

(1992) 04 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petitions No"s. 7385 of 1989, 21727 of 1990, 9911 of 1990, 6404 of 1990 and 8208 of 1989

Nitte Education Trust and another, etc.

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 23-04-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 226, 41
Karnataka State Universities Act, 1976 — Section 53

Citation : AIR 1993 Kar 167 : (1992) 3 KarLJ 160

Hon'ble Judges : N.Y. Hanumanthappa, J

Bench : Single Bench

Advocate : M.V. Seshachala, B. Veerabhadrappe, B.T. Parthasarathy, Anant Mandagi, K.S. Desai and P.P. Muthanna, for the Appellant; Sylendra Kumar, M.N. Seshadri, D.L.N. Rao, V.S. Gunjal and N.B. Bhat, for the Respondent

Judgement

1. Since the question of law involved in all these petition is common, all these petitions are clubbed together and a common order is passed.

2. A few facts in each case are as follows :

W.P. No. 7385 of 1989 : The case of the petitioners is that the 1st petitioner is „a linguistic minority institution of Tulu speaking community having its office at Nitte, Karkala Taluka, Dakshina Kannada District. The said Society has been started with an intention to impart education to its members. It established and is administering number of colleges and institutions, to name a few, Dental College at Mangalore, Pharmacy College at Deralakatte in Mangalore Taluk, Engineering College, Polytechnic, First Grade college and one junior college and one High School at Nitte, Karkala Taluk. All the institutions are recognised by the Government of Karnataka. The institutions of the petitioners are imparting very high standard of education to its students. The students are getting high ranks in different examinations conducted. All the colleges referred to above are affiliated to Mangalore University. As the institution is a philanthropic one, it thought of

starting a Medical College in Dakshina Kannada District. Under Article 30 of the Constitution of India the Society being a linguistic minority institution has a right of establishing and administering educational institutions of its choice. Hence, in the year 1987-88 the petitioner gave an application to the respondent seeking affiliation and permission to start a medical college. On 4-1-1987 the local inspection committee held an inspection and submitted a favourable report. On the basis of the said report, the University of Mangalore recommended to the Government the case of the petitioner to establish and administer a medical college. However, the respondent by its endorsement dated 15-7-1987 rejected the request of the petitioners. For the academic year 1988-89 the Society once again submitted its application seeking permission to start a medical college. The same came to be rejected again by the respondent by its endorsement dated 18-7-1988. Again for the academic year 1989-90 the Society presented an application for the same purpose which was again recommended by the Affiliation Commission. But no action was taken. In the meanwhile, the petitioners came to know that the Government had taken a policy decision not to grant permission to start any more medical colleges in the State on the ground that there are sufficient number of medical colleges in the State and thus there is no need to have any more medical colleges in the State. When the third application of the petitioners was pending, 3 medical colleges in the State approached the Indian Medical Council to permit them to double their intake and the Indian Medical Council in turn accepted their request. As the decision to increase the in-take of some of the private medical colleges amounted to granting permission to start new medical colleges, the petitioners went on requesting the Government to grant the permission as sought for. The petitioners also brought to the notice of the Government that the Society has got all the infra-structures, necessary finance, buildings, land and necessary staff to teach M.B.B.S. course as the staff is already teaching the Dental College students. The petitioners also brought to the notice of the Government that there is no prohibition in the Karnataka State Universities Act to start a medical college. It is also explained by the petitioners that in case permission is accorded they would establish and administer an hospital as per the standard of the Indian Medical Council within 18 months from the date of starting the medical college. In addition to this the petitioners explained that in view of the decision rendered by the Supreme Court in Siddhartha Education Trust's case, possessing own hospital during the pre-clinical course is not a must; but it is sufficient if the concerned institution undertakes to provide clinical facilities within 18 months of starting the medical college. For the reasons given above, the petitioners seek for the following reliefs :

"Therefore, it is prayed that this Hon'ble Court be pleased to issue.

(a) A writ in the nature of mandamus directing the respondent State to permit the petitioner trust to establish and administer a Medical College which would impart education leading to a degree in M.B.B.S. for the academic year 1989-90;

(b) Issue such other writ, or direction or order as this Hon"ble Court deems fit in the circumstances of the case in the interest of justice."

3. The Government filed its statement of objections. The stand of the Government in the statement of objections is as follows :

There is no merit in any one of the contentions raised by the petitioner. If the institution is a minority institution, it may have a right to establish and administer medical college but granting permission or affiliation is not just a formality. The Government took a policy decision during the year 1989-90 not to sanction any new medical college for the reason that there are already 4 Government Medical Colleges and 14 Private Medical Colleges in the State. The private medical colleges are not up to the standards prescribed by the Indian Medical Council, Most of the private medical colleges depend upon the Government clinical facilities. Because of non-availability of clinical facilities, most of the private medical colleges are depending of the Government Hospitals and Government clinical facilities. Government took the decision not to grant any more medical colleges in the State. But, that does not mean a permanent prohibition for seeking permission. The restriction imposed by way of policy decision is not only in the interest of the State but also in the interest of minority institutions. It is the State which has the right to bring regulatory measures on the right of the minority institutions under Article 30 of the Constitution of India. Refusal to grant permission to start medical colleges is in tune with Article 41 of the Constitution. The policy formulated by the State is the sovereign power of the State and the same cannot be subjected to the provisions of the Act. During the period 1989-90 the Government had not permitted to establish any more medical colleges on the ground that there is already unemployment problem in the State. The policy decision taken by the Government is with the main object to see that standard of education is maintained on the one hand and that the unemployment problem of the Doctors is not aggravated on the other hand. The petitioner/Society has neither the required infra-structure, facilities, let alone the financial capacity. Secondly, the Government of India has taken a decision not to have any more medical colleges in the country. Thus, the respondent submits that refusal to grant permission is neither arbitrary or unreasonable Nor can it be said that the action of the Government is not in conformity with Article 14 or Article 19(1)(g) of the Constitution.

4. Subsequent to filing the Statement of Objections, the petitioners filed a reply statement contending that the reasons given by the Respondent to refuse to grant permission is quite arbitrary. According to the petitioners, the Government granted permission to increase the in-take of some of the private medical colleges in the State and the said permission was granted when the application submitted by the petitioners seeking permission to start a medical college was pending. The said increase was granted to various private medical colleges in the State on different dates, viz., 14-2-1989, 29-7-1989, 25-11-1989, 1-10-1990, 15-2-1991 and 16-10-1991 and the total increase of in-take of private medical

colleges was about 730 which may roughly come to granting 7 more medical colleges. The information relating to increase in the in-take of different medical colleges on the dates mentioned above is as follows :

Sl. No.

Colleges

Permitted in-take as existed.

Increased in-take permitted in the year 1989

Total in-creased.

