

(1998) 03 MAD CK 0182
In the Madras High Court

Muthayammal Polytechnic

APPELLANT

Vs

The Regional Officer, Southern Regional Office, All India
Council for Technial Education and Others

RESPONDENT

Date of Decision : 04-03-1998

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1998) 2 MLJ 591

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—In all these writ petitions, the respective petitioner seeks the issuance of a writ of certiorarified mandamus, calling for the records of the first respondent made in G.O.Ms.No. 258, Higher Education Department, dated 8.5.1997, and also for a declaration that the proceedings of the third respondent in his letter No. 21249/J2/97-2, dated 16.6.1997 regulating the admission procedures for self-financing polytechnic Institutes for the academic year 1997-98 are inchoate and inconsistent with the All India Council for Technical Education Act, 1987 and Regulations, 1994, and pass such further or other orders as this Court may deem fit and proper.

2. To be little more specific learned Senior Counsel Mr. K.M. Vijayan appearing for some of the petitioners has (prayed) for the declaration mentioned above. Mr. A.L. Somayaji, learned Senior Counsel, Mr. Peppin Fernando, Mr. Mohan Parasaran and Mr. R. Muthukumarswami who have also appeared for some of the petitioners herein, have sought for the issuance writ of certiorarified mandamus. They have sought to quash G.O.Ms.No. 258, dated 8.5.1997. The sum and substance of both the Government Order and the proceedings are the same.

3. All the writ petitioners herein are self-financing polytechnics which have been established after they got approval from the All India Council for Technical Education and also as permitted by the Government of Tamil Nadu. It is said in all these writ petitions that they have established the Institutions without any

financial commitment from the Government. At the time when they were permitted to establish the Private Institutions, these Institutions were directed to fill up the intake capacity on certain conditions, i.e., 50% of the intake could be filled up at the discretion of the management, and the balance 50% must be filled on merits, as the Guidelines issued by the Government and the Director for Technical Education, from time to time. It is said that the Managements were required to follow the Rules of admission relating to minimum marks, qualifications prescribed by the Government from time to time. The other conditions provided for establishment of Endowments, provision of land, building, etc. who also complied with. In the year 1987, the Parliament enacted the All India Council for Technical Education Act, shortly known as A.I.C.T.E. Act, which came into force in 1988. The Act provided for the formation of a body known as A.I.C.T.E., and it also laid down the functions and powers of the Council. The powers included to lay down the norms and standards regarding admission and also in respect of other matters relating to educational institutions. On coming into force of the Act and the Constitution of the council, the entire area relating to technical education stood occupied by the Central Law. A.I.C.T.E, in terms of the above Act, issued various Rules and Regulations laying down the norms and standards for the course, infrastructural facilities and Guidelines for admission of students to educational institutions imparting technical education. It is said that it is a law referable to Entry 66 of List I of 7th Schedule of the Constitution. This occupied the entire field relating to the technical education and the State ceased to have any power with reference to subjects covered by the central legislation. After coming into force of the Act, permission to establish technical institutions, including polytechnics was a power vested with the A.I.C.T.E. subject to the Managements fulfilling the norms and standards prescribed by the body. The State Government ceased to have any jurisdiction with reference to technical institutions except to the extent provided for under the Regulations directed by the Central Government and by the A.I.C.T.E. under the said Act. It is said that all these Institutions were allowed to function only after the A.I.C.T.E. was satisfied with the infrastructural facilities in the Institutions. All these petitioners are making admissions in the Institutions, observing the norms and standards and Guidelines issued by the A.I.C.T.E. and also taking into account the higher standards, if any, fixed by the State Government from time to time. It is said that all these seats were filled by the petitioners after fulfilling the norms fixed by the A.I.C.T.E. The reason for filing all these writ petitions is that the State Government issued an Order, namely, Government Order No. 258, Higher Education, dated 8.5.1997, directing that admission to 50% seats as Government quota shall be regulated by the Director of Technical Education by constituting Regional committee. As per the said Government Order, admissions were done only by respective principal and not by the State Government. The petitioners submit that the Government Order is patently illegal and without jurisdiction and has got the effect of seriously encroaching upon the field governed by Central Law. In the various grounds of attack, it is stated that the State Government has no power to make any law including the issuance of any

