

IN THE HIGH COURT OF JUDICATURE AT MADRAS

W.P.Nos.21960, 22253, 22444, 22465 and 22473 of 2019
RESERVED ON : 05.08.2019

W.P.No.23105 of 2019 RESERVED ON : 06.08.2019

PRONOUNCED ON : 08 .08.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition Nos.21960, 22253, 22444, 22465, 22473 and
23105 of 2019 and

W.M.P.No.21192 of 2019 in W.P.No.21960 of 2019
W.M.P.No.21533 of 2019 in W.P.No.22253 of 2019
W.M.P.No.21822 of 2019 in W.P.No.22444 of 2019
W.M.P.No.21855 of 2019 in W.P.No.22465 of 2019
W.M.P.No.21873 of 2019 in W.P.No.22473 of 2019
W.M.P.No.22819 of 2019 in W.P.No.23105 of 2019

Master Hari Prasath. G ... Petitioner in W.P.No.21960 of 2019
Dharshini.G ... Petitioner in W.P.No.22253 of 2019
U.Kirthana ... Petitioner in W.P.No.22444 of 2019
Pavithra ... Petitioner in W.P.No.22465 of 2019
Shobiga ... Petitioner in W.P.No.22473 of 2019
R.Dharsini ... Petitioner in W.P.No.23105 of 2019

Vs

1.Union of India,
Represented by Secretary to
Government,
Chief Secretariat,
Pondicherry.

2.The Convener,
Centralized Admission Committee (CENTAC),
Pondicherry Engineering College Campus,
Pondicherry - 605014.

3.Sri Venkateshwara Medical College,
Hospital and Research Centre,
Ariyur, Pondicherry - 605 102.

4. Medical Council of India,
Represented by Secretary,
Sector - VIII, Dwaraga Phase II,
New Delhi - 110 077.

... Respondents in W.P.Nos.21960
& 23105 of 2019

1. The Government of Pondicherry,
Represented by its Secretary,
Chief Secretariat,
Pondicherry.

2. The Secretary,
Department of Higher Education,
Government of Pondicherry,
Chief Secretariat,
Pondicherry.

3. The Convener/Chairman,
Centralized Admission Committee (CENTAC),
Pondicherry Engineering College,
Pondicherry.

4. The Chairman,
Sri Venkateshwara Medical College,
Hospital and Research Centre,
Pondicherry

... Respondents in W.P.No.22253 of
2019

1. The Government of Pondicherry,
Represented by its Secretary,
Chief Secretariat, Pondicherry.

2. The Secretary,
Department of Higher Education,
Government of Pondicherry,
Chief Secretariat,
Pondicherry.

3. The Convener/Chairman,
Centralized Admission Committee (CENTAC),
Pondicherry Engineering College,
Pondicherry.

4. The Chairman,
Sri Venkateshwara Medical College,
Hospital and Research Centre, Pondicherry.

5.The Medical Council of India,
Rep. By the Secretary,
Pocket - 14, Sector - 8,
Dwarka Phase - 01,
New Delhi.

... Respondents in
W.P.Nos.22444, 22465 & 22473 of 2019

Prayer in W.P.No.21960 of 2019:- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the second respondent to consider the petitioner under the merit/non-management category for admission of MBBS course for the academic year 2019-2020 in terms of the decision of the Hon'ble Supreme Court of India dated May 9, 2017 in Dar-us-slam Educational Trust and Others vs. Medical Council of India and others (W.P.(C).No.267/2017) and the petitioner's representation dated July 22, 2019, so as to enable the petitioner to join the third respondent college.

Prayer in W.P.No.22253 of 2019:- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the third respondent to prepare a separate list of minority students seeking admission in the respective minority institutions in order of merits for the state quota as per the directions of the Hon'ble Supreme Court in W.P.(Civil) No.267 of 2017 thereby enabling the petitioner to get admitted in the 4th respondent institution for the MBBS course for the academic year 2019-2020.

Prayer in W.P.Nos.22444 & 22465 & 22473 of 2019:- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the third respondent to prepare a separate minority (Linguistic) merit list for the students seeking admission in the respective minority institutions in the order of merits for the State quota as per the directions of the Hon'ble Supreme Court in W.P.(Civil) No.267 of 2017 dated 09.05.2017 thereby enabling the petitioner to get admitted in the 4th respondent institution for the MBBS course for the academic year 2019-2020.

Prayer in W.P.No.21960 of 2019:- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Declaration declaring the provisional allotment given to the petitioner in on 29.07.2019 under "Management Quota - Telugu Minority" as unconstitutional and in violation of the Hon'ble Supreme Court guidelines contemplated in Writ Petition(s)

(Civil) No(s).267/2017 on 09.05.2017 filed by Dar-us-slam Educational Trust and Others vs. Medical Council of India and others and further direct the second respondent to consider the petitioner for a MBBS seat under the linguistic minority state quota so as to enable her to join in the third respondent College.