By go dated 14-2-89

By go dated 29-7-89

1.

Dr. Ambedkar Medical College.

50

100

50

2.

Shri Devraj Urs Medical College, Kolar.

130

150

20

3.

a) Kasturba Medical College, Manipal Section.

220

250

30

b) Kasturba Medical College, Mangalore Section.

200

250

250

50

4.

J. J. M. Medical College, Davana-gere.

240

270

250

30

5.

Al-Ameen Medical College, Bijapur.

120

125

5

6.

J. N. Medical College, Belgaum.

155

175

20

7.

B. L. D. E. Societies Medical College, Bijapur.

130

160

30

PLUS

235

8.

Siddartha Medical College has been permitted to admit in 1989

150

Total increase given in the year 1989 to various colleges.

385

5. Further, the Government have accepted the recommendations of the Universities and are ordered to allot the additional seats to the following colleges

as recommended by the respective Universities :

Sl. No.

Name of the College

Seats already sanctioned for the year 90-91

Additional seats now sanctioned.

Total

1.

Kasturba Medical Colleges, Mangalore.

250

50

300

2.

J. J. M. Medical College, Davanagere.

250

50

300

3.

B. L. D. E. A. Medical College, Bijapur.

130

30

160

4.

M. R. Medical College, Gulbarga.

150

25

175

On 15-2-1991 once again increase in in-take was permitted from 45 to 70 to 2 different colleges. Further by the Government Order dated 16-10-1991 the Government increased the intake in private medical colleges up to 120. The increase of such in-take, when the petitioners' application was pending, contrary to the order passed by this Court in Writ Appeal No. 708 of 1990 dated

8-11-1990 wherein this Court while making reference the some of the decisions had held that the request has been ordered to be re-considered on the basis of need of medical college existing on date of application for permission to start medical college irrespective of what had happened between the date of application and the endorsement dated 4-10-1981 at Annexure R.-6. Apart from this, Government had rejected the request of Kasturba Medical College, Mangalore Branch for splitting up of existing college into two sections on the ground that it amounts to establishing of a new college. Further the Government had also observed that Government already taken a policy decision not to start any new medical college during 1989-90. Similar were the orders in the case of J. J. Medical College, Davangere, and Devraj Urs Medical College, Kolar. Within no time Government gave a go by to its earlier stand, permitted to split the Kasturba Medical College into two, allowed to double the in-take of J. J. M. College, Davangere, and granted permission to Devaraj Urs Medical College, Kolar to start Medical College at Kolar. It is also contended in the reply statement that the action of the Government in not considering the petitioner's request in already to the decision rendered by the Supreme Court in Shri Siddhartha Educational Society and another v. Chief Secretary to the Government of Karnataka and others (Writ Petition No. 210 of 1987) dated 6-1-1988 (Annexure R-3) and in Siddhartha Educational Society and another v. Chief Secretary of State of Karnataka and other (Civil Misc. Petition No. 5414 of 1988) dated 21-4-1988 (Annexure R-4) which are extracted below :

" ANNEXURE R-3

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURIDICTION

WRIT PETITION NO. 1240 OF 1987

Shri Siddhartha Educational Society and another,

PETITIONERS

--Versus--

Chief Secretary to the Government of Karnataka and others.

RESPONDENTS

ORDER

Whatever may be the policy of the Government for the academic year 1987-88 the Government is directed to consider the question of grant of affiliation to the petitioners' Society for the year 1988-89 giving due weight to the fact that the petitioner's Society for the year 1988-89 giving due weight to the fact that the petitioner's Society is an institution of persons belonging to Scheduled Castes and Scheduled Tribes and also to the fact that the Local Inspection Committee and the Academic Council and the Syndicate of the University have

recommended granting of such affiliation and the application in this behalf has been pending for about three years.

We clarify that it will not be necessary for the petitioner to make a fresh application for the academic year 1988-89.

"In view of the aforesaid direction, the petitioners withdraw all the allegations made against respondents 5 and 6. The Writ Petition is disposed of accordingly with no order as to costs.

Sd/- M. P. Thakkar, Judge. Sd/- Murari Mohan Dutt, Judge.

New Delhi, January 6, 1988."

Annexure R-4 reads as under :

" SUPREME COURT OF INDIA

Record of Proceedings

Civil Miscellaneous Petition No. 5714/88 (In WP No. 1240/87)

Siddhartha Education PETITIONER(S)/ Society and another. APPELLANT(S) --
Versus-

Chief Secretary of State of Karnataka and others

(for directions) RESPONDENT(S). Dated : 21-4-88. This matter was called on for hearing today. Coram :

Ranganath Misra Hon"ble Mr. Justice M. M. Dutt.

For the petition(s)/ Mr. Soli J. Sorabji, Appellant(s): Sr. Advocate. M/s. BRGK Achar, MN Shroff, Advs. "For the respondent(s)/ Mr. K. L. Sharma, Opposite Party : Sr. Advocate. Mr. M. Veerappa, Advocate. Mr. C. S. Vaidya- nathan, Advocate. Mr. P. R. Rama- sesh, Advocate. UPON hearing counsel the Court made the following

ORDER

Heard learned counsel for the parties. This court made an order on January 6, 1988 by saying, "Whatever may be the policy of the Govt. for the academic year 1987-88, the Government is directed to consider the question of grant of affiliation to the petitioners" Society for the year 1988-89, giving due weight to the fact that the petitioners" society is an institution of persons belonging to Scheduled Castes and Scheduled Tribes and also to the fact that the Local Inspection Committee and the Academic Council and the Syndicate of the University have recommended granting of such affiliation and the application in this behalf has been pending for about three years. Pursuant to the direction in the order the petitioner has made an application to the State Government respondent herein. The present application is for a direction to the State Govt. to dispose of the said application within a time frame. The learned counsel

appearing for the respondents agree that the said application shall be disposed of within two weeks from today. In view of this statement, no further directions are necessary. CMP is disposed of accordingly.

Sd/- V. K. Nigam, Court Master."

In the order passed by this Court in Writ Petitions Nos. 19504/85, 8014 and 11640 of 1988 dated 1-12-89 (Sri Siddaganga Education Society v. The State of Karnataka and others (Annexure R-5) a direction was given to the State Government to consider the request of the petitioners therein. Subsequent to this the petitioner has filed an additional reply statement enclosing a copy of the order dated 25-11-1989 passed by the Government informing the Vice-Chancellor that the petitioners' request for granting permission to start medical college for the year 1989-90 has been rejected. In view of the said order the petitioners' request that the relief as extracted above be granted to the petitioner by quashing the said letter.