order with reference to matters covered by the Central Law. Since the area occupied by the Central Law covers the impugned Government Order which seeks to regulate admissions to polytechnics which are educational institutions, is one without jurisdiction. It is also said that the impugned Government Order does not fall within the permissible higher eligibility qualifications, etc., but seeks to deal with and interfere with the matter provided for by the A.I.C.T.E. and, therefore, it is liable to be struck down as one without jurisdiction. The power of the management to admit students is sought to be interfered with by the impugned Government Order. But it is inconsistent with the Guidelines issued by the A.I.C.T.E. and is also violative of Article 14 of the Constitution of India. It is said that the Government appears to have issued Government Orders based on the condition subject to which the Government had granted permission to establish polytechnics After coming into force of the A.I.C.T.E. Act, the State legislature as well as the State Government ceased to have any power relating to Central Law. It is said that earlier the Government Orders issued in November, 1982-83 on various conditions also ceased to be in force, and cannot be relied on by the Government after the Central Law has occupied the field. It is said that this Court has struck down similar Government Order, G.O.Ms.No. 245, dated 7.5.1997 and for the same reasons, the impugned Government Order is also liable to be struck down. The Principals of the various Institutions are made liable for the lapse on the part of the Institutions. But at the same time, the Regional committee that is delaying the matter and it can also create hardship to the Management by deliberately violating the conditions and the principals in the Colleges are mute spectators. It is also said that the impugned Government Order has been issued under a total misconception. Merely because a few Institutes are violating the Government Orders and are collecting huge amounts there cannot be a general accusation against all self-financing Institutes and that cannot be a further reason to introduce executive fiats or restrictions which are contrary to law. In some of the writ petitions filed by learned Senior Counsel Mr. K.M. Vijayan, it is said that so long as there is no common entrance test for polytechnics, the impugned Government Order can be treated only as inchoate and inconsistent with the Guidelines issued by the A.I.C.T.E. Even though the A.I.C.T.E. has given various directions or guidelines for admission, none of them has been fulfilled by the Government an issuing the impugned Government Order will only create confusion and that is not going to achieve the purpose for which it was intended to be issued. A fee structure is not given. There is no centralised admission, nor is there a common entrance test, and no common merit list. It is for the above reasons, petitioners pray for a declaration that the direction dated 16.6.1997 is inchoate and inconsistent.

4. In some of the writ petitions, it is said that the impugned Government Order dated 8.5.1997 is bad since the same has been issued without hearing the affected persons and, therefore, it violates the principles of natural justice. The sweeping remark is without any basis or material and is, therefore, illegal.

5. Counter affidavit has been filed by the State Government as well as the

Director of Technical Education and also by the All India Council for Technical Education and also by the All India Council for Technical Education.

