

(1993) 10 SC CK 0079

In the Supreme Court Of India

Case No : Writ Petition (C) No. 317 1993

T.M.A. Pai Foundation and others

APPELLANT

Vs

State of Karnataka and others
Mar Athanasius College
Vs State of Kerala and another

RESPONDENT

Date of Decision : 07-10-1993

Acts Referred:

Constitution of India, 1950 — Article 144

Citation : AIR 1994 SC 13 : (1995) 4 SCALE 665 : (1994) 3 SCALE 8 : (1993) 4 SCALE 513 : (1993) 3 SCR 117 Supp : (1994) 1 UJ 211

Hon'ble Judges : S.P. Bharucha, J;S.C. Agrawal, J;S. Ratnavel Pandian, J;S. Mohan, J;B.P. Jeevan Reddy, J

Bench : Full Bench

Advocate : Deepankar Gupta, ASG., Harish Salve, R.K. Garg, Sunil Kumar and Kapil Sibbal, for the Appellant;

Final Decision : Allowed

Judgement

1. These matters were posted before us on October 4 and 5, 1993 for orders with respect to the fee structure in private professional colleges and for other appropriate orders. We have heard the learned Solicitor General for the Union of India, the learned Advocate General for Karnataka and counsel for other States. In view of the non-admission of students to the private professional colleges even by now (first week of October) we called upon the counsel for the Union, the States and the private parties to tell us the way in which the present impasse can be resolved. We pointed out to the counsel that the refusal of the managements of the private professional colleges or, for that matter, their demand that they should be permitted to admit 50% of the students of their own choice cannot be and shall not be conceded. We made it clear that in case of the failure of the parties to find a reasonable way-out, this Court would be obliged to adopt coercive measures to enforce its judgment in Unnikrishnan P.J. and Others Vs. State of A.P. and Others, and Ors. orders in that behalf.

2. The learned Solicitor General appearing for the Union of India submitted that in pursuance of the judgment in Unnikrishnan, the Central Government, Medical Council of India, All-India Council for Technical Education and other similar bodies have promptly initiated the exercise for determining the fee structure. He placed before us the proceedings of the meeting of the sub-committee of the Medical Council of India held on April 12, 1993 and the affidavit filed on behalf of the All-India Council for Technical Education (A.I.C.T.E.). The operative portion of the minutes of the sub-committee of the I.M.C. reads thus:

Keeping all the factors into mind, the Committee recommended that the following fee structure may be considered: -

Rs. 80,000 to Rs. 1,00,000 per year per student Indian student joining the institutions having their own hospitals.

Rs. 60,000 to Rs. 80,000 from the students joining the institutions utilising the facilities of both Govt. as well as their own hospitals.

Rs. 40,000 to Rs. 60,000 from the students joining the institutions utilising the facilities completely as provided by Govt. hospitals. Fee to be charged from non-resident Indians is \$50,000 for the whole course.

3. So far as the engineering colleges are concerned, the learned Solicitor General pointed out that though the A.I.C.T.E. has not taken any decision so far, it will, soon enough, issue regulations prescribing a reasonable and non-disparate fee structure for different States, effective from the academic year 1994-95. He pointed out that while the fee fixed for payment seats is Rs. 37,000 in Madhya Pradesh, It is Rs. 20,000 in Karnataka and that in other States a figure in between these two figures has been specified for payment seats. He submitted that for this year, this Court may fix a tentative fee to be adjusted in accordance with the final fixation by the Central Government and/or the appropriate council/ authority. The learned Solicitor General assured us that the Central Government is fully committed to the full implementation of the judgment in Unnikrishnan and that any steps taken by this Court for implementation of the said judgment will have the unconditional support of the Union of India.

4. The learned Advocate General of Karnataka submitted that the Karnataka Government has taken prompt steps for implementing the judgment of this Court in Unnikrishnan, that the lists of free seats have already been published though lists of payment seats could not yet be communicated for want of certain relevant particulars. He stated that the State Government has also revised the fee structure pursuant to this Court's order dated August 18, 1993. He brought to our notice the present stand of the managements that unless they are permitted to admit 50% of the students of their choice, they will not open the professional colleges and that they prefer to close them. He brought to our notice the affidavit filed by the Government of Karnataka in Writ Petition (C) No.663 of 1993 for a direction to all the private educational institutions in Karnataka to admit the students allotted to their colleges on such conditions as may be

deemed proper by this Court. The learned Advocate General assured us that the State of Karnataka is constitutionally bound to implement the said judgment and will take all necessary steps in that behalf.

