

State of H.P. and Others

Vs

Himachal Institute of Engg. and Technology, Shimla

IAS Nos. 2-3 of 1995 In Slp(C) No. 15938 of 1995

(CJI A.M. Ahmadi, Sujata V. Manohar JJ)

04.01.1996

ORDER

1. This petition has been filed by the State of Himachal Pradesh challenging the order of the Division Bench of the High Court of Himachal Pradesh in CWP No. 378 of 1994 whereby it allowed 34 students admitted to the respondent-Institute to continue their studies after regularisation of their admission. It was directed that the Board should conduct the examination and allow these 34 students to sit in the examination and declare the results and any student who fails to obtain the qualifying marks in the 1st and 2nd semesters would be subject to the Board's decision made in accordance with the rules permitting them to appear in those subjects. The learned counsel for the Institute invited our attention to the decision of the Constitution Bench in Unni Krishnan, J.P. v. State of A.P. [(1993) 1 SCC 645] Our attention was particularly drawn to the Scheme set out in para 210 of that judgment. Broadly speaking, according to the Scheme, students seeking admission are to be divided into two classes, namely, those to be admitted purely on merit basis and those to be admitted on payment basis. The merit was to be determined on marks obtained at the entrance test or examination. Fifty per cent students to be admitted to every professional college on free seats had to be determined in accordance with the merit in the entrance examination whereas the other fifty per cent payment seats had to be filled by students who are prepared to pay the fees but where the total number of such students exceeds the number of available seats, their admission had to be regulated on the basis of inter se merit to be determined on the same basis as in the former case. Clause (9) of para 210 then reads as under : (SCC pp. 760-61)

"(9) After making the allotments, the competent authority shall also prepare and publish a waiting list of the candidates along with the marks obtained by them in the relevant test/examination. The said list shall be followed for filling up any casual vacancies or 'drop-out' vacancies arising after the admissions are finalised. These vacancies shall be filled until such date as may be prescribed by the competent authority. Any vacancies still remaining after such date can be filled by the management."

2. The contention of the learned counsel for the Institute is that according to this Scheme, if all the payment seats are not exhausted on the basis of the merit criteria either on account of paucity of students prepared to take admission on payment basis or on account of drop-outs after the cut-off date, the vacancy or vacancies, if any, had to be filled by the management. For filling these vacancies, the management had to determine its own criteria since none from amongst those who qualified at the entrance test was forthcoming to take the seat on payment basis. In such a situation, counsel contends, either the seats must remain vacant and be wasted or the management must be permitted to fill those seats on a reasonable criteria adopted by the management. To take the

situation in the instant case, out of the 50 per cent payment seats in one particular year, we are told that only six students applied for those seats and their names were forwarded by the State Government for admission. No one from amongst the candidates, who had qualified at the entrance test, was forthcoming to take the remaining vacant seats on payment basis, presumably because they could not afford it. After the cut-off date, those seats remained vacant. The management contends that it was entitled to fill those seats under clause (9) of para 210 of Unni Krishnan case [(1993) 1 SCC 645] on the basis of a reasonable criteria of selection that may be adopted by the management. The management also did not mind any criteria being fixed in this behalf by any other authority like the Central Council or the State Government. What it is concerned with is that if the payment seats remain vacant in such large numbers, the Institute would not be able to meet the expenses for running the professional course and would be placed on 'the Hobson's choice of either suffering huge losses or closing down the Institute. Our attention was also drawn to a subsequent decision of this Court in T.M.A. Pai Foundation v. State of Karnataka [(1995) 5 SCC 200]. That was a case where religious and linguistic minority institutions had approached the Court for clarification in view of some difficulty arising from the observations in Unni Krishnan case [(1993) 1 SCC 645]. In that case, the Court further divided the 50 per cent payment seats into two halves and allowed the minority institutions to fill the first-half from minority students but again on inter se merit at the entrance examination, the other half had to be filled in accordance with the criteria laid down in Unni Krishnan case [(1993) 1 SCC 645]. That decision does not really apply to the situation in the instant case because here the position is quite different, in that, the 50 per cent payment seats are not exhausted because students are not forthcoming in this professional discipline to take admission. The situation has to be resolved because as very rightly pointed out by counsel for the Institute, the choice is between running huge losses or closing the Institute for want of availability of such students. Ultimately, the finance has to come from those students as per the scheme envisaged in Unni Krishnan case [(1993) 1 SCC 645]. If the State Government does not permit the Institute to fill up the vacancies not filled up from amongst students who had qualified at the entrance test, a solution to the question of financing the Institute would have to be found. Counsel for the Institute submitted that if the State Government wants to adopt the attitude of not permitting the Institute to fill up those vacancies by students prepared to pay but who have not qualified at the entrance examination, then it must be prepared to bear the financial burden by paying a sum equivalent to the payment seats remaining vacant to the Institute as a grant to run the Institute for otherwise it would have to close down. The learned counsel for the State of Himachal Pradesh very rightly pointed out that he would like to place, this matter before the State Government to enable it to make a positive response to the stalemate situation arising in the State in regard to, this professional discipline from year to year. An effective solution has to be found. A copy of this order may be given to the learned counsel for the State of Himachal Pradesh to enable him to seek the response of the State Government and place the same before this Court before the next date of hearing. Let the matter come up after two weeks.