In W.P.No.21960 of 2019:-

For Petitioner :Mr.Sathish Parasaran, Senior Counsel
for Mr.R.Parthasarathy

For Respondents 1 and 2 :Mr.C.T.Ramesh,
Additional Government Pleader
For 3rd Respondent :Mr.Abishek Jenasenar
For 4th Respondent :Mr.V.P.Raman

In W.P.No.22253 of 2019:-

For Petitioner :Mr.P.Suresh
For Respondents 1 to 3 :Mr.Gandhiraj,
Additional Government Pleader (P)
For 4th Respondent :Mr.Abishek Jenasenar

In W.P.No.22444, 22465 & 22473 of 2019:-

For Petitioner :Mr.V.Sivalingam
For Respondents 1 to 3 :Mr.Gandhiraj,
Additional Government Pleader (P)
For 4th Respondent :Mr.Abishek Jenasenar
For 5th Respondent :Mr.V.P.Raman

In W.P.No.23105 of 2019:-

For Petitioner :Mr.R.Sreedhar
For Respondents 1 and 2 :Mr.C.T.Ramesh,
Additional Government Pleader
For 3rd Respondent :Mr.Abishek Jenasenar
For 4th Respondent :Mr.V.P.Raman

COMMON ORDER

This batch of the writ petitions filed by the students who are aspiring for medical college admission in Sri Venkateshwara Medical College, Hospital and Research Centre, Ariyur, Puducherry (third respondent in W.P.Nos.21960 & 23105 of 2019) under merit/non management category.

2.The contention of the petitioners herein is that, they are natives of Puducherry and their Mother tongue is Telugu. As far as Union Territory of Puducherry is concerned, Telugu speaking persons are linguistic minority. Sri Venkateshwara Medical College, Hospital and Research Centre, Ariyur, Puducherry is established and administered by Telugu minority Trust. It is duly recognised as linguistic minority institution by the Puducherry Union Territory.

3.The Puducherry Union Territory and Sri Venkateshwara Medical College, Hospital and Research Centre, Ariyur, Puducherry (third respondent in W.P.Nos.21960 & 23105 of 2019) have made an internal arrangement wherein, out of total sanctioned intake of 150 seats, the third respondent Institute has shared 55 seats to Puducherry Union Territory and the remaining seats have to be filled up under management quota.

4.According to the petitioners, as per the dictum of the Hon'ble Supreme Court in its decision dated 09.05.2017 in Dar-us-slam Educational Trust and Others vs. Medical Council of India and others (W.P.(C).No.267/2017) there can only be a sprinkling persons of non minority students in the total student strength. While so, in Sri Venkateshwara Medical College, Hospital and Research Centre, Ariyur, Puducherry, only linguistic minority candidates, can be admitted both, under the management category as well as non-management.

5.When the petitioners approached the Convener, Centralized Admission Committee (CENTAC), Pondicherry Engineering College Campus, Puducherry. to explore the possibility of securing seat in Sri Venkateshwara Medical College, Hospital and Research Centre, Ariyur, Puducherry, under merit/non management category, they were made to understand that in view of the seat sharing arrangement, entered by the said College with the Puducherry Government, the petitioners' candidature will not be considered under the merit/non management category. Their candidature will be considered only as per the merit and rule of reservation followed by the Union Territory of Puducherry for Government quota.

6.The learned Senior Counsel appearing for the petitioner in W.P.No.21960 of 2019 would contend that the said stand of the

respondents is contrary to the judgment of the Hon'ble Supreme Court and the principle laid down in Dar-us-slam Educational Trust and Others vs. Medical Council of India and others (cited supra).

7. In the counter affidavit filed by the respondent State, it is contended that Sri Venkateshwara Medical College, Hospital and Research Centre, Ariyur, Puducherry, and the Government of Union Territory of Puducherry has an agreement of seat sharing and as per the agreement, the third respondent has surrendered 55 seats to the State to be added to the common pool under State quota. The admission of students under Government quota will be in accordance with the rule of reservation adopted by the State. This is in consonance with the verdict of the Hon'ble Supreme Court in T.M.A. Pai Foundation v. State of Maharashtra (2002 (8) SCC 481). According to the respondents, the judgment of the Hon'ble Supreme Court relied by the petitioner in Dar-us-slam Educational Trust and Others vs. Medical Council of India and others (cited supra), on fact, not applicable to the case of the petitioners.

8. Since, the judgment in Dar-us-slam Educational Trust and Others vs. Medical Council of India and others (2002 (8) SCC 481) is only for the State quota vis-a-vis all India quota and not in respect of admission made under the Government quota and management quota.

