

T.M.A. Pai Foundation and Others

Vs

State of Karnataka and Others

I.As. Nos. 24, 41-A, 43-49 and 51-65 in Writ Petition (C) No. 317 of 1993

(Kuldip Singh, S. Saghir Ahmadi JJ)

09.08.1996

ORDER

1. In *Unni Krishnan, J.P. v. State of A.P.* [(1993) 1 SCC 645] a Constitution Bench of this Court had evolved a scheme governing admission to private medical, engineering and certain other colleges, keeping in view the positive features of the relevant Central and State enactments. The idea behind the scheme has been set out in para 205 of the judgment. In para 206, it was stated that the scheme evolved therein : (SCC p. 756) "is in the nature of guidelines which the appropriate Governments and recognising and affiliating authorities shall impose and implement in addition to such other conditions and stipulations as they may think appropriate as conditions for grant of permission, grant of recognition or grant of affiliation, as the case may be". Clauses (a), (b) and (c) of para 6 of the Scheme, in particular, dealt with the fees to be charged by the professional colleges. It would be appropriate if we extract the said clauses : (SCC pp. 759-60, para 210)

"(6)(a) Every State Government shall forthwith constitute a Committee to fix the ceiling on the fees chargeable by a professional college or class of professional colleges, as the case may be. The Committee shall consist of a Vice-Chancellor, Secretary for Education (or such Joint Secretary, as he may nominate) and Director, Medical Education/Director Technical Education. The Committee shall make such enquiry as it thinks appropriate. It shall, however, give opportunity to the professional colleges [or their association(s), if any] to place such material, as they think fit. It shall, however, not be bound to give any personal hearing to anyone or follow any technical rules of law. The Committee shall fix the fee once every three years or at such longer intervals, as it may think appropriate.

(b) It would be appropriate if the U.G.C. frames regulations under Section 12-A(3) of the U.G.C. Act, regulating the fees which the affiliated colleges, operating on no grants-in-aid basis, are entitled to charge. The Council for Technical Education may also consider the advisability of issuing directions under Section 10 of the A.I.C.T.E. Act regulating the fees that may be charged in private unaided educational institutions imparting technical education. The Indian Medical Council and the Central Government may also consider the advisability of such regulation as a condition for grant of permission to new medical colleges under Section 10-A and to impose such a condition on existing colleges under Section 10-C.

(c) The several authorities mentioned in sub-paras (a) and (b) shall decide whether a private educational institution is entitled to charge only that fee as is required to run the college or whether the capital cost involved in establishing a college can also be

passed on to the students and if so, in what manner. Keeping in view the need, the interest of general public and of the nation, a policy decision may be taken. It would be more appropriate if the Central Government and these authorities (U.G.C., I.M.C. and A.I.C.T.E.) coordinate their efforts and evolve a broadly uniform criterion in this behalf. Until the Central Government, U.G.C., I.M.C. and A.I.C.T.E. issue orders/regulations in this behalf, the Committee referred to in sub-para (a) of this para shall be operative. In other words, the working and orders of the Committee shall be subject to the orders/regulations, issued by the Central Government, U.G.C., I.M.C. or A.I.C.T.E., as the case may be."

2. Pursuant to the directions contained in para 6, a tentative exercise was done by the authorities including certain State Governments, which was placed before this Court. This Court was, however, not satisfied with the manner in which it was prepared and the unrealistically high level of fees suggested. In that view of the matter, certain tentative orders were passed for the Academic Year 1993-94 including the fees to be charged by the said institutions. The Order is dated 7-10-1993 reported in (1993) 4 SCC 276. The idea then was that the authorities referred to in para 6 of the Scheme shall prepare a proper scheme consistent with the ground realities and that the Orders dated 10-10-1993 were to be only tentative in nature. Since no such scheme was coming forward from the side of the authorities, this Court had no option but to pass fresh set of orders with respect to Academic Year 1994-95. This Order is dated 13-5-1994, reported in (1994) 4 SCC 728. The situation did not improve even by the Academic Year 1995-96 and hence, this Court was obliged to pass yet another order on 11-8-1995 [(1995) 5 SCC 220] applicable for the Academic Year 1995-96. The fees fixed for each of the academic years varied having regard to the material placed by the parties before us.

3. On 10-5-1996, this Court passed another Order stating that the orders passed on 11-8-1995 with respect to Academic Year 1995-96 shall continue to apply for the next academic year as well i.e. 1996-97. Even so, a number of interlocutory applications are filed by the various medical and engineering colleges, their associations and other persons seeking a variety of directions. We have heard the counsel. The following orders are made which shall be of general application. These directions shall be in addition to, in continuation of and in clarification of the earlier orders including the Order dated 11-8-1995, as extended by Order dated 10-5-1996.

4. (i) It is directed that the fees fixed for each of the Academic Years 1993-94, 1994-95 and 1995-96 shall be confined to that respective year only. By way of illustration, a student admitted against a payment seat in MBBS course for the Academic Year 1993-94 in a college having its own hospital facility shall pay Rs. 1.40 lakhs for that year. For the next academic year, i.e., 1994-95, he shall pay only Rs. 1.10 lakhs and for the Academic Year 1995-96, he shall pay only rupees seventy-five thousand. Similarly, for Academic Year 1996-97 too, he shall pay a sum of only rupees seventy-five thousand. This does not, however, mean that he shall be entitled to claim refund of any part of the amount on account of the fees paid by him for any of the said earlier years. The Order of this Court dated 11-12-1995 (sic 11-8-1995) in Interlocutory Application No. 40 in Writ Petition (C) No. 317 of 1993 does not say otherwise and shall not be understood as direction otherwise.

