

(1987) 04 MAD CK 0014

In the Madras High Court

Case No : W.A. No's. 1311 and 1312 of 1986

State of Tamil Nadu and Others

APPELLANT

Vs

N. Hari Prasad and Others

RESPONDENT

Date of Decision : 22-04-1987

Acts Referred:

Annamalai University Act, 1928 — Section 23, 3

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 2(12), 2(8), 52

Citation : AIR 1988 Mad 212

Hon'ble Judges : M.N. Chandurkar, C.J.;Srinivasan, J

Bench : Division Bench

Advocate : R. Desabandhu, Govt. Pleader, for the Appellant; P.V. Bhaktavatsalam, Jayanthi Nataraja and R. Muthukumaraswami, for the Respondent

Judgement

M.N. Chandurkar, C.J.—These two appeals arise out of two identical orders in two writ petitions the main order being in W.P. 3793 of

1986 by which the learned single Judge directed that the two petitioners therein should be provided with a seat in any one of the Medical Colleges

under its control by the Government for the academic year 1986-87. The petitioner Hari Prasad, in W.P. 5804 of 1986, who -is the respondent

No. I in W.A. 1311 of 1986 and the petitioner Mercy Gladstone who was represented by father

and natural guardian in W.P. 3783 of 1986 and respondents No. I in W.A. 1312 of 1986 had both applied for admission to a Medical College in

the State of Tamil Nadu for the academic year 1985-86. None of them was, however, selected for admission in any of the Government Medical

Colleges. However the State Government made a separate list of certain candidates, who were allotted to private Medical Colleges from the open

competition wait list for the year 1985-86. This list consisted of allotments of students in accordance with the number of marks to what the State

Government considered as three Private Medical colleges, namely, P.S. G. Institute of Medical Sciences, Peelamedu, Coimbatore, Sri

Ramachandra College of Health Science, Madras and Raja Muthiah Institute of Health Sciences, Annamalia Nagar, SouthArcot Dist. Seven

candidates were allotted to the P.S.G. Institute of Medical Sciences, Coimbatore whose marks varied between 224-76 and 224-05. Twelve

candidates were allotted to Sri Ramachandra Medical College and the marks of those candidates varied from 224-70 to 223-85. Eight candidates

were allotted to what is described as Raja Muthiah Institute of Health Sciences Annamalia Nagar. The marks of these candidates varied between

223-6 and 223-45. It may be stated that the petitioner Hari Prasad had obtained 22345 marks and the other petitioner, Mercy Gladstone had

obtained 223-55 marks.

2. In February 1986, two separate communications were issued by the Secretary, Selection Committee Sabarmathi Hostel, Kilpauk Medical

College, Madras, intimating to them that they had been nominated by the Government to undergo M.B.B.S. course at Raja Muthiah Institute of

Health, Science's Annamalia Nagar, SouthArcot Dist. Though originally, the intimations had not been produced on record, the learned Government

Pleader has made available to us a standard pro forma in which the intimations were sent. The Just two paragraphs of this letter-of intimation read

as follows-

The tuition fees and special fees to be paid by you will be the same as that collected by the Government Medical Colleges.

You will receive intimation regarding date of admission etc. from the concerned institute. For further details you may contact the concerned

College.

Both the petitioners, Hari Prasad and Meey Gladstone waited for sometime for the receipt of intimation from the Raja Muthiah Institute of Health

Sciences, Annamalia Nagar, SouthArcot Dt, which having regard to the fact that the respondent in the writ petitions is shown as Annamalia

University, will be referred to hereinafter as the Annamalia University. However, since they did not receive any communication from the Annamalia

University and there was no response from the Secretary of the Selection Committee to the queries with regard to the delay, the two petitioners,

Hari Prasad and Mercy Gladstone, filed two separate writ petitions in this Court sometime in April 1986, that is, almost at the fag end of the

academic year 1985-86. In both the writ petitions the prayer was to direct the respondents therein to admit the petitioners forthwith in the

M.B.B.S. course for the year 1985-86, in any one of the colleges run by the respondents who were the Director of Medical Services. Madras, the

Secretary Selection Committee and the Registrar Annamalia University in W.P. 3793 of 1986. In the writ petition filed by Hari Prasad, in addition

to the aforesaid three respondents, the State of Tamil Nadu was also added as a respondent.

3. The Annamalia University filed a counter-affidavit in which the stand taken was that the State Government had no power to direct to admit, any

particular student, since the University was unitary institution governed exclusively by Tamil Nadu Act I of 1929. According to the University, G-

O. Ms. No. 1196 Health and Family Welfare Department, dated 24-7-1985 by which the Government had directed that initially 40 per cent of the

seats in the Medical College, which figure was modified to 35 per cent should be reserved for nominees of the Government, was not binding on the

University. Thus according to the University Hari Prasad and Mercy Gladstone could not claim any admission to the Medical College run by the

Annamalia University, as the University was an autonomous body exclusively governed by the Tamil Nadu Act I of 11429.

