seats as well as Management

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seats till 2012-13. By fixing the different fee structure for Government and Management seats, Government could fix a fee almost at par with Government Dental Colleges in 40% seats. If Government agrees with the request of K.M.C.T. Dental College and P.M.S. Dental College, Vattappara, other Dental Colleges under the consortium may also follow their path whereby the number of students who can be admitted on a fee at par with Government rate of fee will be reduced considerably. This will affect the policy and efforts of the Government to provide higher educational facilities for the meritorious students of the State at a fee at par with Government fee. This would put Government into an embarrassing situation. Therefore, Government have decided not to accede their request in the larger interest of the students and the public.

11. The acceptability or otherwise of the explanation given in paragraph 7 of the statement is not a matter for consideration in these Writ Petitions. Even if it is to be found that the explanation is not acceptable, that is not aground for granting the reliefs as prayed for by the petitioners, since the Court cannot issue a writ of mandamus directing the Government to enter into an agreement with the petitioners for seat sharing. However, we hasten to add that if the explanation offered in paragraph 7 of the statement is true, there is no reason why a uniform fee was agreed upon by the Government in the case of Kerala Christian Professional College Management Federation and Dr. Somerwell Memorial Medical College. Nobody can be compelled to enter into an agreement. So far as the Government is concerned, that is a matter in the realm of taking policy decisions by the Government. But the policy decisions should be just, fair and reasonable and there should not be any attempt to apply different yardsticks in the case of different managements. A policy decision taken by the Government is normally beyond challenge under Article 226 of the Constitution of India. However, there are certain well accepted principles and precedents in the matter of interfering with the policy decisions taken by the Government. It is not necessary to consider those aspects in these Writ Petitions, since even if it is found that the policy decision taken by the Government is liable to be questioned, that does not entitle the petitioners to get a writ of mandamus issued to compel the Government to enter into an agreement with them.

12. The next question to be considered is what will happen if no agreement is executed between the petitioners and the Government for seat sharing and what method should be adopted in the matter of admission to the Dental Colleges run by the petitioners. In this context, the principles of law laid down by the Supreme Court are quite relevant. In T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , the Supreme Court held thus:

40. Any system of student selection would be unreasonable if it deprives the private unaided institution of the right of rational selection, which it devised for itself, subject to the minimum qualification that may be prescribed and to some system of computing the equivalence, between different kinds of qualifications, like a common entrance test. Such a system of selection can involve both written

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and oral tests for selection, based on principle of fairness.

....

56. .... It has, therefore, to be left to the institution, if it chooses not to seek any aid from the Government, to determine the scale of fee that it can charge from the students.

One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government.

13. In P.A. Inamdar and Others Vs. State of Maharashtra and Others, , the Supreme Court held thus:

124. So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of a difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat-sharing in unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement the State''s policy on reservation for granting admission on lesser percentage of marks i.e. on any criterion except merit.

125. As per our understanding, neither in the judgment of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, nor in the Constitution Bench decision in In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, which was approved by T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, is there anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalisation of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend

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to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidates. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

126. The observations in para 68 of the majority opinion in Pai Foundation on which the learned counsel for the parties have been much at variance in their submissions, according to us, are not to be read dis-jointly from other parts of the main judgment. A few observations contained in certain paragraphs of the judgment in Pai Foundation if read in isolation, appear conflicting or inconsistent with each other. But if the observations made and the conclusions derived are read as a whole, the judgment nowhere lays down that unaided private educational institutions of minorities and non-minorities can be forced to submit to seat-sharing and reservation policy of the State. Reading relevant parts of the judgment on which learned counsel have made comments and counter-comments and reading the whole judgment (in the light of previous judgments of this Court, which have been approved in Pai Foundation) in our considered opinion, observations in para 68 merely permit unaided private institutions to maintain merit as the criterion of admission by voluntarily agreeing for seat-sharing with the State or adopting selection based on common entrance test of the State. There are also observations saying that they may frame their own policy to give free ships and scholarships to the needy and poor students or adopt a policy in line with the reservation policy of the State to cater to the educational needs of the weaker and poorer sections of the society.

127. Nowhere in Pai Foundation either in the majority or in the minority opinion, have we found any justification for imposing seat-sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.

128. We make it clear that the observations in Pai Foundation in para 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State.

129. In Pai Foundation it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.

14. Act 19 of 2006 was enacted taking into account the decisions of the Supreme Court and also the past experiences in the State. The constitutional validity of Act 19 of 2006 was challenged in Lisie Medical and Educational Institutions v. State of Kerala (2007 (1) KLT 409). A Division Bench of this Court struck down

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Section 3 and certain other sections and Rules 10 and 11 of the Rules framed under Act 19 of 2006. The matter is now pending before the Supreme Court. Since no agreement is executed between the petitioners and the Government for seat sharing, the Government have no right to say that the Managements have no right to regulate and decide the procedure for admission. The learned counsel for the petitioners submitted that for admission, a fair, transparent and non-exploitative procedure would be adopted by the petitioners and that they are prepared to admit students from the NEET rank list. The learned senior counsel appearing for the petitioner in W.P. (C) No. 18474 of 2013 submitted that Ext. P8 letter dated 25.6.2013 issued by the Principal Secretary to Government should not be allowed to be misinterpreted to the detriment of the petitioner. So long as there is no agreement for seat sharing between the petitioners and the Government, we hold that the aforesaid letter dated 25.6.2013 would not be applicable to the petitioner in W.P. (C) No. 8474 of 2013. There is a mechanism under Act 19 of 2006 to supervise the entire process of selection and admission of candidates in the Professional Colleges. It is made clear that the Admission Supervisory Committee would have jurisdiction to intervene, if it is found that the admission of candidates in the petitioners Colleges is not fair, transparent and merit based. It is also made clear that the Government would have no jurisdiction to interfere with the admission in the petitioners Colleges only on the ground that uniform fee is being collected from the candidates under 85% of the seats, other than NRI seats. In other words, in the absence of any agreement between the petitioners and the Government, the petitioners would be entitled to fix a uniform fee, provided it does not exceed the annual tuition fee of Rupees Three lakhs as fixed in Ext. P7 agreement for the year 2013-14. It is also made clear that this judgment would not bar either the petitioners or the Government from entering into an agreement at a later point of time.

The Writ Petitions are disposed of as above.

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