9. The learned Senior Counsel appearing for the petitioner in W.P.No.21960 of 2019 and the learned counsel for the respondents have cited at length the judgments of the Hon'ble Supreme Court which has dealt the issue of minority rights vis-a-vis right of the states to regulate them. Particularly, the learned Senior Counsel appearing for the petitioner in W.P.No.21960 of 2019 would submit that after the amendment of Constitution by introducing Article 15(5), which has come into force from 20.01.2006, as far as the regulations and reservation policy of the State is concerned, they shall have no application with respect to minority institutions. In the light of the said amendment and the observations made by the Hon'ble Supreme Court in Dar-us-slam Educational Trust and Others vs. Medical Council of India and others (cited supra), the State can have no right to take away (carve out) seats from the minority institutions and allot it to non minority students. This infringes the protection given to the minority institutions and amounts to nationalising the minority institutions. In this regard, the learned Senior Counsel appearing for the petitioner in W.P.No.21960 of 2019 would also rely upon the judgment of the Bombay High Court in St.Xavier's College v. University of Mumbai (AIR 2018 Bom 41).

10. Per contra, the learned Additional Government Pleader appearing for the respondent submit that the memorandum of agreement entered between the minority institution viz., Sri Venkateshwara Medical College, Hospital and Research Centre, Ariyur, Puducherry, and the Union Territory of Puducherry, no way diminishes the minority character of Sri Venkateshwara Medical College, Hospital and Research Centre, Ariyur, Puducherry nor it infringes the right of minority students. According to the learned Additional Government Pleader, the judgment of the Hon'ble Supreme Court in Dar-us-slam Educational Trust and Others vs. Medical Council of India and others (cited supra) is in respect of admission of students in minority institutions under All India quota and State quota. The reading of the said judgment, on the whole will clearly indicate that, the minority quota seats, if any, in the institution run by minorities will be filled up only by the minority students.

11. As far as the Union Territory of Puducherry is concerned, the management quota in the minority Institute are to be filled up by the minority candidates only. The State has no role to interfere in that quota. As far as the seats shared with the State Government, the State Government has taken it into the State pool, admitting students as per the merit and reservation roster. The Hon'ble Supreme Court in Dar-us-slam Educational Trust and Others vs. Medical Council of India and others (cited supra), applying reservation policy for management quota of a minority institute alone is prohibited. Therefore, the petitioners' plea that even for the seats surrendered to the State Government by the management should also been filled up with the minority candidates is opposed to the public policy and constitutional provisions.

12. Before advertng to the merits of the submissions made by the learned counsel for both sides, it is appropriate to extract some of the observations made by the Constitutional Bench of the Hon'ble Supreme Court in the following judgments:-

(i) St. Stephen's College v. University of Delhi (1992 (1) SCC 558) (consisting of 5 Judges) in which, it has dealt with the right of the minority institutions:-

“ THE MINORITY RIGHTS AND BALANCING INTERESTS

95. We have elsewhere pointed out that the minorities have the right to admit their own candidates to maintain the minority

character of their institutions. That is a necessary concomitant right which flows from the right to establish and administer educational institution in Article 30(1). There is also a related right to the parents in the minority communities. The parents are entitled to have their children educated in institutions having an atmosphere congenial to their own religion [See : the observations of Mathew, J., at 253 in St. Xavier's case .

96. The collective minority right is required to be made functional and is not to be reduced to useless lumber. A meaningful right must be shaped, moulded and created under Article 30(1), while at the same time affirming the right of individuals under Article 29(2). There is need to strike a balance between the two competing rights. It is necessary to mediate between Article 29 (2) and Article 30(1), between letter and spirit of these Articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change.

97. The Constitution establishes secular democracy. The animating principle of any democracy is the equality of the people. But the idea that all people are equal is profoundly speculative. It is well said that in order to treat some persons equally, we must treat them differently. We have to recognise a fair degree of discrimination in favour of minorities. But it is impossible to have an affirmative action for religious minorities in religious neutral way. In order to get beyond religion, we cannot ignore religion. We must first take account of religion. It is exactly in the spirit of these considerations that this Court in its advisory opinion in Re : Kerala Education Bill case [1959] SCR 995 recognised a fair degree of discrimination in favour of religious minorities. In this respect the Court seems to have acted on the same principle which is applied to socially and

educationally backward classes, that is the principle of protective discrimination. In *Balaji v. State of Mysore* [1963] Supp. 1 S.C.R. 43 while examining the validity of reservation to socially and educationally backward classes under Article 15(4) Gajendragadkar, J., as he then was, pointed out that the reservation to socially and educationally backward classes would serve the interests of the society at large by promoting the advancement of the weaker elements in the society.

98. In *State of Kerala v. N.M. Thomas and Ors.* Ray, C.J., while dealing with the concept of equality guaranteed by Article 14, 15(1) and 16(1) with reference to the preferential treatment for backward classes observed that preferential treatment for members of the backward classes with due regard to administrative efficiency alone can mean equality of opportunity for all citizens. Equality for opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason. Discrimination with reasons means rational classification for differential treatment having nexus to the constitutionally permissible objects. Preferential representation for the backward classes in services with due regard to administrative efficiency is permissible object and backward classes are a rational classification recognised by our Constitution. Therefore, differential treatment in standards of selection are within the concept of equality.

