

SHAHAL H. MUSALIAR AND ANR. ETC. ETC.

v.

STATE OF KERALA AND ORS. ETC. ETC.

AUGUST 18, 1993

[S. RATNAVEL PANDIAN, S.C. AGRAWAL, S. MOHAN,
B.P. JEEVAN REDDY, AND S.P. BHARUCHA, JJ.]

Education—Minority Educational Institutions—Admission—Process—Merit to be guiding principle—Quota distribution—50% seats to be filled up by Government—Remaining 50% of seats to be filled up by Management—Selection strictly on basis of merit—Equal distribution between free seats and payment seats—N.R.Is if any admitted to an extent not exceeding 5% of total seats shall be out of payment seats—Statements containing full particulars of students admitted to be submitted to Competent Authority—Order to apply only to Minority Education Institutions on verification by Government—A larger Bench to hear question arising in these batch of cases.

The present Writ Petitions question applicability of the scheme framed by the Supreme Court in *J.P. Unnikrishnan v. State of A.P.* [1993] 1 SCR 594 as also the applicability of the rules and order made by State Government in pursuance of and on the basis of the said decisions. In *Unnikrishnan*, the Supreme Court did not make any order or direction about Minority Educational Institutions (MEIs). However, several State Governments served notice upon the petitioner intimating them they have to follow the said decision. Many of the petitioner-institutions raised an objection that since they are MEIs, the said decision or the rules and orders made pursuant thereto do not apply to them. The respective Governments ignored the protest and called upon the petitioners to abide by the said decision. Petitioners filed writ petitions. In Writ Petitions 350 and 355 of 1993 an interim order dated May 14, 1993 was made in the following lines with the consent of the petitioners.

(i) Fifty per cent of the total seats be filled up by candidates selected by the agencies of the State Government on the basis of a competitive examination/test.

(ii) Admission to the remaining fifty per cent be regulated by admitting candidates belonging to the particular religious or linguistic minority,

A strictly on the basis of merit. Merit could be determined on the basis of the academic performance at the qualifying examination; or on the basis of any objective test that the institution might itself hold or on the basis of performance of the results of the selection tests that the State Government may hold for selecting candidates for admission to technical colleges in the State. Such selected candidates to abide by such condition in the matter of payment of tuition and other fee as may be permitted by the State Government.

(iii) The order was made on the assumption that the petitioners are minority institutions and it was open to the respondents to question the status claimed by the petitioners.

(iv) The order should not estop the petitioners from urging all other contentions raised in the writ petitions, as the interim interlocutory order was made on the consent of the petitioners and without prejudice to all the contentions.

Disposing of the writ petitions, this Court

HELD: 1.1. In Writ Petitions 284 of 1993 and 350 of 1993, having regard to the fact that the process of admission is complete though admissions as such have not been made, petitioners are permitted to admit students to their colleges on the basis of entrance test conducted by them. After completing the admissions the petitioners shall furnish full particulars of the students admitted etc. to the competent authority. Any violation of the directions given herein shall entail serious consequences inasmuch the above orders are made/based upon their representations and even before a counter affidavit has been filed. [657-A, B, E]

1.2. In all other cases, except those mentioned specifically hereinafter, the order made by the Court on May 14, 1993 in W.P. 355 and 350 of 1993 shall be the order with the following modifications (which modifications shall apply even in W.P. 350 and 355 of 1993). [657-F]

(a) In continuation of para (3) it is made further clear that whether any of the petitioner-institution is a M.E.I. or not is a matter for the Government to verify and determine. This order shall be made applicable only to those institutions which are found to be M.E.Is. on verifications by

the Government. [657-G-H]

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(b) The 50% seats to be filled up by candidates selected by the agencies of the State Government on the basis of a competitive examination/test as well as the remaining 50% seats to be filled up by the Management strictly on the basis of merit shall be equally distributed between free seats and payment seats. The N.R.Is., if any admitted to an extent not exceeding 5% of the total seats shall be out of the payment seats to be filled on the basis of merit. [658-A-B]

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(c) After completing the admission each of the colleges shall submit to the competent authority full particulars of the students admitted. [658-C]

C

1.3. The order dated May, 14, 1993 shall not apply to the institutions concerned in W.Ps. 497/93, 597/93, 442/93, 525/93, 392/93 since the Court is not *prima facie* satisfied that they can be characterised as M.E.Is.