6. In the common counter affidavit filed by the State and the Director of Technical Education, it is said that the proceedings dated 16.6.1997 was issued to ensure that meritorious students are getting admission and the interests of the weaker sections are protected by strictly following the Rules of Reservation. It is only consequent to the proceedings, pursuant to and based on the communication dated 5.6.1997. It is said that the impugned notification is quite consistent with the scheme framed by the Supreme Court in the judgment reported in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . These instructions are issued only to see that the power of the Government to fill up the 50% seats which they are entitled to under the category of free seats. Before the impugned Government Order was issued, 50% seats were filled up strictly on merits and the balance by the management, as per the Guidelines issued by the Government and as per directions given by the Director of Technical Education subsequently. The selection was liable to be set aside and cancelled by the Director of Technical Education, if it is found that it is irregular and not in accordance with the guidelines issued in that behalf. As per the impugned Government Order, instead of getting post approval, a prior approval is sought for, so that there is no scope for setting aside the admissions made. It is intended only to protect the selected students from any hardship. In regard to the constitutional questions that are taken in the various writ petitions, it is said that these questions will arise only in cases of repugnancy between the Central enactment and state enactment. If there is inconsistency, the Central enactment will prevail, and it has no application to cases where the field is uncovered or left open. The allegation that the petitioners are admitting the entire 100% seats without reference to the Government is not correct. It is true that the selection was made by the management in so far as it relates to 50% free seats, but subject to the ultimate approval by the Director of Technical Education. Even now, the selection is to be made by the Institute after getting the approval from the Director of Technical Education. It is said that the A.I.C.T.E, has a statutory power and authority to provide Guidelines for admission of students to technical institutions and the University is imparting technical education to make necessary Rules and Regulations in that behalf. But the same has no statutory force. The State has also the power to issue Instructions under Article 162 of the Constitution and there is no inconsistency as alleged. When the decision of the Supreme Court governs the case, even the Rules and Regulations framed by the A.I.C.T.E. will be subject to the scheme. As per the Supreme Court's decision in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , the Government is directed to fill up 50% seats by its nominees, and the impugned Government Order seeks to achieve that purpose. As per the same decision, the selection of students need not be on the basis of a common entrance test. If selection could be made by other approved method, the same is also saved by the scheme. The new procedure of

admission in so far as the 50% free seats are concerned, is only in the interest of the selected students and to avoid unsettling the selection process. It does not curtail the power of the management as it has left the procedure to fill up the seats under payment quota intact with the Management. As per the new procedure, the application form will have to be supplied by the Director of Technical Education for admission under 50% free seat in self-financing polytechnics for the First year, i.e., 1997-98. It is said that Forms will be available for sale in Government Institutions. The filled in applications have to be sent to the principal of the concerned Institutions where admission is sought for by the candidate, and an Index Card attached to the Application Form has to be detached and sent to the Additional Director of Technical Education, Madras after the same is duly filled up by the candidate. There is also a self-addressed envelope addressed to the Additional Director of Technical Education. In the final selection list sent by the Institution, the Director of Technical Education, they are verified and checked with the Index Card, which procedure ensures that the procedure of selection on the merit basis and reservation policy. By this revised procedure, the eligible candidate can be benefited by applying for 50% free seats quota in self-financing polytechnic, and the Government Order can be effectively implemented without giving room for any complaint whatsoever. As stated earlier, the procedure as to admission for First Year Diploma Course is already in vogue and it was not newly introduced at present. The only change now effected is that instead of post-approval, proper approval is sought for at the time of admission itself. It is intended only for the benefit of all.

7. An additional counter-affidavit was also filed by the Director of Technical Education. It is said that subsequent to 8.5.1997, the Government has also issued G.O.Ms.No. 279, dated 22.5.1997, setting up a procedure to be adopted for regulating admission of seat under the 50% Government quota. It is further said that in case there is no common entrance examination, the Honourable Supreme Court has said that the Government is free to adopt any other criteria in its own discretion. Since there is no entrance test the question of exercising the discretion also does not arise.

8. In the various counter-affidavits filed on behalf of the A.I.C.T.E., it is said that it has issued guidelines on 15.6.1992 and 20.5.1994. The Regulation dated 20.5.1994 relating to procedure for allotment of seats and the Regulation dated 15.6.1992 refers to the criteria for admission in Engineering and Diploma Programmes. The contention of the petitioners that the State Government has no role to play in the admission of students to polytechnics is not correct. The council has been empowered to make Guidelines and the Statement Government has the power to act as per the Guidelines of the council. The only restriction is that the State Government cannot act in contravention of the Guidelines. It is also said that as per the Regulations of the Council, the State Government or the University concerned is the competent authority and they are authorised to administer the admission process. The council does not allow any institution to make their own admissions. The Regulations dated 20.5.1994 was issued by the

Council based on Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , wherein it has been held that the competent authority for all admission process is defined as the State Government or the University. The impugned Government Order No. 258 issued by the State Government is, therefore, within its authority and is not in contravention of the Regulations or Guidelines to the Council. The Government Order has been issued in order to centrally administer the admission process and the same does not violate or infringe the directions of the council, nor the scheme prepared by the Supreme Court and adopted by the Council. Therefore, all the respondents pray that the writ petitions may be dismissed.

