

(1986) 04 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No's. 15793 and 16517 of 1985

Sir M. Visweswaraya Education Trust

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 30-04-1986

Acts Referred:

Constitution of India, 1950 — Article 166, 226
Karnataka State Universities Act, 1976 — Section 53

Citation : (1986) ILR (Kar) 3095

Hon'ble Judges : Puttaswamy, J;Mahendra, J

Bench : Division Bench

Advocate : H.B. Datar and H. Srinivasa Rao, for the Appellant; N. Santosh Hegde, General, R. Narasimha Murthy, Senior Advocate and M. Papanna, for the Respondent

Judgement

Puttaswamy, J.—As the questions that arise for determination in these cases are common we propose to dispose of them by a common order.

2. A registered trust called "Sir M.Visveswaraya Education Trust" with its office at No. 45 Millers Road, Vasanthnagar, Bangalore-560 052 named after that renowned Engineer, Statesman, Administrator and one of the illustrious Diwans of erstwhile native State of Mysore who was born in a village called Muddenahalli of Kolar District is the Petitioner in Writ Petition No. 15793 of 1985 and we-will hereafter refer to the same as "Sir M. V. Trust" or as the Petitioner. While the mother-tongue of Sir M. Visveswaraya was Kannada, though his forefathers migrated from a village called Mokshagundam situated in the Kurnool District of the present State of Andhra Pradesh, the language of the State, the trust named after him somewhat intriguingly claims to have been founded by linguistic minorities probably on the ground that those who have founded the trust and controlling the trust are ail from Kerala State or Malayalam speaking which however, was not pressed before us. The petitioner has also mustered the support of about 101 persons mostly of Kolar town and a few from other places of that District and they have filed Writ Petition No. 16517 of 1985

wholeheartedly supporting its case for reasons that are obvious. We will refer to the petitioners in Writ Petition No. 16517 of 1985 as the public of Kolar.

3. On or about 30-10-1984 the petitioner made an application in the prescribed form u/s 53 of the Karnataka State Universities Act, 1976 (Karnataka Act 28 of 1976) ("the Act") to the Bangalore University ("University") for grant of affiliation to a Medical College called "Mahatma Gandhi Medical College" to be started by it near Kolar Town, the District Head Quarter of the same District for the academic year 1985-86. On receipt of that application, the University deputed a Local Inquiry Committee ("LIC") consisting of Dr. (Mrs.) Saraswathy K. Bhargava as the Chairman and Sri B.G. Mahesh, Deputy Registrar as the Convenor to inspect the facilities available and report. The LIC visited Kolar on 4-4-1986 inspected the facilities available for starting the college and ultimately recommended thus :

"The hired building shown are suitable only for public functions or residential purposes and are unsuitable in all respects for housing the Medical College. There is no hospital, no staff and equipment. In view of the above facts, the Committee does not recommend the grant of affiliation to Sri M. Visveswaraya Education Trust to start a medical college at Kolar."

The Syndicate and Academic Council of the University in their meetings held on 28-5-1985 and 12-7-1985 accepted the said recommendation of the LIC and the same was communicated to Government on 5-8-1985 by the Registrar of University.

4. On 9-6-1985 Dr. H.L. Thimmegowda, Minister of Health and Family Welfare forwarded a minute to the Education Minister recommending the sanction of affiliation to Respondents 5 and 6 for reasons stated therein. The "Devaraj Urs Education Trust for Backward Classes and Backward Castes, Kolar" referred to in that minute to be hereafter referred to as "D.Urs Trust" is respondent-5 in Writ Petition No. 15793 of 1985. On that minute the Minister for Education by his minute dated 9-6-1985 directed his Secretary to prepare a Cabinet note and place the same before the Cabinet scheduled to be held on 11-6-1985. On that day the Cabinet directed to get full information of all pending applications for medical colleges before the Bangalore, Mysore and other Universities of the State. In pursuance of the said decision of the Cabinet additional information was obtained and a Cabinet note bearing Subject No C. 395/85 was placed before the Cabinet and that note in so far as the same pertains to Bangalore and Mysore Universities with which only we are concerned reads thus :--

"Secret 1985 Ed 51 UAC 85

CABINET NOTE Subject : C 3951/5

Grant of fresh affiliation to start new Medical Colleges in the State during the year 1985-86.

