

(1995) 03 KL CK 0055

In the High Court Of Kerala

Case No : O.P. No's. 15567 and 15776 of 1994 and W.A. No. 1642 of 1974

Sugathan, K.S. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(4), 29(2), 30
Kerala Education Act, 1958 — Section 36, 36(2), 7
Kerala Education Rules, 1959 — Rule 10, 13, 14, 2, 3

Citation : (1995) 03 KL CK 0055

Hon'ble Judges : P.K. Balasubramanyan, J;P. Shanmugam, J;K. Sreedharan, J

Bench : Full Bench

Advocate : George Varghese Kannanthanam, for the Appellant; S. Narayanan Poti, General and Issac M. Perumpalli, Government Pleader, for the Respondent

Judgement

P. Shanmugam, J.—O.P. No. 15776 and 15567 of 1994. Both the above Original Petitions are filed against the order of the Deputy Director of Education, Ernakulam cancelling the selection made by the 1st Petitioners in both the O.Ps. under the management quota on the ground that it was made contrary to the principle of merit. The facts leading to the filing of the above Original Petitions are as follows:

2. The 1st Petitioners in both the Original Petitions are the Managers of two non-minority Aided Private Teachers Training Institutes. Petitioners 2 to 9 are candidates selected for the course 1994-1996. The Director of Education issued notification, dated 8th February 1994, published in the Kerala Gazette, calling for applications for the Teachers Training Certificate Course 1994-1996. The said notification prescribed eligibility and the method to apply. In pursuance of the notification, Petitioners 2 to 9 applied to the management quota and were selected. The select list was forwarded to the Deputy Director of Education, Ernakulam. The said list was verified and found to be correct as per the endorsement of the Deputy Director, dated 26th October 1994. Thereafter the students were allowed to pay the fees on 29th October 1994. However, based on

the communication from the Director of Public Instructions, Thiruvananthapuram, dated 24th October 1994 the Deputy Director, Ernakulam by order dated 28th October 1994 (Ext. P-5) (Ext. P-8 in so far as O.P. No. 15567/94) informed the petitioned that the selection made under the management quota was cancelled. As against these orders the above Original Petitions are filed.

3. The main submissions made by Mr. George Varghese Kannanthanam, learned Counsel for the Petitioners are as follows: (1) The 3rd Respondent-Deputy Director of Education has no power to cancel the selection of candidates already approved. (2) The Director of Public Instruction's power is circumscribed by rules 13 and 14 of Chapter XXV of the Kerala Education Rules (for short "KER", viz. to lay down the procedure for selection of candidates and to fix the number of candidates to be selected. (3) The management has absolute freedom for selection in reference to 20 per cent of the seats and their freedom cannot be restricted by Rule 10. (4) In any event, the prescription of order of merit in relation to selection under Rule 10 will not be applicable to the management quota. (5) Clause 5 of the notification dated 8th February 1994 will not apply to private schools.

4. In support of his contentions the learned Counsel placed strong reliance on the decision of the Division Bench reported in Chandrasekharan v. State of Kerala ILR 1993 Ker 590. The learned Counsel also referred to the following decisions, viz. Kehar Singh and Others Vs. State (Delhi Administration), , Ambica Quarry Works v. State of Gujarat and Ors., (1987) 1 SCC 213 , Union of India (UOI) and Others Vs. C. Damani and Co. and Others, and Hari Prasad Mulshanker Trivedi Vs. V.B. Raju and Others, in support of his contention that the court need not go into the constitutional questions to decide the issues that arise for consideration in this case. According to the learned Counsel the question is whether the 3rd Respondent-Deputy Director has the power to cancel the selection already made. Therefore the issue that arises for consideration is whether the 3rd Respondent has got the authority and jurisdiction to pass such an order?

5. The learned Advocate-General Mr. S. Narayanan Poti appearing on behalf of the State submitted that Section 7 of the Kerala Education Act, hereinafter referred to as the Act, imposes an obligation on the part of the Manager of the school to conduct the school in accordance with the provisions of this Act and the Rules made thereunder. Rule 9 of Chapter III imposes a duty on the Manager of aided schools to abide by the orders that may be issued from time to time by the Government and the Department in conformity with the provisions of the Act and the Rules issued thereunder. Rule 5 of Chapter XXV of the Rules states that admission to the Teachers Training Schools shall be open to candidates having the qualifications specified by the Government in this behalf. A reading of Rules 5, 6 and 10 of Chapter XXV makes it clear that the management of the aided schools also have to follow the qualifications prescribed under Rule 10. Rule 6 deals with the power of the management for selection to 20 per cent of the seats and Rule 7 deals with the selection to the remaining seats in Aided Training