9. I heard all the learned Counsel.

10. Before proceeding with the various contentions, it is better to extract the following letter as well as the Government Orders. They are: (1) Letter No. 21249/J4/97, dated 6.5.1997, (2) G.O.Ms.No. 258, Higher Education, dated 8.5.1997 (Letter and G.O. impugned in various writ petitions). They are as follows:

(English version of Letter No. 21249/J4) Department of Technical Education From To The Director of The Principals of all Technical Education, Self-Financing Polytechnics Guindy, Chennai-25. in Tamilnadu. Letter No. 21249/J4/97 dated 6.5.1997.

Sir,

Sub: Technical Education - Admission into I year Diploma Course in self-financing polytechnics during 1997-98 in free seat - Certain instructions - Regarding.

As per the policy decision taken by the Hon'ble Chief Minister in the High Level Committee "meeting held recently, it is decided that the application for admission of I year Diploma Course in self-financing polytechnics under 50% free seat will be issued by Directorate of Technical Education to regulate the admission.

Hence, all the Principals of self-financing polytechnics are requested not to take any action for the issue of application for admission into I year Diploma Course under 50% free seat and to admit candidates until further orders from this directorate.

They are requested to acknowledge the receipt of this letter by return of post.

sd. for Director of Technical Education.

G.O.Ms.No. 258:

Higher Education (J2) Dept.

G.O.Ms.No. 258, Dated: 8.5.1997. Read:

G.O.Ms.No. 603 E.S.T. dated 30.8.1996.

ORDER:

The High Level Committee constituted in the G.O. read above, among others, suggested that "even though there is different fee structure for students coming under Government quota and that of private management, capitation fee is being collected freely from all students irrespective of the category and therefore recommended that allotment of students in the Government quota may be regulated through centralised admission.

2. The Government have examined the above suggestion and direct that the application for the allotment of seats in polytechnics under Government quota (50%) shall be regulated by the Director of Technical Education by Constituting the Regional Committees. The Regional committee will be responsible for the sale of applications in polytechnics for each institutions to the applicants. If the student/applicant wants to apply for more than one institution, he will have to get those many applications in duplicate, paying for each one of them. The applicant will send one copy of it to the respective polytechnic and the other to the Regional committee. The admissions will be made by the polytechnic and the list will be sent to the Regional Committee concerned, and only after the approval by the Regional Committee concerned, the students will be given admission. The wait listed candidates will move up whenever vacancies arise due to mobility of the candidates in the event of applying for more than 2 or 3 institutions and the waiting list admission will also have to be approved by the Regional committee concerned.

3. The Director of Technical Education is requested to send proposals immediately for forming the required number of Regional committees for the above purpose.

I will also be making reference to portions of G.O.Ms.No. 279, Higher Education Department, dated 22.5.1997, referred to in the counter-affidavit filed on behalf of the Director of Technical Education though it is not extracted.