The Minister for Health and Family Welfare has sent a minute dated 9th June,

1985 for sanctioning two Medical Colleges for rural areas - one at Bellur of Nagamangala Taluk, Mandya District by the Adichunchanagiri Educational Trust and another at Tamaka Village in Kolar Taluk by the Devaraj Urs Educational Trust. Interalia in the minutes it has also been mentioned that the Chief Minister had desired that this subject of according affiliation be brought before the Cabinet to be held on 11-6-1985 with a required Cabinet note. The Education Minister in his marginal note on the minutes desired that the subject be put up to Cabinet expeditiously.

2. In the Cabinet meeting held during November, 1984, the Cabinet took a decision relaxing the policy decision with regard to starting of medical colleges and permitted the two educational trusts viz., Al-Ameen Education Trust, Bijapur and J.S.S. Vidya Peeta, Mysore. The decision of the Cabinet is as follows :

3. In the Cabinet meeting held on 11-6-1985, the cabinet after going through the factual position regarding the receipt ,of applications from various institutions directed that full particulars regarding the applications pending for the starting of new medical colleges in Bangalore and Mysore Universities be obtained and put up for consideration during the next Cabinet meeting.

4. Accordingly, the Bangalore and Mysore Universities were contacted. The proposals received from the above two Universities for sanctioning of fresh affiliation to start Medical Colleges during the year 1985-86 are as follows:--

i)

Sri Siddhartha Education Society, Tumkur (SC/ST Institution)

| | | | |

Bangalore University.

ii)

Mahatma Gandhi Vidya Peeta, Bangalore.

iii)

Sir M Visveswaraiyah Education Trust, Bangalore (College proposed to be started at Kolar)

iv)

Adichunchanagiri Kshetra at Javaranahalli.

| | | | |

Mysore University.

v)

Sri Devaraj Urs Memorial Trust, Mysore.

vi)

S. J. M. Vidya Peeta, Chitradurga.

vii)

National Education Society, Shimoga.

5. While none of the applications of the Education Trusts received from the Bangalore University, cited at (i), (ii) and (iii) above are recommended by it, the Mysore University has recommended the proposals of all the Education Trusts cited at (iv), (v) (vi) (vii) to grant affiliation for the year 1985-86.

6. On 8-8-1985 the Education Minister desired to obtain the information regarding the applications pending with other Universities for starting new Medical Colleges. Accordingly, they were contacted.

xxx xxx xxxxxx xxx xxx 10. u/s 53 of the Karnataka State Universities Act, 1976, the proposals received from the Universities for starting new colleges with the recommendations of the Academic Council and Syndicate could be considered by Government. The Government may either grant the affiliation or reject the application with reasons.

11. Hence, the position in brief is as follows :

(a) Mysore University has recommended grant of affiliation for the following four institutions:

(1) Adichunchanagiri Kshetra at Javaranahalli.

(2) Sri Devaraj Urs Memorial Trust, Mysore.

(3) S.J.M. Vidya Peeta, Chitradurga.

(4) National Education Society, Shimoga.

(b) Bangalore University has not recommended any case.

(c) Gulbarga University has not recommended any case.

(d) Karnataka University is processing the case of B.L.D.E., Association, Bijapur, but there is no recommendation till now.

12. In view of the the above, the orders of the Cabinet are solicited on the following :

(i) As there are many applications for sanctioning of new Medical Colleges, a decision has to be taken taking into consideration the need and demand for the same ;

(ii) u/s 3 of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 colleges started after the commencement of this Act shall not collect any capitation fee. In view of the statutory provision whether all seats to be

declared as capitation free seats while giving affiliation ;

OR

Whether 50 % of the seats should be declared as merit pool seats. If it is declared so, whether these 50 % seats to be allotted based on the ranking in the entrance examination.