99. In *Akhil Bhartiya Soshit Karamchhari Sangh (Railway) v. Union of India and Ors.* Chinnappa Reddy, J., while explaining the interrelationship of Article 16(1) and 16(4) said the Article 16(4) is not in the nature of an exception to Article 16(1). It is a

facet of Article 16(1) which fosters and furthers the idea of equality of opportunity with special reference to an underprivileged and deprived classes of citizens. It is illustrative of what the State must do to wipe out the distinction between egalite to droit and egalite de fait. It recognises that the right to equality of opportunity includes the right of the under privileged to conditions comparable to or compensatory of those enjoyed by the privileged. Equality of opportunity must be such as to yield equality of results and not that which simply enables people, socially and economically better placed to win against the less fortunate, even when the competition is itself otherwise inequitable.

100. It is now an accepted jurisprudence and practice that the concept of equality before the law and the prohibition of certain kinds of discrimination do not require identical treatment. The equality means the relative equality, namely the principle to treat equally what are equal and unequally what are unequal. To treat unequals differently according to their inequality is not only permitted but required.

101. Laws carving out the rights of minorities in Article 30(1) however, must not be arbitrary, invidious or unjustified; they must have a reasonable relation between the aim and the means employed. The individual rights will necessarily have to be balanced with competing minority interests. In Sidhajbhai case the Government order directing the minority run college to reserve 80 per cent of seats for Government nominees and permitting only 20 per cent of seats for the management with a threat to withhold the grant-in-aid and recognition was Struck down by the Court as infringing the fundamental freedom guaranteed by Article 30(1). Attention may also be drawn

to Article 337 of the Constitution which provided a special concession to Anglo-Indian community for ten years from the commencement of the Constitution. Unlike Article 30(2) it conferred a positive right on the Anglo-Indian community to get grants from the Government for their educational institutions, but subject to the condition that at least forty per cent of annual admission were made available to members of other communities.

102. In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course in conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed fifty per cent of the annual admission. The minority institutions shall make available at least fifty per cent of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.

(Emphasis added)

(ii) T.M.A. Pai Foundation v. State of Maharashtra (cited supra), the Constitution Bench (consisting of 11 Judges headed by B.N.Kirpal, CJI), has held as follows:-

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration

while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentage can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and post-graduation non-professional colleges or institutes.

.....

153. We would, however, like to clarify one important aspect at this stage. The aided linguistic minority educational institution is given the right to admit students belonging to the linguistic minority to a reasonable extent only to ensure that its minority character is preserved and that the objective of establishing the institution is not defeated. If so, such an institution is under an obligation to admit the bulk of the students fitting into the description of the minority community. Therefore, the students of that group residing in the state in which

the institution is located have to be necessarily admitted in a large measure because they constitute the linguistic minority group as far as that state is concerned. In other words, the predominance of linguistic students hailing from the state in which the minority educational institution is established should be present. The management bodies of such institution cannot resort to the device of admitting the linguistic students of the adjoining state in which they are in a majority, under the facade of the protection given under Article 30(1). If not, the very objective of conferring the preferential right of admission by harmoniously constructing Articles 30(1) and 29(2), which we have done above, may be distorted.

.....

231. From the aforesaid report it is clear that in certain circumstances rights conferred to minority groups are distinct from and additional to, all the other rights which as an individuals are entitled to enjoy under the covenant. The political thinkers have recognised the importance of minority rights as well as for ensuring such rights. According to them the rights conferred on linguistic or religious minorities are not in the nature of privilege or concession, but their entitlement flows from the doctrine of equality, which is the real de facto equality. Equality in law precludes discrimination of any kind, whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes equilibrium between different situations. Where there is a plurality in a society, the object of law should be not to split the minority group which makes up the society, but to find out political social and legal means of preventing them from falling apart and so destroying the society of which they are members. The attempt should be made to

assimilate the minorities with majority. It is a matter of common knowledge that in some of the democratic countries where minority rights were not protected, those democracies acquired status of theocratic States.

232. In India, the framers of the Constitution of India with a view to instill a sense of confidence and security in the mind of minority have conferred rights to them under the Constitution. One of such rights is embodied in Article 30 of the Constitution. Under Article 30 the minorities either linguistic or religious have right to establish and administer educational institutions of their choice. However, under the Constitution every citizen is equal before law, either he may belong to minority group or minority community. But right conferred on minority under Article 30(1) would serve no purpose when they cannot admit students of their own community in their own institutions. In order to make Article 30(1) workable and meaningful, such rights must be interpreted in the manner in which they serve the minorities as well as the mandate contained in Article 29(2). Thus, where minorities are found to have established and administering their own educational institutions, the doctrine of the real de facto equality has to be applied. The doctrine of the real de facto equality envisages giving a preferential treatment to members of minorities in the matter of admission in their own institutions. On application of doctrine of the real de facto equality in such a situation not only Article 30 (1) would be workable and meaningful, but it would also serve the mandate contained in Article 29(2). Thus, while maintaining the rule of non-discrimination envisaged by Article 29(2), the minorities should have also right to give preference to the students of their own community in the matter of admission in their own institution. Otherwise, there would be no meaningful purpose of Article 30(1) in the

Constitution. True, receipt of State aid makes it obligatory for educational institution to keep the institution open to non-minority students without discrimination on the specified grounds. But, to hold that the receipt of State aid completely disentitles the management of minority educational institutions from admitting students of their community to any extent will be to denude the essence of Article 30 of the Constitution. It is, therefore, necessary that minority be given preferential rights to admit students of their own community in their own institutions in a reasonable measure otherwise there would be no meaningful purpose of Article 30 in the Constitution."