Schools and Government Training Schools. The prescription regarding qualifications which are common to both these schools are found in Rule 10. Therefore, both the management as well as the Government authorities are bound by the qualification and the mode of selection prescribed under Rule 10. That apart the notification issued by the Director of Education dated 8th February 1994 is in consonance with Rule 10 and it applies to both management and Government Training Schools, the applications being required to be made are common. Learned Advocate General also submitted that assuming that there are no rules, merit alone can be the method applicable to the selection of candidates for Teachers Training Course. The principle laid down in *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.,* and *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.,* will apply to the facts of this case and, therefore the method of selection should be based only on merit. The learned Advocate General further submitted that admittedly the selection made by the Petitioner-management is not on the basis of the rule of merit. The management has selected the candidates based on consideration other than merit. In that even the selection made by the management has to be set aside. Assuming the impugned order is held to be illegal for any reason, by quashing the orders the court should not restore the illegal orders of selection made by the management.

6. We have considered the submissions made at length, the relevant documents and the rules carefully. Chapter XXV of the Rules deals with admission to Teachers Training Schools. The Petitioners-Managers are non-minority institutions recognised and aided by the Government. The institutions are governed by the Act and Rules as per Section 7 read with Rule 9 of Chapter III. Rule 9 which is relevant is extracted below:

9. Duties and powers of the Managers of Aided Schools.- (1) The Manager shall be responsible for the conduct of the school strictly in accordance with the provisions of the Kerala Education Act and the Rules issued thereunder. He shall also abide by the orders that may be issued from time to time by the Government and the Department in conformity with the provisions of the Act and the rules issued thereunder.

Therefore, the managements are bound by the rules in reference to admission in Teachers Training Schools found under Chapter XXV and also the notifications and the orders issued in this regard. Therefore, the first contention that the Director of Public Instruction and the Deputy Director of Education have no power to issue orders as per Exts. P-5 and P-8 respectively, has to be rejected as devoid of any substance.

7. The admission to the Teachers Training Schools is governed by Rule 5 which is as follows:

5. Admission to the Government Training Schools and Aided Training Schools shall be open to candidates having the qualifications specified by Government in

this behalf.

Rule 6 gives a right to the management to select 20 per cent of the seats in Aided Training Schools. Rule 7 enables the Selection Committee to select for 60 per cent of the seats in aided and 80 per cent of the seats in Government Training Schools. The remaining seats are to be filled up as per rules 8 and 9, which does not arise for consideration by us. Rule 10 is the relevant rule which prescribes the qualifications and eligibility for the candidates, which is extracted below:

10. The minimum qualification for Selection for training shall be a pass in the S.S.L.C. Examination conducted by the Commissioner for Government Examinations Kerala with a minimum of 45 per cent marks each in English, Science, Malayalam and Mathematics and an aggregate minimum of 48 per cent marks. Those who had taken more than three chances to pass the S.S.L.C. or its equivalent examination shall not be selected. The restriction regarding percentage of marks and number of chances shall not apply to Scheduled Tribes candidates and to those candidates who have passed the Pre-degree Examination conducted by any of the Universities in Kerala or passed any examination recognised by any of the Universities in Kerala as equivalent thereto, in the first or second chance. Half the number of seats will be filled up by S.S.L.C. holders and the rest by the holders of Pre-degree or its equivalent. The applicants shall possess the qualifications specified for selection on the date of application and shall not be below 16 years of age or above 31 years of age on the first day of July of the year in which the notification inviting applications is published in the Gazette. The maximum age limit shall be relaxable by 3 years for Backward Classes and by 5 years for Scheduled Castes and Scheduled Tribes. For Ex-Servicemen the age limit shall be relaxable to the extent of their period of Service in the Defence Forces. For candidates with previous teaching experience the age limit shall be relaxable to the extent of their period of service in departmental or private schools. The order of merit for S.S.L.C. holders will be judged on the basis of marks for S.S.L.C. and for Pre-degree holders on the basis of marks for the Pre-degree examination. The rule of Communal rotation should be observed separately for S.S.L.C. holders and Pre-degree holders. If there is shortage of eligible applicants in one category such shortage can be filled up from the other category. Kannada and Tamil applicants will also be selected separately applying the above criteria.

8. Apart from these rules, the notification issued in the Kerala Gazette dated 8th February 1994 by the Director of Education sets out the eligibility for applying to the Teachers Training Certificate Course 1994-1996 and also the method to apply for the said course. Clause 5 says that selection will be made on a comparative evaluation of the merit of the applicants. Clause 6 of the said notification deals with the allocation of seats between the S.S.L.C. candidates and P.D.C. candidates. It further says that those who have passed P.D.C. will not be eligible to be considered for the 50 per cent seats reserved for S.S.L.C. candidates.