Sd/- A. Bharat Secretary to Government. Education Department."

On 23-9-1985 the Cabinet considered the above proposal and decided as hereunder and we will hereafter refer to the same as the first decision of the Cabinet.

" Sub : C. No. 395/85.

Grant of fresh affiliation to start new Medical Colleges in the State during the year 1985-86.

DECISION OF THE CABINET

Cabinet agreed to the grant of fresh affiliation and to the starting of Medical Colleges at the following places on the same terms and conditions as applicable to Medical Colleges started last year.

(1) At Kolar by Sir M. Visveswaraiah Education Trust, Bangalore ;

(2) At Adichunchanagiri Kshetra at Javaranahalli ;

Sd/- (Ramakrishna Hegde) Chief Minister 23-9-1985."

This decision of the Cabinet decided to grant affiliation to the petitioner and respondent-6. For reasons that are not necessary to notice, the aforesaid decision of Cabinet was not authenticated and communicated by Government to the petitioner or any other officer, authority or person.

5. On 7-10-1985 the Cabinet considered the subject again and decided to substitute the name of respondent-5 in place of the petitioner and that resolution which is material reads thus :

In this resolution it is stated that the name of the petitioner by mistake had been typed in the place of respondent-5 in its resolution dated 23-9-1985 on its subject No. C. 395/85 and the same is being corrected. What this resolution states is that it had really granted affiliation to respondent-5 and not to the petitioner and the name of the latter had found its place in its earlier resolution only by a typographical or clerical error and that innocuous mistake was being corrected. Even this decision of the Cabinet had not been authenticated and communicated by Government to respondent-5 or the petitioner so far.

6. On 9-10-1985 "Sir M.V. Trust" petitioner in Writ Petition No. 15793 of 1985 had approached this Court under Article 226 of the Constitution for quashing the second decision of Cabinet and for a mandamus to implement its first decision

which was in its favour.

7. On 17-10-1985 as many as 101 persons of Kolar Town and of other places of Kolar District who are the petitioners in Writ Petitions No. 16517 of 1985 or public of Kolar have approached this Court for a Mandamus to the State of Karnataka which is the sole respondent in that Writ Petition to implement the first decision of the Cabinet in favour of the petitioner in Writ Petition No. 15793 of 1985. We will deal with this Writ Petition after we deal with Writ Petition No. 15793 of 1985.

8. The petitioner has asserted that Sri C. Byregowda Minister for Fisheries hailing from Kolar District announced the first decision of the Cabinet in a public meeting held on 25-9-1985 (Annexure-A5). The petitioner had asserted that the Education Secretary had also informed it of the same, when it met him. Lastly, the petitioner had relied on a telegram issued by the Chief Minister wishing the inaugural function of the College all success (Annexure-D).

9. The Petitioner had asserted that the second decision of the Cabinet was reached only at the instance of Sri R. L. Jalappa, Minister for Co-operation, who was the Chairman of respondent-5, that was formed in November, 1984 and had not at all made an application for affiliation for 1985-86. The petitioner had urged that the second decision of the Cabinet was vitiated by personal bias of Sri Jalappa, dishonest, irrational and procedural improprieties. On the aforesaid grounds, the petitioner had sought for the reliefs noticed by us earlier.

10. In their returns, respondents 1 to 4 have asserted that the two decisions of the Cabinet had not been authenticated and communicated in conformity with the requirements of Article 166 of the Constitution and Rules of Business framed by Governor and they were unenforceable.

11. While denying the illegalities, irregularities and imputation of mala fides attributed by the petitioner, these respondents had also sought to sustain the second decision of the Cabinet. But, at the hearing of these cases the participation of Sri R.L. Jalappa in the proceedings of the Cabinet held on 7-10-1985 was admitted before us, on which basis they also conceded to re-examine the matters afresh.