(iii).Ashoka Kumar Thakur v. Union of India (2008 (6) SCC 1) the Constitution Bench of the Hon'ble Supreme Court (consisting of 5 judges) has held as follows:-

"139. To sum up, the conclusions are as follows:

(1) For implementation of the impugned Statute creamy layer must be excluded.

(2) There must be periodic review as to the desirability of continuing operation of the Statute. This shall be done once in every five years.

(3) The Central Government shall examine as to the desirability of fixing a cut off marks in respect of the candidates belonging to the Other Backward Classes (OBCs). By way of illustration it can be indicated that five marks grace can be extended to such candidates below the minimum eligibility marks fixed for general categories of students. This would ensure quality and merit would not suffer. If any seats remain vacant after adopting such norms they shall be filled up by candidates from general categories.

(4) So far as determination of backward classes is concerned, a Notification should be issued by the Union of India. This can be done only after exclusion of the creamy layer for which necessary data must be obtained by the Central Government from the State Governments and Union Territories. Such Notification is open to challenge on the ground of wrongful exclusion or inclusion. Norms must be fixed keeping in view the peculiar features in different States and Union Territories.

(5) There has to be proper identification of Other Backward Classes (OBCs.). For identifying backward classes, the Commission set up pursuant to the directions of this Court in Indra Sawhney No.1 has to work more effectively and not merely decide applications for inclusion or exclusion of castes. While determining backwardness, graduation (not technical graduation) or professional shall be the standard test yardstick for measuring backwardness.

(6) To strike the constitutional balance it is necessary and desirable to earmark certain percentage of seats out of permissible limit of 27% for socially and economically backward classes.

(7) In the Constitution for the purposes of both Articles 15 and 16, caste is not synonymous with class and this is clear from the paragraphs 782 and 783 of Indra Sawhney No.1. However, when creamy layer is excluded from the caste, the same becomes an identifiable class for the purpose of Articles 15 and 16.

(8) Stress has to be on primary and secondary education so that proper foundation for higher education can be effectively laid.

(9) So far as the constitutional amendments are concerned:

(i) Articles 16(1) and 16(4) have to be harmoniously construed. The one is not an exception to the other.

(ii) Articles 15(4) and 15(5) operate in different fields. Article 15(5) does not render Article 15(4) inactive or inoperative.

(10) While interpreting the constitutional provisions, foreign decisions do not have great determinative value. They may provide materials for deciding the question regarding constitutionality. In that sense, the strict scrutiny test is not applicable and indepth scrutiny has to be made to decide the constitutionality or otherwise, of a statute.

(11) If material is shown to the Central Government that the Institution deserves to be included in the Schedule, the Central Government must take an appropriate decision on the basis of materials placed and on examining the concerned issues as to whether Institution deserves to be included in the Schedule.

(12) Challenge relating to private unaided educational institutions has not been examined because no such institution has laid any challenge. It is to be noted that the petitioners have made submissions in the background of Article 19(6) of the Constitution. Since none of the affected institutions have made any challenge we do not propose to consider it necessary to express any opinion or decide on the question."

सत्यमेव जयते (Emphasis added)

(iv) Ashoka Kumar Thakur v. Union of India case (cited supra), it is also useful to extract the descending view Dalveer Bhandari.J., (as he then was) which has traced the checkered history of minority institutions right and permissible extend of State interference. The relevant paragraphs are extracted below:-

" 512. Before making such a determination, it is prudent to briefly revisit the rulings of two landmark cases:

P.A. Inamdar & Others v. State of Maharashtra & Others, (2005) 6 SCC 537; T.M.A. Pai Foundation & Others v. State of Karnataka & Others (2002) 8 SCC 481. In Inamdar (supra), paras 26-27 (seven-Judge Bench), unaided (minority and non-minority) professional institutions filed petitions to determine, inter alia, whether the State could impose quotas on unaided (minority and non-minority) institutions. A seven-Judge Bench was constituted such that Islamic Academy's clarification of Pai could be reviewed. Islamic Academy was a five-Judge Bench. Given that Pai was an eleven-Judge Bench, Inamdar could clarify but not overrule Pai.