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[658-E-F]

1.4. In W.P. 598/93, a certain agreement has been entered into between the institution and the Government of Kerala according to which while 85% of the seats were to be filled by the Government, the remaining 15% of the seats were left for the management to fill up in its discretion. Since the basic principle is that merit shall be the guiding principle in the matter of admission, plea for discretionary quota cannot be accepted. The said writ petition shall be governed by the order dated May 14, 1993 with the aforesaid modifications. [658-H;659-A-B]

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1.5. A larger Bench should hear the question arising in these batch of cases. [653-H]

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ORIGINAL JURISDICTION : Writ Petition (Civil) No. 598 of 1993.

Under Article 32 of the Constitution of India.

G

WITH

W.P. (C) Nos. 536/93, 597/93, 407/93, 343/93, 613/93, 399/93, 626-27/93, 284/93, 327/93, 350/93, 355/93, 482/93, 484/93, 485/93, 474/93, 523/93, 417/93, 444/93, 317/93, 442/93, 525/93, 463/93, 469/93 and 392/93.

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A E.M.S. Enam for the petitioners.

The following order of the Court was delivered:

B Several writ petitions questioning the applicability of the scheme framed by this Court in *J.P. Unnikrishnan v. State of Andhra Pradesh*, [1993] 1 SCR 594 as also the applicability of the rules and orders made by several State Governments in pursuance of and on the basis of the said decision are placed before us. In some of the writ petitions rule nisi has already been issued, while some others are fresh matters. We have taken each of the writ petitions placed before us in seriatum and heard the respective counsel.

C In *Unnikrishnan*, we did not make any order or direction about Minority Educational Institutions (M.E.Is.). Indeed a few matters pertaining to MEIs were delinked from that batch to be heard separately. However, several State Governments have served notices upon the petitioners intimating them they have to follow the said decision and the rules and orders made pursuant thereto. Many of the petitioners-institutions raised an objection that since they are MEIs, the said decision or the rules and orders made pursuant thereto do not apply to them. The respective Governments ignored the said pretest and called upon the petitioners to abide by the said decision, rules and orders made pursuant thereto. It is then the petitioners have approached this Court by way of these writ petitions.

F Some of the writ petitions out of those placed before us had come up before a Bench comprising the Hon'ble The Chief justice and one of us (B.P. Jeevan Reddy, J.) on May 14, 1993. Counsel for the petitioners in writ petitions 350 and 355 of 1993 agreed to the following order being made and accordingly it was made:

"Writ Petition Nos. 350 and 355 of 1993

G We have heard Sri Soli J. Sorabji, learned senior counsel for the petitioners in these two writ petitions. Issue Rule.

2. There will be an interim order in the following terms:-

H i) Fifty per cent of the total intake in the petitioners' educational institutions shall be permitted to be filled up by candidates

selected by the agencies of the State Government on the basis of a competitive examination/test. The candidates so selected and admitted to this class of students shall be as determined by the State Government from time to time. A

- ii) The remaining fifty per cent of the intake may be regulated by the petitioners to admit candidates belonging to the particular religious or linguistic minority. However, the selection shall be made strictly on the basis of merit among the candidates seeking admission to the institutions. Such merit shall be determined on the basis of the academic performance at the qualifying examination; or on the basis of any objective test that the institution might itself apply to determine such relative and competing merits; or on the basis of performance of the results of the selection tests that the State Government itself hold for selecting candidates for admission to technical colleges in the State. It is optional for the petitioners to adopt any one of these three modes and apply it uniformly. Candidates so selected on the basis of merit amongst the minorities shall, however, abide by such condition in the matter of payment of tuition and other fee as may be permitted by the State Government. B C D

3. It is made clear that this order is made on the assumption that the petitioners are minority institutions. It is open to the respondents to question this status claimed by the petitioners. E

4. This order shall, however, not estop the petitioners from urging all other contentions raised in the writ-petitions, as, indeed, this interim interlocutory order is made on the consent of the petitioners and without prejudice to all the contentions. F

Writ Petition No. 360 of 1993

Delink this petition from this group of matters and list the same in the usual course." G

Counsel for some other petitioners, however, did not agree to the above order whereupon they were adjourned for being heard by an appropriate Bench. Later it was ordered that all such writ petitions should H

A be heard by the same Bench which decided *Unnikrishnan*.