6. WRIT PETITION NO. 21727 OF 1990. This is the petition filed by Siddaganga Education Society. It is a Society registered under the Societies Registration Act. It has more than 90 Educational Institutions in Tumkur and other parts of the State. It has financial capacity, huge extent of land, numerous buildings, staff, etc. It is running High Schools, First Grade Colleges, Engineering Colleges, Pharmacy College and other training colleges. With a view to start a medical college at Tumkur rural, it made an application on 25-7-1970 seeking permission to start a medical college. It was rejected on 6-11-1970, on the ground that already there are five Medical Colleges, no need to have more medical colleges -- no provision for starting new medical colleges in the State during the IV 5 Year Plan period, due to lack of financial stringency and lack of hospital facilities. On 19-11-1979, the petitioner filed second application. But the said application was kept pending till 1984 and only on 19-10-1984 the petitioner was directed to file a fresh application. Hence, the 3rd application was filed on 10-7-1985. It was also rejected by the Government. During this period the Government had accorded permission to following Associations to start medical colleges viz.,

- 1) Kempe Gowda Medical College, Bangalore.
- 2) Ambedkar Medical College, Bangalore.
- 3) M. S. Ramaiah Medical College, Bangalore.
- 4) A1-Ameen Charitable Fund Trust, Bijapur.
- 5) Shri Shivaratreshwara Medical College, Mysore.

Challenging the refusal writ petitions Nos. 19504 of 1985, 804 of 1985 and 11640 of 1985 were filed. On 1-12-1989, this Court passed an order with a direction to the Government to consider the petitioner's application in view of the local inspection report. However, on 25-9-1990 the Government rejected the petitioner's request as at Annexure-K which is extracted below :

" GOVERNMENT OF KARNATAKA

No. HFW 75 Karnataka Government MMe 88. Secretariat, Vidhana Soudha, Bangalore, dated 25th Sept., 1990. From

The Secretary to the Government of Karnataka Health and Family Welfare Department. To

The President, Siddaganga Education Society, Tumkur. "Sir,

Sub: Request for permission to establish New Medical College.

Ref: W.F. Nos. 19504, 801 and 1640/88.

With reference to the above subject, I am directed to state that, the Government have examined your request. While examining your request Government have also taken into consideration among other things, the following factors:--

as on date there are 18 Medical Colleges in the State. 4 run by the Government and the rest by Private Institutions. The total in-take of all these Colleges is over 2800 per year. Though quite some of them come from outside the State with passing of the Karnataka Capitation Fee Abolition Act, not less than 50% of the admission are expected to be open to students from Karnataka only i.e. more than 1000 students from Karnataka are already being admitted into the private Medical Colleges. The total number of registered practitioners of allopathic medicine on the rolls of the K.M.C. is 30712. Thus the doctor population ratio in the State is very favourable. Therefore it is considered that there are abound medical colleges to meet the requirements of the State for a considerable time in future and also that is sufficient "to see that the existing colleges are enabled to consolidate their position."

Therefore, the Government is of the view that it is not necessary to permit the establishment of any more new Medical Colleges in the State for the next three years.

In the circumstances, your request for giving permission to establish new Medical College is rejected.

Yours faithfully, Sd/- (G. N. Nayak)

Under Secretary to Government,

Health & Family

Welfare Department." Subsequently, the Government also accorded permission to various other institutions to start private medical colleges in the State, viz., Devaraj Medical College, etc. Thus, when the petitioner's application was pending for consideration, the Government granted permission to nearly 8 to 10 private medical colleges, but in the case of the petitioner the Government passed an order rejecting the petitioner's request. Aggrieved by the same the petitioner has filed this writ petition seeking for the following reliefs :

"Therefore petitioner prays that this Hon''ble High Court be pleased to :

(i) call for records;

ii) to quash the order dated 25-9-1990 bearing No. MFE 75 MME 88 marked here as Annexure "K" by issue of writ of certiorari or any other suitable writ or order or direction.

iii) to issue writ of mandamus or any other suitable writ or direction to the respondents to give affiliation to start Medical College as prayed for from the next academic year.

iv) to grant such other reliefs as this Hon''ble Court deems fit in the interest of justice."

7. Writ Petition No. 9911 of 1990: This petition is filed by a private Educational Institution, viz., National Education Society, Shimoga. It comes within the jurisdiction of the Kuvempu University, Its case is that it is running a good number of educational institutions in Shimoga District, right from Nursery Schools, High Schools, Junior Colleges. First Grade Colleges, Engineering Colleges to Pharmacy Colleges, etc. Details of the institutions the petitioner is running are given at Annexure A. It is one of the very old philanthropic Societies in Shimoga District. It has its own staff, library, buildings, huge extent of land including financial capacity. As there is no medical college existing in Shimoga District, with a view to start a medical college in Shimoga District, the petitioner gave an application seeking affiliation and permission to start a medical college as required u/s 53 of the Universities Act. On the basis of the application local inspection was held and the University recommended its case for granting permission. The petitioner also brought to the notice of the Government that in the case of other Societies similarly placed to whom permission to start medical colleges granted, their infra-structure and other facilities are in no way superior when compared with the case of the petitioner/Society and, therefore, the petitioner/Society is entitled for permission to start a medical college. When its application for affiliation was pending, it also brought to the notice of the Government that the Government had granted permission to some of the private educational institutions (sic) future and also that is sufficient viz., Respondents 3, 4, 5 and 6 and, no action has been taken on the petitioner's application. Hence, the petitioner filed this writ petition seeking for the following reliefs :

"Wherefore, the petitioner Society prays that this Hon''ble Court may be pleased to :

1. Issue an order or direction in the nature of mandamus to the State Government, the 1st respondent herein, to recommend grant of sanction and affiliation to the petitioner-society to start a college of Medical Sciences in the Shimoga area from the coming academic year;

2. Grant such other reliefs as this Hon''ble Court deems fit to grant in the circumstances of the case."

8. WRIT PETITION NO. 6404 OF 1990: The case of the petitioner is that it is a private Society registered under the Societies Registration Act, viz., Karnataka Law Society, Belgaum. Its main object is to impart education in rural parts of Belgaum District. It is running High Schools, Colleges, etc. With a view to start a medical college at Ghataprabha which is at a distance of 60 km, from Belgaum City, the petitioner gave an application on 27-11-1979 for permission and affiliation. The said application was considered by the University u/s 53(4) of the Universities Act and the University recommended for granting affiliation on the basis of the local Inspection report. The said recommendation was made after satisfying that the petitioner has necessary infra-structure, land, financial capacity, hospital facilities, building etc. Pursuant to the application submitted, the Chairman and Secretary of the petitioner were called upon to appear before Respondent on 13-7-19. Age in the petitioner was asked to furnish the particulars of financial capacity to run medical college which was duly answered by the petitioner. However, to its surprise, the petitioner received a letter on 15-7-1987 at Annexure G to the effect that the request of the petitioner for permission to start a medical college is rejected. The said order is extracted hereunder :