4. No counter was however, filed on behalf of the State Government or the Director of Medical Education, Madras, but it appears that at the

stage of arguments reliance was placed on two Government Orders issued in July 1985. G.O. Ms. No. 1079 Health dated 1-7-1985 issued by

the Health and Family Welfare department, laid down certain conditions for starting a new private medical colleges in Tamil Nadu without any

financial commitment to Government both under recurring and non-recurring items. Certain conditions were also prescribed by the said

Government Order, one of the conditions being No. 4 reads as follows : -

Orders regarding the number of seats to be created apportionment of such seats between Government nominees and Management -nominees and

other conditions of admission will issue separately.

Then there is a second Government Order being G.O. Ms. No. 1196 Health and Family welfare Department, dated 24-7-1985. This order which

is fairly exhaustively reproduced in the judgment of the learned Judge, refers to certain obligations of the aspiring organisations for starting new

Medical Colleges to be scrutinised by the Director of Medical Education, with reference to their financial soundness, their reputation and their

ability to run the proposed medical colleges on sound lines and recommend to the Government only deserving cases. The Government Order then

refers to the recommendation made by the Director of Medical Education in respect of three private organisations which had reasonable

infrastructural facilities and sound financial position. The relevant paragraphs 2 and 3 of this Government Order read thus-

2. Accordingly, the Director of Medical Education has now recommended the applications of the following three private organisations which have

reasonable infrastructural facilities and sound financial position : -

(i) Sri Ramachandra College of Health Sciences, Madras.

(ii) Raja Muthiah Institute of Health Sciences, Annamalianagar, South Arcot Dt;

(iii) P.S.G. Institute of Medical Sciences, Peelamedu Coimbatore, The Director has suggested certain conditions to be enforced for fulfillment

prior to granting permission to private organisations for starting Medical Educational institutions.

3. The Government have carefully examined the proposal and suggestions of the Director of Medical Education and permit the three private

organisations mentioned in para. 2 above to open their Medical Colleges subject to the conditions mentioned in the Annexure to this order.

The Annexure referred to in paragraph 3 above set out certain conditions and the first condition reads as follows : -

The Private Management Educational Trusts/Agencies which propose to open unaided self-financing Medical Colleges shall be allowed to admit

candidates of their choice up to 60% of the approved intake of the college adhering to the minimum mark rules prescribed for Government

Medical Colleges. Candidates to the remaining 40% of the seats will be allotted to by the Director of Medical Education every year and this will be

filled from among the approved list of candidates selected for admission to

Government and private medical colleges.

The contention of the State Government and the Director of Medical Education both before the learned single Judge and in this Court was and is

that it was in pursuance of " this express condition that certain candidates were nominated for admission in the Medical College run by the

Annamalia University. The State Government thus claimed that by virtue of this express condition they nominated the two candidates to the

Medical College run by the Annamalia University. It was the case of the Annamalia University that they had, in fact, never applied to the

Government for permission as referred to in G.O. Ms. No. 11% dated 24-7-1985. Indeed their case was that so far as the University is

concerned they do not require any permission from the State Government because under Tamil Nadu Act I of 1929 they are entitled as a matter of

right to start any professional course which includes a course in medicine also.

5. The learned, Judge upheld the contention of the Annamalia University. After granting sufficient time to the learned Government Advocate for

producing the application, reference to which was made in G.O. Ms. No. 1196 Health, dated 24-7-1985, the learned Judge made a specific

query to the learned Government Advocate as to whether any application was really made to seek permission to open a new ,medical college. The

learned. Judge stated in the order- ""The learned Government Advocate informed me that he had received a communication over the phone that

there was no such application made by Annamalia University."" The learned Judge took the view that the Medical College in question was not

newly started by a private individual but was a new course of studies started by the Annamalia University constituted under

Tamil Nadu Act I of 1929 in exercise of the power conferred by Tamil Nadu Act I of , 1929 and there was no need for the Annamalia University

to seek permission from any one much less the Tamil Nadu Government. The learned Judge found that there was no provision in the Act (Act I of