B The writ petitions placed before us can be categorised into five categories as per the averments in the writ petitions viz., (1) Unaided Minority Educational Institutions, (2) Minority Educational Institutions which are in receipt of State funds by way of aid, (3) M.E.Is. in respect of which it is not clear from the averments in the writ petitions whether they are aided or unaided institutions, (4) writ petitions challenging the correctness and applicability of *Unnikrishnan* filed by educational institutions which do not claim to be M.E.Is., (5) writ petitions which do not fall in any of the above categories.

C In the first category fall writ petitions Nos. 284 of 1993 *Catholic Bishops Conference of India Society for Medical Education, Bangalore & Ors. v. State of Karnataka & Anr.*, 317 of 1993 *Dr. T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.*, 327 of 1993 *Madrassa-E- Madeenathul-Uloom Trust & Anr. v. State of Karnataka & Ors.*, 350 of 1993 *Islamic Academy of Education, Mangalore & Ors. v. State of Karnataka & Ors.*, 482 of 1993 *Christian Medical Association, Vellore, Tamil Nadu v. State of Tamil Nadu*, 613 of 1993 *Somaiya Vidya Vihar v. State of Maharashtra* and 627 of 1993 *Hyderabad (Sind) National Collegiate Board & Ors. v. State of Maharashtra & Ors.*

E The second category comprises two writ petitions namely; (1) W.P. 536 of 1993 *Marathanasius College v. State of Kerala*, and (2) W.P. 598 of 1993 *Sahal H. Musaliar & Anr. v. State of Kerala & Ors.*

F The third category comprises writ petition Nos. 444/93 *Vijayanagar Education Trust (Regd.) & Anr. v. State of Karnataka & Anr.*, 417 of 1993 *Fr. Muller's Charitable Institutions & Ors. v. State of Karnataka & Ors.*, 523 of 1993 *Sri Nanak Thira Saheb & Anr. v. State of Karnataka & Anr.*, 474 of 1993 *All India Islamic Foundation and Anr. v. Director of Technical Education and Anr.*, 485 of 1993 *Al-Badar Education Charitable Trust v. State of Karnataka*, 484 of 1993 *Khaja Education Society v. State of Karnataka*, 355 of 1993 *S. Venkatesha Education Society & Anr. v. State of Karnataka & Ors.*, 429 of 1993 *Raja Rajeshwari Dental College v. State of Karnataka & Anr.*, 479 of 1993 *Tamil Nadu Technical Educational Foundation v. State of Tamil Nadu & Anr.*, 597 of 1993 *Muslim Educational Association of Southern India v. State of Tamil Nadu & Anr.*, 442 of 1993 *Sri Sidhartha Education society (Regd.) & Ors. v. State of Karnataka &*

Ors., 525 of 1993 *DAV College Management Committee & Ors. v. State of Haryana & Ors.*, 469 of 1993 *Jeppiaar Educational Trust & Anr. v. State of Tamil Nadu*, and 392 of 1993 (*Federation of Linguistic and Religious Minorities Education Institution, Pune v State of Maharashtra*) (However, as we shall presently point out some of the petitioner-institutions do not *prima facie* appear to be M.E.Is. Wherein we have adjourned the matters. We shall specify them a little while later) .

The forth category comprises of W.P. Nos. 407/93 (*Marathwada Mitra Mandal v. State of Maharashtra*, 399/93 *Kolhapur Institute of Technogy v. State of Maharashtra*, 571/93 *Kumaraguru College of Technology v. Union of India*, and 626/93 *Hyderabad (Sind) National Collegiate Board & Ors. v. State of Maharashtra & Ors.* The petitioners in these writ petitions do not claim to be M.E.I.s. Since we are not considering their cases today, the matters are simply adjourned to be posted in usual course.

"Writ Petition No. 626 of 1993 filed by *Hyderabad (Sind) National Collegiate Board* which has been shown in category (4) (i.e. writ petitions challenging the correctness and applicability of *Unnikrishnan* filed by educational institutions which do not claim to be M.E.I.s) is placed in category No. (2) relating to Minority Educational Institutions which are in receipt of State funds by way of aid.

