CASE NO.:
Writ Petition (civil) 350 of 1993

PETITIONER:
Islamic Academy of Education and another

RESPONDENT:
State of Karnataka and others

DATE OF JUDGMENT: 14/08/2003

BENCH:
V. N. KHARE CJI & S. N. VARIAVA & K. G. BALAKRISHNAN & ARIJIT PASAYAT & S.B. SINHA

JUDGMENT:
JUDGMENT

(With S.L.P.(Civil) Nos. 11286/2003, 11391/2003, 11189-11195/2003,

W.P(Civil) Nos. 355/1993, 174/2003, T.P.(Civil) No. 286-288/2003,

S.L.P.(Civil) Nos. 3465-3466/2003, 3942-3943/2003, 4002-4003/2003,

9253-9254/2003, 10561/2003, W.P.(Civil) Nos. 261/2003, 275/2003,

280/2003, 289/2003)

Delivered by:
V. N. KHARE, CJI
S.B.Sinha, J.

V.N. Khare, CJI for himself and for Variava, Balakrishnan and Pasayat, JJ.

207. On 31st October, 2002 eleven Judge Bench of this Court delivered the Judgment in the case of T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. , A brief history as to how a eleven Judge Bench of this Court came to decide this case is set out in para 3 of the judgment, which reads as under:

"3. The hearing of these cases has had a chequered history. Writ Petition No. 350 of 1993 filed by the Islamic Academy of Education and connected petitions were placed before a Bench of five Judges. As the Bench was prima facie of the opinion that Article 30 did not clothe a minority educational institution with the power to adopt its own method of selection and the correctness of the decision of this Court in St Stephens College v. University of Delhi was doubted, it was directed that the questions that arose should be authoritatively answered by a larger Bench. These cases were then placed before a bench of seven Judges. The questions framed were recast and on 6-2-1997, the Court directed that the matter be placed before a Bench of at least eleven Judges, as it was felt that in view of the Forty-second Amendment to the Constitution, whereby "education" had been included in Entry 25 of List III of Seventh Schedule, the question of who would be regarded as a "minority" was required to be considered because the earlier case-law related to the pre-amendment era, when education was only in the State List....."
After the Judgment was delivered, on 31st October 2002, the Union of India, various Stale Governments and the educational institutions understood the majority judgment in different perspectives. Different statutes/regulations

were enacted/framed by different State Governments. These led to litigations in several Courts. Interim orders passed therein have been assailed before this Court. When these matters came up before a Bench of this Court, the parties to the writ petitions and special leave petitions attempted to interpret the majority decision in their own way as suited to them and therefore at their request all these matters were placed before a Bench of five Judges. It is under these circumstances that this Bench has been constituted so that doubts/anomalies, if any, could be clarified.

208. Most of the petitioners/applicants before us are unaided professional educational institutions (both minority and non-minority). On behalf of the petitioners/applicant it was submitted that the answers given to the questions, as set out at the end of the majority Judgment, lay down the true ratio of the Judgment It was submitted mat any observation made in the body of the judgment had to be read in the context of the answers given. We are unable to accept this submission. The answers to the questions, in the majority Judgment in Pai's case, are merely a brief summation of the ratio laid down in the Judgment. The ratio decidendi of a Judgment has to be found out only on reading the entire Judgment. In fact the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from, the judgment, one cannot find out the entire ratio decidendi of the judgment. We, therefore, while giving our clarifications, are deposed to look into other parts of the Judgment other than those portions which may be relied upon.

209. Very briefly stated the other submissions were as follows:

210. On behalf of the petitioners/applicants it was also submitted that fixation of percentages of seats that could be filled, in title unaided professional colleges both minority and non minority by the management, an done by various State Governments, was impermissible. It is further submitted that the private, unaided professional educational institutions, had been given complete autonomy not only as regards the admission of students but also as regards the termination of their own fee structure. If was submitted that these institutions could fix their own fee structure, which could include a reasonable revenue surplus for purposes of development of education and expansion of the institution, and that so long as there was no profiteering or charging of capitation fees, there could be no interference by the Government. It was submitted that the right to admit students is an essential facet of the right to administer, and so long as admission to the unaided educational institutions is on a fair and transparent basis and on the basis of merit, government cannot interfere. It was submitted that these institutions are entitled to fill up all their seats by adopting/evolving a rational and transparent method of admission which ensures that merit is adequately taken care of. It was submitted that in any event the institutions should be given a choice and be allowed to admit students on basis of the ICSC or SSC or other such examination. It was also suggested that educational institutions of a particular type may be permitted to associate themselves for the purposes of holding a common entrance test in each State. On behalf of minority institutions, it was submitted that they are entitled to fill up ail the seats with students of their own community/language. On behalf of non-minority institutions, it was submitted that they also had a fundamental right to establish and administer educational institutions and that the majority Judgment puts them on a par with the minority institutes.

211. As against this, on behalf of the Union of India, various State Governments and some students, who sought to intervene, it was submitted that the right to set up and administer an educational institution was not an absolute right, and this right is subject to reasonable restrictions and that this right is subject (even in respect of minority institutions) to national interest. It was submitted that imparting education was a State

function but, due to resources crunch, the States were not in a position to establish sufficient number of educational institutions. It was submitted that, because of such resources crunch, the States were permitting private educational institutions to perform State functions. It was submitted that the Union of India, the States, Universities had statutory rights to fix the fees and to regulate admission of students in order to ensure (a) that there was no profiteering; (b) capitation fees were not charged; (c) admissions were based on principles of merit and (d) to ensure that persons from the backward classes and poorer sections of society also had an opportunity to receive education, particularly, professional education. It was submitted that if these educational institutions were permitted to have their own tests for admission, the students would be put to undue harassment and hardship inasmuch as they would have to pay for application forms in various colleges and appear for tests in various colleges. It was pointed out that even if each institution charged Rs. 500 to Rs. 1000 a student would ultimately have to pay a large amount by way of application fees as, in the absence of a common entrance test and admission procedure the students would have to apply to a number of colleges. It is submitted that the students would also have to spend for transport from and to each college and may find it difficult, if not impossible to travel from one college to another, to appear in all the tests. It was submitted that unless it was ensured that colleges admit students strictly on the basis of merit at a common entrance test, it would be impossible to ensure that capitation fees were not charged and that there was no profiteering. It was pointed out that some colleges do not even issue admission forms unless and until the student agrees to pay a hefty sum. It was submitted that the majority Judgment clarified that Article 30 had been enacted not for the purposes of giving any special right or privileges to the minority educational institutions, but to ensure that the minorities had equal rights with the majority. It was submitted that minority educational institutions cannot claim any higher or better rights than those enjoyed by the non-minority educational institutions.

212. Both sides relied upon various passages from the majority judgment in support of the respective submissions. These passages are reproduced hereinafter.

In view of the rival submissions the following questions arise for consideration:

1) whether the educational institutions arc entitled to fix their own fee structure;

2) whether minority and non minority educational institutions stand on the SAME footing and have the same rights;

3) whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100% and if not to what extent; and

4) whether private unaided professional colleges are entitled to admit students by evolving their own method of admission;

Question No. 1.

213. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee

structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, mere are statutes/regulations which govern the fixation of fees and as this Court had, not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in TMA PAI's case the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short 'MCI') or the All India Council for Technical Education (in short 'AICTE'), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that total number of members of the Committee shall not exceed 5. Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge cither directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already, framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation.

214. It must be mentioned that during arguments it was pointed out to us mat some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year, if an institution feels that any particular student may leave in midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall duo. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.

Question No. 2

215. The next question for consideration is whether minority and non minority educational institution stand on the same footing and have the same rights under the Judgment. In support of the contention that the minority and non minority educational institutions had the same rights reliance was placed upon paragraphs 138 and 139 of the Judgment. These read as follows;

"138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities; thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard so the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St Xaviers College case, at page 192, that "the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality." In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do."

"139 Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g., method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the condition of recognition, which cannot be such as to whittle down the right under Article 30."

Undoubtedly at first blush it does appear that these paragraphs equate both types of educational institutions. However on a careful reading of these paragraphs it is evident that the essence of what has been laid down is that the minority educational institutions have a guarantee or assurance to establish and administer educational institutions of their choice. These paragraphs merely provide that laws, rules and regulations cannot be such that they favour majority institutions over minority institutions. We do not read these paragraphs to mean that non minority educational institutions would have the same rights as those conferred on minority educational institutions by Article 30 of the Constitution of India. Non minority educational institutions do not have the protection of Article 30. Thus, in certain matters they cannot and do not stand on similar footing as minority educational institutions. Even though the principle behind Article 30 is to ensure that the minorities are protected and arc given an equal treatment yet the special right given under Article 30 does give them certain advantages. Just to take a few examples, the Government may decide to nationalise education. In that case it may be enacted that private educational institutions Will not be permitted. Non minority educational institutions may become bound by such an enactment. However, the right given under Article 30 to minorities cannot be done away with and the minorities will still have a fundamental right to establish and administer educational institutions of their choice. Similarly even though the government may have a right to take over management of a non minority educational institution the management of a minority educational

institution cannot be taken over because of the protection given under Article 30. Of course we must not be understood to mean that even in national interest a minority institute cannot be closed down. Further minority educational institutions have preferential right to admit students of their own community/language. No such rights exist so far as non minority educational institutions are concerned.

Questions Nos. 3 and 4

216. Questions 3 and 4 pertain to private unaided professional colleges. Thus ail observations in answer to questions 3 and 4 are therefore confined to such educational institutions.

217. In order to answer the third arid fourth questions it is necessary to see the manner in which the majority judgment is framed and to consider certain paragraphs of the judgment. The majority judgment considered various aspects under different heads. The 3rd head is "In case of private institutions, can there be government regulations and, if so, to what extent?". This is further divided into four subheadings viz. "Private unaided non minority educational institutions"; "Private unaided professional colleges"; "Private aided professional institutions (non minority)" and "Other aided institutions". The paragraph which has been strongly relied upon is paragraph 62 which is under the sub-heading "Private unaided professional colleges". The said paragraph reads as under:

"63. 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 he filled up on the basis of counseling 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 percentages 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."

218. Reliance was also placed on paragraphs 58 and 59 which read as follows:

"58. For admission into any professional institution, merit must play an important role. While it may be normally possible to judge the merit of the applicant who seeks admission into a school while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions."

"59. Merit is usually determined for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in

the case of professional colleges, by government agencies."