Contending that the order at Annexure is arbitrary and unjust the petitioner filed this petition for the following reliefs:

"Wherefore, the petitioner prays this Hon''ble Court be pleased to:

(i) Declare that the decision of the respondent No. 1 dated 15-7-1987 refusing per- mission to the petitioner to start a Medical College at Ghataprabha is void, illegal and unconstitutional;

"(ii) Quash the order bearing No. AKK/ 80/MME/87(3) dated 15-7-1987 passed by the 1st respondent at Annexure G by issuing appropriate writ or order or direction;

(iii) issue appropriate writ, order or direction to the 1st respondent to consider the application of the petitioner society seeking affiliation of a proposed Medical College to be run by it at Ghataprabha to the Respondent No. 2-University; and

(iv) issue appropriate writ, order or direction to the Respondent No. 1 to grant permission to the petitioner society to run a Medical College at Ghataprabha in Belgaum District as an affiliated college to 2nd respondent."

9. WRIT PETITION NO. 8208 OF 1989: The case of the petitioner is that it is an Association having its office at Shimoga, viz., Malnad Medical College, Shimoga. It is mostly managed by Scheduled Caste Members. In addition to this, it consists of persons belonging to various Fields, such as social, medical and literary fields. The main object of the Association is to promote education and literary activities for the all-round development of students of weaker sections of the Society and to establish and run educational institutions such as medical, engineering, technical institutions, residential schools, etc. in Shimoga and

Chickmagalur Districts. With a view to start a medical college at Shimoga, the petitioner gave an application to the respondents seeking permission and affiliation to start a medical college. In support of its application, it also furnished particulars of its experience infra-structure, financial capacity (sic) hospital facilities, etc. It has (sic) and fairly big buildings. It (sic) form of deposit in the Bank (sic) the Current and Savings Bank Account. Then a Bank has come forward to advance a loan of Rupees one crore to the petitioner, if permission to start a Medical College is granted. It also gave undertaking that in case permission is granted, within 18 months from the date of permission it will provide pre-clinical facilities. It has building and other facilities necessary to impart medical education. It (sic) explained that both in Shimoga and (sic), there are a good number of hospitals, where it can get hospital facilities till it establishes its own hospital. It also explained that there are 14 medical colleges in the State, whereas in Malnad area, there is no medical college. Thus it requested to grant permission to start a medical college which is a just one. It also explained that it being an Association consisting of persons belonging to Scheduled Caste, its case is similar to Siddartha Education Society on whose request the Supreme Court has observed earlier as extracted above which resulted in granting permission to start a medical college. As such the same yardstick should be applied in the case of the petitioner. In spite of explaining to the Government that its case should be considered for permission to start a medical college on the lines of Siddartha Education Society, Tumkur, the Government failed to take any action. Hence, the petitioner approached this Court with the present writ petition seeking for the following reliefs:

"Therefore, it is prayed that this Hon''ble Court may be pleased to:

(i) Declare that Section 53(5) of Karnataka State Universities Act as unconstitutional by issue of appropriate writ;

ii) issue a writ of mandamus or any other appropriate writ or order directing Respondents to consider Petitioners case for permission to start a medical college for the academic year 1989-90 at Shimoga and grant the same in the interest of justice;

iii) issue such other appropriate writ or order or direction as deemed fit in the interest of justice."

iv) The grounds made out by the petitioners in seeking permission to start medical colleges in all these petitions are almost similar except additional grounds made out in Writ Petition No. 7385 of 1989, i.e., that the institution is linguistic minority institution and, therefore, it has a fundamental right under Art. 30(1) of the Constitution of India to establish and administer educational institutions of its choice and granting permission is just a formality and whereas in W. P. No. 8208 of 1989 urging that this institution's request be treated on par with the case of Shri Siddartha Education Society, Tumkur.

(ii) When the applications are made as required u/s 53 of the Universities Act, it

is the duty of the concerned authorities to consider the same and pass appropriate orders within a reasonable time instead of keeping silent.

(iii) When there is no prohibition under the Universities Act to start medical colleges, it is incorrect and improper on the part of the Government to refuse permission that too when it is established that the petitioners possess all the necessary requirements for obtaining permission to start medical colleges.

(iv) When the applications of the petitioners were pending, the Government granted permission to start medical colleges to some other associations similarly placed and in some cases, the Government even ordered to double the in-take, thus indirectly granted permission to start new medical colleges. As such no reason to refuse permission to the petitioners to start medical colleges.

(v) The so called public policy the ground on which the Government refused to grant permission to the petitioners to start medical colleges is neither in existence nor it is in reality a public interest.

(vi) When there is need, it is the duty of the Government to consider the applications for according permission to start medical college.

(vii) The refusal to grant permission is quite arbitrary and discriminatory in nature and it is a clear case of colourable exercise of power. Thus it is a legal mala fide.

(viii) The so called policy decision to refuse to grant permission is purely a discriminatory one as in case of other associations similarly placed the Government granted permission to start new medical colleges or to increase the intake. While in case of petitioners the Government took a different and unreasonable attitude. Thus the Government's action is violative of Art. 14 of the Constitution of India.

(ix) The Government in the guise of policy decision shall not prevent desiring students in seeking an opportunity to become medical graduates, otherwise it will be violative of Art. 19(1)(g) of the Constitution of India.

(x) The Respondent/Government should have noticed that it was not the policy that was existing on the date of considering the application, but the policy that was existing on the date of submitting the application which should have been taken note of.

(xi) The power exercised by the Respondent/Government is contrary to the orders passed by this Court and the Supreme Court in the matters of this type.

(xii) The orders of the Government are not only unjust and unreasonable, but the same are devoid of merits as no convincing reasons are given to turn down the request of the petitioners to start medical colleges.

(xiii) The respondents should have appreciated the bona fides of the petitioners who are prepared to provide the required hospital facilities, even though such

facilities are required only after the completion of the pre-clinical course. When the need and, qualification of the petitioners properly considered by the concerned Universities and recommended for permission to start Medical Colleges, it is improper on the part of the Government to turned down the request of the petitioners on imaginary grounds. Thus the entire action of the Government is violative of S. 53(5) of the Karnataka Universities Act, 1976 and disobedience of Arts. 14, 19(1)(g), 30(i) and 41 of the Constitution of India.

Petitioners also contended that in case the Court comes to a conclusion that the orders and action of the Government in not according permission is quite arbitrary, unjust and unreasonable, instead of once again giving a direction to the Government to consider the petitioners request, a mandamus may be issued to the Government to grant permission to start Medical Colleges as these are the appropriate cases for such a relief, and in fact under similar circumstances this Court had issued a Writ of Mandamus in the following cases, namely:

(a) Shanti Institute of Commerce v. State of Karnataka AIR 1989 Kant 355.