513. At para 124, Inamdar held that the State cannot impose quotas on unaided (minority and non-minority) institutions. To do so would nationalize seats, contrary to Pai. (See: Inamdar at para 125). In dictum, Pai suggested that the State could compel unaided institutions to admit a reasonable percentage of students via reservation. (Pai, para 68). Inamdar clarified this point, stating that Pai should be read to mean that the State and unaided institutions may enter into consensual agreement regarding reservation. (See: Inamdar at para 126). Unaided institutions (minority and non-minority) can admit as they choose, provided their process is fair, transparent, non-exploitative and merit-based.

514. Inamdar stated:

"124: So far as appropriation of quota by the State and enforcement of its reservation policy is concerned, we do not see much of difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners

that the States have no power to insist on seat sharing in the unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement State's policy on reservation for granting admission on lesser percentage of marks, i.e. on any criterion except merit.

125. As per our understanding, neither in the judgment of Pai Foundation nor in the Constitution Bench decision in Kerala Education Bill, which was approved by Pai Foundation, there is anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in Pai Foundation. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19 (6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidate. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair,

transparent, non-exploitative and based on merit."

(Emphasis supplied)

To the extent that Islamic Academy had approved of quotas in unaided institutions, a scheme in which the States could fix quota for seat sharing between management and the State, Islamic was overruled. [Inamdar at para 130]

515. In T.M.A. Pai Foundation (supra) para 2 (eleven- Judge Bench), private educational institutions, aided and unaided, filed writ petitions to challenge regulations that impeded their rights. They wanted to establish and administer educational institutions, unfettered by Government interference. [para 2].

Reading Article 29(2) and 30(1) harmoniously, the six-Justice majority held that (1) unaided institutions could admit students free of Government interference, as long as their admission process was transparent and merit-based; (2) minority aided institutions may still admit their own students, contingent upon admitting a reasonable number of non-minority students per the percentage provided by the State Government."

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519. Pai traces the autonomy of institutions back to Chitralkha and Rajendran. The proposition is simple: he who funds or runs the institution holds the power to select students. The State cannot ask these institutions to abridge this right

in exchange for affiliation/recognition. The relevant paragraphs are reproduced hereunder:

"36: The private unaided educational institutions impart education, and that cannot be the reason to take away their choice in matters, inter alia, of selection of students and fixation of fees. Affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. The private institutions are right in submitting that it is not open to the Court to insist that statutory authorities should impose the terms of the scheme as a condition for grant of affiliation or recognition; this completely destroys the institutional autonomy and the very objective of establishment of the institution.

42. In *R. Chitralekha and Anr. v. State of Mysore and Ors.* [citation omitted], while considering the validity of a viva-voce test for admission to a Government medical college, it was observed at page 380 that colleges run by the Government, having regard to financial commitments and other relevant considerations, would only admit a specific number of students. It had devised a method for screening the applicants for admission. While upholding the order so issued, it was observed that "once it is conceded, and it is not disputed before us, that the State Government can run medical and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a power which every private owner of a College will have, and the Government which runs its own Colleges cannot be denied that power."

43. Again, in *Minor P. Rajendran v. State of Madras and Ors* , it was observed at page 795

that "so far as admission is concerned, it has to be made by those who are in control of the Colleges, and in this case the Government, because the medical colleges are Government colleges affiliated to the University. In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it subject to the rules of the university as to eligibility and qualifications." The aforesaid observations clearly underscore the right of the colleges to frame rules for admission and to admit students. The only requirement or control is that the rules for admission must be subject to the rules of the university as to eligibility and qualifications. The Court did not say that the university could provide the manner in which the students were to be selected.

61. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged."

(Emphasis supplied)

520. Unaided institutions may admit students of their choice, subject to an objective and rational procedure of selection. They might admit a small percentage of students belonging to the weaker sections of the society by granting those sections freeships or scholarships, if not granted by the Government. [See: Pai at para 53]. Given a transparent and reasonable selection process, it is up to the institution to define "merit" according to its own values. Pai stated:

"65. The reputation of an educational institution is established by the quality of its faculty and students, and the educational and other facilities that the colleges has to offer. The private educational institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies. If is for this reason that in the St. Stephen's College case, this Court upheld the scheme whereby a cut-off percentage was fixed for admission, after which the students were interviewed and thereafter selected. While an educational institution cannot grant admission on its whims and fancies, and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified according to say their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons."

(Emphasis supplied)

13. From the reading of the above judgments which has vividly extracted by Dalveer Bhandari.J., (As he then was in his minority judgment in Ashoka Kumar Thakur v. Union of India (cited supra)), the State has very little role in admitting the students and in the policy of administering students in the un-aided minority institutions. However, when the institution has agreed to share seats with the Government, the minority

Institution shall have its own transparent method of admitting students to fill the seats held by them. As far as the seats shared with the State and given to the State are concerned, neither the management of minority institution nor the minority can dictate terms to the State as to how the seats should be filled.