11. Now I come to the various submissions made by learned Senior Counsel appearing for the various writ petitioners.

12. (1) The impugned Government Orders dated 8.5.1997 and 16.6.1997 have been issued without jurisdiction. The State Government has no power to issue such instructions when there is already a law enacted by the Central Government. When the Central Government has enacted a law, i.e., A.I.C.T.E. Act, and All India Council for Technical Education has also issued Regulations and Guidelines, which relate to admissions to various polytechnics, the State Government cannot issue any Instructions in that field, which has already been occupied. (2) The various writ petitioners have followed all the Instructions of the Government and there is no necessity for issuing G.O.Ms.No. 258, dated 8.5.1997 and the subsequent G.O. dated 22.5.1997. They have not been heard before passing the impugned orders. (3) There is no centralised admission for the polytechnics and so long as there is no such procedure, it is impracticable to

enforce the Government Order. It creates confusion among the various Institutes and the Principals of the Institutions ultimately become the victims. (4) These various Institutes are not taking any financial aid from the Government. At the same time, they have invested huge amounts. From 1982-83 onwards, they have been obeying the Instructions of the Government without fail So long as there is no complaint against any of these Institutions that they have collected any fees other than the rates prescribed by the Government, tarnishng their image by issuing these Government Orders is most unwarranted.

13. All the learned Senior Counsel laid stress on their argument that the impugned Government Order and letter are one without jurisdiction. According to them, they violate Article 162 of the Constitution. The following decisions were relied on by learned B.N. Nagarajan and Others Vs. State of Mysore and Others, , Union of India v. Ann Kumar Roy AIR 1986 S.C. 737 : (1986)1 S.C.J. 246, State of Haryana, Vs. Shamsher Jang Bahadur, etc. etc., and Chief Settlement Commissioner, Rehabilitation Department, Punjab and Others, etc. Vs. Om Prakash and Others etc., .

14. The above legal position submitted by various learned Senior Counsel for the petitioners is not disputed either by the learned Additional Advocate General or the Additional Solicitor General, who appeared for the A.I.C.T.E. According to them, there is no scope for such an argument, not has it any application to the facts of these cases. It is the case of the respondents that Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , is a law declared by the Supreme Court and the Supreme Court has also prepared a scheme. It has also directed that the scheme may be given a statutory power, especially by incorporating the Rules that may be framed under the enactments. Their Lordships also considered in that judgment the scope of All India Technical Education Act, 1987. Their Lordships have also taken into consideration in paragraph 190 of the Judgment the Guidelines issued by the A.I.C.T.E. for admission to Engineering Degree and Engineering Diploma Programme in G.S.R.320, dated 15.6.1992. The scheme was also approved by the Supreme Court. As per the said scheme, the Government or the University is the appropriate and competent authority and shall be competent to allot students for admission to various professional colleges in a given state. "Professional College" has also been defined to Include Institutions imparting technical education including electronics, computer science, established at or run by private educational institutions. As per the scheme approved by the Honourable Supreme Court, a competent authority is entitled to allot students for admission and it is also competent to grant recognition to a professional college. It is also stated in the main part of the judgment, i.e., in paragraph 204, that the private educational institutions merely supplement the effort of the state in educating the people. It is not an independent activity. No private educational institution can survive or subsist without recognitions and or affiliation. The bodies which grant reconnection and or affiliation are the authorities of the State. Their Lordships emphasised that it is obligatory in the interest of general public upon

the Authorities granting recognition or affiliation, to insist upon such conditions as are appropriate to ensure not only education of requisite standard, but also fairness and equal treatment in the matter of admission of students. Their Lordships further went on and said that since the recognising/affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution. It cannot allow itself or its power or privilege to be used unfairly. The incidence attached to the main activity attached to supplemental activity as well. Affiliation or recognition is not there for anybody to get it gratis or unconditionally. Their Lordships further said that in such cases, no Government Authority or University is justified or is entitled to grant recognition the affiliation without imposing such conditions, and doing so would amount to abdicating its obligations enjoined upon it by Part III of the Constitution, and its activity is bound to be characterised as unconstitutional and illegal. It is with this in mind, the Honourable Supreme Court prepared the scheme.