Based on the above paragraphs it had been submitted, on behalf of the Union of India various State Governments and students that the majority Judgment makes a clear distinction between professional educational institutions (both minority and non minority) and other educational institutions i.e. schools and undergraduate colleges. The submission was that in professional institutions merit had to play an important role and that excellence in professional education required that for purposes of admission merit is determined by Government agencies. It is submitted that paragraph 68 provides that in unaided professional colleges only a "certain" percentage of seats can be reserved for admission by the management. It is submitted that the said paragraph provides that if is permissible for the University or the Government to require a private unaided professional institute to provide for a merit based selection. It was submitted that paragraph 68, read with paragraph 59, lays down that in unaided professional colleges merit is to be determined by a common entrance test conducted by Government agencies.

219. Paragraph 68 of the majority judgment in Pai’s case can be split into seven pads :-

220. Firstly, it deals with the unaided minority or non-minority professional colleges.

221. Secondly, it will be unfair to apply the rule and regulations framed by the State Government as regards the government aided professional colleges to the unaided professional colleges.

222. Thirdly, the unaided professional institutions are entitled to autonomy in their administration; while at the same time they should not forego or discard the principles of merit.

223. Fourthly, it is permissible for the university or the Government at the time of granting recognition to require an unaided institution to provide for merit based admission while at the same time giving the management sufficient discretion in admitting students.

224. Fifthly, for unaided non-minority professional colleges certain percentage of seats can be reserved for admission by the management out of those students who have passed the common test held by itself or by the State/University and for applying to the college/university for admission, while the rest of the seat may be filled up on the basis of counseling by the State agency.

225. Sixthly, the provisions for poorer and backward sections of the society in unaided professional colleges are also to be provided for.

226. Seventhly, the prescription for percentage of seats in unaided professional colleges has to be done by the government according to the local needs. A different percentage of seats for admission can be fixed for minority unaided and non-minority unaided professional colleges.

227. Undoubtedly the majority judgment makes a distinction between private unaided professional colleges and other educational institutions i.e. schools and undergraduate colleges. The subheading "Private unaided professional colleges" includes both minority as well as non minority professional colleges. This is also clear from a reading of paragraph 68. It appears to us that this distinction has been made (between private unaided professional colleges and other educational institutions) as the Judgment recognises that it is in national interest to have good and efficient professionals. The Judgment provides that national interest would prevail, even over minority rights. It is for this reason that in professional colleges, both minority and non-minority, merit has been made the criteria for admission. However a proper reading, of paragraph 68,

indicates that a further distinction has been made between minority and non minority professional colleges. It is provided that in cases of non minority professional colleges "a certain percentage of seats" can be reserved for admission by the management. The rest have to be filled up on bases of counseling by State agencies. The prescription of percentage has to be done by the Government according to local needs. Keeping this in mind provisions have to be made for the poorer and backward sections of the society. It must be remembered that, so far as, medical colleges are concerned, an essentiality certificate has to be obtained before the college can be set up. It cannot be denied that whilst issuing the essentiality certificate the respective State Governments take into consideration the local needs. These aspects have been highlighted in a recent decision of this Court in State of Maharashtra v. Medical Association and Ors. . Whilst granting the essentiality certificate the State Government undertakes to take over the obligations of the private educational institution in the event of that institution becoming incapable of setting of the institution or imparting education therein. A reading of paragraphs 59 and 68 shows that in non minority professional colleges admission of students, other than the percentage given to the management, can only be on the basis of merit as per the common entrance tests conducted by government agencies. The manner in which the percentage given to the management can be filled in is set out hereinafter.

228. Paragraph 68 provides that a different percentage can be prescribed for unaided minority institutions. That the same yardstick cannot be applied to both minority and non minority professional colleges is also clear from the fact that paragraph 68 also falls under main heading "In case of private institutions, can there be government regulations and, If so, to what extent?". Paragraph 47, which is one of the first paragraph under this heading, inter-alia provides as follows:

"It is appropriate to first deal with the case of private unaided institutions and private aided institutions that are not administer the by linguistic or religious minorities. Regulations that can be framed relating to minority institutions will be considered while examining the merit an effect of Article 30 of the Constitution."
Whilst discussing Article 30 under heading "To what extent the rights of aided private minority institutions to administer can be regulated" reliance has been placed, in the majority Judgment, on previous judgments in the cases of Re Kerala Education Bill (AIR 1958 Supreme Court page 956); Rev Sidhajbhai v. State of Bombay : Rev Father Proost v. State of Bihar ; State of Kerala v. Very Rev Mother Provincial; Ahmedabad. St Xaviers College Society v. State of Gujarat . All these cases have recognised and upheld the rights of minorities under Article 30. These cases have held that in the guise of regulations, rights under Article 30 cannot be abrogated. It has been held, even in respect of aided minority institutions that they must have full autonomy in administration of that institution. It has been held that the right to administer includes the right to admit students of their own community/language. Thus an unaided minority professional college cannot be in a worse position than an aided minority professional college. It is for this reason that paragraph 68 provides that a different percentage can be fixed for unaided minority professional colleges. The expression "different percentage for minority professional institutions" carries different meaning than the expression "certain percentage for unaided professional colleges," In fixing percentage for unaided minority professional colleges the State must keep in mind, apart from local needs, the interest/need of that community in the State. The need of that community, in the State, would be paramount vis-a- vis the local needs.

229. It must be clarified that a minority professional college can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student

is more meritorious. However, whilst selecting/admitting students of their community/language the inter-se merit of those students cannot be ignored. In other words whilst selecting/admitting students of their own community/language they cannot ignore the inter-se merit amongst students of their community/language. Admission, even of members of their community/language, must strictly be on the basis of merit except that in case of their own students it has to be merit inter-se those students only. Further if the scats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by government agencies.

230. That brings us the question, as to how the management of both minority and non minority professional colleges can admit students in the quota allotted to them. Undoubtedly the majority Judgment has kept in mind the sad reality that there are a large number of professional colleges which indulge in profiteering and/or charging of capitation fees. It is for this reason that the majority Judgment provides that in professional colleges admission most be on the basis of merit. As has been rightly submitted it is impossible to control profiteering/charging of capitation fees unless it is ensured that admission is on the basis of merit. Also as has been rightly pointed out if a student is required to appeal at more than one entrance test it would lead to great hardship. The application fees charged by each institute, even though they may be only Rs. 500 to Rs. 1000 for each institute, would impose a heavy burden on the students who will necessarily have to apply to a number of colleges. Further as has boon rightly pointed out, students would have to arrange for transport from arid to and stay at various places if they have to appear for individual tests conducted by each College. If a student has to go for test to each institute it is possible that he/she may not be able to reach, in time, the venue of a test of a particular institute. In our view what is necessary is a practical approach keeping in mind the need for a merit based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by State/University". The words "common entrance test" clearly Indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance tests conduced by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on basis of merit as per that merit list. Of course, as indipated earlier, minority colleges will be entitled to fill up their quota with their own students on basis of inter-se merit amongst those students. The list of students admitted, along with the rank number obtained by the student, the fees collected and all such particulars and details as may be required by the concerned authority or the Committee must be submitted to them forthwith. The question paper and the answer papers must be preserved for such period as the concerned authority or Committee may truncate. If it is found that any student has been admitted de-hors merit penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn.

231. At this juncture it is brought to our notice that several institutions, have since long, had their own admission procedure and that

even though they have been admitting only students of their own community no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and that they stand on a different footing from other minority non-aided professional institutions. It is submitted that their cases are not based only on the right flowing from Article 30(1) but in addition they have some special features which requires to they be permitted to admit in the manner they have been doing for all these years. A reference is made to few such institutions i.e. Christian Medical College, Vellore, St. Joans Hospital, Islamic Academy of Education etc . The claim of these institutions was disputed. However we do not think it necessary to go into those questions. We leave it open in institutions which have been established and who have had their own admission procedure for, at least, the last 25 years to apply to the Committee set out hereinafter.

232. Lastly, it must be mentioned that it was urged by learned counsel for the appellant that paragraph 68 of the majority judgment only permits University/State to provide for merit based selection at the time of granting recognition/affiliation. It was also submitted that once recognition/affiliation is granted to unaided professional colleges, such a stipulation cannot be provided subsequently. We are unable to accept this submission. Such a provision can be made at the time of granting recognition/affiliation as well as subsequently after the grant of such recognition/affiliation.

233. We now direct that the respective State Government do appoint a permanent Committee which will ensure that the tests conducted by the association of colleges to fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice Chancellors of University in that State so that the total number of persons on the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper/s, to know the names of the paper setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt its own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college/s shall be separately fixed on the basis of their need by the respective State Governments and in care of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.

234. Our direction for setting up two sets of Committees in the States has been passed under Article 142 of the Constitution of India which shall remain in force till appropriate legislation is enacted by the Parliament.

The expenses incurred on the setting up of such Committees shall be borne by each State. The infrastructural needs and provision for allowance and remuneration of the Chairman and other members of the Committee shall also be borne by the respective State Government.

235. So far as the year 2003-2004 is concerned, time is running out as the outer time limit for admission is fast approaching or has gone. To meet the urgent situation without going into the issues involved in the various petitions/application?), we direct that the seats be filled up by the institution and the State Governments in the ratio 50:50. However, if by any interim order, this Court has permitted any institution to fill up a higher percentage of seats and the seats have been filled up accordingly, the same shall not be disturbed. It is made clear that due to the lime constraint this arrangement has been made, without deciding the contentious issue involved in various pending cases.

236. With these clarifications we now direct that all the matters be placed before the regular benches for disposal on merits.

237. All Interlocutory applications as regard interim matters stand disposed of.

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S.B. Sinha, J.

INTRODUCTORY REMARKS :

1. Imparting of education is a State function. The State, however, having regard to its financial and other constraints is not always in a position to perform its duties. The function of imparting education has been, to a large extent, taken over by the citizens themselves. Some do it as pure charity; some do it for protection of their minority rights whether based on religion or language and some do it by way of their "occupation". Some such institutions are aided by the State and some are unaided.

2. Privately managed educational institutions imparting professional education in the fields of medicine, dentistry and engineering have spurted in the last few decades. The right of the minorities to establish an institution of their own choice in terms of Clause (1) of Article 30 of the Constitution of India is recognized; so is the right of a citizen who intends to establish an institution under Article 19(1)(g) thereof. However, the fundamental right of a citizen to establish an educational institution and in particular a professional institution is not absolute. These rights are subject to regulations and laws imposing reasonable restrictions. Such reasonable restrictions in public interest can be imposed under Clause (6) of Article 19 and regulations under Article 30 of the Constitution of India. The right to establish an educational institution, although guaranteed under the Constitution, recognition or affiliation is not. Recognition or affiliation of professional institutions must be in terms of the statute.

3. Entry 66 of List I and Entry 25 of List III of the Seventh Schedule of the Constitution of India provide for legislative field in this behalf. Various States have enacted laws for regulating admission and prohibiting charging of capitation fee. The said legislations also provide for employment of teachers, their conditions of service, discipline in institution and several other matters. Such regulatory measures have been the subject matter of various decisions of this Court.