Clause 7 says that the management has to follow the, above principle strictly in the case of their selection. Clause 20 which is also relevant states that the minority Teachers Training Institutes should give 50 percent of seats on merit basis to the candidates belonging to the concerned minority Section. The remaining 50 per cent seats should be given on merit basis to candidates other than those belonging to minority community section.

9. We find, the notification issued by the Education Department is strictly in conformity with the rules and it has further incorporated the principle laid down in the judgment, in O.P. No. 6241/93, dated 27th July 1993 wherein it was held that even in minority institutions selection should be based on merit to both categories of seats viz. 50 per cent for the minority section and 50 per cent for the non-minority community section. The managements of the private Teachers Training Institutes including the Petitioner are bound to follow the notification. The communication sent by the Director of Public Instruction dated 24th October 1994 to the Deputy Director and the impugned order of the Deputy Director in Ext. P-5 are for the implementation of the rules and the notification. The Petitioner ought to have followed the rules and notification viz. the rule of selection by merit and the Petitioner having forced to the law cannot take advantage of the verification endorsement of the Deputy Director in their illegal select list. The Verification at best can only relate the minimum qualification and the requirement to be verified as per Ext. P-1. The order of the Deputy Director cancelling the selection made by the management on the ground that the principle of merit has not been followed, is therefore, perfectly valid and is in accordance with the rules and the notification. The Petitioners cannot be allowed to take advantage of their own wrong.

10. The Deputy Director has the authority to issue the order by virtue of Rule 9 of Chapter III read with Section 7 of the Act. Rule 9 enables the Government and the Department to issue orders from time to time in conformity with the provisions of the Act and the rules issued thereunder. Rule 10 of Chapter XXV which prescribes the order of merit on the basis of marks obtained in the qualifying examination is also reflected in Clause 5 of the notification issued by the Education Department dated 8th February 1994. The authorities viz. the Director and the Deputy Director are to issue orders in conformity with the provisions of the Act and the rules which they have done in this case. The contention that the Director of Public Instruction can only lay down the procedure and the number of candidates for selection and that he has no power to issue other directions, is baseless. The competent authority to see that the relevant rules are implemented is the Director of Public Instruction. The further contention that insofar as the 20 percent seats in Aided Training Schools are concerned the management has got absolute freedom to select, cannot have any basis. As rightly contended by the learned Advocate General Rule 6 of Chapter XXV enables the management to select for the 20 per cent seats and Rule 7 enables the Government to select 60 per cent of the seats in aided Training Schools and 80 per cent of the seats in Government Training Schools. Both these

provisions are governed by Rule 10 in reference to the qualification and the mode of selection.

11. Learned Counsel for the Petitioner referred the decision of the Division Bench of this Court reported in *Chandrasekharan v. State of Kerala* I.L.R 1993 Ker 590 in support of his contention that for filling up the 20 per cent seats Managers are having absolute freedom. The said decision is related to sanctioning of additional seats in the Teachers Training Institutes. While disallowing the contention of the management to have absolute freedom to fill up the additional seats without reference to rules, the Division Bench held as follows:

6. Rule 9 of Chapter XXIII provides that the optimum strength of training classes in training schools shall be 20. Each school should have one junior class and one senior class. they together constitute one unit. Only in exceptional cases can the institute be permitted to have more than one unit. In view of this restriction, if additional seat is to be sanctioned in an institute, the restriction contained in the said Rule has to be relaxed. Government are having powers to dispense with or relax the requirements of any Rule as per Rule 3 of Chapter I of Kerala Education Rules. When additional seats are sanctioned as per the orders mentioned earlier, Government exercised their power under Rule 3 of Chapter I. The power exercised under that Rule was only in re"ation to Rule 9 of Chapter XXIII. The said relaxation cannot have any further impact. Admission to the additional seats sanctioned by Government are governed by the provisions contained in Chapter XXV of the Kerala Education Rules. This has been so specifically stated in the orders sanctioning the additional seats. Therefore, it is futile on the part of the managements to contend that the admission to the additional seats are outside the purview of Chapter XXV of Kerala Education Rules.