1929) which vests A power in the State Government to con1trol the powers conferred exclusively on Annamalia University under S. 3 of the Act,

though the Chancellor of the University was to, be the Governor of Tamil Nadu. Holding that the entire management of the Annamalia university

vests under S. 3 of the Tamil Nadu Act 1 of 1929 with the Annamalia University

and in no other much less the Tamil Nadu Government the learned Judge held that neither the Director of Medical Education nor the State Government had any control over Annamalia University nor any competence to compel the said University to admit students selected by the Director of Medical Education, Madras, in the course in medicine conducted by the Annamalia "University, Annamalianagar. Having thus upheld the stand of the Annamalia University, the learned Judge went on to consider as to what relief could be given to Hari Prasad and Mercy in the matter of admission. The learned Judge took the view that one of the candidates that is, Mercy Gladstone had on the strength of the assurance contained in the communication sent to her nominating her for admission in the Annamalia University, abandoned the B.Sc. course in Zoology in St. Mary's College, Tuticorin, and therefore the Director of Medical Education was bound to provide a seat for her in some medical college under its control either under the doctrine of promissory estoppel or under S. 115 of the Evidence Act. By the time the order came to be made, the course for the academic year 1985-86 was over and selections for the course for the academic year 1986-87 were also over. Therefore, the learned Judge directed that the Director of Medical Education was bound to provide, a seat to Mercy Gladstone in any of the medical college under his control at least for the year 1986-87., A similar direction was made in respect of the petitioner Hari Prasad by a separate order in W.P. 5804 of 1986.

6. These two appeals are filed by the State Government and the Director of Medical Education. The substantial challenge made to the order of the learned Judge is with regard to the direction given for admission to the -course for 1986-87 in any one of the Government Medical Colleges. In aid of the challenge to this direction, the learned Government Pleader has contended that the learned Judge was in error in holding that the State Government did not have the right to nominate the students for admission to the Annamalia University Medical College. As a matter of fact, the learned Government Pleader has argued that it is not now open to the Annamalia University to contend that they are not bound by the conditions laid down in G.O. Ms. No. 1196 Health, dated 24 -7-1985. The learned Government Pleader has also pointed out that G.O. Ms No. 1196 as

well as G.O. Ms. No. 1079 have both been upheld by this Court in the writ petitions being W.P. No. 10039 of 1985 R. R.. Dalavai v. Govt. of

Tamil Nadu and W. P. No. 9284 of 1985 All India Students Federation v. Secretary, Health and Family Welfare Dept. Madras on 13th. of March

.1987. Thus, according to the learned Government Pleader, the two Government Orders having been upheld and the Annamalia University being a

party to one of these writ petitions, namely, W.P. 9284 of 1985, it must be held that the direction nominating certain candidates for admission to

the Medical College in question was perfectly valid. The crucial question which therefore falls for our consideration in this case is, whether the

State Government have any power to direct the Annamalia University to admit certain students in accordance with the condition annexed to G.O.

Ms. No. 1196 Health dated 24 -7-1985.

7-8 Mr. R. Muthukumaraswami, learned counsel appearing on behalf of the Annamalia University, has vehemently contended that it is now an

admitted position that the Annamalia University has never sought permission to start a medical college and G.O. Ms. No. 1196 Health dated 24-

6-1985 proceeds on an entirely- erroneous impression that such an application has been made. As a matter of fact, the learned counsel contends

that immediately after G.O. Ms. No. 11% was issued on 24-7-1985, the Annamalia University has protested against the conditions contained in

the said Government Order. Our attention has been invited to a letter-dated 2-8-1985, addressed almost within a week of the Government Order

cited above by the Registrar of the Annamalia University to the Commissioner and Secretary to Government, Health and Family Welfare

Department. It is pointed out in this letter that the Annamalia University has been clubbed with two other Medical Colleges and in doing so; the

Government has treated the Institute as one started by a private organisation. The letter then sets out how the Institute stands on a different footing

when compared with the other two colleges sponsored by private trusts. The Registrar of the University has pointed out that the Institute is set by

the authorities, of the. Annamalia. University, which is an autonomus, unitary and residential university covered by the Annamalia University Act

1928, and S. 3 of that empowered the University to provide for instructions in such branches of learning as the University may think fit, including

professional studies and technology and for research and the advancement and dissemination of knowledge and to confer degrees and other

academic distinctions. It is pointed out that being a unitary University, it does not have any affiliated colleges and the University set up its own

constituent departments, colleges and directorates. Reference is made to the establishment of faculty of medicine in 1980 based on the decision of

the Syndicate, the Academic Council and the Senate. It is reiterated that the University was statutorily autonomous and it was empowered to set

up its own constituent units and cater for its own courses of study some of which may be without Government grants recurring or non-recurring. It

is pointed out that as an autonomous body, the University has the power to lay down -its own norms and parameters and to hold its own entrance

examination for selecting candidates for admission. The Government was, therefore, requested to issue revised orders to the effect that the

conditions specified in G.O " Ms. No. 1196 Health dated 24-7-1985 were not applicable to the Institute which was a constituent of the University

itself., The Government by reply dated 21-1-1986 reiterated that all the conditions stipulated in G.O. Ms. No. 1196 Health dated 24-7-1985 are

liable to be fulfilled by the Institution without fail. By the same letter the Government further conveyed their permission, for utilizing the district Head