BACKGROUND :

4. This Court in Unni Krishnan J.P. and Ors. v. State of Andhra Pradesh and Ors. laid down a Scheme. In terms of the said Scheme the self-financed institutions were entitled to admit 60% of students of their choice,

whereas rest of the seats were to be filed in by the State. For admission of students, a common entrance test was to be held. Provisions for free seats and payment seats were made therein. The State and various statutory authorities including the Medical Council of India, University Grants Commission and All India Council for Technical Education made and/for amended regulations so as to bring them at par with the said Scheme.

5. The Islamic Academy of Education filed a writ petition in the year 1993 questioning the validity thereof. The said writ petition along with connected matters were placed before a Bench of five Judges, which was prima facie of the view that Article 30 of the Constitution of India did not clothe minority educational institutions with the power to adopt its own method of selecting students.

6. This Court in T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. noticed the same stating :

"The hearing of these cases has had a chequered history. Writ Petition No. 350 of 1993 filed by the Islamic Academy of Education and connected petitions were placed before a Bench of 5 Judges. As the Bench was prima facie of the opinion that Article 30 did not clothe a minority educational institution with the power to adopt its own method of selection and the correctness of the decision of this Court in St. Stephen's College v. University of Delhi was doubted, it was directed that the questions that arose should be authoritatively answered by a larger Bench. These cases were then placed before a Bench of 7 Judges. The questions framed were recast and on 6th February, 1997, the Court directed that the matter be placed a Bench of at least 11 Judges, as it was felt that in view of the Forty-Second Amendment to the Constitution, whereby "education" had been included in Entry 25 of List III of the Seventh Schedule, the question of who would be regarded as a "minority" was required to be considered because the earlier case laws related to the pre-amendment era, when education was only in the State List. When the cases came up for hearing before an eleven Judge Bench, during the course of hearing on 19th March, 1997, the following order was passed:-

"Since a doubt has arisen during the course of our arguments as to whether this Bench would feel itself bound by the ratio propounded in -- In Re Kerala Education Bill, 1957 (1959 SCR 955) and the Ahmedabad St. Xavier's College Society v. State of Gujarat, , it is clarified that this sized Bench would not feel itself inhibited by the views expressed in those cases since the present endeavour is to discern the true scope and interpretation of Article 30(1) of the Constitution, which being the dominant question would require examination in its pristine purity. The factum is recorded."

7. The eleven Judge Bench answered various questions raised therein.

8. The petitioners/applicants before us are private unaided institutions. Most of them have been established by a Society, Trust or persons belonging to the minority community based on religion or language.

9. By reason of the impugned legislations/ Government orders, the State Governments, inter alia, while seeking to lay down the government quota in relation to such unaided institutions, directed that while filling up the same, the self-financed institutions must follow the merit list prepared by the State on the basis of External Common Entrance Test (CET). The State Governments also fixed/regulated fees to be charged "from the students by such institutions.

10. Validity or otherwise of the said rules/regulations/ Governmental Orders came up for consideration before several High Courts. Different High Courts in their Orders while granting interim reliefs, construed the judgment of this Court in T.M.A. Pai Foundation (supra) differently. The perceptions of the States as also the High Courts in reading the judgment are widely varied. In the aforementioned situation, several applications have been filed in the matters which were disposed of by the 11-Judge Bench

of this Court. Some institutions as also the State of Kerala had also filed Special Leave Petitions against the interim orders passed by the High Courts. Some writ petitions under Article 32 of the Constitution of India have also been filed. Keeping in view the importance of the question, this Court issued notices to all, the State Governments:

11. In the Special Leave Petitions and the Writ Petitions several other questions have also been raised but as at present advised this Bench intends to confine itself to the interpretation of judgment of this Court in T.M.A. Pai Foundation (supra) leaving other questions open for consideration by the appropriate benches.

12. In these matters this Court is not at all concerned with the rights of the aided minority and non-minority institutions and restrictions imposed by the States upon them but we are concerned only with the rights and obligations of private unaided institutions run by the minorities and non-minorities.

SUBMISSIONS MADE ON BEHALF OF WRIT PETITIONERS - APPLICANTS:

13. It was urged that while interpreting the judgment, this Court should bear in mind the salient aspects of the findings in T.M.A. Pai (supra) that is to say :

I ON THE FUNDAMENTAL RIGHTS OF EDUCATIONAL INSTITUTIONS:

(i) Citizens have a fundamental right to establish and administer educational institutions under Article 19(1)(g), 21, 23 and 30 of the Constitution (Paras 25 & 26) and, thus, the said rights cannot be taken away/ restricted.

(ii) Such a fundamental right extends to education at all levels including professional education. (Para 161)

(iii)The right to establish and administer educational institutions comprises of the right to

(a) admit students

(b) set up a reasonable fee structure

(c) constitute a governing body

(d) appoint staff and take disciplinary action (Para 50)

(iv) Although such rights are subject to reasonable restrictions, but the same must be for the betterment of the institution and as such the right under Article 19(1)(g) and Article 30 cannot be undermined. (Paras 135-138)

(v) Restrictions can be imposed only, at the time of grant of recognition or affiliation of the institutions and not thereafter.

(vi) The right of the citizens vis-a-vis the minority communities must be judged keeping in view the distinction between

(a) unaided and aided institutions

(b) minority and non-minority institutions (Paras 46-73);

II ON THE DEGREE OF CONTROL

14. It was contended that although some amount of regulation/ control is permissible but the validity thereof is required to be considered:

(i) In the light of the decision of this Court that the Scheme framed in

Unnikrishnan has been abolished and consequent directions issued on the basis thereof by the UGC, AICTE, MCI, Central and State Governments etc. have been held to be invalid. (Para 45)

(ii) While exercising the power of control, it is impermissible to nationalize education particularly with regard to the right of minorities to admit members of their own community as also fixing the fee. (Para 38) Minority institutions are not to subsidize the State nor any principle of cross-subsidy can be deciphered therefrom.

(iii) In the case of unaided institutions, maximum autonomy has to be conceded as contradistinguished from the power of the State to exercise more control over unaided institutions but even in relation thereto, aided institutions should not be treated to be wholly owned or controlled by the State or their Departments. (Paras 55, 61, 62 & 72)

(iv) Such a right of control over the aided institutions inheres for the purpose of oversight and restraints so as to

(a) ensure proper utilization of funds (Para 143)

(b) permit the Government to, have some seats to the extent of its reservation policy (Paras 42-441).

(v) Although the aided, institutions are subject to Clause (2) of Article 29 and Clause (3) of Article 28 of the Constitution, but the unaided minority institutions being not so subject would not be bound by the restraints emanating therefrom so long they exercise their right to admit and select students in a transparent and non-arbitrary manner;

III ON ADMISSION OF STUDENTS BY UNAIDED INSTITUTIONS

(i) Unaided institutions have an unbridled right on admission of students, comprising of devising a test for selecting students of their choice (Para 36, 40-41, 50). Such a right emanates from the principle that every private and public owner of an institution has the power to admit qualified students of their own choice (Para 42-44).

(ii) As such a right also emanates with a view to maintain the atmosphere and traditions of the private educational institutions, the general principles for unaided institutions would also apply to unaided professional institutions. The right of option either to select their candidates from the Government CET test or its own test is absolute and the ultimate decision in this behalf rests with the institutions whereas aided institutions can be compelled to follow the CET test devised by the Government or the University.

(iii) Whereas such a test and devising a system on the part of the unaided institutions cannot be based on fancy and whims but once "some identifiable or reasonable methodology" usually on merit is adopted, the right to select qualified students on a fair and discernable basis cannot be interfered with (Para 65).

IV ON THE NATURE AND EXTENT OF THE GOVERNMENT QUOTA FOR UNAIDED INSTITUTION

(i) It is contended that the Government cannot have a quota in this regard as/the institutions are unaided. Having regard to the fact that if such government quota is allowed, the same would destroy not only the concept of unaided institutions but right to exercise maximum autonomy especially in the matter of selection of students and fees would be impaired.

(ii) Such a right must be construed having regard to the extent of control over the aided institution.

(iii) Admission to a small percentage for weaker sections which the unaided

institutions are required to follow by way of implication rules out enforcement of any reservation policy of the State as the same would run counter to the decision of this Court in The Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat and Anr. .

(iv) In any event, the direction to determine a small percentage, of persons drawn from the weaker sections of the society should be left with the management, which would include the weaker sections of the minority community for which such institution has been established.

(v) It is for an unaided institution to volunteer to provide scholarship or freeship to the students of weaker sections so long they are meritorious students (Para 37, 53, 61 & 68)

(vi) Since weaker sections form a special category, they cannot be selected either on the basis of :

(a) reservation policy of the State

(b) regional affiliation or residence within the State

(c) religion.

(vii) For the said purpose also, the social and educational backwardness of the area or the regions entitling such inclusion on the touchstone of compelling necessities of the State will have to be taken into consideration.

(viii) In any event, reservation for weaker sections cannot be greater than 50% of the total in any batch after taking into account the reservation for SC, ST and OBC.

(ix) The unaided institutions cannot be subject to onerous financial impositions nor can they be asked to perform the functions of the State. (Para 61)

(x) In any event, the quota policy cannot be imposed on unaided institutions to the extent of laying down standards of a reasonable nature that do not cut down its operational autonomy and financial independence. (Paras 36, 40, 43, 53, 59, 65).

V. FEE FIXATION FOR UNAIDED INSTITUTIONS

15. As unaided institutions are to be given maximum autonomy in the matter of fixation of fee, there cannot be :

(a) a rigid fee structure (para 54)

(b) Such fees are to be fixed by the unaided institutions (Para 56, 57).

(c) The only impediment in this behalf is that no capitation fee can be charged nor the institutions can take recourse to profiteering since education is charitable in nature Therefore a reasonable revenue surplus for the purpose of development of education and expansion of education would be permissible (Para 571). While restricting charging the capitation fee and profiteering, this Court had merely directed that such institutions make no undue, excessive or illegal profits and thereby a reasonable profit is permitted.

(d) Only because fee is to be charged on a reasonable development profit basis, the same would not result in decline in standard or amount to capitation. (Para 61).

(e) Students of weaker sections when admitted may be granted freeships and scholarships (Para 53).

(f) For the purpose of finding out as to who would be the students belonging to the weaker sections of the community, local needs and other needs must be taken into consideration.

16. The judgment of this Court in T.M.A. Pai Foundation (supra) is to be construed having regard to the following principles:

(a) Its ratio must be found in the answers ultimately given.

(b) A judgment has to be read as a whole and in such a manner so that all parts of a judgment dealing with a particular point are provided with a meaning. The regulations imposing restrictions must be read in such a fashion so that maximum autonomy of the unaided institutions are preserved and respected.