7. As per Rule 6 of Chapter XXV of Kerala Education Rules, twenty per cent of the seats in Aided Training Schools are to be filled up by the Managers of the respective schools. For filling up this twenty per cent of the seats, Managers are having absolute freedom. Out of the remaining seats, sixty per cent of the seats should be filled up by the candidates selected by a selection committee. The Selection Committee is to be headed by a member of the Public Service Commission, of which an official nominee of the Education Department is a member. This Selection Committee is to prepare a Select list for each revenue district. The remaining twenty per cent of seats is Set apart for untrained teachers" employed in Government schools. This is the method of selection to the seats in a Teacher"s Training Institute run by a private management. Additional seats were sanctioned by the Government subject to these provisions. In respect of Institutions run by minority community, these provisions will not apply. The managements before us want to have the right to fill up all the additional seats according to their discretion. That means, they also want to have the benefit of the rights available to minority communities. This claim, we are afraid, cannot be countenanced.

8. On getting the additional seats sanctioned on condition that admission to

those seats will be in accordance with the Rules in the Kerala Education Rules, management approached the Government to have absolute freedom to fill up all those seats. Government did not concede their demand. Managements now want this Court to allow them to fill up all the seats according to their discretion, ignoring the provisions contained in rules 6, 7 and 8 of Chapter XXV on the ground that the insistence of the rules will prejudice the students of Malabar. We are not to direct the Government not to insist on the implementation of the Rules when the Government want the Rules to be implemented. In a country where the rule of law is followed, the Rules should be adhered to. Compliance with the provisions of the Rule must be insisted upon. This Court is not to allow the management to violate the Rules. In the case before us, the managements violated the Rules and filled up the additional seats by selecting candidates according to their discretion. They want this action to be legalised.

The Division Bench has categorically stated in para 6 that the admissions to the additional seats are governed by the provisions contained in Chapter XXV of the rules and negated the contention of the management that the admissions are outside the purview of Chapter 25 of the Rules. When the Division Bench observed that, as per Rule 6 of Chapter 25 the managements have absolute freedom to select, it does not mean that they are entitled to select without reference to Rule 10 of the Rules. In para 8 the Division Bench has categorically held as follows:

In a country where the rule of law is followed, the Rules should be adhered to. Compliance with the provisions of the Rule must be insisted upon. This Court is not to allow the, management to violate the Rules.

12. The management in this case has selected students without following Rule 10 and Clause 5 of the notification. The manager has filed an additional supplementary affidavit dated 16th February 1995. In para 9 of the affidavit it has been stated that in selecting the candidates they have given due weightage to the factors viz., (1) Whether they are members of their Sabha. (2) Whether any member of the family was selected during the previous year or nearby years. (3) Their economic, social and educational backwardness. From the select list Ext. P-3 we find all the 8 candidates selected belonging to Hindu Ezhava/Nair community and they are not selected on the basis of the marks obtained in the qualifying examination since the relevant factor appears to be community. In the absence of the number of applicants or other candidates it is not possible to find whether how many applications are rejected on the ground of merit. But one thing which is clear from a reading of the additional supplementary affidavit is that the management has not taken into account the comparative evaluation of the merit for selecting the candidates. As a matter of fact the contention on behalf of the Petitioner is that the clause relating to selection on the basis of merit will not apply to them. Therefore, it is obvious that the management has not selected the candidates on the basis of merit. Further the affidavit filed in support of the main O.P. is silent about the date and the method of selection of

the candidates. The management is fully aware of Rule 10 and Clause 5 of the notification and knowing fully well that the method of selection is by comparative merit has violated the Rules and the Orders and therefore, the selection is liable to be set aside.

13. Once we hold that the authorities are competent and have power to issue Ext. P-5 order and also hold that Rule 10 and Clause 5 of the notification applies to the management, they must select the candidates according to their relative merit. In *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.*, the Supreme Court while upholding the right of the minority college in selecting for the 50 per cent seats on their own choice, approved the selection because the method adopted by the College was a well-known method followed in the academic field. The Supreme Court's finding in para 65 is as follows:

There is nothing on record to suggest that the interview conducted by the Selection Committee was contrary to the principles laid down by this Court in the aforesaid decisions. We see neither any arbitrariness nor any vice or lack of scientific basis in the interview or in the selection.

In para 102 the Supreme Court directed that admission of other community candidates shall be done purely on the basis of merit. The Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, in para 195 held as follows:

Private educational institutions may be aided as well as unaided. Aid given by the Government may be cent per cent or partial. So far as aided institutions are concerned, it is evident, they have to abide by all the rules and regulations as may be framed by the Government and/or recognising/affiliating authorities in the matter of recruitment of teachers and staff, their conditions of service, syllabus, standard of teaching and so on. In particular, in the matter of admission of students, they have to follow the rule of merit and merit alone (emphasis added) -Subject to any reservations made under Article 15.