15. It could be further seen from the same decision of the Honourable Supreme Court was also emphasising that merit should be the consideration for selection, and at the same time, the various private institutes should not commercial their right to establish educational institutions. Their Lordships said that education is neither a business nor a trade, but it is a mission. It is also not a profession. Their Lordship also emphasised that the grant of recognition or affiliation is not a matter of course, nor is it a formality. It is a matter of substantial significance the very life-blood of a private educational institution, and unless there is a recognition, any Degree given by it will be of no use. Thereafter, their Lordships also went on and said that while preparing the scheme, that 50% in every professional college shall be filled by nominees of the Government or University, as the case may be, and students shall be selected on the basis of merit in the common entrance examination. Their Lordships also directed in a para 210, Sub-para (2) that in the absence of an entrance examination, selection has to be made by such criteria as may be determined by the competent authority or the appropriate authority, as the case may be. The remaining 50% seats (payment seats) shall be filled by these candidates who are prepared to pay the fee. It was also said that there shall be no quota reserved for the management or for any family, caste or community which may have established such college, and the reservation also should be only for constitutionally permissible classes with the approval of the affiliating university or the appropriate competent authority. It was also directed that no professional college shall call for applications for admission separately or individually. All applications for admissions to all the seats available in such colleges shall be called by the Competent Authorities alone, and it shall be done only by one notification. According to me, the above directions by the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , will empower the State Government to issue the Government Order. It is nobody's case that Unnikrishnan's case is not a law and the direction by the Supreme Court that the competent authority is to

issue also empowers the Government to issue the impugned Government Order. The scope of Article 162 of the Constitution, therefore, does not call for any discussion, nor is there any scope for inconsistency, or is there any scope for an argument that it is without jurisdiction.

16. According to me, even the argument of the petitioners' Counsel that it goes beyond the Guidelines of the A.I.C.T.E. also cannot stand. The A.I.C.T.E. has no case that the impugned Government Orders are inconsistent with any Regulations or Guidelines. In this connection, it is also worthwhile to consider certain salient features of the Guidelines issued by the A.I.C.T.E. issued on 15.6.1992. Guideline No. 7 deals with criteria for admission. It says that admissions to diploma programmes in engineering should be centrally administered by the respective State Governments/U.T. Administrations, and the criterion for selection of candidates for admission should be the merit ranking based on the aggregate percentage of marks in all the subjects of the qualifying 10 + level Secondary School Leaving Certificate Examination or on the basis of the Entrance Test, if conducted by the State Government/U.T Administration, [Italics] Regulation were also issued by the A.I.C.T.E. on 20.5.1994. It defines a competent Authority as a Government of University or authorities as designated by a competent authority as a Government of University or authorities as designated by the Government, and Clause 5 of the Regulation of 94 deals with the procedure of admission. It also shows that it is the competent authority who has to make admission according to the Regulation, and going by the Regulation, it is seen that the competent Authority is not a silent spectator of the Regulation. It is also bound to see that the Regulations are fully complied with. The Regulations contemplate that the entire admission must be on the basis of merit out of which 50% must be treated as free seats. For the purpose of implementing the Regulation and to see that admission is done in accordance with the Guidelines and Regulations of A.I.C.T.E., G.O.No. 258 was issued. Though it is not for the entire intake of students, at least, in respect of 50% free seats, the Government Order is at least a partial implementation of the A.I.C.T.E. Regulation. It must also be noted that even before these Regulations came into force, whenever the Government was approving or sanctioning the establishment of a polytechnic, it insisted that 50% shall be strictly on merit, and that too approved by the Director of Technical Education. The Government Orders before 1993 provide for it, and the Managements were also obeying the same. At that time, it was a post-approval. If any selection or admission is not appraised by the Director of Technical Education, the students have to leave the Institution. That put the students to great hardship, and such students were not in a position even to get admission in other Institutions. The amount which the student had spent also becomes a waste. Taking into consideration the difficulties of the candidate, the present Government Order only contemplated that before a firm admission, a prior approval is obtained. Prior to *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, and thereafter, candidates were only provisionally admitted. Even now, as per the present Government Order

dated 8.5.1997, the Principal is given the power to select the candidate strictly on merit. The only condition is that before he is finally admitted, it must be approved by the Director of Technical Education. I do not think that the prior procedure and the later procedure has any difference in so far as the Institution is concerned. All admissions were subject to the approval of the Director of Technical Education. The present procedure is only to oversee that the admission are made strictly in accordance with merit and also strictly according to Guidelines. It is in the best interest of the students.