SUBMISSIONS MADE ON BEHALF OF STATES/CENTRAL GOVERNMENT/STATUTORY AUTHORITIES

(i) The right of citizens including the minority communities whether based on any religion or language contained in Article 19(1)(g) and Article 30(1) is not absolute but is subject to reasonable restrictions.

(ii) Regulations restricting the right of minority to admission of students are necessary for maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and for prevention of mal-administration (Para 54).

(iii) Since education in a sense is regarded as charitable, unaided institutions cannot charge a hefty fee which would not be required for the purpose of fulfilling the object for which the institutions are established nor by reason thereof they can take recourse to profiteering (Para 57.)

(iv) As merit is usually determined by either the marks of the students obtained at the qualifying examination or school leaving certificate stage followed by the interview or by a common entrance test conducted by the institution, the State while framing regulation has the requisite jurisdiction to issue necessary directions in this behalf so that merit is not sacrificed (Para 58-59).

(v) The plea of the minority institutions to the effect that their right to admit or reject students is absolute would not be in consonance with the direction issued in para 68 which provides for

(a) a system to provide merit based selection while granting sufficient discretion to the management

(b) As certain percentage of seats have to be reserved for the management, the rest can be filled up on the basis of counseling by the State agencies which would take care of poorer and backward sections of the society. The prescription of the percentage for the said purpose must be left with the State (Para 68).

(vi) Professional institutions must apply a more rigorous test, which would be subject to greater regulation by the State or by the University. (Answer to Question No. 4).

(vii) As the State while granting essentiality certificate is to consider the local needs and further guarantee smooth functioning of such institutions failing which the State has to adjust the students of the institutions to their own institutions, it has a great stake in the matter. Choice and selection of students in professional courses are directly linked with maintaining the standards of medical education.

(viii) If a free hand is given to all the private medical, dental,

engineering and other professional colleges to hold their own test, having regard to the time schedule framed by this Court for holding examinations in the 15% All India quota as also the All India test held by AIIMS, CBSE, JIFMER, AFMC etc. the students would be deprived from appearing at the examinations if tests are held throughout the country and they will have to incur huge expenditure for purchasing application forms which are priced at Rs. 500 to Rs. 1000/- as also by way of travelling, boarding and lodging so as to enable them to appear at various examinations. More than one examination may be held on the same day or in such near proximity that traveling from one place to another would become virtually impossible. The methodology, thus, must be adopted so as to minimise the inconvenience caused to a majority of the students so that they can appear at many examinations by incurring a reasonable expenditure.

(ix) It is a common knowledge that although not termed as capitation fee a large number of unaided institutions are selling their seats, which must not be allowed to continue, and must be curbed with heavy hands.

(x) In pursuit of its objective of State Policy having regard to Articles 38, 41, & 46 which are in terms of Article 37 thereof, which are fundamental in governance of the country it is necessary to provide for a common examination so that the rights of the inter se minorities and inter se weaker sections can be taken care of in terms of para, 68 of the judgment.

(xi) The directions issued by this Court to unaided professional institutions contained in paras 67 and 68 only are to be given effect to although the Bench referred to professional colleges also in paras 58 and 59 of the judgment.

OVERVIEW OF THE JUDGMENT IN T.M.A. PAI FOUNDATION :

17. The right to establish an institution is provided for in Article 19(1) (g) of the Constitution of India. Such a right, however, is subject to reasonable. restrictions, which may be brought about in terms of Clause (6) thereof.

18. Minorities whether based on religion or language, however, have a fundamental right to establish and administer educational institutions of their own choice. The right under Clause (1) of Article 30 is not absolute; and subject to reasonable regulationswhile inter alia may be framed having regard to the public interest and national interest of the country. Regulations can also be framed to prevent maladministration as also for laying down the standard of education, teaching, maintenance of discipline, public order, health, morality, etc.

UNNI KRISHNANAN, J.P.

19. This Court in Unni Krishnan (supra) while framing the scheme directed :

(a) that a professional college should be established and/or administered only by a Society registered under the Societies Registration Act, 1860, or the corresponding Act of a State, or by a Public Trust registered under the Trusts Act, or under the Wakes Act, and that no individual, firm, company or other body of individuals would be permitted to establish and/or administer a professional college.

(b) that 50% of the seats in every professional college should be filled by the nominees of the Government or University, selected on the basis of merit determined by a common entrance examination, which will be referred to as "free seats"; the remaining 50% seats ("payment seats") should be filled by those candidates who pay the fee prescribed therefor, and the

allotment of students against payment seats should be done on the basis of inter se merit determined on the same basis as in the case of free seats.

(c) that there should be no quota reserved for the management or for any family, caste or community, which may have established such a college.

(d) that it should be open to the professional college to provide for reservation of seats for constitutionally permissible classes with the approval of the affiliating university.

(e) that the fee chargeable in each professional college should be subject to such a ceiling as may be prescribed by the appropriate authority or by a competent court.

(f) that every State government should 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. This committee should, after hearing the professional colleges, fix the fee once every three years or at such longer interval's, as it may think appropriate.

(g) that it would be appropriate for the University Grants Commission to frame regulations under its Act regulating the fees that the affiliated colleges operating on a no grant-in-aid basis were entitled to charge. The AICTE, the Indian Medical Council and the Central Government were also given similar advice. The manner in which the seats to be filled on the basis of the common entrance test was also indicated.

20. In T.M.A. Pai Foundation (supra) the Scheme framed by this Court restricting the right of the citizen to establish private unaided institutions including minority institutions and manage the same was held to be unconstitutional stating : (1) The Scheme enforced by the State Governments in relation to privately managed institutions would not be a reasonable restriction within the meaning of Article 19(6) of the Constitution of India as it resulted into revenue shortfalls making it difficult for the educational institutions; (2) the provision made for free seats and payment seats amounted to subsidising education of one segment of society at the cost of other which was unreasonable having regard to the fact that higher education has been held not to be a fundamental right.

21. All orders and directions issued by the State pursuant to or in furtherance of the directions in Unnikrishnan are, thus, also unconstitutional.

ST. STEPHEN'S COLLEGE:

22. The right of a minority educational institution, to adopt its own method of selection is subject to the restrictions contained in Clause (2) of Article 29 of the Constitution of India, if the institution is an aided one. It was held that allowing minority educational institutions to select its own method of selection, for admission of students to the extent of 50% of the seats would not impinge upon the right under Article 30 of the Constitution of India. It was further held that regulations can be imposed by the State for intake of minority categories with regard to need of the minority in the area which the institution intends to serve.

23. A question, however, arose therein as to whether the State could impose regulatory measures on the institutions run by the minority community which provides for admission by conducting interviews but not solely on the marks obtained in the qualifying examination? In that case, the State had imposed restrictions on the college management compelling it to make admission exclusively on the basis of marks obtained in the qualifying examination. But the management, in addition to the marks obtained by the students, also conducted interviews for making admission to the college. This Court observed that the denial of power to St. Stephen's College to conduct interviews to select candidates for admission would be violative of the rights of the minority community guaranteed under Article 30(1) of the Constitution. It was held that, any regulatory measure imposed by the State

on the minority institutions should be beneficial to the institution or. for the betterment of those who join such institutions.

24. In T.M.A. Pai Foundation (supra) while upholding the judgment in St. Stephen (supra), that part of the direction whereby the right of the minority institutions were confined to 50% of the seats was held to be bad.

25. From the above decisions of this Court, it is evident that though the right engrafted under Article 30(1) of the Constitution does not lay down any limitations or restrictions upon the right of a minority to administer its educational institutions, yet the right cannot be used absolutely and unreasonably.

QUESTIONS POSED IN T.M.A. PAI FOUNDATION :

26. In T.M.A. Pai Foundation (supra), the Bench framed the following questions:

1. What is the meaning and content of the expression "minorities" in Article 30 of the Constitution" of India?

2. What is meant by the expression "religion" in Article 30(1)? Can the followers of a sect or denomination of a particular religion claim protection under Article 30(1) on the basis that they constitute a minority in the State, even though the followers of that religion are in majority in that State?

3. (a) what are the indicia for treating an educational institution as a minority education institution? Would an institution be regarded as a minority educational institution because it was established by a person(s) belonging to a religious or linguistic minority or its being administered by a person(s) belonging to a religious or linguistic minority?

(b) To what extent can professional education be treated as a matter coming under minorities rights under Article 30?

4. Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the university to which the institution is affiliated?

5. (a) Whether the minorities' rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

(b) Whether the Minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?

(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/ withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

6. (a) Where can a minority institution be operationally located? Where a religious or linguistic minority in State 'A' establishes an educational institution in the said State, can such educational institution grant preferential admission/ reservations and other benefits to members of the religious/linguistic group from other States where they are non-minorities?

(b) Whether it would be correct to say that only the members of that minority residing in state 'A' will be treated as the members of the minority vis-a-vis such institution?

7. Whether the member of a linguistic non-minority in one State can establish a trust/society in another State and claim minority status in that State?

8. Whether the ratio laid down by this Court in St. Stephen's case (St. Stephen's College v. University of Delhi) is correct? If no what order?

9. Whether the decision of this Court in Unni Krishnan, J.P. v. State of A.P. (except where it holds that primary education is a fundamental right) and the_ scheme framed thereunder require reconsideration/modification and if yes, what?

10. Whether the non-minorities have the right to establish and administer educational institution under Articles 21 and 29(1) read with Articles 14 and 15(1), in the same manner and to the same extent as minority institutions? and

11. What is the meaning of the expressions "education" and "educational institutions" in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?

27. The Bench did not answer 4 out of 11 questions. The Hon'ble Chief Justice, B.N. Kirpal delivering the majority judgment considered the questions answered by the Bench under the following headings:

1. Is there a fundamental right to set up educational institutions and if so, under which provision?

2. Does the judgment in Unni Krishnan case require reconsideration?

3. In case of private unaided institutions can there be government regulations and if so to what extent?

4. In determining the existence of a religious or linguistic minority, in relation to Article 30, what is to be the unit, the State or country as a whole? and

5. To what extent can the rights of aided minority institutions to administer be regulated?

28. We are not concerned with the subject under heading 1. The core issues in this matter revolve around headings 2, 3 and 5 aforementioned.

29. We are, thus, concerned in this case with Question No. 3 (b) , 4 , 5(a), 5 (b) , 5 (c) and 9.

30. The answers to the relevant questions are in the following terms:

A.3(b) Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words "of their choice" indicates that even professional educational institutions would be covered by Article 30.

A.4 Admission of students to unaided minority educational institutions, via., schools and undergraduate colleges where the scope for merit-based selection is practically nil , cannot be regulated by the State or University concerned, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the

merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The State Government concerned has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the state agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the state agency followed by counselling wherever it exists.