The Supreme Court upheld the regulatory measures of the State holding that regulations made in the true interests of or efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions. The Supreme Court has held that the right of the State to regulate education, educational standards and allied matters cannot be denied. The Supreme Court has also laid down that it is open to the State to prescribe conditions for granting recognition or disbursing aid. These conditions may require a minority institution to follow prescribed syllabus for examination, courses of study, they may further regulate conditions of employment of teachers, discipline of students and allied matters. The object and purpose of prescribing regulations are to ensure that minority institutions do not fall below the standard of excellence expected of an educational institution and that they do not fall outside the main stream of the nation vide *Sidharajbhai v. State of Gujarat AIR 1963 S.C. 540, 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, , All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, and Fr. K.J. Thomas v. State of Kerala 1993 (2) KLT 399 . Even though all these decisions related to the minority schools, the right of the State to regulate has been upheld in the interest of excellence of education. The object of selecting the best candidates for Teachers Training Course cannot be overemphasized. As a matter of fact, Rule 2 of Chapter XXV states that in order that the Training Schools shall develop its individuality and become a centre of activity and a source of inspiration to the neighbouring Primary Schools, they shall be separated from the High Schools and placed under the independent charge of a Headmaster. The Supreme Court in the decision reported in St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., emphasized the importance of maintaining a very high standard of education. The Supreme Court noted with approval the observation made in N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, wherein it was observed as follows:

The Teachers Training Institutes are meant to teach children of impressionable age and we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training. True they will be required to pass the examination but that may not be enough.

In the same judgment the Supreme Court referred to the observation made in Andhra Kesari Education Society v. Director of School Education AIR 1989 S.C. 183, which is as follows:

The teacher alone could bring out the skills and intellectual capabilities of students. He is the "engine" of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energised with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefiter...The ill trained or sub-standard teachers would be detrimental to our educational system; if not a punishment on our children. The Government and the University must, therefore take care to see that inadequacy in the training of teachers is not compounded by any extraneous consideration.

In the same judgment the Supreme Court referred to the observation made in State of Maharashtra v. Vikas Sahebrao Roundale AIR 1992 S.C.W. 2182 which is as follows:

The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. The formal education needs proper equipment by the teachers to meet the challenges of the day to impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well equipped teacher could bring the needed skills and intellectual capabilities of the students in their pursuits....In that behalf compliance of the statutory requirement is insisted upon. Slackening the

standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education.

The Supreme Court laid down that the teacher-education programme has to be redesigned to bring in a system of education which can prepare the student-teacher shoulder the responsibility of impaling education with a living dynamism. Education being closely inter related to life the well trained teacher can instill aesthetic excellence in the life of his pupil. These observations of the Supreme Court make it very clear that the selection of students for the Teachers Training Course must be of the highest order and the best among the candidates should be selected. The role of teachers as emphasized by the Supreme Court above being pivotal and paramount for building the nation, the selection except by way of merit cannot on any account be countenanced. The state Government in recognising the importance of the Teachers has justifiably incorporated the rules for selection of teachers on the basis of merit.

14. Any attempt on the part of the management to classify a group of people for special treatment in the matter of selection will be strictly violating Articles 14 and 29(2) of the Constitution of India. Article 14 of the Constitution forbids class discrimination by conferring privileges upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred vide *R.K. Garg and Others Vs. Union of India (UOI) and Others*, . The Petitioner has admitted that they have selected the candidates on the basis³that they belong to a particular community, which is clearly arbitrary and violative of Article 29(2). The Petitioner-institute is recognised by the Government and is aided by the State fund. It will be violating the provisions of the Constitution the provisions of the Act and the Rules, if they are allowed to select candidates to their whims and fancies.

15. The contention of the Petitioner that they have given consideration to economic, social and educational backwardness of students cannot be countenanced. Rule 9 of Chapter XXV provides reservation for candidates belonging to Scheduled Castes/Scheduled Tribes and backward classes in making selection of candidates for admission to the Teachers Training Schools. While such a reservation is permissible under Article 15(4). of the Constitution and the State having reserved seats for the socially and educationally backward class of citizens, the claim of the Petitioner has to be rejected. Learned Counsel referred to the decision of the Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, and drew our attention to para 12 wherein it is stated that merit cannot be measured in terms of marks alone but human sympathies are equally important. The reference to the said observations is out of the context to the issue involved. The Supreme Court was dealing with the validity of the reservation of seats based on residence requirement. The Supreme Court while holding the total reservation of seats as violative of Article 14, held that reservation up to 70 per cent having regard to socio-economic disparities and inequalities, is valid. While considering the circumstances under which departure

may justifiably be made from the principle of selection on the basis of merit, the Supreme Court held that the claim of State interest in providing adequate medical service to the people of the State by imparting medical education to students who by reason of their residence in the State would be likely to settle down and serve the people of the State as doctors has thus been regarded by the Court as a legitimate ground for laying down residence requirement for admission to medical colleges in the State. Thus the departure from the principle of merit based on residence requirement was held to be valid.