5. Sri. P.R. Seetharaman, learned Counsel for the State of Tamil Nadu stated that the Government of Tamil Nadu has since revised the fee chargeable in private medical colleges and has fixed it at Rs.1,58,000 per annum. He brought to our notice the fee structure for other colleges which we shall presently mention.

6. The learned Counsel appearing for the State of Maharashtra brought to our notice the fee structure evolved by the Government of Maharashtra.

7. Sri. K. Parasaran, appearing for some of the private managements submitted that no citizen of this country can refuse to implement the judgment of this Court and that the real difficulty in the way of some of the private managements was that the fee fixed by the Governments of Karnataka and Tamil Nadu was impractical and inadequate. It was not possible to run the colleges with the said fee, submitted the counsel. He attributed the delay in making admissions to the inaction and delay on the part of the concerned governments in complying with the several directions contained in the scheme in Unnikrishnan.

8. S/Sri Santosh Hegde and Govind Mukhoty made a grievance of the differential treatment between the minority institutions and non-minority institution. While complaining about the fee structure, they concentrated their ire against what they called the differential treatment accorded to the minority institutions (implicit in the order dated August 18, 1993) which, according to the learned Counsel, has created a lot of heart-burning among the managements of the non-minority professional colleges. They submitted that the Government of Karnataka has initially fixed a fee structure which was ridiculous and that even after the orders of this Court, the fee structure evolved is totally inadequate and insufficient for running the private colleges.

9. The sub-committee of the I.M.C has categorised the medical colleges into three classes, as would be evident from the final recommendation quoted hereinabove. The Government of Karnataka has also adopted the very same categorisation but has fixed the fee in an inverse fashion. In other words, whereas the sub-committee of the I.M.C. has recommended a higher level of fee for those medical colleges have their own hospital facility and a lesser fee for those who are availing of Government hospital facilities, the Karnataka Government has fixed higher fee for medical colleges without having their own medical facility and, therefore, using the Government medical facility and lesser fee for those medical colleges which are having their own hospital facility.

10. The learned Solicitor General clarified that the fee structure recommended by the sub-committee of the I.M.C. is per seat uniformly and not merely for payment seats as understood in Unnikrishnan. We record his statement and act on that basis. The learned Solicitor General further brought to our notice that for dental colleges, the Dental Council of India has fixed the following fee structure

for payment seats in the light of Unnikrishnan:

Annual Fee of Rs.1,00,000 for Resident Indian students studying in a Dental College which utilises the facilities of a Medical College & Hospital or of a Hospital which fulfills the requirements of D.C.I, norms.

Annual Fee of Rs.1,20,000 for Resident Indian students studying in a Dental College which cannot utilise the facilities of a Medical College Hospital, but has to run its own Hospital fulfilling the requirements stipulated by D C.I. norms.

11. We may now set out the fee structure evolved by Karnataka, Maharashtra and Tamil Nadu State Governments.

KARNATAKA:

MEDICAL COLLEGES:

Rs. 65,000 p.a for medical colleges having their own hospital facility. Rs. 75,000 p.a. for those medical colleges which are partly utilising their own hospital facility and partly utilising Government hospital facility. Rs. 85,000 p.a. for those medical colleges which are not having own hospital facility. Rs. 8,000 p.a. for free seats.

Dental Colleges:

Rs. 40,000 p.a. for those medical colleges having their own hospital facility and Rs. 50,000 p.a. for those who do not have their own hospital facility and, therefore, utilise the Government hospital facility. Rs. 8,000 p.a. for free seats.

Engineering Colleges:

Rs. 25,000 p.a. uniformly for payment seats. Rs. 4,000 for free seats.

Nursing Colleges:

Rs. 15,000 p.a. uniformly for payment seats. Rs. 1,000 p.a. for free seats.

12. The learned Advocate General stated that while fixing the above fee structure, the Government has not taken into account the capital cost. The basis for fixation, stated the learned Advocate General, is the expenditure incurred by the Government on each student in the Government Medical College, Bangalore.

13. Sri Santosh Hegde, appearing for certain private managements brought to our notice that where a medical college is permitted by the Government of Karnataka to avail of the facilities of the Government hospital, the colleges are made to pay for the same and that they also have to provide for certain other things. This aspect has, however, not been put in issue before us and, hence, we express no opinion thereon.