(b) The Academy of Liberal Education Sulya v. State of Karnataka, W. P. No. 21756/1990.

(c) W. P.No. 16423/85disposedofon6-3- 1990, Shri JMRC v. State of Karnataka.

For these reasons, the petitioners submit that the Writ Petitions be allowed and the reliefs sought for by them be granted.

10. Whereas the respondent/State supporting its action in refusing permission to the petitioners to start medical colleges submitted as follows :

(i) There is no fundamental right to any Association to start medical colleges or any commercial institutions even if there is no policy decision.

ii) After completely satisfying that there is no need to start any new medical colleges in the State, as otherwise it results in creating unemployment problems to Doctors, the Government rightly thought that there shall be no more medical colleges in the State.

iii) What type of education and the standard to be maintained is purely the concern of the State. Merely because the Universities recommended the cases of the petitioners for permission, that does not mean that the same is binding on the Government to accord permission.

iv) As required under S. 53(5) of the Universities Act, on the recommendations of the Syndicate, the Government has got power either to grant permission or to refuse.

v) Granting of permission to private medical colleges in the state during the period in question and in some cases to increase the intake in private medical colleges were not factors which should have weighed in the mind of the Government to consider the request of the petitioners.

(vi) The contention of the petitioners that section of the Government in not considering the request for granting permission to start medical colleges is violative of Art. 14 of the Constitution of India is untenable.

(vii) Permission to start medical colleges and permission to double the intake in some other colleges made under special circumstances.

(viii) When there is already unemployment problem of Doctors and there is no need to produce more doctors the contention of the petitioners that the land of the Government to refuse permission to the petitioners as incorrect is again untenable as starting of new colleges is subject to the policy decision of the State.

(ix) Merely because there was a direction by the Court in case of some other institutions to accord permission the same does not bind the State to accede to the request of the petitioners.

(x) When the petitioners do not possess necessary qualifications, necessary equipments, financial capacity availability of buildings and open land including non-availability of hospital facilities, the Government justified in not granting the request of the petitioners. Article 30(1) of the Constitution confers a right on the minority institutions to establish and administer institutions of their choice. But the same is controlled by regulations and reasonable restrictions made in the public interest.

(xi) Further the period for which the permission was sought, expired long ago as such now no relief can be claimed or the same cannot be granted by this Court.

For the above reasons, the respondents submitted that the Writ Petitions be dismissed.

11. In support of the rival contentions, both parties relied upon some of the decisions of this Court and of the Supreme Court.

12. For the proposition that minority institutions have a fundamental right to establish and administer educational institutions of their choice, reliance is placed on the law laid down by the Supreme Court from the case of Kerala Educational Bill in re The Kerala Education Bill, In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, up to the law laid down by the Supreme Court in St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., , State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another, , Reliance is also placed on the following decisions, namely, Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, Ref. Rev. Father W. Proost and Others Vs. The State of Bihar and Others, ; State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., ; The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, ; Delhi Cloth and General Mills Co. Ltd. and Others Vs. Union of India (UOI) and Others, ; Vellore Education Trust v. State of A. P. 1987 SCC (Supp) 543 : (AIR 1987 SC 130; Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, ; Bapuji Educational Association Vs. State, ; A1 Ameen Educational

Society v. State of Karnataka 1989 (3) Kar U 104 ; Hyderabad Karnataka Education Society, Gulbarga and Others Vs. State of Karnataka, Andhra Kesari Education Society Vs. Government of Andhra Pradesh and Others, ; Managing Board of The Milli Talimi Mission, Bihar, Ranchi and Others Vs. State of Bihar and Others, ; M/s. Shanthi Institute of Commerce v. State of Karnataka AIR 1989 SC 325 ; A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, ; and Writ Appeals Nos. 952 to 955 of 1990 D. D. 5-6-90 (Sarvajna Education Trust v. State of Karnataka).

13. From the above pleadings, contentions and the authorities relied upon, the points that arise for determination are as follows:

1. Whether a right is confirmed on the minority institutions (linguistic or religious) to start educational institutions of their choice which include institutions imparting general and secular education or can it be extended to opening of colleges like Medical, Engineering and other technical courses?

2. Whether acts of the Government in not considering the petitioners' applications or permission to start medical colleges are not acts of colourable exercise of power by the respondent? In other words, whether the acts of the Government in not considering the petitioners' applications for starting medical colleges cannot be said as one of legal mala fides?

3. Whether the petitioners are entitled for a direction in their favour directing the Government to grant them permission to start new medical colleges as prayed for?

14. To answer the first point raised for determination, it is proper to bear in mind the effect of Art. 30(1) read with Art. 19(1)(g) of the Constitution of India which read as follows:

"30. Right of minorities to establish and administer educational institutions.-

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to Educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

Article 19(1)(g) of the Constitution of India reads as follows:

"19. Protection of certain rights regarding freedom of speech, etc.-

(1) All citizens shall have the right-

.....

(g) to practice any profession, or to carry on any occupation, trade or business."

15. While interpreting the scope of Art. 30(1) of the Constitution of India, the Supreme Court while tendering its advice on the In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, held as follows (at pages 978 & 979):

"Article 30(1) in the first place gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the article says and means is that the religious and linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children. The next thing to note is that the article, in terms, gives all minorities, whether based on religion or language, two rights namely, the right to establish and the right to administer educational institutions of their choice."

In the case of Rev. Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, the Supreme Court held thus (at page 547):

"The right established by Art. 30(1) is a fundamental right declared in terms absolute : unlike- the fundamental freedoms guaranteed by Art. 19 is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. Regulations which may lawfully be imposed either by legislative or executive action must satisfy a dual test -- the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