Quarters Hospital Cuddalore and Government Kamaraj Hospital Chidambaram by the students of t~ institution till the college establishes its own

hospital. The correspondence thus went the Government insisting on the conditions-to be fulfilled and the University reiterate its stand that it was a

unitary institution and the college in question was not a private college. The last in the series of correspondence is a letter dated 17-7-1986 written

by the Registrar of the Annamalia University once again , requesting the Government to withdraw the direction issued in G.O. Ms. No. 1196

Health dated 24-7-1985. While this is the state of correspondence, the position is that the Government has declined to review its decision that

G.O. Ms. No. 1196 Health dated 24-7-1985 applied to the institute. We are informed that since the matter was in court, the Government did not

nominate any student for admission for the academic year 1986-87.

9. When the appeal was argued before us by the learned Government Pleader he placed heavy reliance on the provisions of the Tamil Nadu

Private Colleges (Regulation) Act, 1976 (hereinafter referred to as the Regulation Act). The learned Government Pleader. contended that the

institute in question squarely falls within the definition of " Private College " in. S. 2(8) of the Regulation Act, when that definition is read in the

context of the definition of "University" in S. 2(12). S. 2(8) of the Regulation Act defines "Private College" thus-

"Private college" means a college maintained by an educational agency and approved by, or affiliated to a University but does not include a

college-

(a) Established or administered or maintained by the Central Government or the Government or any local authority or any university; or

(b) Giving, providing or imparting religious instructions alone, but not any other institutions.

"University" is defined as follows-

"University" means the "Madras University" the Madurai University or, as the case may be and any other University that may be established in the

State of Tamil Nadu under any, law".

The argument of the learned Government pleader is that the definition of "University" excludes the Annamalia University because it refers only to

the Madras University and Madurai University and any other University that may later on be established in the State of Tamil Nadu under any law.

The argument

is that when the Act came into force in 1976 the Annamalia University was very much in existence. The words "any other University that may be

established in the State of Tamil Nadu under any law according to the learned Government Pleader clearly contemplated a new university coming

into being after the commencement of the Act and inasmuch as only two Universities, that is, Madras University and Madurai University are

specifically named in the definition the omission to mention the Annamalia University is a deliberate omission made expressly with the object of

bringing in institutions run by the Annamalia University within the definition of a "private college". The argument is that when the latter part of

definition of "private college" refers to a college established or administered or maintained by the Central government or the Government or any

,local authority or any university, as has not included in the definition of private

college", what was intended to be excluded and that is the effect of

S. 2(12) was only an institution, which was run by any one of the Universities, namely, Madras University and Madurai University when the

reference to any-university was made in clause (a) of S. 2(8) of the Regulation Act (sic). The learned Government Pleader had vehemently argued-

that the name of Annamalia University having been omitted from the definition of University in S. 2(12), the effect is that even for the purpose of S.

2(8) the reference to "University" in S. 2(8) must also be, construed in the same manner as is contemplated by S. 2(12) i.e. a college run by the

Annamalia University was. not intended to be excluded form the definition of "private college". The effect, according to the learned Government

Pleader, substituting the said definition in S. 2(12) in clause (a) of S. 2(8) in place of the word "University" was that a college run by the Annamalia

University would be included within the definition of "private college" as it does not stand excluded by clause (a) of S. 2(8) of the Regulation Act.

10. Mr. Muthukumaraswami appearing on behalf of , the Annamalai University has, however, argued, , as already indicated, that Tamil Nadu "

Act I of 1929 is the sole repository of the powers, privileges and functions of the University," that does not provide for affiliating any college or

institution to the University,

the University itself is a unitary institution and is not an affiliating university and further, a private college contemplated by the definition is one which

necessarily is affiliated to a University. The argument is that" since the Annamalai University has no powers of affiliation and indeed the medical

college being now run as a part of the University, the question of affiliation does not arise. One of the essential conditions required to be satisfied

for an-institution to be treated as a private college being absent, according to him , neither the institute nor the college in question falls within the

definition of a private college.