12. In its return, respondent-5 while justifying the second decision of the Cabinet in its favour, had urged that the Bangalore University was a necessary party to the proceedings and in its absence the Writ Petition was liable to be dismissed in limine. In the very nature of things it is necessary to examine this objection which goes to the root of the matter first and then the merits, if that becomes necessary.

13. Sri P. Subramonian Poti, Learned Senior Advocate, of the Supreme Court Bar assisted by Sriyuths Sundar Dayal Sharma, K.S. Desai has appeared for the petitioner in Writ Petition No. 15793 of 1985. Sri H.B. Datar, Learned Senior Advocate assisted by Sri H. Srinvasa Rao has appeared for the petitioners in Writ

Petition No. 16517 of 1985. Sri N. Santhosh Hegde, Learned Advocate General has appeared for respondents 1 to 4 in Writ Petitions Nos. 15793 of 1985 and the respondent in Writ Petition No. 16517 of 1985. Sriyuths R.N. Narasimha Murthy, Learned Senior Advocate, M. Papanna, Learned Advocate had appeared for respondents 5 and 6 respectively in Writ Petition No. 15793 of 1985.

14. Sri Murthy had urged that the Bangalore University to which the application was made and on whose opinion Government had acted or acts was a necessary party and in its absence, the Writ Petition was not maintainable and Was liable to be dismissed in limine.

15. Sri Poti had urged that the Bangalore University was neither a necessary nor a proper party to the proceedings and the objection of respondent-5 was without any merit.

16. Chapter IX of the Act regulates the affiliation of colleges and recognition of institutions. Section 53 of the Act inter alia provides for making applications, inquiry by Local Inquiry Committees, recording of opinion by the Syndicate and the Academic Council and their forwarded to Government, which is the sole and exclusive authority to grant or reject such applications. The State Government is not bound by the opinion furnished by the Syndicate, Academic Council or the Local Inquiry Committee. In reality and in substance the University really acts as a limb of Government in deciding affiliation u/s 53 of the Act. The petitioner has not challenged any action of the University and had not sought for any relief against the same. From these facts, it follows that the Bangalore University is not a necessary or proper party to the Writ Petition. We find no merit in this preliminary objection of Sri Murthy and we reject the same. With this, it is now necessary to examine the merits.

17. Sri Poti had urged that the order made by Government u/s 53 of the Act was a statutory order and was not one made in exercise of its executive powers.

18. Sri Hegde has urged that the order made by Government though referable to Section 53 of the Act was still an order made in exercise of its executive powers only.

19. In Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab, a Constitution Bench of the Supreme Court in examining whether the State can undertake text book business without enabling legislation, examined the true concept of executive powers or executive functions of the Union and the State under our Constitution and the Court speaking through B.K. Mukherjea, CJ. expressed thus :

"12. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away.

The Indian Constitution has not indeed recognised the doctrine of separation of

powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinated legislation when such powers are delegated to it by the legislature.

It can also, when so empowered, exercise judicial functions in a limited-way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution, but as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws.

(13) The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is, deemed to have the primary responsibility for the formulation of Governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State.

The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State."

in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, Shah J. (as His Lordship then was) rejecting the contention urged for the Union that derecognition of Rulers was in exercise of political power expressed thus :

"96 The functions of the State are classified as legislative, judicial and executive ; function is the residue which does not fall within the other two functions. Constitutional mechanism in a democratic polity does not contemplate existence of any function which may qua the citizens be designated as political and orders made in exercise whereof are not liable to be tested for their validity before the lawfully constituted Courts. Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab, , Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others, ; and Halsbury's Law of England, 3rd Edn Vol. 7 Article 409 at p. 192."

What emerges from these rulings is that even when Government exercises its powers under the Act that power exercised by it is only executive power and cannot be anything other than executive power. At any rate the power exercised by Government u/s 53 of the Act is neither judicial nor quasi-judicial in character.

If that is so, the power exercised by Government under the Act must only be executive power and cannot be anything other than that.