TAMIL NADU:

MEDICAL COLLEGES:

Rs. 1,58,000 p.a. (No categorisation among the medical colleges).

Engineering Colleges:

Rs. 32,000 p.a. for payment seats and Rs. 6,000 p.a. for free seats.

Dental Colleges:

Rs. 95,000 p.a. for payment seats and Rs. 5,000 p.a. for free seats.

14. The learned Counsel stated that in fixing the said fee structure, the Government has taken into account both the capital as well as recurring costs.

MAHARASHTRA:

Medical Colleges:

Rs. 1,71,000 p.a. for payment seats and Rs. 4,950 p.a. for free seats. (No categorisation).

Dental Colleges:

Rs. 1,30,000 p.a. for payment seats and Rs. 3,450 p.a. for free seats.

BAMS. (Ayurveda):

Rs. 1,10,000 p.a. for colleges having their own hospital facility and Rs. 90,000 p.a. for colleges without their own hospital facility. Rs. 2700 p.a. for free seats.

B.H.M.S. (Homoeopathic) :

Rs. 30,000 p.a. for colleges with their own hospital facility. Rs. 22,000 p.a. for colleges without their own hospital facility and, therefore, depending upon the government facility. Rs. 2,700 p.a. for free seats.

B.U.M.S. (Unani):

Rs. 40,000 p.a. for medical colleges with their own hospital facility and Rs. 23,000 p.a. for colleges without their own hospital facility and, therefore, depending upon the government facility. Rs. 2,700 p.a. for free seats.

Engineering Colleges:

Rs. 32,000 p.a. for payment seats. Rs. 4,000 p.a. for free seats.

15. It is stated before us that in Andhra Pradesh, the fee structure has been evolved only for engineering colleges and not for the medical college. (It is stated that there is only one private medical college in the State). The fee fixed for engineering colleges is Rs. 26,000 p.a. for payment seats and Rs. 4,000 p.a. for free seats.

16. The system obtaining in Kerala appears to be altogether different which was unfortunately not brought to our notice on August 18, 1993. There are only two private engineering colleges in the State, said to be Minority Educational

Institutions. The system obtaining in this State appears to be that the entire fees collected by these private engineering colleges has to be made over to the Government while the Government bears the entire expenditure for running the colleges. Under this system, the colleges were allowed to admit students of their own choice to the extent of 15%.

17. It would appear from the particulars stated above that the fee structure evolved in Karnataka alone is at a lower level compared to the fee structure in Tamil Nadu and Maharashtra. In the circumstances, we are inclined to fix a fee tentatively for these colleges in all the States. It is made clear that the fee fixed by us herewith is only tentative and provisional in nature and is liable to be adjusted in accordance with the fee structure evolved by the central government and/or appropriate central body, as the case may be. The figure fixed by us is no indication and shall not be treated as such by any Government or authority fixing the fee structure on a regular basis.

18. Then remains the question of foreign students. The learned Solicitor General brought to our notice that the Government of India had permitted the private medical colleges in the country to admit foreign students upto 30% of their intake capacity every year and that the said limit was raised to 50% in the year 1991. He submits that the bulk of the foreign students are from Malaysia and that there was an understanding between the Government of India and the Government of Malaysia that a sizeable number of students from Malaysia will be admitted to the private medical colleges in India on payment of about 40 to 50,000 U.S. dollars. It is stated that most of the students prefer and are admitted into colleges run by Dr. T.M.A. Pai Foundation at Manipal and Mangalore. A few of them are also admitted into the colleges at Bangalore and Belgium. He submitted that while there is no agreement as such between the two Governments, it was an assurance held out by the Government of India to the Government of Malaysia. He submits that for the current year (academic year 1993-94), status quo may be maintained which means that foreign students to the extent of 50% of the intake capacity of the medical colleges may be permitted to be filled in by Foreign students. He submits that by the academic year 1994-95 the Government would have evolved a definite and clear policy in this behalf. He brings to our notice para (9) of the affidavit filed by Ms. Shailaja Chandra, which reads as follows:

The Central Government therefore submits that for the current academic session 1993-94, purely as an ad-hoc dispensation, 50% of the seats may be permitted to be filled by foreign students, particularly Malaysians. This would cover all recognised private medical colleges and apply to the number of seats recognised by Medical Council of India. The Central Government will undertake a de novo examination of the entire subject to formulate a policy that will be made applicable from the next academic year 1994-95 onwards to be placed before the Honorable Court at a subsequent stage.