A.5(a) A minority institution may have its own procedure, and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

A.5(b) While giving aid to professional institutions, it Would be permissible for the authority giving aid to prescribe bye-rules or regulations, the conditions on the basis of which admission will, be granted to different aided colleges by virtue of merit, coupled with the 'reservation' policy of the state qua non-minority students. The merit may be determined either through a common entrance test conducted by the University or the Government concerned followed by counselling, or on the basis of an entrance test conducted by individual institutions - the method to be followed is for the university or the government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the government or the university to provide that consideration should be shown to the weaker sections of the society.

A.5(c) So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions; of affiliation to an university or board, have to be complied with, but in the matter of day-to-day management like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial Officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

A.9 The scheme framed by this Court in Unni Krishnan case and the direction to impose, the same, except where it holds that primary education is a fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering.

31. The conflict has to be resolved keeping the aforementioned findings in view.

CORE QUESTION :

(i) Whether unaided professional institutions, are entitled to lay down their own fee structure?

(ii) Whether in view of the judgment of this Court in T.M.A. Pai Foundation (supra) private and unaided professional institutions are entitled to have their own admission programme?

(iii) Whether the State Governments are entitled to lay down the quota of total seats to be filled up by the management?

RELEVANT FINDINGS OF THIS COURT IN T.M.A. PAI FOUNDATION

32. The right to establish and administer educational institutions was held to be guaranteed to citizens under Article 19(1)(g) of the Constitution of India and to the minorities under Article 30.

33. One of us (Chief Justice Khare) while agreeing with the majority delivered a separate opinion relating to aided minority institutions and non-minority institutions as also interpretation of the right of the minorities under Clause (1) of Article 30 vis-a-vis Clause (2) of Article 29 and held that such right is limited by the conditions laid down in Clause (2) of Article 29 and Clause (3) of Article 28.

34. Quadri, J, agreed with the aforementioned view stating :

" 259. In regard to the minorities seeking recognition and/or aid it was observed in Kerala Education Bill, 1957 that the minorities cannot surely ask for aid or recognition for an educational institution run by them - in unhealthy surroundings, without any competent teachers, possessing any. semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. In such matters, "the State can insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided", (emphasis supplied) Thus, it is clear that regulations postulated for granting recognition or aid ought to be with regard to the excellence of education and efficiency of administration vis. to make certain healthy surroundings for the institutions, existence of competent teachers possessing requisite qualifications and maintaining fair standard of teaching. Such regulations are not restrictions on the right but merely deal with the aspects of proper administration of an

educational institution, to ensure excellence of education and to avert maladministration in minority educational institutions and will, therefore, be permissible. This is on the principle that when the Constitution confers a right, any regulation framed by the State in that behalf should be to facilitate exercise of that right and not to frustrate it. "

35. Pal, J. also agreed with the said view stating:

"Similarly, the Constitution has also carved out a further exception to Article 29(2) in the form of Article 30(1) by recognising the rights of special classes in the form of minorities based on language or religion to establish and administer educational institutions of their choice. The right of the minorities, under Article 30(1) does not operate as discrimination against other citizens only on the ground of religion or language. The reason for such, classification is not only religion or language, per se but minorities based on religion and language. Although, it is not necessary to justify a classification made by the Constitution, this fact of 'minorityship' is the obvious rationale for making a distinction, the underlying assumption being that minorities by their very numbers are in a politically disadvantaged situation and require special protection at least in the field of education.

Articles 15(4), 337 and 30 are therefore facets of substantive equality by making special provision for special classes on special considerations."

36. One of us (Variava, J.) speaking for himself and Dhan, J. agreed with the majority but thought it appropriate that a mechanism therefor should be set up observing:

"So far as the statutory provisions regulating the facets of administration, are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to a University or Board have to be complied with, but in the matter of day-to-day Management, like appointment of staff, teaching and non-teaching and administrative control over them, the Management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the Management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal could be presided over by a Judicial Officer of the rank of District Judge. The State or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of Management over the staff, Government/University representative can be associated with the selection committee and the guidelines for selection can be laid down. In regard to un-aided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare, of teachers could be framed.

There could be appropriate mechanism to ensure that no capitation fee is charged and profiteering is not resorted to.

The extent of regulations will not be the same for aided and un-aided institutions."

37. The majority held that there is an apparent conflict between the provisions of Clause (2) of Article 29 and Clause (1) of Article 30. Article 29 guarantees the right to every citizen not to be denied admission

into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them; whereas Clause (1) of Article 30 confers a fundamental right to set up educational institutions of their choice.

38. A delicate balance was sought to be struck by stipulating that minority educational institutions may admit non-minority students to a "reasonable extent" so that the rights of both minorities and non-minorities are protected. However, the extent to which such balance is to be a truck may be determined by the State having regard to such factors as 'the type of institution', 'course of education'. 'population and educational needs of minorities'. It was further laid down that the minority institutions are required to admit students having regard to inter-se merit amongst the applicants. Non-minorities students, who qualify the test, would be entitled to seek admission against the "allotted seats" as per their own respective cumulative merit.

39. However, one of us Variava, J., speaking for himself and Bhan, J. clearly held that where the minor by institutions take aid from the State they do not have any right to admit students of minority community alone. For arriving at the said conclusion, the learned Judge referred to the history of the said provision and the intention of the founding fathers, which was the conferment of a right of minorities to establish "a secular state where in people belonging to the different religions should all have a feeling of equality and non-discrimination".

40. The learned Judge further referred to the significance of conditional clause, at their own expense in the draft Article VI which reads as follows :

"Citizens belonging to national minorities in a state whether based on religion or language have equal rights with other citizens in forming, controlling and administering at their own expense, charitable, religious and social institutions, schools and other educational establishments with the free use of their language and practice of their religion.

No legislation providing state-aid for schools shall discriminate against schools under the management of minorities whether based on religion or language."

41. The learned Judge further observed that, by reason of Article 30(1) no 'special' or 'additional' right is conferred on the minorities.

42. Expression 'minorities' although is not defined in the Constitution, one of us Khare, CJI, referred to the Year Book on Human Rights (1950) and Encyclopaedia Britannica and some other standard works on the theme of protection of minorities.

43. Though in para 153 the view regarding merit was expressed, but while answering the question No. 7 was left open to be answered by the appropriate Benches.

44. The majority opined that the minority status of a group of persons would be determined on the basis of population of the State or Union Territory concerned and not on the whole of the country. It was further held that education within the meaning of the provision of Article 36 would mean and include education from primary level to the post-graduate level and would include professional education as well.

45. The Bench, however, overruled the dicta in Unni Krishnan's case (supra) that education is not a 'business' or 'occupation' within the meaning of Article 19(1)(g) of the Constitution of India, wherein referring to State of Bombay v. R.M.D. Chamarbaugwala [1957 SCR 874] and incorporating the doctrine of res extra commercium, the Court had observed :

"While the conclusion that 'occupation' comprehends the establishment of educational institutions is correct, the proviso in the aforesaid observation to the effect that this is so provided no recognition is sought from the state or affiliation from the concerned university is, with the utmost respect, erroneous. The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. "

46. While declaring that the Scheme framed in Unni Krishnan's case (supra) and the directions issued to the Government, UGC and other concerned bodies to give effect to the same vis-a-vis privately managed educational institutions as unconstitutional, it upheld two propositions : (1) primary education is a fundamental right; and (2) the institution cannot charge any capitation fee or otherwise take recourse to profiteering.

47. It was observed :

"The scheme framed by this Court in Unni Krishnan's case and the direction to impose the same, except where it holds that primary education is a fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct, Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering."

48. The Bench agreed with the contention of the private institutions that affiliation and recognition has to be made available to every institution that fulfils the conditions for grant thereof observing :

"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 the institution. "

49. The Court, however, laid emphasis that in professional education merit should be the criteria.

50. With a view to appreciate the extent to which the Scheme formulated in Unni Krishnan was not found favour with T.M.A. Pai Foundation (supra), we may set out the observations of this Court in T.M.A. Pai Foundation (supra) as follows:

1. Establishment of Educational Institutions

All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right is subject to provisions of Articles 19(6) and 26-A. (See Answer to Question Nos. 10 & 11).

2. Admission to Courses

(i) Private Unaided Professional Colleges;

(a) Admission to professional colleges should be based on merit by common entrance test conducted by the Government agencies (See Paragraph 59)

(b) Certain percentage of seats can be reserved for admission by management out of those students who have passed common entrance test held by itself or by the State agency and the rest of the seats may be filled up on the basis of counsellings by the State agency. Prescription by percentage has to be determined by the Government according to local needs (See Paragraph 68)

(c) When the considers the Constitution Bench's earlier statements that higher education is not a fundamental right, it seems unreasonable to compel a citizen to pay for the education of another more so in the unrealistic world, of competitive examinations which assess the merit for the purpose of admission solely on the basis of marks obtained where urban

students always have an edge over rural students. Those who seek professional education roust pay for it. (See Paragraphs 37 & 70).

2(ii) Private aided professional institutions:

It would be permissible for the authority giving aid to prescribe by Rules or Regulations the conditions on the basis of which the admissions shall be granted to different aided colleges by virtue of merit coupled with reservation policy of the State. The merit may be determined either through the common entrance test conducted by the University or the Government followed by counselling or on the basis of entrance test conducted by individual institution, and method to be followed is for the Government or University to decide.

2. (iii) Private aided minority institutions:

The State Government is not entitled to interfere with the right of minority educational institutions to admit students of their choice so long as the admission is on a transparent basis and the merit is adequately taken care of. The right not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellency thereof, specially in the case of admission to professional institutions. (See Page 588, Q. 4).

2(iv.) Unaided minority institutions:

Such institutions would have the right of admission of students belonging to minority groups and at the same time would be required to admit reasonable extent of non-minority students as notified by the State Government. In case of professional institutions it can also be stipulated that passing of common entrance test held by the State agency is necessary to seek admission. (Page 588, Qs. 4, 5(a) and 5(b))

3. Reservation of Seats

..While the State has a right to prescribe qualifications necessary for admission, private unaided colleges have right to admit students of their choice subject to objective arid rational procedure of selection and the compliance with the conditions if any requiring admission of certain percentage of students belonging to weaker sections by granting them free scholarships or scholarships if not granted by the Government (paragraph 53).

4. Fee Structure

(i) ..Scheme of "free" and "Payment" seats was evolved on the presumption that the economic capacity 6f the 50 per cent of admitted students would be greater than the remaining 50%, whereas the converse has proved to be the reality. In this scheme, the "Payment" seat student would not only pay for his own seat, but also finance the cost of a "free seat" classmate. It seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the basis of marks obtained where urban students always have an edge over rural students. In practice, it has been the case of the marginally less merited rural or poor students bearing the burden of a rich and well exposed and urban students. (See Paragraph 37).