16. The Rules are framed by the Government by virtue of the power conferred u/s 36 of the Act. Section 36 confers power on the Government to make rules either prospectively or retrospectively for the purpose of carrying into effect the provisions of the Act. Section 36(2)(ee) enables the Government to make rules for regulating admissions to schools maintained by the aid Government or receiving out of State funds, by making special provisions for the advancement of socially and educationally backward classes of citizen and the Scheduled Castes and Scheduled Tribes. Sub-clause (k) of the said section enables the State to make rules regarding the standards of education and courses of study. Rule 10, Chapter XXV of the Rules which prescribes minimum qualification for selection also provides that the order of merit will be judged on the basis of marks applying in the qualifying examination. The provision regarding the order of merit was inserted by G.O. (P) 85/79/G. Edn., dated 25th May 1979 published in gazette notification dated 25th May 1979. Thus the Rules which are made under the rule making power by the State are binding and enforceable. The Petitioners have neither questioned or challenged the Act or Rules or notifications framed thereunder. While it is not disputed that Clause 20 of the notification has prescribed the merit as the basis for the selection for minority institutions also, which it had hitherto enjoyed freedom to select candidates of their own choice. It will be unreasonable to construe and interpret to Rule 6 as conferring a special privilege and freedom for the non-minority institutions and schools to select candidates of their choice without reference to the merit. The contention of the Petitioners that they had not been following the rule of merit all these years is no answer in the face of clear provisions of law. The decision in *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.*, which enables the minority institutions to fill up 50 per cent of the seats on their choice has been referred to a larger Bench of the Supreme Court in the decision in *T.M.A. Pai Foundation and others Vs. State of Karnataka and others*, In paragraph 31., Their Lordships held as follows:

31. With regard to the third question, we think, we must briefly indicate the reasons for reference to the larger Bench. In *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.*, it is held that it is not permissible for the State or the affiliating University to provide that admissions to Minority Educational Institution should also be on the basis of merit as determined in a joint/common entrance test and that the Minority Educational Institution too must draw its students from the common pool on the basis of merit. We entertain serious

reservation with respect to the said holding. So long as the Minority Educational Institution is permitted to draw students belonging to that minority to the extent of 50 per cent seats even by going down the merit list, we see no reason why the State/affiliating University cannot stipulate that the general students as well as minority students must all be drawn only from, the common merit pool and that even the minority community students must also be admitted on the basis of inter se merit determined on the basis of common/joint entrance test. Article 30, in our opinion, does not clothe a Minority Educational Institution with the power to adopt its own method of selection of students. It is not a part of the minority character of the Institution. The said requirement is but a piece of regulation which the State/affiliating University can prescribe in the interest of fairness and maintenance of standards.

17. The Supreme Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., held private educational bodies receiving grant from Government are obliged to act fairly in consonance with Part III of the Constitution as well as rules and regulations framed by Government. The Supreme Court held in that context as follows:

These are and shall be understood to be the conditions of grant of aid. The reason is simple: public funds, when given as grant-and not as loan-carry the public character wherever they go; public funds cannot be donated for private purposes. The element of public character necessarily means a fair conduct in all respects consistent with the constitutional mandate of Articles 14 and 15.

In the same judgment it was held that private institutions are not State instrumentalities but since they perform a public duty of imparting education, they are bound to act in consonance with Article 14. In the same judgment the Supreme Court held that the effect of holding that right to education is implicit in the right to life is that the State cannot deprive the citizen of his right to education except in accordance with the procedure prescribed by law. In the light of these decisions it is clear that the Petitioners' institutions cannot deny to follow the rule of merit in selecting candidates.

18. A faint attempt was made to rely upon the order of the Full Bench of this Court in O.P. No. 5427 of 1994, etc., dated 17th January-1995. In the Batch of O.Ps. the challenge was made against the Clause 20 of the Notification of the Director of Education dated 8th July 1994 which prescribed the rule of merit for selection. When the matter came up before the Full Bench the learned Advocate General submitted that he has been instructed not to oppose the prayer in those Original Petitions. But the Full Bench was not inclined to grant the prayer, but Wanted to dispose of the matter on merits. Thereafter the Original Petitions were requested to be adjourned. On the subsequent date a statement on behalf of the Government was filed stating that the Clause 20 of the notification will not be enforced for the year 1994-95. As nobody opposed this the Full Bench without examining the issues involved disposed of the Original Petitions recording the statement filed by the State. Thus the Full Bench did not decide the issues

involved in those matters. Therefore it is idle to contend that Clause 20 of the notification is not enforceable against those institutions. As rightly contended by the learned Advocate General assuming the Clause 20 is not insisted upon the law declared by the Supreme Court as referred above are binding on all the T.T.Is. and they must select candidates only by merit.