11. It may be advantageous to refer to the relevant provisions of Tamil Nadu Act I of 1929. The purpose and powers of the University are

specified in S. 3 of the 4ct. The -relevant provisions of S . 3 read as follows-

The purpose and powers of the University shall be the following, namely-

(a) To provide- (i) for instruction in such branches of learning as the University may, think fit including professional studies and technology; and (ii)

for research and the advancement and dissemination of knowledge; (b) to grant and confer degrees and other academic distinctions to and on

persons who shall have-

(i) Pursued a course of study in the University and shall have passed ½ the examinations of the University in the manner prescribed or (ii) carried on

research under conditions prescribed;

(I) To demand and receive such fees and other charges as may be prescribed;

(L) To do such other acts and things whether incidental to the purposes and powers aforesaid or not but not inconsistent therewith, as may be

requisite to further the purposes and objects of this Act.

Section 6 empowers the University to hold examination for regulating admission thereto or with the previous sanction of the State Government

recognise examinations of other Universities or bodies as suitable for the purpose, but it cannot maintain classes for the purpose of preparing

students for such admission. The residential status of- the University is provided for in S. 7 which provides thus-

Every person pursuing a course of studies for any examination -except the entrance examination and for any degrees or diploma of the University

except those referred in clauses (f) and (g). of S. 3 shall reside in A hotel or lodgings maintained or recognised by the University.

Section 8 of the Act specified the officers of the University, which includes the Registrar. The Deans of Faculties etc. The authorities of the

University are specified in S. 14 such as the Senate, the Academic Council, the faculties, the Boards of Studies, the Syndicate etc. Section 19

prescribes for different faculties. Each faculty is to have a Dean elected from the departments of the faculty. Under S. 19(3) each faculty is

comprised of such departments of study as may be prescribed by the regulations and the faculty is, subject to the control of the Academic Council,

to be. in charge of the teaching courses of study and research work in such - departments. A reference may also be made to S. 40 of the Act,

which provides for transfer of the colleges and of their properties to the "University. S. 40 read thus-

On the commencement of this Act " the institutions known as the Sri Minakshi College, the Sri Minakshi Tamil College and the Sri Minakshi

Sanskrit College situated at Chidambaram and being maintained by biwan Bahadur Sri S. R. M. Annamalai Chettiar shall cease to exist as

separate entities and shall become part of the University and all rights, powers and privileges of the said Institutions and all property movable and

immovable thereof shall vest in the University and shall be applied to the objects and purposes for ~which the University is incorporated.

The enactment of S. 40 thus indicates that all teaching activity was to be conditi6ted by the University alone, and not by any college independent of

the University. A review of these provisions will therefore, show that the Annamalai University is a residential University. It is undoubtedly a

teaching University and the examinations conducted by the said University are only restricted to students who take instruction in the different

faculties which are conducted by the University itself. It has the power to confer its own degrees. It has, the power to prescribe its own terms of

admission to the students, even in respect of fees and other charges. Now undoubtedly the Governor of Tamil Nadu is the Chancellor of the

University statutorily. But it is difficult to hold that merely because the Governor of Tamil Nadu is the Chancellor of the University, the State

Government has any powers to control the management and the affair of either the University or the faculties run by the said University. Some

reference has been made by the learned Government leader to the visitation right provided for in S. 28 of the Act. S. 28 provides that the State

Government shall have the visitation right. to cause an inspection or inquiry to be made in respect of any matter, institution or property connected

with the University by such person or persons as they may appoint in that behalf. Even this visitation right for its proper implementation and efficacy

depends upon the Senate or the Syndicate because the result of the inspection or inquiry is to be communicated to the Senate and to the Syndicate

and it is only after obtaining the opinion of the Senate and the Syndicate that the State Government can ,advise the University upon the action to be

taken". The capacity of the State Government is, therefore, an advisory capacity though it is provided in sub-sec. (4) that where the Senate or

Syndicate do not, within a reasonable time take action to the satisfaction of the "State Government, they may, after considering any explanation

furnished or representation mad~ by the Senate or the Syndicate, issue such directions as they may think fit and it is obligatory then on the State

and the Syndicate to comply with those directions. The visitation right is not to be equated with a right to Control the day-to-day work of the

University or the Faculties. In any case the scope of the visitation right does not extend as far as to direct the University to admit certain students of

- the choice of the State Government because any such direction by the State Government will be an infringement of the powers of the University

itself which are statutorily provided under S. 3 of Tamil Nadu Act I of 1929.

12. What are the courses of study to be conducted in the University as -a teaching institution and how they are to be regulated is a matter which

appears under the Act to be exclusively" with in , the domain of the University to decide.

13. We are not impressed by the argument of the learned Government Pleader that the permission which purports to have been granted by G.O.

Ms. No. 11% Health, dated 24-7-1985 is referable to the provisions of the Tamil Nadu Private Colleges (Regulation" Act. We have already

referred to the statement made before the learned Judge by the learned Government Pleader that no application as contemplated by any law for

seeking permission to start any college was made by the Annamalai University. The University has produced before us two letters dated 8-7-

1985, one by the Vice-Chancellor of the Annamalai University and to the Commissioner and Secretary Department of Health and Family Welfare.