14. The learned Senior Counsel appearing for the petitioner in W.P.No.21960 of 2019 would rely upon a judgment of a Division Bench of High Court of Bombay in St.Xavier's College v. University of Mumbai (cited supra). This case is with reference to the Act providing communal reservation of 50% of seat. The said act directs the unaided minority institute to hand over 50% of their total intake. Therefore, the Division Bench has rightly held that, such act is unconstitutional and violative of Article 15(5) of the Constitution of India. Whereas, in the case on hand, the Management has itself shared 55 seats out of 150 seats. The memorandum entered between the Puducherry Government and the third respondent management reads as follows:-

"MEMORANDUM OF AGREEMENT (MOA)

.....

2. Admission of Students:

(i) Permission to admit students to MBBS course shall be obtained from the Government of India and affiliation shall be obtained from the Pondicherry University.

(ii) 50% of the total intake permitted by the Government of India shall be from the above minority community.

(iii) Ramachandra Educational Trust Chennai, shall share seats to the Government of Puducherry for admission of students through CENTAC by reaching mutual agreements between Management and the 'Authority every year in Sri.Venkateswaraa Medical College Hospital and Research Centre, Puducherry, Indirani College of Nursing, Puducherry, Sri.Venkateswaraa College of Paramedical Sciences, Puducherry, Sri.Venkateswaraa Dental College, Puducherry, Sri.Venkateswara Engineering College, Ariyur, Puducherry and any other new colleges /educational institutions proposed to be established by the said Ramachandra Educational Trust in future.

(iv) The Trust shall abide by the directions of the Hon'ble Supreme Court of

India in Unnikrishnan J.P and others versus state of Andhra Pradesh and others in Writ Petition (C) No.607 of 1992 and other recent decisions of the Supreme Court in the matter and the Medical Council of India (Norms and Guidelines for Fees and Guidelines for Admission in Medical Colleges) Regulations, 1994, in filling up the remaining seats.

(v) The Trust shall abide by the any other directions/orders of the Supreme Court of India and the Government of India in matters of admission and allied matters incidental thereto.

(vi) Ramachandra Educational Trust, Chennai, administering institutions in the Union Territory of Puducherry and functioning at No.13-A, Pondicherry - Villupuram Main Road, Ariyur, Puducherry - 605 102, has agreed to allot not less than the number of seats allotted in the academic year 2014-15 to the Government of Puducherry for admission of students through CENTAC by reaching mutual agreement between Management and the Authority every year in Sri Venkateshwaraa Medical College Hospital & Research Centre, Puducherry, Indirani College of Nursing, Puducherry, Sri Venkateshwaraa College of Paramedical Sciences, Puducherry, Sri Venkateshwaraa Engineering College, Ariyur, Sri Venkateshwaraa Dental College, Puducherry and any other new colleges/educational institutions proposed to be established by the said Ramachandra Educational Trust in future. Further, in case of increase in the total intake of seats, the Trust shall proportionately increase the number of seats given to Government of Puducherry.

(vii) Legal provisions made by the Legislature of the Government of Puducherry or the scheme evolved by the Court for monitoring admission procedure and fixation of fees are binding on the Trust.

(viii) All graduate, post graduate level of education as well as all technical and professional educational institutions

administered by the said Trust shall obtain the required recognition by or affiliation with any competent authority created by law, such as a University, Board, Central or State Government or the like, in the interest of students of the Union Territory of Puducherry.

(ix) Unless there is fundamental change of circumstances warranting cancellation of earlier orders or suspension of any material fact while passing the order of conferral of minority status, the 'Authority' shall not review its order conferring minority status on the minority educational institutions administered by the said Trust. "

15. Even in Dar-us-slam Educational Trust and Others vs. Medical Council of India and others case (cited supra), which is relied by the learned counsel for the petitioners, in paragraph 10, the arrangement is confined to minority quota seats if any, in respect of seats under the State quota. As pointed out by the learned Additional Government Pleader appearing for the State, the arrangement emanated in Dar-us-slam Educational Trust and Others vs. Medical Council of India and others case (cited supra), as interim measure and in respect of admitting the candidates in the minority institutes under the all India quota and State quota. The said State quota comprises of both management quota and Government quota. The arrangement said in paragraph 8 is only in respect to the seats to be followed by the management under the State quota. For the seats to be filled under All India quota, these judgments do not confine that it must be filled only by minority candidates.

16. As far as 55 seats surrendered to the State which to be filled under the common pool, there is every possibility of linguistic minority getting admitted as per merit under Government quota in Venkateshwara Medical College, Hospital and Research Centre. It is not the case of the petitioners that minorities are excluded from getting admission under the Government quota. Therefore, the apprehension of the petitioners that the character of sprinkling persons of minority will change if the 55 seats shared with Union Territory of Puducherry if not exclusively filled by minority is sustainable.

17. It is not out of context to re-collect and record the words of the Hon'ble Justice V.R. Krishna Iyer (As he then was) in Jagadish Saran v. Union of India (1980 (2) SCC 768) regarding wholesale reservation.