19. Whatever may have been the circumstances and reasons for which the

Government of India had permitted the private medical colleges to admit the foreign students to the above extent, it is clear that the said permission or arrangement is not enforceable and cannot be enforced with effect from the academic year 1993-94 in view of the judgment in Unnikrishnan. Admittedly, there is crying need for these seats within the country itself and it is they who must have the priority in the matter of admission to these colleges.

20. Sri Salve, learned Counsel appearing for the petitioner in Writ Petition (C) No.317 of 1993 (filed by Dr. T.M.A. Pai Foundation and others submits that a part of Kasturba Medical College, Mangalore and their medical college at Manipal have become a part and parcel of the deemed University and that the petitioners have already withdrawn the petition to that extent. He says that only 125 seats in K.M.C. college, Mangalore are the subject matter of the writ petition at present. (He submits that the total intake capacity of this college was 300 which was later reduced to 250 and only 125 seats out of them are the subject matter of the writ petition at present. The learned Advocate General of Karnataka, however, says that he has no instruction or information in this behalf and that according to his information, the number of sanctioned seats in the colleges is 300, which means that 150 seats are not concerned in this writ petition. We do not wish to express any opinion on this aspect). Sri Salve says that out of these 125 seats the petitioners may be permitted to fill up 81 seats by admitting foreign students from Malaysia inasmuch as the petitioner has already collected the fees from the said 81 students and has made a commitment to them to grant admission for this academic year. He submits that the collection of fees and the commitment made to the said students was prior to this Court's decision in Unnikrishnan on February 4,1993. He conceded that no permission or authorisation was given to the college, either by the Government of India or by the Government of Karnataka, either to collect the fee in advance or to made a commitment to foreign students to admit them far in advance of the academic year. The learned Counsel brought to our notice certain proceedings which, however, do not pertain to the academic year 1993-94. The learned Counsel also relies upon the general authorisation given to all private medical colleges in this country to admit students to the extent of 50% of their intake capacity and submits that in view of the bonafide action of petitioner in collecting the fees and making a commitment to admit foreign students from Malaysia, they may be permitted to admit atleast 81 students for the current academic year as a special case. Sri Salve submits that if the petitioner is asked to refund the fee (which they are bound to do in case they are not able to grant admission to those students) the impact may be very heavy in view of the fact that the rate of exchange has gone up since the amount was collected from the said students.

21. On this aspect, the learned Advocate General of Karnataka has brought to our notice that when the petitioner was permitted to withdraw the writ petition partly, this Court made an order, with the consent of the counsel for the petitioner, on September 22,1993, that the seats concerned in this writ petition at present will be filled in accordance with the order dated August 18, 1993. He

says that having obtained the said order with consent, the petitioner cannot now ask for a review of that order.

22. We are of the opinion that the objection raised by the learned Advocate General is a perfectly legitimate one and has to be given effect to. There was no reason why the petitioner should have collected the fee from foreign students promising them admission for the academic year 1993-94 (beginning sometime in July/August, 1993) even prior to February, 1993. Indeed, according to the particulars furnished by the petitioner, he has collected the amounts from students promising them admission not only for the academic year 1993-94 but also for 1994-95. We see no justification for this act and if the petitioner suffers any prejudice on account of such action, he has to blame himself of the same. We are, therefore, not inclined to pass any special order in the case of the petitioner in Writ Petition No.317 of 1993.

23. Then remains the question whether any quota is to be allotted for foreign students for this year - 1993-94 being an year of transition and adjustment-in view of the Government of India's Orders referred to above permitting admission of foreign students to the extent of as much as 50%. Taking into account all the facts and circumstances and having regard to time that has already elapsed and the constriction of time, we are of the opinion that it would be proper to permit the private professional colleges to admit N.R.Is. and foreign students upto a maximum extent of 15% of the intake capacity for this year. In other words, provision made for N.R.Is. to the extent of 5% in the order dated May 14, 1993 in Review Petitions 482 of 1993 etc. shall be raised to 15% and shall be available both for N.R.Is. as well as foreign students. The basis of selection and admission for these N.R.Is. and foreign students shall be the same indicated in our order dated May 14, 1993 in Review Petition Nos. 482/93 etc. In case, however, N.R.Is./foreign students are not available to fill up all the seats within the said 15% meant for them, it shall be open for the management to admit other students within the said quota. It will not be necessary that the students admitted against the said 15% quota should be the allottees from the Government or that they should have appeared for the joint entrance examination, if any, held by the concerned Government or authority. It is made clear that this is a special provision made only for this year, being an year of transition.