In the first letter addressed to the Commissioner and Secretary Department of Health and Family Welfare, the Vice-Chancellor has referred to the

brochure with regard to the Medical College and he has stated as follows-

Even though the University as an autonomous body has embarked upon the above venture, it still needs the blessings, support, guidance and

encouragement of our benign Government in several ways.

The concluding paragraph refers to the letter addressed to the Minister, which reads as follows: -

In my D.O. letter cited I have requested that the Government be pleased to bless our venture as well as give it its valued support, guidance and

encouragement, apart from passing early orders on the two specific requests made therein. The Pro-Chancellor and I should be deeply thankful to

you, if you would kindly use your good offices to move the Government in the matter of its supporting and encouraging our project, apart from

securing and communicating to our University its favourable orders on my two requests.

In the letter to the Minister once -again a reference is made to the starting of the Medical College and the letter contains two requests, one is to

issue orders extending the provisions of the Madras Anatomy Act and the Madras Anatomy Rules to cover Chidambaram and its surrounding

areas in South Arcot District so as to enable their Medical and Dental Colleges as teaching medical institutions to use the unclaimed bodies of

deceased persons for purposes of, anatomic dissection and examination. The other request is to issue orders to the District Medical Officer

directing him to permit the students of their Medical Colleges to make use of the facilities available in the District Head Quarters hospital,

Cuddalore and the. Kamaraj Government Hospital, Chidambararn for their clinical training from January, 1987.

14. The provisions of the Regulation Act clearly require an application for permission to be made to the State Government in the prescribed form.

Now apart from the question as to whether this Act applies to the college in question or not these two letters can hardly be treated as any

application made to the Government for permission. The maximum that can be said about these letters is that the Annamalai "University wanted

certain, assistance from the Government in its project of commencing a M.B.A.S. course and apart from the two specific requests, the blessings of

the Government were asked, which seems to have been done more as a courtesy than as a matter of any legal formality. That letter cannot -be

treated as an application for permission. Asking for permission to do anything in respect of which there is a specific provision for making an

application and invoking the blessing of the Government for a new project are entirely two different things.

15. On a consideration of the arguments of the learned Government Pleader, we are not at all satisfied that the Medical College of the Annamalai

University is a private medical college as contemplated by the Regulation Act. No doubt, the learned Government Pleader has referred us to the

overriding provision in S. 52 of the Regulation Act which says-

The provisions of this Act shall have the effect notwithstanding anything to the contrary contained in any other law for the time being in force

including any regulation or statute of any University,

The only effect of this overriding provision is. that if an institution falls within the definition of the Regulation Act, then it is the Regulation Act that

alone will govern and no other Act. The basic requirement for this overriding provision to be effective is that the concerned institution has first to be

a private college. If the institution is not a private college within the meaning of the Act, then the overriding provision in S. 52 will itself be

inapplicable in the case of such an institution.

16. If we read the definition of "private college" carefully, the definition is in two parts in the sense that it refers to two conditions which have to be

satisfied before~ a college can be treated as a private college as contemplated by the Regulation Act. The first condition is it must, be a college,

maintained by an educational agency. The, second condition is that it must be approved by or affiliated to a University. The educational agency is

defined in S. 2(4) of the Regulation Act, which reads as follows -

Educational agency"" in relation to- -

(a) any minority college means any person who" or body of persons, which, has, established and is administering or proposes t o establish and

administer such minority colleges; and

(b) any other private college, means any person or body of persons permitted or deemed to be permitted under this Act to establish and maintain

such other private college.

We are not concerned with clause (a) of the definition. Clause (b) deals with non-minority private college. In respect of the non-minority private

college, the educational agency means any person or body of persons permitted or deemed to be permitted under this Act to establish and

maintain such other private college. Now it has to be remembered that the conduct of an educational agency is defined in the context of a private

college and has reference to a person or a body of persons who have been permitted under, the Act to establish and maintain the private college.

Therefore, before one goes to the question as to whether a particular individual or group of individuals constitute an educational agency it becomes

necessary to decide whether a particular college is a private college as defined. Now, undoubtedly, there cannot be a college without any person

or body of persons establishing and maintaining such a college. The concept of "educational agency" is incorporated in the Act for a specific

purpose. Therefore, every person who starts an institution, cannot automatically become an educational agency for the purpose of the Act, unless

that person or group of persons is permitted under the Act to start the college. As already pointed out, no permission was even sought by the

Annamalai University and therefore a question of granting the permission does not arise. The essential condition which a college must satisfy before

it can be treated as a private college is that it must be either approved by or affiliated to a University. We assume for a moment that the learned

Government Pleader is right that the absence of a reference to the Annamalia University is a deliberate omission, which means that the reference to

the University in the definition of "private college" must be treated as a reference to only either the Madras University or the Madurai University.