(ii) The decision in Unni Krishnan insofar as it framed the Scheme relating to grant of admission and fixing fee was not correct, and to that extent the said decision and consequent direction given to UGC, AICTE, Medical Council of India, Central and State Governments etc., is overruled. (Paragraph 45).

(iii) A rational fee structure should be adopted by the management and it

would not be entitled to charge capitation fee and appropriate machinery can be devised by the State or University to ensure that no capitation fee is charged and that there is no profiteering, though a reasonable surplus in furtherance of education is permissible. The conditions of granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers (Paragraph (59, Q.9).

51. The problem presented in these matters should be viewed from the aforementioned perspective.

52. There is a fundamental right to set up educational institutions both under Article 19(1)(g) and Article 30 of the Constitution of India. It held that the Scheme framed by this Court in Unni Krishnan did not impose reasonable restrictions within the meaning of Clause (6) of Article 19 of the Constitution of India. The unaided institution compared to the aided institutions will have more autonomy to run the institutions. However, in the matter of non-professional institutions, the autonomy is absolute which is not the case in professional institutions.

53. The right . to establish and administer an institution comprises of the right:

(a) to admit students;

(b) to set up a reasonable fee structure;

(c) to constitute a governing body;

(d) to appoint staff (teaching and non-teaching); and

(e) to take action if there is dereliction of duty on the part of any employees.

54. As regards fee structure, it was held that the fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions. Although an educational institution is not a business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowing's. It is important to note that the essential ingredients of the management of the private institution include the admission of students and recruiting staff, and the quantum of fee that is to be charged.

55. An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of studies are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in, the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been, given to understand that a large number of professional and other institutions have been started by private parties, who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon

any funds from the Government.

56. Since the object of setting up of an educational institution is charitable in nature, capitation fee and profiteering cannot be allowed to be indulged in:

(a) although the institutions may generate a reasonable revenue surplus for the purpose of development of education and expansion of the institutions.

(b) For admission in a professional institutions, merit must play an important role and meritorious candidates should pot be treated unfairly or put at a disadvantage by preferences shown to less meritorious but more influential applicants.

57. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission for which appropriate regulations can be made.

As regards determination of merit, it was stated:

"Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a, common entrance test conducted by the institution, or in the case of professional colleges, by government agencies."
58. Educational institutions, however, cannot grant admission on their whims and fancies and must follow some identifiable or reasonable ’methodology of admitting the students. Any scheme, rule or regulation that does not give an 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 in 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 some students, such rejection must not be whimsical or for extraneous reasons.

59. The principles governing private unaided professional colleges were dealt with separately in paragraphs 67, 68 and 69; the relevant portions whereof read thus:

’’It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional, institutions. It must, he 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 percentages 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.

In such professional unaided institutions, the Management will have the right to select teachers as per the qualifications and eligibility conditions laid down by the State/University subject to adoption of a rational procedure of selection. A rational fee structure should be adopted by the Management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the state or university to ensure that no capitation fee is charged and that; there is no profiteering, though a reasonable surplus for the furtherance of education is permissible. Conditions granting recognition or affiliation can broadly cover academic and educational matters including the welfare of students and teachers.

STATUTES OPERATING IN THE FIELD :

60. The Parliament in exercise of its power conferred upon it under Entry 66 List I of the Seventh Schedule of the Constitution of India enacted the Medical Council of India Act, University Grants Commission Act and Ail India Council for Technical Education Act. Regulations have also been framed pursuant to or in furtherance of the regulation making power contained therein. Section 10(1)(i) of the ATCTE Act reads as under :-

"10. Functions of the Council, -

(1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical and management education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may-

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;

(b) co-ordinate the development of technical education in the country at all levels;

(c) allocate and disburse out of the Fund of the Council such grants on such terms and conditions as it may think fit to -

(i) technical institutions"

61. Section 12A of UGC Act is as follows :

"12A. Regulation of fees and prohibition of donations in certain cases.- (1) In this section, -

(a) "affiliation", together with its grammatical variations, includes in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a University;

(b) "college" means any institution, whether known as such or by any other name which provides for a course of study for obtaining any qualification from a university and which, in accordance with the rules and regulations of such University, is recognized as competent to provide for such course of study and present students undergoing such course of study for the examination for the award of such qualification;

(c) "prosecution", in relation to a course of study, includes promotion from one part or stage of the course of study to another part or stage of the course of study:

(d) "Qualification" means a degree or any other qualification awarded by a University;

(e) "regulations" means regulations made under this Act;

(f) "specified course of study" means a course of study in respect of which regulations of the nature mentioned in Sub-section (2) have been made;

(g) "student" includes a person seeking admission as a student;

(h) "university" means a university or institution referred to in Sub-section (1) of section 22.

(2) Without prejudice to the generality of the provisions of section 12 if, having regard to -

(a) the nature of any course of study for obtaining any qualification from any University;

(b) the types of activities in which persons obtaining such qualification are likely to be engaged on the basis of such qualification;

(c) the minimum standards which a person possessing such qualification should be able to maintain in his work relating to such activities and the consequent need for ensuring, so far as may be, that no candidate secures admission to such course of study by reason of economic power and thereby prevents a more meritorious candidate from securing admission to such course of study; and

(d) all other relevant factors,

the Commission is satisfied that it is necessary so to do in the public interest, it may, after consultation with the university or universities concerned, specify by regulations the matters in respect of which fees may be charged, and the scale of fees in accordance with which fees shall be charged in respect of those matters on and from such date as may be specified in the regulations in this behalf, by any college providing for such course of study from, or in relation to, any student in connection with his admission to, and prosecution of, such course of study

Provided that different matters and different scales of fees may be so specified in relation to different universities or different classes of colleges or different areas.

(3) Where regulations of the nature referred to in Sub-section (2) have been made in relation to any course of study, no college providing for such course of study shall

(a) levy or charge fee in respect of any marter other than a matter specified in such regulations;

(b) levy or charge any fees in excess of the scale of fees specified in such regulations, or

(c) accept, either directly or indirectly, any payment (otherwise than by way of fees) or any donation or gift (whether in cash or kind),

from, or in relation to, any student in connection with his admission to, and prosecution of, such course of study.

(4) If, after making, in relation to a college providing for a specified course of study, an inquiry in the manner provided by regulations, and after giving such college a reasonable opportunity of being heard, the Commission is satisfied that such college has contravened the provisions of Sub-section (3), the Commission may, with the previous approval of the Central Government, pass an order prohibiting such college from presenting any students then undergoing such course of study therein to any university for the award of the qualification concerned.

(5) The Commission shall forward a copy of the order made by it under Sub-section (4) to the university concerned, and on and from the date of receipt by the University of a copy of such order, the affiliation of such college to such university shall, in so far as it relates to the course of study specified in such order stand terminated and on and from the date of termination of such affiliation and for a period of three years thereafter affiliation shall not be granted to such college in relation to such or similar course of study by that or any other university.

(6) On the termination of the affiliation of any college under Sub-section (5), the Commission shall take all such steps as it may consider appropriate for safeguarding the interests of the students concerned.

(7) The provisions of this section and the regulations made for the purposes of this section shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

62. Detailed regulations have been framed under the aforementioned three Acts regulating admission of students, percentage of the minority students to be admitted into non- minority institutions, determination of fee and matters incidental thereto and ancillary therewith. By reason of the said regulations, the State Government, however, have been delegated with the power to determine the fee structure in respect of professional institutions wherefor requisite guidelines have been issued; pursuant whereto and in furtherance whereof committees have been constituted for the said purpose.

63. The States of Tamil Nadu, Maharashtra, Karnataka and Andhra Pradesh enacted statutes prohibiting collection of capitation fee and regulating admission in professional colleges. In terms of the provisions of the said Acts, the management of the professional colleges is prohibited from charging any fee other than fee determined under the said Acts. The right of the minorities under Article 30 of the Constitution, however, stands protected thereby. The respective State Governments enforced the said statutes in respect of self-financing private institutions, minorities or otherwise. They further issued various Government orders in exercise of their powers under Article 162 of the Constitution of India after, the judgment in T.M.A. Pai Foundation. The University Grants Commission, the A.I.C.T.E. and the Medical Council of India, issued provisional/ad hoc guidelines covering the same subject purported to be in terms of the provisions of the principal statutes governing the field in the light of the judgment of this Court in T.M.A. Pai Foundation. The State Governments also in terms of the observations made by this Court issued various orders or adopted resolutions providing for enforcement of their reservation policy as also determining the fee structure.

64. Constitutionality of such Government orders came to be challenged, inter alia, by way of writ petition before the High Courts of Andhra Pradesh, Karnataka and Kerala. Certain interim orders had been passed therein which are under challenge in several special leave petitions.

65. As noticed hereinbefore, in T.M.A. Pal Foundation’s case (supra) only orders and directions issued pursuant to Unni Krishnan have been declared unconstitutional.

66. However, the question with regard to constitutionality or otherwise of the said statutes, Rules and Regulations had not been examined. In particular the parliamentary acts and the regulations framed thereunder have not been referred to. The question as to whether the field with regard to the higher education is covered by the parliamentary legislations or not was not adverted to. The extent and scope of the legislative competence of the Parliament and the State Legislatures within the meaning of Entry 66 of List I and Entry 25 of List III of the Seventh Schedule of the Constitution also had not been adverted to. In the Aforementioned premise, one of us,

Variava, J. stated :

"393. The learned Chief Justice has repeatedly emphasised that capitation fees cannot be charged and that there must be no profiteering. We clarify that the authorities concerned will always be entitled to prevent by enactment or by regulations the charging of exorbitant fees or capitation fees. There are many such enactments already in force. We have no gone into the validity or otherwise of any such enactment. No arguments regarding the validity of any such enactment have been submitted before us. Thus those enactments will not be deemed to have been set aside by this judgment. Of course now by virtue of this judgment the fee structure fixed under any regulation or enactment will have to be reworked so as to enable educational institutions not only to break even but also to generate some surplus for future development/expansion and to provide for free seats."
67. Although the parties have raised their contentions as regards constitutionality of some of the provisions of the aforementioned statutes, keeping in view the limited scope for which this Constitution Bench has been constituted, we refrain ourselves from going thereinto. This exercise has to be undertaken in appropriate cases.

ARE THE RIGHTS UNDER ARTICLE 19(1)(g) AND ARTICLE 30(1) OF THE CONSTITUTION OF INDIA EQUAL?:

68. T.M.A. Pal Foundation (supra) for the first time brought into existence the concept of education as an 'occupation'. In to uncertain terms, it was held that all citizens of India irrespective of the fact as to whether they belong to a minority group or not have a right to establish and run an institution. A right conferred on a citizen of India in terms of Article 19(1)(g) of the Constitution of India indisputably is subject to reasonable restrictions, which may be imposed in public interest under Clause (6) thereof. The makers of the Constitution no doubt while enacting Article 3C of the Constitution of India intended to confer on the minorities the same right as that of the majority. But, does it mean that for all intent and purport no further or additional right exists in the minority community s the question.