24. The learned Advocate General of Karnataka submitted that while determining the tentative fee which can be collected by these colleges, this Court must keep in mind that they are being permitted to admit N.R.Is. and foreign students to the above extent. We agree that the submission made by the learned Advocate General is a relevant one but it is not of much significance at this stage inasmuch as the determination by us is only tentative and provisional subject to adjustment as and when the Government of India or the concerned apex professional council fixes the fee structure on a regular basis.

25. In the above circumstances, we determine the provisional fee payable for the

payment seats in the following manner:

The medical colleges shall be categorised into three classes for the purpose of fixation of fee payable by the payment students. Category (1) shall comprise medical colleges who have their own hospital facility. Category (2) shall comprise medical colleges partly utilising the facilities of the Government hospitals and partly their own hospitals and category (3) shall comprise those medical colleges who do not have their own hospital facility but depend entirely on the government hospital for training students.

26. For category (1), we determine the fee payable at Rs.1,40,000 per annum, for category (2) at Rs.1,20,000 per annum and for category (3) Rs.1,00,000 per annum.

27. For Dental Colleges, the fee shall be Rs.1,00,000 per annum for those having their own hospital facility and Rs.90,000 per annum for colleges availing of the Government hospital facility.

28. In the case of nursing colleges and colleges imparting instructions in B.A.M.S., B.H.M.S. and B.U.M.S., the fees respectively fixed by the appropriate State Government shall be followed and operated subject of course to adjustment on regular fixation by the Government of India/appropriate apex professional council.

29. So far as engineering colleges are concerned, no fee used be fixed by us tentatively for this year. The fee fixed by the respective State Government shall be operative and shall be subject to the final fixation as stated above.

30. It may appear at first glance that the fees tentatively fixed by us is quite high, but is not really true. Firstly, this is only a tentative fixation subject to adjustment on regular determination of fee structure by the Central Government and/or central councils concerned. Secondly, the payment seats are only half and it is they who have to bear the entire burden of the expenditure incurred by college; the fees paid by free students admitted on the basis of merit, is only a nominal fee. Any excess paid in this year can always be adjusted in later years.

31. It is further directed that the requirement of Bank guarantee or cash deposit provided by Clause (5) and referred to in Clause (7) of the scheme evolved in Unnikrishnan shall stand deleted. This deletion is effective for both minority professional colleges as well as to 'non-minority' colleges.

32. So far as the affidavit filed by the Karnataka Government in Writ Petition No. 663 of 1993 is concerned, we are unable to appreciate the reasons for filing it seeking directions to private managements. The judgment and orders of this Court are already there containing the directions. We fail to see the need for another direction to implement the directions already given. To us, the affidavit appears to be an attempt to explain away the inaction of the Karnataka government. Instead of performing its constitutional duty of implementing the judgment and directions of this Court in Unnikrishnan and subsequent order-

which are indeed inspired by the Karnataka Act banning capitation fee among other enactments the seeking of fresh direction to the managements to admit students allotted by it is difficult to appreciate. It goes without saying that managements of private professional colleges are found to admit students allotted by the Government as per the decision of this Court in Unnikrishnan and the subsequent orders in that behalf including those issued herein. So far as Kerala is concerned there are only two private engineering colleges in respect of which we propose to make orders separately inasmuch as we could not hear the counsel for the petitioners on these two days. Writ Petition (C) No. 536 of 1993 shall be posted for orders at 1.30 P.M. on 8.10.1993 in the chambers of S. Ratnavel Pandian. J.

33. The directions given in Unnikrishnan and the subsequent orders and those given herein shall be implemented and students admitted against all the free seats and payment seats in all the professional colleges on or before October 31, 1993. The State Government shall take immediate and effective steps for the above purpose. The Central Government shall ensure the implementation of the same by issuing appropriate directions keeping in view Article 144 of the Constitution, if found expedient or necessary. In case, any professional colleges refuses to abide by the said orders and directions, the State Government concerned shall bring it to the notice of this Court immediately for appropriate orders. Liberty is given to the learned Counsel for the concerned State Government to mention the same before the Presiding Judge,

S. Ratnavel Pandian, J.

34. Ordered accordingly.