As we shall presently show, this argument is hardly of any assistance to the learned Government Pleader. But before we go to that, it is necessary

to point out that if the college in question is a department of the University itself, there is no question of approval by the University or affiliation to

,the University at contemplated by the definition of "private college". This apart the provisions of Tamil Nadu Act I of 1929 do not at all permit the

Annamalai University to, be an affiliating University. It may be of some significance to point out that when the Legislature referred to the approval

by the, University or affiliation to a University the "reference was in the context of the provisions ~similar to the provisions of the Madras University

Act of 1923, in which while providing for the powers of the Madras University, the powers to affiliate colleges have been expressly granted by the

statute. Section 4-A of the Madras University Amendment Act 1929 insofar as it is material, reads as follows-

4A. The University shall have the following powers, namely-

(1) To provide for instruction and training in such branches of, learning as it may think fit and to make provision for research and for the

advancement and dissemination of knowledge;

(2) To establish, maintain and manage institutes of Research;...

(9) To affiliate colleges to the University as affiliated professional or post-graduate,, colleges under conditions prescribed and to withdraw

affiliation from colleges;

(9-A) to approve Colleges providing courses of study for admission to the examinations for titles and diplomas and the Pre-University examination

of the . University under conditions prescribed and to withdraw such approval.

The above provisions will, therefore, show that when the Legislature contemplated that a University should also be an affiliating University apart

from a teaching university, it has provided for the power to affiliate colleges and the power to approve colleges. It is not without significance that

such a provision is absent in Tamil Nadu Act I of 1929. Indeed it has to be so because of the fact that the Annamalai University as a unitary

teaching residential University, was not contemplated to be a University, which could affiliate other colleges. The indication is also to the contrary in

S. 40 of the Act where the existing colleges which were within the area of the University were statutorily merged in the University. If one of the

necessary conditions is not satisfied then it is difficult to see how the teaching activity of the Annamalai University in the, medical course can be

classified as a private college.

17. The contention of the Government "must fail in our view, on the argument of the learned Government Pleader himself. If the reference to the

University in S. 2(8) was intended to be restricted only to the Madras University and the Madurai University and such of the Universities which

would be established later, then that intention will have to be given effect to. The definition of "Private College" when it refers to a University in S.

2(8), it must be read only as a reference to -Madras or Madurai Universities. The teaching activity, of the Annamalai University for the. M.B.B.S.

course has nothing to do with Madras or Madurai Universities or to any other University and "the Annamalai University cannot be brought in within

the definition of a private college. In our view, therefore, the conditions in accordance with which the Tamil Nadu Government purported to

exercise control over the Annamalai University on the basis of what was in effect a request for good wishes and blessings made by the University

and by virtue of which the Government claim the power to have seats reserved for its own nominees must be held to be void, unauthorised and

unenforceable. As no permission was ever asked for by the University, the conditions do not bind the Annamalai University.

18. The reference to, the judgment of this Court in W. Ps. 10039 and 9284 of 1985* does not seem to be of much assistance to the learned

Government Pleader. In those two writ petitions what was substantially in issue was really a question whether, While permitting the starting of a

private medical college, the Government should have prescribed a reservation as in any other colleges with regard to the backward classes,

scheduled castes, scheduled tribes. In W. P. 10039 of 1985 the contention of Mr. Dalavai, who was the petitioner, was that the admissions to the

private medical colleges should be regulated on the same footing as in any other medical colleges of the, State especially with regard to the

reservation for backward classes, scheduled castes and scheduled tribes. In the other writ petition which was filed by the District Secretary of the

All -India Students Federation, undoubtedly the two Government Orders G.O. Ms. 1079 Health dated 1-7-1985 and G.O. Ms No. 1196 Health

dated 24 -7-1985, were challenged. But at the stage of hearing as recorded by the Division Bench, they conceded that they were not against the

opening of private medical colleges in the State. The main question which therefore fall for consideration before the Division

Bench was whether it was obligatory on the part of the Government to prescribe reservations while granting permission to start a private medical

college. It must, however, be stated that in these petitions the contention of the Annamalai University was that though they got the sanction from the

Government, it was only by way of abundant caution and that as a matter of fact, in law, they did not require any such recognition or permission

from the Government in as much as S. 3 of that Act empowers the University to provide for instructions in such branches of learning as the

University thinks fit including. professional studies and technology and grant and confer other academic distinction to persons who have pursued

such courses. The stand taken in those writ petitions was, therefore, not different from the stand taken before us. It had also to be-pointed out that

in so far as the power of the Government to impose conditions upon the Annamalai University that certain seats should be reserved for the

nominees of the Government is concerned, that did not expressly. fall for consideration in those writ petitions. The writ petitions were, however

dismissed and the Division Bench took the view that ""if the Government had thought that reserving of 35 per cent of the seats for them to be filled

up in private self-financing Colleges is sufficient, we do not think that this Court can sit in judgment over it and prescribe any higher percentage.