A caveat or two may be sounded even in this approach lest exception should consume the rule. The first caution is that reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation where minimum qualifications are absent. Similarly, all the best talent cannot be completely excluded by wholesale reservation. So, a certain percentage, which may be available, must be kept open for meritorious performance regardless of university, State and the like. Complete exclusion of the rest of the country for the sake of a province, wholesale banishment of proven ability to open up, hopefully, some dalit talent, total sacrifice of excellence at the altar of equalisation-when the Constitution mandates for every one equality before and equal protection of the law-may be fatal folly, self-defeating educational technology and antinational if made a routine rule of State policy. A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potential of the weak with the partial recognition of the presence of competitive merit-such as the dynamics of social justice which animates the three egalitarian articles of the Constitution.

18.If the contention of the petitioners is accepted, it will amount to wholesale reservation of medical seats in Venkateshwara Medical College, Hospital and Research Centre, for the said linguistic minority. This will go contra to the spirit of the Constitution of India. Therefore, for this reason also, the contention of the petitioners herein is untenable. It is fallacious to argue that even if the institution shares the seat voluntarily with the State Government, as minority, the petitioner shall have the say who the person should be educated under the minority institution.

19.While Article 30 of the Constitution of India gives right to the minorities to establish administered educational institutes Article 29 of the Constitution of India protects the

citizens from being discriminated on the ground of religion, caste, race or language.

20.Though Article 29 of the Constitution of India is with the caption "protection of interest of minorities", deep reading of the provision, it is not only for minorities but for all citizens. Because the petitioners are Telugu speaking persons who are minority in Puducherry, the other candidates whose mother tongue other than Telugu cannot be discriminated and denied admission.

21.For the said reasons, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Secretary to Government,
Union of India,
Chief Secretariat,
Pondicherry.

2.The Convener,
Centralized Admission Committee (CENTAC),
Pondicherry Engineering College Campus,
Pondicherry - 605014.

3.The Chairman ,
Sri Venkateshwara Medical College,
Hospital and Research Centre,
Ariyur, Pondicherry - 605 102.

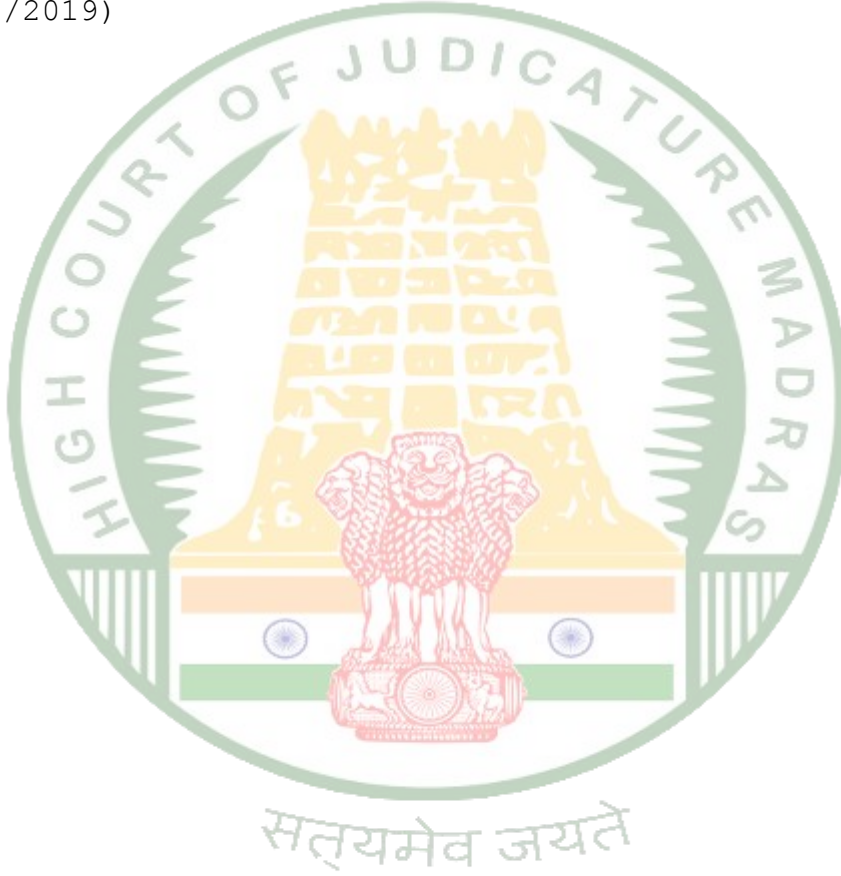
4.The Secretary,
Medical Council of India,
Sector - VIII, Dwaraga Phase II,
New Delhi - 110 077.

5.The Secretary,
Department of Higher Education,
Government of Pondicherry,
Chief Secretariat,
Pondicherry.

+1cc to Mr.R.R.Parthasarathy , Advocate SR.No.67956
+1 cc to Government Pleader cum Public Prosecutor, pundy.
Sr.No. 68147 to 68151

Writ Petition Nos.21960, 22253, 22444, 22465,
22473 and 23105 of 2019

A.SK(08/08/2019)



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