(ii) The fee structure and all other directions provided in this Court's Order dated 11-8-1995 (applicable for the Academic Year 1995-96) shall also apply to and continue to apply for the Academic Year 1996-97. The NRI quota and all other particulars shall be the same. There shall be no change in that behalf.

(iii) It is made clear that the Order dated 10-5-1996 shall apply to all States including the State of Maharashtra. In other words, the Order applies to the professional colleges in all the States, irrespective of the fact whether such colleges or the States are parties to the said order or not.

(iv) It is made further clear that with effect from the Academic Year 1995-96 free-seat students shall pay the fees prescribed in the Order dated 11-8-1995, even though these students may have been admitted during the Academic Year 1993-94, or for that matter during the Academic Year 1994-95.

(v) There shall be no change in the fees for engineering colleges. The NRI quota for them shall remain at five per cent.

(vi) A request is made on behalf of the engineering colleges that the Governments, in particular, the Karnataka Government should be directed to specify a last cut-off date for allotment of students, whether in free seats category or in the payment seats category, and that if all the seats are not filled up, in any of the above categories, by the said last cut-off date, the colleges should be left free to fill up those seats on their own account and in their discretion. Grievance is made that on account of non-specification of such a last cut-off date, a number of seats in many engineering colleges are remaining vacant, particularly in the payment seats category, which is making it impossible for the colleges to function or to continue to function, as the case may be. This plea is rebutted by the learned counsel appearing for the State of Karnataka. The learned counsel for the State contended that Rule 10 of the Karnataka Selection of Candidates for Admission to Engineering, Medical and Dental Courses Rules, 1993, as amended in 1996, fully safeguards the interests of colleges and fully allays the apprehension and grievance aforesaid. By way of the said amendment, it is pointed out, clause (g) is added in sub-rule (3-A) of Rule 10 which reads : "(g) After the closing date for admission, as fixed by the Government is over, a reconciliation meeting regarding the number of unfilled and unallotted seats shall be held between the C.E.T. Cell, the Directorate of Technical Education, Directorate of Medical Education and the respective colleges and after identifying the vacant seats, issue notification regarding such seats by the Directors concerned. Such seats shall be filled by the Colleges." In our opinion, the said clause is a salutary one. All that we need to add to the said clause is that the action contemplated therein shall be taken within fifteen days of the closing date for admission. Any seats remaining unfilled thereafter can be filled by the management of the private engineering colleges on their own and in their discretion. This direction shall not apply to medical/dental colleges.

(vii) So far as the thirty-five per cent payment seats in medical colleges in the State of Karnataka are concerned (i.e. after providing for fifty per cent free seats and fifteen per cent NRI quota), the said seats shall be filled in the same proportion as between Karnataka and non-Karnataka students as has been specified for the Academic Year 1995-96, viz., twenty per cent for Karnataka students and fifteen per cent for non-Karnataka students. It is further directed that if any of the seats in twenty per cent meant for Karnataka students remain vacant, they shall be filled by students from among the non-Karnataka students. The allotment of the students shall be governed by the 1993 Admission Rules of Karnataka aforesaid.

5. We must express our distress at the inaction of the authorities pursuant to para 6 of the Scheme aforementioned. Though a period of more than three years have passed by since the decision in Unni Krishnan, [(1993) 1 SCC 645], the authorities mentioned in the said paragraph have not come forward with a workable, realistic and just fee structure, with the result that year after year, this Court is practically being forced to fix the fee on a tentative basis. Fixing the fees is not the function of this Court. It is the function of the Government, the affiliating universities and the statutory professional bodies like, University Grants Commission, Indian Medical Council and All India Council for Technical Education. At least now, we expect the authorities concerned to move in the matter with promptitude and evolve an appropriate fee structure. While doing so, it is made clear, they shall not feel shackled by the Orders made by this Court from time to time relating to fee structure. It shall be open to them to evolve such fee structure as they think appropriate, in such terms, and subject to such conditions as they feel are in the interests of the student community, the private professional colleges as also in public and national interest. We hope and trust that the fee structure to be evolved by them would take into consideration the ground realities and would be realistic and practical from the point of view of all concerned. In particular, we request the Central Government, including the Ministry of Education (Ministry of Human Resource Development), to take immediate steps to convene a meeting of all the authorities concerned as contemplated by para 6 of the Scheme and ensure that a proper fee structure is evolved for the medical, dental and engineering colleges throughout the country. It shall be open to the authorities to fix separate fee structure for each of the States, if such a course is warranted. It may also be open to the authorities to fix different fee structure having regard to the location of the colleges, to wit, a college in the city of Bombay may be allowed a different level of fees than a similar college (with similar facilities) situated in a rural area. To reiterate, the Central Government and the authorities concerned shall be free to evolve the fee structure in such appropriate manner as they think just and equitable to all concerned. We hope and trust that this would be done within a period of three months from today and the matter brought to the notice of this Court forthwith. We wish to make it clear that with effect from the Academic Year 1997-98, it shall be the responsibility of the authorities aforesaid to prescribe the fee payable in these colleges.

6. So far as the modification of the scheme contained in Unni Krishnan [(1993) 1 SCC 645] is concerned, that is a matter pending before this Court separately. Probably that may have to be done by a larger Bench as indicated in one of our earlier orders. We are, therefore, not making any directions in that behalf.

7. Ordered accordingly. All the interlocutory applications are disposed of. These orders are to be communicated forthwith to the Secretary, Ministry of Human Resource Development, Government of India and the Chief Secretaries to all State Governments, Administrators of Union Territories as well as to the University Grants Commission, Indian Medical Council, All India Council for Technical Education and Indian Dental Council.