20. When once we hold that the power exercised by Government u/s 53 of the Act was executive power, it necessarily follows from the same, that all the incidents and attributes of that power must necessarily be recognised by this Court. In other words, the principles enunciated by the Supreme Court in *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, *Bachhittar Singh Vs. The State of Punjab*, reiterated in *State of Punjab Vs. Amar Singh Harika*, *Kedar Nath Bahl Vs. The State of Punjab and Others*, must necessarily be held to be applicable to the decisions of the Cabinet. We are of the view that that is inevitable from our earlier finding also.

21. But, Sri Poti has urged that the rulings of the Supreme Court noticed and relied on which arose in service matters were not apposite and do not conclude the question.

22. Every one of the reasons on which we have held that the power exercised by the Government u/s 53 of the Act was executive, equally apply for rejecting this contention of Sri Poti. Even otherwise the distinction made by Sri Poti is without a difference and has no merit. After all even most of the service matters are also regulated by laws. We are also of the view that the Division Bench ruling of this Court in *State of Karnataka and Ors. v. M .V. Chandrashekaramurthy and Ors.* 1984(2) KLJ 48 is also to the same effect.

23. In *Golakh Behari Vs. State of Orissa and Others*, on which considerable reliance was placed by Sri Poti, the question that arose was the validity of an action taken by an Authorised Officer under an enactment of the legislature, there being no Cabinet on the date of the authority taking the decision. On that question, the Court repelling the contention of the petitioner upheld the action of the Authorised Officer. But, that is not the position in the present case. We are therefore of the view that the ratio in this case does not really bear on the point.

24. On the above finding, it also follows from the very rulings of the Supreme Court noticed earlier, that the two decisions of the Cabinet are only provisional in character and that the Cabinet's power to re-examine them, affirm, modify or rescind them must also be recognised by us. We cannot on principle or authority deny that power to Government at all.

25. With these general findings we will first deal with the challenge to the second Cabinet decision and then revert to the case of the petitioner to the first decision of the Cabinet.

26. Sri Poti had urged that the second decision of the Cabinet was arbitrary, dishonest, irrational and suffers from procedural improprieties.

27. Sri Hegde, in our opinion, very rightly did not seek to justify the second decision of the Cabinet due to the participation of Sri R. L. Jalappa in its decision making on 7-10-1985.

28. Sri Jalappa was Chairman of "D. Urs Trust" respondent-5 which was claiming affiliation to a college to be started at Kolar and that he participated in the decision of the Cabinet held on 7-10-1985 are not disputed but are admitted.

29. One of the important Rules of natural justice expressed in latin language viz. *memo index in re sua* or that no man shall be a judge of his own cause or rule of bias when applied disentitled Sri Jalappa from participating in the decision of the Cabinet held on 7-10-1985. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, this question has been set at rest by the Supreme Court. On the application of the principles enunciated in *Kraipak's* case, the second decision of the Cabinet which is illegal and void is liable to be quashed. In this view, it is not necessary for us to consider all other grounds urged by Sri Poti and the various English rulings and several passages of *Wade's Administrative Law* relied on in support of them.

30. We believe that Sri Jalappa participated in the deliberations of the Cabinet out of sheer ignorance and not deliberately. We need hardly say that when the matter comes up again before the Cabinet he will refrain from participating in its deliberations. With that hope which will not be belied, we refrain from issuing any *Mandamus* in that behalf.

31. Sri Pod had urged that the communication of a decision of the Cabinet was only a rule of evidence or expediency and was not a rule of law and on the facts and circumstances, there was a communication of the first decision of the Cabinet to the petitioner.

32. In *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, one of the earliest cases, the Supreme Court by majority has held that Article 166 of the Constitution was only a directory provision and that the existence of a valid order or not does not necessarily depend on the form of the order drawn up and communicated to a person. On the ratio of this ruling and the ruling of the Supreme Court in *State of Punjab Vs. Khemi Ram*, on which Sri Poti placed great reliance, we will assume that Sri Poti is right in his submission that the communication of a Cabinet decision is only a rule of evidence or expediency and is not a rule of law. But, still the question is whether the decision of the Cabinet had been communicated to the petitioner or not.