17. An argument was taken by some of the learned Senior Counsel that there is not common entrance test. I have already extracted the relevant passage in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , wherein their Lordship have said that common entrance test alone is not the criterion for admission. The competent Authority is empowered to consider other methods also for centralised admission. In this case, the State Government, i.e., the competent authority has started to follow a new method for centralised admission. In regard to free seats, the application shall be issued only by the Director of Technical Education. How it has to be used by a candidate is explained there, and necessary Instructions have been given regarding that The Director of Technical Education thereafter verifies the Index Card with the provisional admission made by the Institution and after satisfying that it is considered the merit of the candidate and other guidelines, approves the admission. I do not find any allegation in the writ petitions that this method of centralised admission in regard to free seats has put the Institutions to any hardship. At the same time, in regard to payment seats, the earlier Government Orders even now govern the field. There also the eligibility and merit have to be considered, though the approval is not necessary. The free seats are intended for the weaker sections of the society and also for the reserved candidates. The Government, as a protector of the weaker sections, wanted to see that their interest and their merit do not go a waste. It is in the interest of the public and also in the best interest of the candidates. It is not inconsistent with any of the provision or Guidelines of the A.I.C.T.E. and the same was intended only to fully implement the guidelines. There is no scope for the argument that these Instructions have been issued without jurisdiction. Therefore, the argument is repelled.

18. Learned Senior Counsel for the petitioner also brought to my notice a Bench decision of this Court reported in The Association of Managements of Private Colleges and Others Vs. The State of Tamil Nadu and Others, . On the basis of this decision, an argument was advanced that a similar Government Order was quashed by the Division Bench. I do not think that the decision has any application to the facts of this case. In that case, the Bench said that the Government Order in that case pertained to Arts Colleges and, therefore, the same is not governed by Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . It was also found in that case that there was no centralised selection, and Unnikrishnan's case applied only to professional colleges. Each College has got its own standard to consider the merits. The

Government Order impugned in that case was also not a law and, therefore, it was held that it did violate Article 162 of the Constitution. In this case, I have already found that the decision in Unnikrishnan's case is a law, and A.I.C.T.E. has also issued Guidelines, and the impugned Government Order is intended only to implement that Guideline. The Government Instructions also can be issued on the basis of Unnikrishnan's case, being the competent authority.

19. Learned Senior Counsel also relied on the decision reported in State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, in support of his contention that the power of the State Government is taken away in view of the passing of the A.I.C.T.E. Act and the field is already occupied. I have already answered the above point and I do not think that any further discussion on the basis of this judgment is necessary.

20. All the other arguments advanced by learned Senior Counsel for petitioners can be considered together.

21. It was contended that the impugned Government Order dated 8.5.1997 was issued without hearing the various Institutions under a misconception. It was also contended that before issuing the Government Order, viz., G.O.Ms.No. 258, a High Level Committee was appointed for a certain purpose, the question whether the fee structure is correct, or whether the Institutes are collecting higher fees than the rates fixed by the Government, were not matters required to be considered by that committee and they were asked to consider only the infrastructural facilities of each and every Institute. There is no reference to any of these Institutes, that they are receiving capitation fees, which is the basic reason for issuing the impugned Government Order. When there is no reference to consider the same and in fact the committee has not considered it, the argument is that the impugned Government Order has been issued without application of mind, and that there is no material for issuing the G.O.