In the above decision, while reiterating its earlier view taken on the Kerala

Education Bill on the scope of Art. 30(1) of the Constitution of India further held that any action to control the right conferred under Art. 30(1) of the Constitution of India on the minority institutions in the form of restriction or regulation imposed either by legislative or executive action must not only be lawful but also it shall satisfy the two tests, viz., reasonableness and secondly it is regulative of educational character in the interest either of the institution or the public to impart education. It also explained that the restrictions so imposed shall be in the national or the public interest and it shall not be a "teasing illusion". In the said decision of the Supreme Court, it is further observed that the right conferred under Art. 30(1) of the Constitution of India can be enjoyed by the minorities as long as they care to do with their own resources. But, once the minority institution desires to get aid from the State, then the State can impose terms and conditions and the right to establish and administer educational institutions shall cater to the educational need of the citizens or the sections thereof. That is what Art. 30(1) of the Constitution of India contemplates. Regarding the regulations or the restrictions the Supreme Court held that regulation made in the true interests of efficiency or instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed and such regulations are not restriction on the substance of the right which is guaranteed; they secure the proper functioning of the institution, in matters educational. In *Rev. Father W. Proost and Others Vs. The State of Bihar and Others*, the Supreme Court following the principles laid down by it in the above 2 decisions again affirmed that right to administer educational institutions by minority shall not be mistaken for mal-administration. It also explained how Art. 29(1) and Art. 30(1) of the Constitution of India deal about the right of minorities and how they are different, viz., one is dealing in general and the other is flowing from the special power on the minority. In *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, explaining the scope of Art. 30(1) of the Constitution of India held that the said Article contemplates two rights, viz., (i) initial right to establish institutions of minority's choice and (ii) right to the administration of such institutions which means "management of the affairs" of the institution. In the said decision, the Supreme Court said that there is an exception, i.e., maintaining of standards irrespective of the institutions being minority or majority institutions. For the reasons above, though the standards of education are not part of management as such, the institutions shall maintain the standards of excellence expected of educational institutions or in other words even the minority institutions as far as standards of education are concerned shall follow the same pattern ordered to be maintained in general. The decision of the Supreme Court in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, is quite exhaustive on the scope of Arts. 29(1) and 30(1) of the Constitution including the reasonable restrictions to be imposed on the rights of minority institutions. While considering the scope of Art. 30(1) of the Constitution and making reference to its earlier decision the Supreme Court held thus:

"Article 30(1) covers institutions imparting general secular education. The object of Article 30 is to enable children of minorities to go out in the world fully equipped. It will be wrong to read Article 30(1) as restricting the right of minorities to establish and administer educational institutions of their choice only 10 cases where such institutions are concerned with language, script or culture of the minorities. Articles 29 and 30 create two separate rights though it is possible that the rights might meet in a given case."

Further the Supreme Court held :

"The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. The right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration. The right to administer is not the right to mal-administer. The appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important. The right of minority institutions to administer institution implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. Regulations are, therefore, necessary to see that there are no divisive or disintegrating forces in administration."

In *Managing Board of The Milli Talimi Mission, Bihar, Ranchi and Others Vs. State of Bihar and Others*, , the Supreme Court while dealing with the scope of Article 30 of the Constitution once again stressed on the principles already laid down in its earlier decisions. While reviewing the earlier decisions, the Supreme Court held as follows (at page 1757):

"... while Article 30 undoubtedly seeks to preserve the religious freedom, autonomy and its individuality, there is no fundamental right under which an institution can claim either aid or affiliation as a matter of right. It is permissible for the State or the University, as the case may be to lay down reasonable conditions to maintain the excellence of standard education but in the garb of doing so, refusal to grant affiliation cannot be made a ruse or pretext for destroying the individuality and personality of the said institution. If this is done, then apart from being wholly arbitrary and unreasonable it would amount to a clear infraction of the provisions of Art. 30 because what cannot be done directly is done indirectly."

The Supreme Court also observed that either the State or the University while imposing conditions before granting affiliation shall not kill or annihilate the individuality or personality of the institution in question by imposing certain restrictions which may directly oppose the aims, objects and ideals sought to be achieved by the institutions. Thus, while affiliation itself may not be a

fundamental right but refusal of affiliation on terms and conditions or situations which practically deny the progress and autonomy of the institution is impermissible as being violative of Article 30 of the Constitution.

16. The same principles have been further reiterated by the Supreme Court in the following two decisions, viz., (i) *St. Stephen's College v. University of Delhi* (1991 (4) SCC 548) and (ii) *State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another*,

17. Placing reliance on the principles laid down by the Supreme Court in the cases referred to above, the learned Counsel for the petitioner in Writ Petition No. 7385 of 1989 submitted that when permission was sought for, the same should have been granted automatically, as the petitioner/ Institution is a minority one and protected under Art. 30(1) of the Constitution of India. The case of the petitioner is that the right conferred under Article 30(1) of the Constitution is not limited to start an institution to be taught only its language, script or literature but even to start medical and engineering colleges.

18. As an answer to the above contentions of the learned Counsel for the petitioner, particularly on the scope of Art. 30(1) of the Constitution, the learned Advocate General submitted that the right conferred under Article 30(1) of the Constitution is only to impart general and secular education which includes language, script and literature and definitely not to start institutions which are intended to get financial advantage. According to him, the Government took a policy that there shall not be any more medical colleges. When the request of the petitioner was rejected in view of the policy decision, it cannot be said that such action of the Government is either violative of Art. 30(1) of the Constitution or the restrictions imposed in any way are contrary to Art. 19(1)(g) of the Constitution. To support his contention, reliance was placed on the decision of this Court in *All Ameen Educational Society, Hazrat Madarasa Education Society, Evershine Education Trust, Jain Mahila Mandal and Sarabeshwar Vidya Peetha Vs. State of Karnataka*, wherein this Court, while interpreting the scope of Section 53 of the Karnataka State Universities Act, 1976, held that there is no absolute discretion to reject an application or a mandatory duty to grant affiliation to an institution. Their Lordships further held that the relevant factors to be considered either for rejecting the application or for granting affiliation are not confined only to the factors enumerated under Sec. 53(2) of the Universities Act or individual cases but also other important and relevant consideration shall weigh in the minds of the authorities either to grant or to reject. This Court also held thus:

"Right on minority institution to establish an education institution does not include a right to be affiliated to an University. Right does not automatically flow out of Art. 30 though without affiliation right to establish and administer an educational institution of one's choice may become illusory."

Regarding the restrictions imposed while considering the right under Art. 30(1) of the Constitution of India, this Court observed thus:

"Every restriction placed cannot be said to be destructive of right under Art. 30. Restriction as to: number of colleges in the State, limit of intake of students by any institution, to see output of qualified persons/graduates may not exceed a reasonable number, ultimately conducive to advancement of minorities also. Such restrictions closely proximate and relevant to question of public order and maintenance of morale of younger generation."

19. In A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, the Supreme Court while holding that under Article 30 of the Constitution the minority institutions have right to start and administer institutions of their choice, had cautioned that while granting permission to such institutions, the authorities shall be satisfied whether the institution intended to be started are really genuine and to be started with a view to improve the educational standard of minority or for any other purpose unconcerned with educational upliftment of minority. His Lordship Chinnappa Reddy, J. observed as follows (at page 1491):

"A brazen and bizarre exploitation of the naive and foolish, eager and ready-to-be-duped, aspirants for admission to professional collegiate courses, behind the smoke screen of the right of the minorities to establish and administer educational institutions of their choice is what this case is about."