Writ petition No. 597 of 1993 filed by *Muslim Educational Association of Southern India* which has been placed in Category No. (3) (i.e., M.E.I.s in respect of which it is not clear from the averments in the writ petitions whether they are aided or unaided institutions is categorised as Unaided Minority Educational Institutions and accordingly placed in category No. (1)"

The fifth category comprises S.L.P. (C) 18890 of 1993 (*Dr. B.M. Thippeswamy Memorial Educational Association v. State of Karnakata & Anr.* and 463 of 1993 *T.M.T. Kannammal Education Trust v. State of Tamil Nadu & Ors.*

So far as W.P. 350/93 and 355/93 are concerned, this court has already passed orders on May 14, 1993 with the consent of the petitioners. We see no reason to modify the said order in their cases. However, the said order (dated May 14, 1993) shall be subject to the modifications hereinafter mentioned.

We shall now take up Writ Petitions 284 of 1993 and 350 of 1993

- A which appear to stand on a different footing altogether. The petitioner in W.P. 284/93 claims to be a M.E.I. established by the Catholic Community, a religious minority community in Karnataka. It is averred by the petitioner that it runs medical, engineering, dental, pharmacy and nursing colleges in the State of Karnataka, that they do not charge any capitation fee from any student, that the fees charged by them in these institutions is not more than
- B (and in some cases less than) the fees charged in the government colleges and that the admission to their institutions is made on the basis of an All-India Common Entrance Test separately conducted by the petitioner. It is submitted that the admissions are made on the basis of merit as determined in the said test. It is also stated that the petitioners' institutions
- C are well-established institutions and in view of their reputation, thousands of students apply for and appear in the entrance test every year. The learned Advocate General of the State of Karnataka does not dispute the above facts though, we must record, no counter has as yet been filed in the matter. He did not also dispute that at no point of time was any complaint of irregularity received against any of the colleges run by the petitioner-institution. It is further submitted by the learned counsel for the petitioner
- D that in pursuance of the order dated May 24, 1993, the petitioner has conducted an All-India entrance test and the process of selection is complete. What remains to be done is to admit the students which was not done in view of the aforesaid order. Sri Kapil Sibal, learned counsel for the petitioner also advanced certain legal submissions which it is not
- E necessary to deal with at this stage.

- The petitioner in W.P. 482/93 runs a medical college at Vellore in the State of Tamil Nadu. According to the petitioner, it is a well reputed institution, admission to which is made on the basis of an All-India
- F entrance test conducted by the petitioner. It is stated that admissions are made on the basis of merit. It is submitted further that the college does not charge any capitation fee, that the fees charged by it is not more than the fees chargeable in similar governmental institutions and that there never has been any complaint about the working of petitioner-institution. Sri Sitaraman, learned counsel for the State of Tamil Nadu does not
- G dispute the above averments. Though we may record again that no counter has as yet filed in the matter. It is submitted by Sri Salve for the petitioner that during the vacations, a learned Single Judge has made an interim order in this writ petition directing the State of Tamil Nadu not to allot any seats to the petitioner-institution for admission not selected by the petitioner. Sri
- H Salve, learned counsel for the petitioner submitted further that the process

of admission is complete though admissions as such have not been made in view of the aforesaid orders of this court. A

Having regard to the above circumstances, we permit the petitioners in the above two writ petitions to admit students to their colleges on the basis of entrance test conducted by them and on the same basis on which admissions were made by them in the said colleges in the previous academic year. After completing the admissions, the petitioners shall furnish full particulars of the students admitted, the categories, if any, whereunder they were admitted and all other particulars relating to their admission. This information should be furnished to the competent authority, to the University to which the said colleges are affiliated and to the Secretary, Education Department, Government of Karnataka/Tamil Nadu. The said authorities shall verify whether the admissions have been made by the petitioners in accordance with the directions given herein. In case of irregularity, any of the said authorities shall be entitled to call upon the petitioner to rectify the said irregularity. It shall also be open to the competent authority, University and the Government of Karnataka/Tamil Nadu to bring any such irregularity to the notice of this Court by way of an interlocutory application for appropriate orders in that behalf. It is made clear that any violation of the directions given herein by the petitioners shall entail serious consequences *inasmuch as the above orders are made based upon their representations and even before a counter affidavit has been filed by the respective respondents* in view of the urgency expressed by them. B C D E