The Bench also took the view that the Government Order G.O. Ms. No. 73 Special Welfare Department dated 12-1980 which prescribed the

reservation of seats in the educational institutions Applied to Government institutions and institutions run by, local bodies and Government aided

management institutions and since the private medical colleges were unaided and on self financing basis Without any financial commitment recurring or

non-recurring to the Government; would not be applicable. Therefore, the fact that these Government Orders have been upheld does not prevent

the Annamalai University from contending in this Court that the Government has no power to nominate students of their choice and their terms for

the admissions in the Annamalai University Medical College.

19. The view taken by the learned-Judge that the Government did not have such power, or out view, was clearly correct.

20. The other question which requires to be decided is-whether the learned Judge was right in directing the government to give admission to the

two petitioners before him in any other Government Medical College. Mr. Bhaktavatsallam appearing on behalf of Hari Prasad, petitioner in W.P.

5804 of 1986 has argued that Hari Prasad cannot be made a victim of the controversy between the Annamalai University and, the State

Government and the State Government is now duty bound to give admission to him somewhere. The learned Judge has referred to promissory

estoppel or estoppel under S. 115 of the Evidence Act. It is difficult for us to see how the concept of estoppel can at all arise in this case. Even on

the Government's stand it is obvious that the two petitioners Hari Prasad and Mercy Gladstone were not entitled to admission on merits in

Government Colleges. They were in the waiting list. Admissions had already been closed in all the Medical Colleges, for the year 1985-86 on

227-2 marks. Both the candidates have secured less than 227-2 marks. Therefore, their claim to admission to any of the Government Medical

Colleges was wholly misconceived.

No doubt, it is true that the Government nominated both these candidates to the Annamalai University. Such nomination, which is clearly based on

erroneous view of the legal position, can hardly amount to

estoppel. When a candidate is informed on an erroneous assumption that he has been nominated to some other institution when in fact the

Government has no power to nominate and if on merits the candidate is

not entitled to admission in the Government college, no right can flow from such an erroneous act of nomination. All that the Government did was

to ask the students to await information from the Annamalai

University and this cannot in law amount to any representation. It, is true that both these students as a matter of fact came to this court only in April

1986. It is true that they continued to correspond and mere waiting to hear from the authorities, by the time they came to this Court, large part of

academic session of the year 1985-86 was over. The prayer in the writ petition had become really infructuous. There is no justification for directing

Admission of these students to any of the Government Medical Colleges for the

year 1985-86 course in 1987. We are aware of the fact that we are dealing with professional courses where, admission has to be secured on

merits and as it is, there were several candidates who were rejected admission even though they had higher percentage of marks. To direct these

two candidates to be admitted in the year 1986-87 course would clearly be at the cost of students who would otherwise have got admission if

there were vacancies. In any case, that question does not arise at all because even the course for the year 1986-87 is now coming to an end. It is

not possible to give any relief to the petitioners because even on merits they would not have been selected and admitted in any of the Government

Medical Colleges at all It is true that one of the candidates had left her B.Sc. course on the intimation of the Government nominating her to the

Annamalai University Medical College. It would not be proper to deprive another deserving candidate who would normally get a seat by directing

the Government to provide her a seat in any one of the Medical Colleges under its control merely on that ground. In our view, such a direction

would be wholly improper. Therefore, while we confirm the view of the learned single Judge that the State Government had no power to direct

Admissions to be made to the Annamalai University, we modify the order of the learned Judge and find that no direction can be given to the

Government which in our opinion, would be improper, to provide a seat to each of the candidates in any one of the Government Medical Colleges

either for the year 1,985-86 or for 1986-87, as the academic year for 1985-86 came to an end and classes, in fact are almost over for the year

1986-87 and on merit also the, candidates are not eligible for admission.

21. Accordingly, we find that it would be improper to direct the Government to provide a seat to each of the candidates. The Government had

succeed in the appeals in part and the appeals are allowed to the extent that the orders directing the students to be admitted in some Government

Colleges are set aside. In other respects, the orders of the learned Judge are confirmed. There will be no order as to costs.

22. Order accordingly.