Again in para 8 his Lordship held thus:

"It was seriously contended before us that any minority, even a single individual belonging to a minority, could found a minority institution and had the right so to do under the Constitution and neither the Government nor the University could deny that society's right to establish a minority institution, at the very threshold as it were, howsoever they may impose regulatory measures in the interests of uniformity, efficiency and excellence of education. The fallacy of the argument insofar as the instant case is concerned lies in thinking that neither the Government nor the University has the right to go behind the claim that the institution is a minority institution and to investigate and satisfy itself whether the claim is well founded or ill-founded. The Government, the University and ultimately the court have the undoubted right to pierce the minority veil with due apologies to the Corporate Lawyers and discover whether there is lurking behind it no minority at all and in any case, no minority institution. The object of Art. 30(1) is not to allow bogies to be raised pretenders but to give the minorities a sense of security and a feeling of confidence not merely by guaranteeing the right to profess, practice and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms. They may be institutions intended to give the children of the minorities the best general and professional education, to make them complete men and women of the country and to enable them to go out into the world fully prepared and

equipped. They may be institutions where special provision is made to the advantage and for the advancement of the minority children. They may be institutions where the parents of the children of the minority community may expect that education in accordance with the basic tenets of their religion would be imparted by or under the guidance of teachers, learned and steeped in the faith. They may be institutions where the parents expect their children to grow in a pervasive atmosphere which is in harmony with their religion or conducive to the pursuit of it. What is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities. We have already said that in the present case apart from the half a dozen words as a Christian minorities institution occurring in one of the objects recited in the Memorandum of Association, there is nothing whatever, in the Memorandum or the Articles of Association or in the actions of the society to indicate that the institution was intended to be a minority educational institution. As already found by us these half a dozen words were introduced merely to found a claim on Art. 30(1). They were a smokescreen."

From the above discussion, it is clear that under Art. 30(1) of the Constitution minority institutions whether they are linguistic or religious minority institutions have a right to establish and administer institutions of their choice, but such right is subject to reasonable restrictions and regulations made by the Government in order to maintain efficiency and academic excellence, discipline, etc. But, the Supreme Court in *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, has cautioned the authorities when permission has to be granted and to what type of institutions.

20. Since the Government has not turned down the requests of some of the petitioners to start medical colleges on the ground that they are minority institutions, the question of answering that the order under challenge is against Article 30(1) of the Constitution does not arise.

21. Regarding the second proposition, which, of course is very important and appropriate to be decided whether action of the Government in not considering the petitioner's request for granting permission to start medical colleges is arbitrary or resultant of colourable exercise of the power conferred on them, it is now necessary to be considered now from the material placed and the discussion made above. It is not in dispute that when an application is filed by an institution seeking affiliation or permission to start a college, the same has to be processed as required u/s 53 of the Universities Act. Section 53(5) of the Universities Act gives power to the University to place the application before the Government and the Government has to take a decision under Sec. 53(5) either rejecting the application or granting the same, of course, in the case of refusal, the Government has to give reason. "Public policy" is not defined in the Universities Act. When a duty is cast on the Government to take a decision, it is needless to state that such duty shall be exercised fairly and in a reasonable manner without

giving room for arbitrariness or discrimination. Otherwise such action will violate the Equality Clause as enshrined under Article 14 of the Constitution which reads as follows:

"14. Equality before law.-- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The idea behind Article 14 of the Constitution is that all persons subjected to any legislation should be treated alike under like circumstances and conditions. Further, there shall not be any discrimination between persons and persons and any class legislation, but the classification to be made by the State shall be reasonable and rational, viz., such classification must be based on some qualities or characteristics which are to be found in all the persons grouped together. Secondly, the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others. Further the differentia must have a rational relation to the object sought to be achieved. In other words, if an order or action of the Government is discriminatory, unreasonable and arbitrary, the same has to be said as illegal. Because, it was the desire of the founding fathers of the Constitution that equality shall become the living reality for the large masses of the people of the nation.

22. The attack of the petitioner to the action of the Government in not considering their applications on the ground that the Government acted in most arbitrary manner in selecting only a few institutions and conferring on them a right to start medical colleges and denying similar request of some of the applicants though they are similarly placed is quite unfair. It is not in dispute that the applications of these petitioners were pending and the applications of other associations were also pending for the similar purpose. Hence the policy that was put forth by the Government to refuse to grant permission to the petitioners was equally applicable to all other applicants. But, as narrated above, in case of some private institutions the Government granted permission to start medical colleges. Whereas the cases of the petitioners came to be rejected though they are similarly placed. In case of some institutions which in fact were running medical colleges already, orders came to be passed increasing their intakes that were fixed earlier. By such increase in intake or granting permission to split the institutions into 2 sections what the Government did was indirectly granting permission to such associations or applicants to start new medical colleges. In the case of Sarvajna Education Trust (Writ Appeals Nos. 952 to 955 of 1990) such an action of the Government came to be held as illegal. Apart from these, the theory of public policy or policy decision taken by the Government that there shall be no more medical colleges during the 6th Five Year Plan is again quite illusory and it is a mere pretence, for the reason that the same yardstick was not applied to other institutions to whom granted-permission to start new medical colleges or whose intake was increased. In similar circumstances, this Court in *Bangalore University v. Vidya Ganapathi Education Society* 1982 (2) Kar LJ 217, held as follows :

"The justification pleaded by the State Government in para-3 of its statement of objections, for not granting affiliation to the new College of the Education Society, is far from convincing. The existence of unemployment among medical and engineering graduates, has not deterred the Government from granting affiliation to a number of newly started Medical and Engineering Colleges. In the cases of those Medical and Engineering Colleges, the Government has not chosen to raise the objection that those colleges are commercial concerns rather than educational institutions and that the quality of education would suffer in such institutions.

.....

It was open to the State to refuse affiliation to all the Colleges on the ground of non-fulfillment of conditions and requirements for granting affiliation. But, it cannot be heard to say that it was open to the State Government to grant affiliation for such Colleges which it chose and to refuse affiliation to other Colleges which it did not so choose. Such action is plainly arbitrary and discriminatory."

Likewise, even the Supreme Court in *Vellore Educational Trust Vs. State of Andhra Pradesh and Others*, held that arbitrariness shown in granting of permission to start Engineering College despite of public policy as unconstitutional and violative of Article 14 of the Constitution of India. The relevant discussion reads as follows (at page 132):

"The impugned order made by respondent-1 refusing to grant permission solely on the ground of policy of the Government, is in pur considered opinion not at all tenable as we have stated hereinbefore that such permission has already been accorded to establish private engineering college to Nagarjuna Education Society on November 15, 1985. Moreover the application for permission was filed long before the alleged policy in question was adopted by respondent 1."

From the above, it is clear that the Government was not consistent in its stand in considering applications of private institutions seeking permission to start medical colleges during the 7th Five Year Plan or earlier to it or subsequent to it.