33. We have earlier found that the decision of the Cabinet dated 23-9-1985 had not been drawn up as an order of Government, authenticated by the authorised officer and communicated to any one at all. If that is so, then it is inconceivable to hold that the decision of the Cabinet had been communicated to the petitioner.

34. We will assume that Sri Byregowda had announced at the public meeting, that the Education Secretary had informed the petitioner of the Cabinet decision and that the congratulatory telegram of the Chief Minister was a very conscious act. But, all of them cumulatively or individually will not stamp the Cabinet decision into an order of Government authenticated and communicated to the petitioner and will not detract from its provisional character or the power of the

Cabinet to re-examine, modify or rescind the same For all these reasons, we see no merit in this contention of Sri Poti and we reject the same.

35. Sri Poti has urged that the first Cabinet decision which had rightly granted affiliation to the petitioner and on our finding that its second decision was illegal and void that too when respondent-5 was not even an applicant, for the academic year 1985-86, this Court should direct Government to implement the same as was done by the High Court of Kerala in *Lakshmikutty and Ors. v. State of Kerala* and Ors. 1985 KerLT 490.

36. We have no doubt found that the second decision of the Cabinet was illegal and calls for our interference. But, from that itself it does not follow that the first decision of the Cabinet which is only tentative or provisional in character by its own force becomes enforceable. So long as that decision of Cabinet is only provisional the power of the Cabinet to re-examine, cancel, modify the same cannot be denied by this Court. We must on this score itself decline to examine this contention of Sri Poti and refuse to grant the relief sought by the Petitioner.

37. Even otherwise whether there was any misapprehension or mistake in the mind of the Cabinet in its first decision or not is primarily for that authority to decide and that power cannot be usurped by this Court.

38. While the minute of the Health Minister expressly recommended for the grant of affiliation to "D. Urs Trust" respondent-5 the colourless Cabinet note extracted earlier does not clearly bring out as to why that request supported by the Health Minister cannot be granted. Unfortunately the Cabinet note does not say a word on the same. In these circumstances whether there was any misapprehension in deciding to grant affiliation or not to the Petitioner has necessarily to be examined and decided by the Cabinet itself and not by this Court. Before the Cabinet so decides the matter, it is even odd and premature for this Court to hold that there was no misapprehension in the mind of the Cabinet. On these grounds we are of the view that it is not proper for this Court to enforce the first decision of the Cabinet.

39. In *Lakshmikutty's* case 1985 KerLT 490 which decision itself is pending in appeal before the Supreme Court, the Kerala High Court dealing with the recommendations made by the High Court of Kerala to the posts of District Judges and the decisions taken by Kerala Government, the first one to accept partially and the second one to scrap the same in its entirety though not communicated directed its implementation. In *Lakshmikutty's* case 1985 KerLT 490 there was no controversy on the correctness and efficacy of the decision of Government as in the present case. In that case, the State Government did not claim that its decision was only provisional and it proposes to re-examine the matter as in the present case. Even assuming that the ruling of the Kerala High Court is correct, on which we express no opinion, then also those principles do not really bear on the precise question, that arises before us.

40. What emerges from our above discussion is that we are bound to uphold the

power of Government to re-examine and decide the matter. As to how Government should modulate the same, is a matter for Government itself to decide. In the very nature of things, we cannot place any fetter on that power of Government.

41. Before dealing with the other questions it is necessary to notice and deal a contention urged on the legality of the first decision of the Cabinet.

42. Sri Murthy has urged that the first decision of the Cabinet that had overlooked the opinion of the University and had not given reasons to overrule them as required by Section 53 of the Act was illegal.

43. We have earlier expressed the view that the first decision was a provisional decision and it is for the Cabinet to re-examine and decide afresh. When that is so, there is hardly any ground for us to examine this contention of Sri Murthy.

44. Even otherwise, we are of the view that Respondent-5 who had not challenged the first decision of the Cabinet cannot challenge the same. We, therefore, decline to examine this contention of Sri Murthy.