22. I do not think that the said argument has also any legs to stand. It is true that a High Level Committee was appointed as per G.O.Ms.No. 603 of 1996, which is referred to in the impugned Government Order. Though the order of Reference does not make mention of the complaints against the Institutes, whether they are receiving any additional amount, it is seen that the purpose for instituting the committee was, that there was scant regard for maintaining the standard of education, and what necessitated the Government for passing the impugned Government Order was that admission to the free seats must be regulated by centralised admission. If centralised admission is intended to consider the merits of the candidates and provide facilities for weaker sections of society, I do not think that the Government Order could simply be invalidated for the reason that a High Level Committee was not empowered to do it. One of the main reasons for appointing the High Level Committee was that the Educational Standard was not being maintained. Naturally, for considering the infrastructural facilities and for imparting education, a good educational institution and the merit of the student/candidate is also to be considered. The Committee also

recommended it, and the Government has also accepted it. I do not think that the petitioners can challenge the recommendation of the committee for the reasons alleged in the writ petitions.

23. I do not think that any further individual hearing of the various Institutions is necessary, because, the Government is insisting upon a policy. How the petitioners are affected by the impugned Government Order when there is already a declared law by the Supreme Court is not explained anywhere in the writ petitions. There is no scope for any individual hearing, nor is there any violation of principle of natural justice in such cases.

24. The principle of promissory estoppel also may not have any application here when the Government Order was issued in public interest. On going through the various Government Orders, I do not think that the Government has made any representation that it will not change its policy and the various Institutions have acted on their representation to their detriment. Even if there was any representation, it will not stand in the way of the Government to implement a law declared by the Supreme Court, to disobey the Order would amount to committing an illegality.

25. Learned Senior Counsel Mr. K.M. Vijayan argued that the letter No. 16697 is invalid.

26. In view of my finding that the Government has power to issue Instructions on the basis of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., as well to implement the Guidelines of A.I.C.T.E., I do not think anything requires to be considered regarding this letter. It is only an instruction how the application form is to be issued for the purpose of regulating the admission for the free seats. I do not think that the letter referred to above is one without jurisdiction.

27. After the impugned Government Order dated 8.5.1997 was issued, the Government has further issued another G.O., namely, G.O.Ms.No. 279, dated 22.5.1997. On a reading of that G.O., I find that it is only regarding the procedure to implement the Government Order dated 8.5.1997, which I have already held as valid. The G.O. dated 22.5.1997 only says that a common advertisement for the First year Diploma course has to be issued and how the various Institutions should send the application form to the Principal of the concerned Institutions, and how to make use of the Index card, filled up by the candidates. Since a detailed procedure has also been issued by the Government on 22.5.1997, the argument that the Institutions are put to great difficulties, is also without any basis. The Principals of the Institutes are only sending provisional admission intimation. If they are not approved, the principals are also free from any difficulty.

28. An argument was taken by learned Senior Counsel Mr. K.M. Vijayan, that there is no fee-structure. I do not think that the said contention is also correct. Even before Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and

others etc. etc., the Government has already issued a Government Order on 27.3.1993 fixing the fees to free seats and payment seats.

29. In the additional counter affidavit, it is also said that the earlier fixation of fees is even now in vogue and the Government is considering about revising the same.

30. The argument that the aptitude test or interview is not conducted also loses its importance when there is no common entrance test.

31. Learned Additional Advocate General brought to my notice that there are 99 self financing polytechnics in the State out of which 94 polytechnics have already complied with the direction dated 8.5.1997 and the selection list sent by them was already approved by the Director of Technical Education. Only five Institutes have challenged the same in these writ petitions. Since 95% of the Self-financing Institutions have implemented the Government Order, it shows that none of these Institutions are prejudiced by the impugned Government Order, and they have accepted the same in the best interest of the students. I find force in that argument also.

32. In the result, all these writ petitions are dismissed. No costs, connected W.M.Ps. that are pending are also dismissed consequently.