19. In view of the larger issues raised in these cases and the arguments addressed by both sides on the constitutional provisions and on the Supreme Court decisions, earlier contention of the Petitioners that the matter may be confined to the power of the educational authorities lost its significance.

20. It is, therefore, clear that in so far as the selection to the Teachers Training Schools are concerned, merit is the only method for admitting candidates subject of course to the rule of reservation. Any other mode of selection will be unconstitutional and illegal. The selection done by the Petitioner-institute is violative of the rules and constitutional provisions. For all these reasons we are of the view that the order passed by the Deputy Director (Ext. P-5) is valid. The selection of Petitioners 2 to 9 which was done contrary to the above findings is set aside. The Original Petitions are dismissed. No order as to costs.

21. W.A. No. 1642 of 1994: In view of our findings in O.P. Nos. 15567 and 15776 of 1994, W.A. No. 1642 of 1994 which is filed against the order in C.M.P. No. 276 of 1994 in O.P. No. 667 of 1994 by the State is consequently allowed.

22. I had the advantage of going through the judgment of my learned brother P. Shanmugam and I agree with the conclusions reached by him. But I am writing these few lines on account of the fact that I was party to the judgments in Chandrasekharan v. State of Kerala ILR 1993 Ker 590 and Fr. K.J. Thomas v. State of Kerala 1993 (3) KLT 399.

23. In 1992 Government sanctioned additional seats to the T.T.C. course on condition that selection will be made strictly in accordance with existing Rules. Chapter XXV of Kerala Education Rules, hereinafter referred to as "Rules" govern the selection of candidates for admission to T.T.C. course. As per Rule 6 of that Chapter, 20 per cent of the seats in the Aided Training Schools are reserved for selection by the managers of the respective schools. Rule 7 states that 60 percent of the seats in the Aided Training schools shall be made by selection committee consisting of a member of the Public Service Commission as Chairman. Some of the managers of Training Schools situated in Malabar represented that Malabar is an educationally backward area and so they must be given freedom to fill up the additional seats without reference to Rules in Chapter XXV of K.E.R. Even though this request of management was turned down by Government, the management admitted students to the sanctioned additional seats. Thereupon the management and students admitted in violation of the Rules approached this Court contending that if the students so admitted are not allowed to take the examination, it will put them to irreparable damages and loss. Division Bench had to examine the nature of admission secured by the

students. As per Rule 6 of Chapter XXV management has right to admit students to 20 per cent of the seats. Students who got admission in the management quota were treated as legally admitted to the course. But admission given by management to the 60 per cent of the seats reserved for selection by Selection Committee was found to be against law and those students were defied right to take examination. Dealing with this situation it was observed in paragraph 7 of the judgment "For filling up this twenty per cent of the seats managers are having absolute freedom". Basing on this observation it was contended that the managers have absolute freedom to choose any one to the 20 per cent seats set apart for selection by management. This contention is misconceived. While considering the selection of candidates to the additional seats sanctioned by Government the Bench treated the two categories of seats, one to be filled up by management and the other by Selection Committee separately, the first one at the discretion of the management and the second not on the volition of the management. The Bench had no occasion to consider whether the management should make the selection on the basis of merit or otherwise. So the observation in the decision in Chandrasekharan's case ILR 1993 Ker 590 cannot be taken as upholding any unbridled power on management to select the candidate for T.T.C. course. Rule 10 of Chapter XXV with all its vigor will apply to selection of candidates by management under Rule 6 to the 20 per cent seats reserved to them. Chandrasekharan's case ILR 1993 Ker 590 has in no manner relaxed the rigor of Rule 10. Management has to strictly comply with Rule 10 while selecting candidates to the 20 per cent seats reserved for them under Rule 6 of Chapter XXV of K.E.R.

24. In *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.*, the Supreme Court had to consider inter alia whether St. Stephen's College as minority institution is bound to admit students on the basis of merit based on the percentage of marks secured by the student in the qualifying examination and whether the college can reserve seats for students of their own community in view of Article 29(2) of the Constitution. The college was selecting candidates on the basis of the academic record and performance at the interview. There was nothing to show that interview was held in an arbitrary manner. Therefore Their Lordship observed:

We see neither any arbitrariness nor any vice or lack of scientific basis in the interview or in the selection. The interview confers no wide discretion to the Selection Committee to pick and choose any candidate of their choice. They have to select the best among those who are called for interview and the discretion is narrowly limited to select one out of every 4 or 5. In these premises, we would defer to the choice and discretion of the Selection Committee so long as they act properly and not arbitrarily and act within the recognised principles.