45. Sri Poti has urged that on the promise and representation made by Government, the petitioner had invested huge amounts and had altered its position to its disadvantage and on the application of the principle of promissory estoppel expounded by the Supreme Court in *Union of India v. Indo Afghan Agencies* AIR 1968 SC 718 : *Century Spinning and Manufacturing Company Limited v. Ulhasnagar Municipal Council* 1973 (3) SCR 854 : *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and *Union of India v. Godfrey Philips India Limited*, 158 ITR 576 1985 SCC 369 we should direct the State Government to implement its first decision.

46. Sriyuths Hegde and Murthy have urged that every one of the facts and circumstances do not justify the application of the principle of promissory estoppel and even if there were any such circumstances, then also, this is a fit case in which this Court should deny relief to the petitioner on that score.

47. In *Godfrey Philips India Limited's* case 158 ITR 576 1985 SCC 369 the learned Chief Justice reviewing all the earlier cases has summarised the meaning and content of promissory estoppel and its limitations in these words :

"Now, the doctrine of promissory estoppel is well-established in the administrative law of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. This doctrine, though of ancient vintage, was rescued from obscurity by the decision of Mr. Justice Denning, as he then was, in his celebrated judgment in *Central London Property Trust Limited v. High Trees House Limited* (1956) 1 All ER 256 . The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and

unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action : it can only be a shield and not a sword : but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , it is now well settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. The decision of this Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, contains an exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine outlined in that decision.

** ** Of course, we must make it clear, and that is also laid down in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and we find ourselves wholly in agreement with what has been said in that decision on this point."

We must now examine, whether the case of the petitioner attracts the application of these principles and if it so attracts whether the Respondents plea should be upheld.

48. We have earlier found that Government had not authenticated and

communicated the first decision of Cabinet granting affiliation to the petitioner. When that decision had not been authenticated and communicated, it is even odd to hold that the petitioner had made arrangements for the starting of a college. Even otherwise every one of the facts and circumstances, do not justify us to hold that there was a promise or representation by Government to the petitioner, on the basis of which the latter had acted to its prejudice at all. We are, therefore, of the view that the petitioner cannot invoke the doctrine of promissory estoppel in its favour.

49. The time lag between 23-9-1985 to 7-10-1985 is hardly about 15 days. Within that short time, it is inconceivable to hold that the petitioner had made all, arrangements for the starting of a medical college and has changed its position to its prejudice and, therefore, we should compel Government to enforce its earlier decision. Even otherwise, we are of the view that even if there was a promise or representation by Government and the petitioner had made some arrangements this is not a fit case in which we should invoke the equitable principle in favour of the petitioner.

50. We have noticed earlier that the application made by the petitioner for affiliation was for the academic year 1985-86 for which year respondent-5 had made no application, which position appears to have been reversed for the year 1986-87 in that the latter had made an application for that year and the former had made no application for the same. The academic year 1985-86 is fast coming to an end. With these facts, we must now examine the rival contentions urged before us on this aspect.

51. Sriyuths Hegde and Murthy have urged that since the petitioner had made no application for the academic year 1986-87 and its earlier application for the previous academic year, cannot now be considered as one made for 1986-87, this Court should refuse to grant any relief to the petitioner.

52. Sri Poti in opposing the contention of Sriyuths Hegde and Murthy had naturally urged for granting the very reliefs fought by the petitioner, In driving home his point on this aspect and the reliefs to be granted, Sri Poti had relied on the rulings of the Supreme Court in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, ; State of Kerala Vs. Kumari T.P. Roshana and Another, ; the District Registrar, Palghat and Ors. v. M.B. Koyyakutty and Ors., AIR 1979 SC 1060; Chingleput Bottlers v. Majestic Bottling Company, AIR SC 1030 and the ruling of the Kerala High Court in C.Murugan and ors. v. State of Kerala and Ors., ILR 1982 Ker74.