23. An attempt was made by the learned Advocate General placing reliance on the decision of this Court in *All Ameen Educational Society, Hazrat Madarasa Education Society, Evershine Education Trust, Jain Mahila Mandal and Sarabeshwar Vidya Peetha Vs. State of Karnataka*, which has no application to the case on hand. In the said decision, no doubt this Court has said that an applicant seeking permission to start a college has no right as such to claim it as a matter of right and in case of increase in intake or permitting to start new college ignoring the case of some of other applicants cannot be construed as an act of discrimination. In the said decision it is further observed that when the Government has taken a policy decision not to accord permission to start any more colleges, under such circumstances there cannot be any compulsion to accord permission to start new colleges ignoring such policy. However, on facts,

the said decision has no application as the so-called increase of intake in the said case was marginal in nature and granting of permission to start new colleges was in respect of those colleges who had filed application prior to declaring the new policy. Whereas the cases of the petitioners squarely fall within the principle laid down by this Court in *Vidya . Ganapathy's case* 1982 (2) Kar LJ 217 and by the Supreme Court in *Andhra Kesari Education Society Vs. Government of Andhra Pradesh and Others*, wherein it is held that as long as there is desire to learn, the so-called public policy shall not come in the way. Further, the policy to be applied shall be consistent and not discriminatory.

24. Regarding "Public Policy", Prof. H.W.R. Wade in his *Administrative Law*, Fifth Edition, at pages 330 and 331 on Over-Rigid Policies observed as follows:

"An authority can fail to give its mind to a case, and thus fail to exercise its discretion lawfully, by blindly following a policy laid down in advance. It is a fundamental rule for the exercise of discretionary power that discretion must be brought to bear on every case; each one must be considered on its own merits and decided as the public interest requires at the time."

The learned author further observed:

"It is not allowed to "pursue consistency at the expense of the merits of individual cases".

.....

Where it is at liberty to make a choice between conflicting policies, it may decide to make no exceptions, as where it adopts a policy of making all schools in its area into comprehensive schools and abolishing all grammar schools. But even then it is in a stronger position if it has listened fairly to the objections of parents and others concerned."

From this it is clear that even assuming that there is a policy the same shall not be mistaken that it can be extended for ever as is done in the cases of the petitioners by saying that no more medical colleges are required during the Plan period.

25. In view of the reasons given above, it has to be said that the approach of the Government in not considering the applications of the petitioners for according permission to start medical colleges by putting forth the theory of public policy a mere pretence. However laudable the policy put forth by the Government to refuse permission to start medical college, the conduct of the Government preferring a few and prohibiting others as demonstrated is arbitrary and not in a fair and reasonable manner.

26. Further, refusal to grant permission or not taking any decision on such applications made by the petitioner is in contravention of Section 53(5) of the Universities Act. In fact, in most of the cases, the concerned Universities and the local inspection committees were satisfied with the need and requirements and

made recommendations for granting permission. But, while refusing the permission, the Government failed to give any reason which are tenable and stand to reason. When it is not in dispute that the acts of the Government shall always be fair, but different yardsticks have been applied by the Government in granting permission to some institutions and refusing the same to the petitioners, it has to be said that the acts of the Government are clear cases of arbitrariness and unreasonable. Discretion to be exercised by the authorities concerned and while considering the requests of the petitioners, it shall be guided by law and it must be governed by rule and not by humour and it must not be vague and fanciful as stated by Lord Mansfield in John Wilke's case and followed by the Supreme Court in S.G. Jaisinghani Vs. Union of India (UOI) and Others, This position further clarified by the Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, wherein it is held thus :

"The absence of arbitrary power is the first essential of the role of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities must be confined within the defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is."

Again in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , the Supreme Court explaining the scope of Article 14, nature of administration and the need of reason based decision observed as follows :

"Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters.

.....

Every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good.

.....

Article 14 applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. It is imperative and implicit in

Article 14 that a change in policy must be made fairly. The basic requirement of Article 14 is fairness in action by the State. State cannot be permitted to act otherwise in any field of its activity, irrespective of the nature of its functions when it has the uppermost duty to be governed by the rule of law. Non-arbitrariness, in substance, is only fair play in action. This obvious requirement must be satisfied by every action of the State or its instrumentality in order to satisfy the test of validity."

In the light of the principles laid down by the Supreme Court and this Court the only conclusion that can be drawn is that the orders and the approach of the Government are not only in contravention of Sec. 53(5) of the Universities Act, but also they are arbitrary, unfair and unreasonable and thus violative of Article 14 of the Constitution of India. Even though a duty is cast on the authorities to act fairly, reasonably and in impartial manner, in the cases on hand the authorities exercised powers in highly fanciful and discriminatory manner and according to their convenience. Hence, it has to be said that the acts of the Government or its authorities in not considering the petitioners' requests for permission to start medical colleges are clear cases of legal mala fides or colourable exercise of power conferred on them.

27. From the above discussion, answer to the third point for determination is that arbitrariness established can be obliterated by this Court by exercising powers under Article 226 of the Constitution. Hence, these are fit cases where this Court can interfere and give direction to the authorities concerned. No doubt, the petitioners submitted that in case petitions are to be allowed, a mandamus may be issued to the Government to grant permission to start medical colleges at places mentioned instead of mere issuing a direction to consider the cases of the petitioners. It is true while allowing writ petitions, straight way the relief sought can be granted under exceptional circumstances. Reliance placed by the learned Counsel for the petitioners on some of the decisions including the Managing Board of The Milli Talimi Mission, Bihar, Ranchi and Others Vs. State of Bihar and Others, ; Shanthi Institute of Commerce Vs. The State of Karnataka and Others, etc. to grant the relief straightway, on facts, are not applicable. However, circumstances explained in the petitions are neither so serious nor delay if any in disposal of the cases in any way harmful to the society. Hence, justice will be met if both parties given one more chance to establish their case for granting permission to start medical colleges.

28. When this Court came to the conclusion that all the petitions are to be allowed directing the respondents to consider the petitioners' requests for permission to start medical colleges, the question of considering the constitutional validity of Sec, 53(5) of the Universities Act, as requested by the petitioner in Writ Petition No. 8208 of 1989, does not arise.

29. Hence it is ordered as follows:

1. All the petitions are allowed;

2. Orders passed by the Government in Writ Petitions Nos. 7385 of 1989, 21727 of 1990 and 6404 of 1990 turning down the request of the petitioners to grant permission to start medical colleges in the respective places are quashed;

3. In all the 5 petitions, respondents are directed either to consider or re-consider as the case may be the petitioners' request for granting permission to start medical colleges as prayed for by making use of the recommendations already made by the concerned Universities to start medical colleges in law if they are entitled without insisting the petitioners to file fresh applications seeking permission. Time for compliance is 3 months from today. No costs.

30. Petitions allowed.