

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

DATE :- FEBRUARY 21, 2019

P.C. :-

1. The petitioners' advocate seeks time to take instructions as to whether these writ petitions should be amended or otherwise.
2. On 28th January. 2019, on these petitions, we passed the following order :-

“1. Let the petitioners' Advocate take instructions as to whether the petitioners are interested in challenging the statutory amendment. The petitions challenge an Ordinance which later on has become an Act of the State Legislature.

2. The petitioners will have to challenge the Act and only then can this Court examine the said challenge. However, for a constitutional challenge not only there should be complete pleadings with full particulars but the challenge should be elaborated as well, for there is nobody who can say that though I do not possess a Certificate of Validity issued by the Competent Caste/Tribe Scrutiny Committee, still I am entitled or eligible for admission to Engineering Course against a reserved seat. Similarly, if he/she does not have such a proof with him/her before the cut-off date, then he/she cannot now say that his/her admission be treated as an admission in open category and he/she be allowed to walk into the college.

3. The admission is over long back. We are in the month of January, 2019. It may be that one academic session/semester is already over.

4. We post these petitions on 31-1-2019 for passing orders.”

3. On 31st January, 2019, the following order is passed :-

“1 The petitioners' counsel is aware that the Ordinance has been replaced by an Act of the State Legislature.

2 Once the State Legislature has prescribed a cut-off or a final date before which a certificate of validity has to be obtained so as to be eligible for being admitted to the MBBS Degree course, then, none of the petitioners possessed such a certificate of validity before the cut-off date, namely, 31st August, 2018

3 However, there were equal number of candidates who possessed such a certificate and they could not secure admission for the admissions were already given to the petitioners in the absence of the certificates of validity. It is in these circumstances that the admissions granted to the Computer Engineering Course (First Year) for the Academic Year 2018-2019 have been cancelled. The cancellation of the admission of the petitioners is on 8th September, 2018. Thus, the Institutions waited till 7th/8th September, 2018, but the petitioners could not produce the certificate of validity.

4 In the circumstances, the cancellation of the admission was consistent with the law then enacted.

5. There is a presumption of constitutionality of law and not of unconstitutionality. In the circumstances, while we allow the petitioners to move an application to amend the petition and to challenge the statutory provision, we cannot continue the ad-interim order any further. Continuing that order would be a mockery of the rule of law. The ad-interim order is vacated forthwith.

6. Stand over to 21st February, 2019.”

4. Now, it is evident that the petitioners in all petitions could not qualify and obtain admission to the Courses simply because they did not possess the Caste Validity Certificate before the cut-off date.

5. It is stated by Mr.Kalel, learned AGP appearing on behalf of respondent Nos.1 to 3 that the statutory provision enabling to secure the admission till 25th August, 2018 was in force only for academic year 2018-2019.

6. We are at the fag end of this academic year.

7. No useful purpose will be served by allowing the amendment raising the issue of constitutionality of the amended provisions now. Once the academic sessions are coming to an end, then, we keep the challenge open and by clarifying that, should a similar provision be brought even for the academic sessions to follow, it would be open for the petitioners to challenge the statutory provisions as amended in the event they are deprived of their chances to seek admission to professional courses against the reserved seats.

8. By clarifying this, each of these petitions are disposed of.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)