25. The Court was convinced of the proper selection based on merits of the candidates. The minority institution was not acting arbitrarily in making selection for admission. So the Court did not interfere with the method adopted by the

college. While dealing with the right under Article 29(2) of the Constitution Their Lordships took the view that 50 percent of the total seats must be made available to members of communities other than minority community and the admission must be purely on the basis of merit. The Court observed:

In the light of all these principles and factors, and in view of the importance which the constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course in conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no cast such intake shall exceed fifty per cent of the annual admission. The minority institutions shall make available at least fifty per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.

The Supreme Court has thus held that selection of candidates belonging to minority communities and those of communities other than minority communities should be on the basis of merit. This principle has been followed by the Bench, to which I was also a party, in *Fr. K.J. Thomas State of Kerala* 1993 KLT 399. The law was stated as:

With effect from 6th December 1991 when *St. Stephen's College's* case was decided; the minority community is under Article 30(1), entitled to fill up seats from its community candidates in the area upto a maximum of 50 per cent of the seats and that the rest of the seats to be filled from non-minority communities on merit basis.

This decision was correctly understood by the Director of Public Instruction when he issued notification dated 8th February 1994 inviting applications for admission to T.T.C. course 1994-95. Clause 20 of that notification stated that T.T.I, institutes belonging to minority communities should give 50 per cent of the seats on merit basis to the candidates belonging to the concerned minority community and the remaining 50 per cent of the seats should be given on merit basis to candidates of other communities. This provision in the notification was challenged by managements of minority communities before this Court. When the matter came before a Full Bench, a statement was filed by Government to the effect that Council of Ministers have decided not to oppose the prayer of the private managements in respect of admission of T.T.C. course. Learned Advocate General accordingly submitted to Court that Clause 20 of the notification will not be enforced during the academic year 1994-95. Since nobody opposed this stand taken by Government the Full Bench without examining the issues further disposed of the Original Petitions recording the statement filed by the State. Can the Government be allowed to take such a stand? This Court on the basis of the decision of the Supreme Court in *St. Stephen's College* laid down the principles governing admission to T.T.C. course in training colleges run by minority

institutions. Those principles are binding on the Government and this Court unless changed by process known to law. No provision of the Constitution has been placed before us by the learned Advocate General which conferred any power on the Government or for that matter to the Council, of Ministers to act against the law laid down by this Court and the Supreme Court. The Council of Ministers if had taken ? decision not to insist on the implementation of Clause 20 of the notification issued by the Director of Public Instruction has the effect of acting in violation of the principles laid down by this Court. Such a power cannot be attributed to the Council of Ministers. The statement filed in Court based on the said illegal decision has in fact gone to violate the provisions of the Contempt of Courts Act as well. The decision of the Council of Ministers must be treated as non-est. Selection made to T.T.C. course during 1994-95 contrary to the provisions contained in clause 20 of the notification is against law and will not confer on the selected candidates any right to continue in the course or to complete the same by taking the final examination. The managements are, it appears, interested in admitting students according to their sweet whims and fancies. Government has illegally conceded their demands ignoring the binding decisions. By this action Government Was trying to nurture institutions, in the words of their Lordships of the Supreme Court, "which are not only masked phantoms but are established as business ventures for admitting sub-standard students, without any competitive tests, on basis of considerations which cannot serve even the interest of the minority." Vide St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., .

26. In *Andhra Kesari Education Society v. Director of School Education* AIR 1989 S.C. 183, the Supreme Court highlighted the importance of Teachers Training Course in the following words:

Though teaching is the last choice in the job market, the role of teacher is central to all processes of formal education. The teacher alone could bring out the skills and intellectual capabilities of students. He is the "engine" of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energised with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and Motivate into action the benefiter. He must keep himself abreast of ever changing conditions. He is not to perform in a wooden and unimaginative way. He must eliminate fissiparous tendencies and attitudes and infuse nobler and national ideas in younger minds. His involvement in national integration is more important, indeed indispensable. It is, therefore, needless to state that teachers should be subjected to rigorous training with rigid scrutiny of efficiency. It has greater relevance to the needs of the day. The ill grained or sub-standard teachers would be detrimental to our educational syatem; if not a punishment on our children. The Government and the University must, therefore, take care to see that inadequacy in the training of teachers is not compounded by any extraneous considerations.

27. Government of Kerala while taking the decision not to implement Clause 20 of the notification during 1994-95 has thrown to wind the views expressed by Court's and ignored the purpose for which the course is held.

I agree with the conclusions arrived at by my learned brother Shanmugam, J.