69. Drawing our attention to paragraphs 54, 65, 138, 139, 224-229 of the judgment, Mr. Venugopal and Mr. Vaidyanathan, the learned senior counsel for the respondents would submit that the minority right is equal to that of the majority and not vice-versa. According to learned counsel, if it is to be held that the minority exercises a higher right than the majority, the same would be counter productive to the Indian ethos. Right to admit students of their own choice, the learned counsel would contend, in a professional college, therefore, is not absolute.

70. On the other hand, the learned counsel appearing on behalf of the Writ Petitioners-Applicant would contend that the discussions in T.M.A. Pai Foundation centered round the question as to whether the right conferred upon minorities under Article 30 was subject to Clause (2) of Article 29 or not. Our attention was drawn to paragraphs 31 to 45 of the judgment and in particular para 31, 45 and 459 of the judgment. The learned counsel would submit that while considering the question as to whether the Scheme framed by this Court in Unni Krishnan was reasonable, it was categorically held that the provisions contained therein to the extent that 50% seats would be free seats and 50% thereof would be payment seats and all examinations would be conducted through Common Entrance Test (CET) and the ceiling on fees was declared unconstitutional as being violative of Clause (6) of Article 19 of the Constitution of India. It was submitted that in the event if it be held that the said provisions are ultra vires for the purpose of Clause (6) of the Article 19 the same consequences must ensue for construction of Article 30 of Constitution of India. It was contended that having regard to the majority decision of this Court, if it is held, having regard to Clause (2) of Article 29 of the Constitution that in the event an aid is granted to a professional institution, they will be subject to the same restrictions which any other self-financed scheme institution would

face in terms of Clause (6) of Article 19 of the Constitution of India then no purpose can be held to have been achieved by the Constitution (sic) in enacting Clause (1) of Article 30 of the Constitution of India.

71. A citizen of India whether belonging to a minority community or not will have the right under Article 19. A person belonging to a minority community apart from 19(1)(g) has a right to establish, administer institution of their choice. In T.M.A Pal Foundation this Court held that minority institutions can establish and run a professional institution in terms of Clause (1) of Article 30 of the Constitution having regard to the fact that they have a right to establish an institution of their own choice.

72. A citizen of India with a view to establish an unaided professional institution exercises his right of occupation. To the said extent admittedly the right of the minority and non-minority is equal. Article 30, however, seeks further to protect the minorities so that they may admit students in the institution established by them. This privilege is not extended to the non-minority community. They also have a right to establish an institution and admit students of their own choice in terms of Para 68 of the judgment in T.M.A. Pai but they do not have any right of admitting students belonging to a particular locality or speaking a particular language as such institutions are not meant to serve the said purpose. But the same for all intent and purport having, regard to the question, involved in the matter may not be of much consequence as would appear from the discussions made hereinafter.

73. The Bench held:

"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,

74. The Scheme framed in Unni Krishnan was held to bo unconstitutional fay this Court and only in that context it was observed:

"38. The scheme in Unni Kriahnan’s case has the effect of nationalising education in respect of important features, viz., the right of a private unaided institution to give admission and to fix the fee. By framing this scheme, which has led to the State Governments legislating in conformity with the scheme the private institutions are indistinguishable from the government institutions; curtailing all the essential features of the right of administration of a private unaided educational institution can neither be called fair nor reasonable. Even in the decision in Unni Krishnan’s case, it has been observed by Jeevan Reddy, J., at page 749, para 194, as follows:

"The hard reality that emerges is that private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are in no position to meet the demand particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most important functions of the Indian State it has no monopoly therein. Private educational institutions -including minority educational institutions - too have a role to play,"

75. However, it was also noticed :

"138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to

establish and administer educational institutions of their choice. Secularism and equality-being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate, against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St. Xavier's College case, that

"the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority, If the minorities do not have such special protection, they will be dented equality."

In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non- minority institutions are permitted to do.

139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g.. method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition. which cannot be such as to whittle down the right under Article 30."

76. The findings of this Court in the aforementioned paragraphs must be given their full effect. Although the width and scope of Article. 19(1)(g) and Article 30 are different, but they seek to fulfill the same purpose. A minority' institution has no additional rights but it enjoys a constitutional protection to admit students belonging to the minority communities whether based on religion or language. All regulations in this behalf must satisfy the requirement of Article 30. The doctrine of equality shall further apply once the institutions have been established.

77. We may notice that this Court in Ahmedabad St. Xavier's College; (supra) stated:

"In order to attain that object, two thing's were regarded as particularly necessary and have formed the subject of provisions in these treaties.

The first is to ensure that nationals belonging to racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics.

These two requirements, are indeed closely interlocked for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions and were consequently compelled to renounce that which constitutes the very essence of its being a minority"."

78. The purport and object for which Article 30(1) was inserted in the Constitution cannot be lost sight of. Judgments of Khare. J. (as the CJI then was) and Variava, J. are replete with the debates in the constituent assembly.

79. The argument that the management of the minority institutions cannot be taken over, whereas that of the non-minority institutions can be, is misplaced and in any event irrelevant. This Court in no unmistakable terms held that the State cannot take any step by way of imposing conditions at the time of grant of recognition which would amount to nationalization of education. This applies to both minorities and non-minorities.

80. The Constitution prohibits acquisition of property of any citizen of India except in accordance with law. Any action taken on . the part of the State to take over the property of minority institution must also receive legal sanction through an act of a legislation and not otherwise.

81. It will not be a correct proposition of law, on the face of Clause 1A of Article 30 of the Constitution to contend that the properties of the minority institutions cannot be taken over at all." The only right which they have is to get reasonable compensation so as to enable them to establish another educational institution at some other place. It is not necessary to raise hypothetical question to drive home a point which is of not much consequence. As and when laws are made, their constitutionality', will have to be tested on their own merit. Preemptive answers should not be given on hypothetical questions.

82. Furthermore, in the event, running of a minority institution is found to be against national interest or permissible limits of regulations, it can be taken over with a view to maintain morality, public order, health, national interest. Similar such considerations would empower the State to close the institution or take over the management thereof, although the same may be done only in extreme cases.

83. In case of gross mismanagement and violation of the conditions of essentiality certificate also, the State may be held to have the power to close down the institution.

84. The right of the minority institution, to admit their own students, in other words, is only by way of protection of the minority interest so that they may get the benefit of the equality clause. Such a protection should not be confused to be a right. This is evident not only from paras 138 and 139 of the judgment but also from para 371, (opinion of Ruma Pal, J.)

85. The statement of law contained in paras 138 and 139 is absolutely clear and unambiguous and no exception can be taken thereto. The doubt, if any, that the minorities have a higher right in terms of Article 30(1) of the Constitution of India may be dispelled in clearest terms inasmuch as the right of the minorities and non-minorities is equal. Only certain additional protection has been conferred under Article 30(1) of the 'Constitution of India to bring the minorities on the same platform as that of non-minorities as regards the right to establish and administer an educational institution for the purpose of imparting education to UK:

86. members of their own community whether based on religion or language. Demographically every Indian can become a minority having regard to the fact that even Hindus are in minority in Jammu & Kashmir, Punjab and some other States in North-East of India. Even Hindi speaking people except northern India are in minority in other parts of the country.

87. The question, thus, has to be considered keeping in view the fact that every Indian may be a minority, either based on religion or language, in one part of the country or the other. The right of a citizen as a minority in one part of the country cannot be higher than his right as a member of majority in another part of the country.

88. Furthermore, one of us (Variava, J.) speaking for himself and Bhan, J. clearly said :

"Article 30 merely protects the right of the minority to establish and administer an educational institution, i.e. to have the same rights as those enjoyed by majority, Article 30 gives no right to receive State aid. It is for the institution to decide whether it wants to receive aid. If it decides to take State aid then Article 30(2) merely provides that the State will not discriminate against it. When State, whilst giving aid, asks, the minority educational institute to comply with a constitutional mandate, it can hardly be said that the State is discriminating against that institute. The State is bound to ensure that all educational institutes, whether majority or minority, comply with the constitutional mandate."

(Emphasis supplied)

89. The right of the minorities in the matter of admission of students can also be restricted like the non-minorities. T.M.A. Pai says so.

90. The professional institutions indisputably are governed by statutes like MCI Act, AICTE Act and the UGC Act. In terms the provisions of the statutes and regulations framed thereunder the private professional institutions are required to maintain certain standards. They cannot be deviated or departed from. In the context of giving admissions to the meritorious students, it cannot be said that the students belonging to the minority community shall be admitted without reference to merit.

91. The courts, it is relevant to place on record, would not encourage establishment of pseudo minority institutions imparting professional courses. The statutory rules and regulations, thus, must be equally applied to an the professional institutions whether aided or unaided whether run by a minority or non-minority. In the matter of maintenance of standard, these Institutions must be equally treated.

92. If it be held that the minority institutions can admit all the students belonging to their own community whereas the non-minority institutions cannot, the same, in my opinion, would amount to re-writing the judgment.

93. The arguments which have been advanced in this behalf, if accepted, would clearly lead to the conclusion that the majority decision in TMA Pai Foundation is wrong.

94. Even while laying down the law in terms of Articles 15(3), 15(4), 16(1) and 16(4), the object is to attain equality. Reverse discrimination even in the majority judgment has been, frowned upon. Can we say that the right of the minorities is higher than the other disadvantaged group? Possibly not having regard to Part III of the Constitution.

95. It is interesting to note that recently in Jennifer Gratz and Patrick Hamacher v. Lee Bollinger decided on 23rd June, 2003 by US Supreme Court the guidelines providing for selection method under which every applicant from an under represented racial or ethnic minority groups was to be automatically awarded 20 points out of 100 points needed to guarantee admission, was struck down as being violative of equality protection clause. It was observed;

"The very nature of a college’s permissible practice of awarding? value to racial diversity means that race must. be considered in a way that increases some applicants’ chances for admission. Since college admission is not left entirely to inarticulate intuition, it is hard to see what is inappropriate in assigning some stated value to a relevant characteristic, whether it be reasoning ability, writing style, running speed, or minority race. Justice Powell’s plus factors necessarily are assigned some values. The college simply does by a numbered scale what the law school accomplishes in its "holistic, review," Grutter, post, at 25; the distinction does not imply that applicants to the undergraduate college are denied individualized consideration or a fair chance to compete on the basis of all the various merits their applications may disclose."