53. We must remind ourself that the petitioner approached this Court on 9-10-1985, challenging the second decision of the Cabinet dated 7-10-1985. For a variety of reasons that are almost beyond the control of every body, the hearing of these cases commenced on 28-3-1986 and closed on 11-4-1986. We very much wish that the petitioner without pitching its tent very high and by way of abundant caution had made an application before the University for the

academic year 1986-87. But, that default or the delay in the disposal of these cases by this Court should not be viewed by us with disfavour. On the other hand, we must endeavour to do substantial and real justice in the cases. When so examined, we are of the view that the reasonable course would be to hold that the application made by the petitioner on 30-10-1984 as one made for 1986-87 if that becomes necessary and then deal with the same on that basis. But, if that becomes necessary, then it is also imperative for Government to consider that application with the application made by Respondent-5, if necessary by obtaining further opinion from the University on the suitability of either of them for the academic year 1986-87.

54. With this we now turn to the grant made to respondent-6.

55. In its first decision, the Cabinet granted affiliation to the petitioner and respondent-6 in pursuance of which Government on 28-10-1985 had separately authenticated and communicated its order to respondent-6. On the basis of the said order respondent-6 had opened the college at Javaranahalli of Mandya District and had made admissions also for the current academic year. The mere fact that the grant was made to respondent-6 in the very first decision of the Cabinet has hardly any relevance to interfere with that grant more so, when that grantee is not even competing to the affiliation sought by the petitioner at a totally different place situated within the jurisdiction of another University. We are clearly of the view that the grant of affiliation made to respondent-6 cannot be interfered with on any ground. We, therefore, reject the challenge of the petitioner to the extent it challenges the grant of affiliation to respondent-6.

56. In Writ Petition No. 16517 of 1985, the petitioners alluding to the grant made to "D. Urs Trust" but impleading the State of Karnataka as the sole respondent have sought for a Mandamus to implement the first Cabinet decision in favour of the petitioner in Writ Petition No. 15793 of 1985. We need hardly say that the "D. Urs Trust" is a necessary party. When the petitioners have not impleaded that Trust as a party, we cannot help dismissing this Writ Petition on that ground.

57. Even otherwise, we do not find any justification to examine the grievance of the petitioners in this case separately and issue any Writ or Mandamus to the State Government. We have earlier found that the proper order to be made is to reserve liberty to Government to re-examine the matter. In this view also the relief sought by the petitioners in Writ Petition No. 16517 of 1985 cannot be granted.

58. As pointed out by the Supreme Court in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, in granting the relief under Article 226 of the Constitution, the High Courts are not bound by the technicalities of English Courts and their Rules of Practice. But, as held in that case itself, the reliefs to be granted by us either negative or positive must necessarily depend on the facts and circumstances of the case and the conclusions to be drawn by the Court. We must, therefore, modulate the reliefs on that basis only.

59. In the light of our above discussion, we make the following orders and directions :

RE : W.P. NO. 15793 OF 1985

(1) We quash the resolution/decision dated 7-10-1985 of the Cabinet on its subject No. DCA (sic)C) 74/85 in so far as it substituted the name of Respondent-5 in place of the petitioner.

(2) We declare that the first decision of the Cabinet dated 23-9-1985 is only provisional in character and it is open to the Cabinet to reaffirm, modify, and rescind the same. But, if it decides to modify or rescind the same, then the Cabinet is directed to treat the application made by the petitioner as one made for the academic year 1986-87 and dispose of the same along with any other application made by Respondent-5 or others, if any, for starting a medical college at or near Kolar Town, in accordance with law and the observations made in this order.

(3) We direct Government of Karnataka -- Respondent-1 to re-examine all matters and take appropriate decisions on all matters pertaining to the starting of a medical college at or near Kolar Town with all such expedition as is possible in the circumstances of the case and in any event within 2 months from the date of receipt of the order of this Court.

(4) We dismiss this Writ Petition in so far as it, challenges the grant of affiliation to Respondent-6.

RE : W.P. NO. 16517 OF 1985

We dismiss Writ Petition No. 16517 of 1985 and discharge the rule issued thereto in this case.

60. Writ Petitions are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.