In all other cases, except those mentioned specifically hereinafter, The order made by this Court on May 14, 1993 in W.P. 355/93 and 350/93 shall be the order, - though not necessarily with their consent - with the following modifications (which modifications shall apply even in the cases of W.P. 350/93 and 355 of 1993). The modifications are the following, numbered as paragraph 5, 6 and 7 in continuation of the said order: F

"(5) In continuation of para (3) it is made further clear that whether any of the petitioner-institutions is a M.E.I. or not is a matter for the Government to verify and determine. We do not - more particularly at this stage - make any pronouncement in that behalf. This order shall be applicable only to those institutions which are found to be M.E.Is. on verification by the Government and not to those who are not found to be M.E.Is. on such verification. G H

- A (6) The 50% seats to be filled up by candidates selected by the agencies of the State Government on the basis of a competitive examination/test as well as the remaining 50% seats to be filled in accordance with clause (ii) of para (2) of the said order shall be equally distributed between free seats and payment seats. In other words, out of the 50% seats to be filled up by government, half will be payment seats and half will be free seats. Similarly, out of the 50% of the seats to be filled up by the management in accordance with para 2(ii) of the said order, half shall be payment seats and the order half free seats. The N.R.Is., if any admitted to an extent not exceeding 5% of the total seats shall be out of the payment seats to be filled under para 2(ii)

- C After completing the admissions each of the colleges shall submit to the competent authority, to the University to which it is affiliated and to the concerned Government statements containing full particulars of the Students admitted under clause (2) of para (ii) of this order. Such statements shall contain as full a particulars as possible. The authorities to which the statements are submitted shall verify the correctness of the statements and, if they find any irregularity, they shall call upon the college concerned to rectify the same. They shall also bring any such violation to the notice of this Court by way of an interlocutory application. Any such irregularity if proved may entail serious consequences. "
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- E The order dated May 14, 1993 shall not apply to the institutions concerned in writ petitions W.P. 479/93 *Tamil Nadu Technical Education Foundation*, W.P. 597/93, (*Muslim Educational Association of Southern India*), W.P. 442/93 *Sri Sidhartha Educational Society and Ors. v. State of Karnataka*, W.P. 525/93 *DAV College Management Committee v. State of Haryana* and W.P. 392/93 *Federation of Linguistic and Religious Minorities Education Institution, Pune v. State of Maharashtra*, since we are not *prima facie* satisfied that they can be characterised as M.E.Is. These writ petitions are adjourned to September 22, 1993. The order dated May 14, 1993 shall not also apply to the writ petitions mentioned in and as fourth and fifth categories.

- G We may mention that in W.P. 598/93, Sri F.S. Nariman invited our attention to a certain agreement entered into between the institution and the Government of Kerala according to which while 85% of the seats were to be filled by the Government, the remaining 15% of the seats were left for the management to fill up in its discretion. It is submitted that the said
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agreement may be allowed to be implemented for the current academic year also. Since the basic principle in *Unnikrishnan*, as well as the orders made herein is that merit shall be the guiding principle in the matter of admission, we cannot countenance a plea for discretionary quota. The said writ petitions shall also be governed by the order dated May 14, 1993 with the aforesaid modifications.

So far as SLP 12898/93 is concerned, we decline to pass any order and leave it to the High Court to deal with the matter (orders already passed separately). It may be mentioned that the said SLP is directed against an interlocutory order made pending a writ petition. In W.P. 463/93 the petitioner claims to be a religious minority educational institution but does not specify how and in what manner it is so. It is not stated which particular religious minority has established the said institution and in administering it. The writ petition is accordingly adjourned to September 22, 1993.

So far as writ petition No. 317 of 1993 is concerned, no orders are passed at the present juncture. The implead application I.A. No. 3 of 1993 filed by the Union of India is allowed. Post on September 22, 1993.

We are of the opinion that a larger Bench should hear the question arising in these bench of cases. We shall, of course, indicate which are to be heard by the larger Bench on September 22, 1993.

We may made it clear that the above orders are passed without prejudice to the rights and contention of the parties in the writ petitions and the further interlocutory orders as may be passed hereinafter.

Within the next date of hearing the Governments of Karnataka and Tamil Nadu (through committees appointed by them in that behalf) shall re-consider the fee structure notified by them. It shall be open to the petitioners to place such material as they think appropriate in that behalf before the Governments. The Governments may take a decision in view of such material or such other material as they may have in their possession.

A.G.

Petitions Disposed of.