96. Justice Ginsburg, however, speaking for himself and Justice Souter in their minority opinion stated:

"Our jurisprudence ranks race A "suspect" category, "not because (race) is inevitably an impermissible classification, but because it is one which usually, to our national shame, has been drawn for the purpose of maintaining racial inequality." Norwalk Core v. Norwalk Redevelopment "Agency, 395 F. 2d 920, 931-932 (CA2 '1938) (footnote omitted). But where race is considered "for the purpose of achieving equality," id., at 932, no automatic proscription is in order. For as insightfully explained, "the Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. "United States v. Jefferson County Bd. Of Ed., 372 F.2d 836, 875 (CA5 1966) (Wisdom, J.) : see Wechsler, The Nationalisation of Civil Liberties and Civil Rights Supp. To 32 Tex.Q.10, 23 (1968) (Brown may be seen as disallowing racial classifications that "imply an invidious assessment" while allowing such classifications when "not invidious in implication" but advanced to "correct inequalities"). Contemporary human rights documents draw just this line; they distinguish between policies of oppression and measures designed to accelerate de facto equality. See Grutter, post, at 1 (Grinsburg, J. concurring) (citing the United Nations - initiated Conventions on the Elimination of All Forms of Racial Discrimination and on the Elimination of All Forms of Discrimination against Women)."

97. It is not necessary to express any opinion on this judgment one way or the other but it is referred to as the same points out two different viewpoints. But one thing is clear; ultimate constitutional goal is to attain equality.

98. Human history would show that struggle of man for democratic polity was inspired by a desire to achieve equality among them. Indeed, some of the world Constitutions in their preamble abhor inequality and proclaim to achieve equality in all respects. Whatever may be the power and jurisdiction of the State and State authorities to make a special provision in favour of backward and downtrodden, when the Court tests the reasonableness of such distinctive State action, it should be done by posing a question whether such State action to ameliorate social, economic and political poverty; whatever be the reason, delays the journey towards proclaimed goal of equality. If a measure tends to perpetuate inequality and makes the goal of equality a mirage, such measure should not receive the approval of the Court. The Court, in such circumstances, has no mould the relief by indicating what would be the reasonable measure or action which furthers the object of achieving equality. The concept of equality is not a doctrinaire approach. It is a binding thread which runs through the entire constitutional text. An affirmative action may, therefore, be constitutionally valid by reason of Articles 15(4) and 16(4) and various directive principles of State policy, but the Court cannot ignore the constitutional morality which embraces in itself the doctrine of equality. It would be constitutionally immoral to perpetuate inequality among majority people of the country in the guise of protecting the constitutional rights Of minorities and constitutional rights of backward and downtrodden. All the rights of these groups are part of right to social development which cannot render national interest and public interest subservient to right of an individual or right of community.

99. In the event the minorities are not granted the right to establish educational institutions of their choice and admit students of their community, the right of equality would lose all its purpose and relevance. It is in that sense the rights of the majority and minority must be held to be equal. In my opinion the provisions of Articles 19(1)(g), 29(2) and 30 must be so construed.

REASONABLE REGULATIONS:

100. So far as institutions imparting professional education, are concerned, having regard to the public interest, they are bound to maintain excellence in standard of education. To that extent, there cannot be any compromise and the State would be entitled to impose restrictions and make regulations both in terms of Article 19(1)(g) and Article 30 of the Constitution of India. The width of the rights and limitations thereof of unaided institutions whether run by a majority or a minority must conform to the maintenance of excellence. With a view to achieve the said goal indisputably the regulations can be made by the State.

101. The right to administer does not amount to right to maladminister and the right is not free from regulation. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions.

EXTENT OF REGULATIONS :

102. Article 30(1) of the Constitution does not confer an absolute right. The exercise of such right is subject to permissible State regulations with an eye on preventing maladministration. Broadly stated there are "permissible regulations" and "impermissible regulations".

103. Some of the permissible regulations/restrictions governing enjoyment of Article 30(1) of the Constitution are

(i) Guidelines for the efficiency and excellence of educational standards (See Sidhrajbhai v. State of Gujarat; State of Kerala v. Mother Provincial, (1970) 2 SCC 2079; All Saints High School v. Government of Andhra Pradesh, :

(ii) Regulations ensuring the security of the services of the teachers or other employees [See In Re Kerala Education Bill, and All Saints High School v. Government of A.P. (supra) ;

(iii) Introduction of an outside authority or controlling voice in the matter of service conditions of employees (See All Saints High School v. Government of A.P. (supra);

(iv) Framing Rules and Regulations governing the conditions of service of teachers and employees and their pay and allowances (See State of Kerala v. Mother Provincial (supra) and All Saints High School v. Government of A.P. (supra).

(v) Appointing a high official with authority and guidance to oversee, that Rules regarding conditions of service are not violated, but, however such an authority should not be given blanket, uncanalised and arbitrary powers (See All Saints High School v. Government of Andhra Pradesh (supra);

(vi) Prescribing courses of study or syllabi or the nature of books [See State of Kerala v. Mother Provincial (supra) and All Saints High School v. Government of A.P. (supra)]; and

(vii) Regulation in the interest of efficiency of instruction, discipline, health sanitation, morality, public order and the like [See Sidhbajbahi v. State of Gujarat (supra)]

104. Subject to what has been stated in T.M.A. Pai Foundation, some of the impermissible regulations are :

(i) Refusal to affiliation without sufficient reasons [All Saints High School v. Government of A.P. (supra)];

(ii) Such conditions as would completely destroy the autonomous administration of the educational institution [All Saints High School v. Government of A.P. (supra)] ;

(iii) Introduction of an outside authority either directly or through its nominees in the governing body or the managing committee of minority institution to conduct the affairs of the institution [All Sainta High School v. Government of A.P. (supra)];

(iv) Provision of an appeal or revision against an order of dismissal or removal by an aggrieved member of staff or provisions for Arbitral Tribunal [See St. Xaviers College v. State of Gujarat (supra), Lilly Kurian v. S.R. Lewina, and All Saints High School v. Government of A.P. (supra)] ;

WHETHER THE STATE CAN IMPOSE RESERVATION ON A SELF FINANCED INSTITUTION IN PURPORTED EXERCISE OF ITS RIGHT TO ENFORCE THE DIRECTIVE PRINCIPLES OF STATE POLICY

105 The purported right of the States to prescribe a certain percentage of seats for their nominees including those belonging to the reserved category candidates is said to have arisen from:

(i) The State grants essentiality certificate in terms whereof in the event of erasure of the institution the State undertakes to take over,

(ii) The States have a duty to enforce Directive Principles of State Policy in terms of Article 38, 41, 45 and 47 of the Constitution of India.

106. Directive Principles of State Policy contained in Part IV of the Constitution of India are not justiciable.

107. Equality clauses contained in Part III of the Constitution are to be found in Articles 14, 15 and 16. Whereas Article 14 mandates equality amongst all sections of people, Articles 15 and 16 deal with the matters specified therein namely, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth and equality of opportunities in matters of public employment.

108. We are concerned in this case with Article 15. Clauses (3) and (4) of Article 15 of the Constitution of India read thus:

"(3) Nothing in this article shall prevent the State from making any special provision for women and children."

"(4) Nothing in this article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes."

109. The said provisions were inserted by the Constitution First Amendment Act, 1951. There, thus, exists provision for an exception to Articles 14 and 15 as also Clause (2) of Article 29 of the Constitution of India. The State has also a right to make some reservation for women and children in terms of Clause (3) of Article 15 of the Constitution of India. Clauses (3) and (4) of Article 15 provide an exception to the general rule. A special provision either for women and children in terms of Clause (3) or for advancement of social and backward class of citizens of Scheduled Castes and Scheduled Tribes in terms of Clause (4) must be made by the State in terms of a legislation or an executive order. Such a legislation or executive order would be in relation to the State action. The said provisions cannot be extended by way of imposition of restriction or regulation so as to impair the right of a citizen of India under Article 19(1)(g) or Article 30 thereof. The question which may arise is as to whether the State can mandate upon an industry or a business house (for

example) to provide job to a person belonging to a reserve category? If not, the necessary corollary would be that such a restriction, or regulation cannot be imposed on a citizen carrying on an 'occupation'. The right of a citizen in terms of Article 19(1)(g) of the Constitution whether to practise any profession' or 'to carry on any business/occupation' must be the same or similar. The reasonable restrictions in terms of Clause (6) must be on the exercise of a right conferred by the said sub-clause. Although reasonable restrictions can be imposed on exercise of such right in terms of the constitutional scheme, the State cannot impose its own duties and obligations upon a citizen.

110. Furthermore, Clauses (3) and (4) of Article 15 are enabling provisions. The States were to take appropriate steps required therefor within the bounds, that is, limited only for uplifting the weaker sections and not for conferring upon them a preferential right. Reservation can be made inter alia by way of compelling State necessity. In any event the executive policy of the State cannot be thrust upon the citizens without any valid legislation.

111. At this juncture, it may be useful to refer to the decisions of this Court in Re : the Kerala Education Bill 1957 (supra) wherein S.R. Das, J. speaking for the Constitution Bench held in the following terms:

"Learned counsel for the State of Kerala referred us to the directive principles contained in Article 45 which requires the State to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years and with considerable warmth, of feeling and indignation maintained that no minorities should be permitted to stand in the way of the implementation of the sacred duty cast upon the State of giving free and compulsory primary education to the children of the country so as to bring them up properly and to make them fit for discharging the duties and responsibilities of good citizens. To pamper to the selfish claims of these minorities is, according to learned counsel, to set back the hands of the clock of progress. Should these minorities, asks learned counsel, be permitted to perpetuate the sectarian fragmentation of the people and to keep them perpetually segregated in separate and iso1ated cu1tural enc1aves and thereby retard the unity of the nation ? Learned counsel for the minority institutions were equally eloquent as to the sacred obligation of the State towards the minority communities. It is not for this Court to question the wisdom of the supreme law of the land. We the people of India have given unto ourselves the Constitution which is not for any particular community or section but for all. Its provisions are intended to protect all, minority as well as the majority communities. There can be no manner of doubt that our Constitution has guaranteed certain cherished rights of the minorities concerning their language, culture and religion. These concessions must have been made to them for good and valid reasons. Article 45, no doubt, requires the State to provide for free and compulsory education for ail children, but there is nothing to prevent the State from discharging that solemn obligation through Government and aided schools and Article 45 does not require that obligation to be discharged at the expense of the minority communities. So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own. Throughout the ages endless inundations of men of diverse creeds, cultures and races - Aryans and non-Aryans, Dravidians and Chinese, Scythians, Huns, Pathans and Mughals - have come to this ancient land from distant regions and climes, India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in one body. India's tradition has thus been epitomised in the following noble lines :

"None shall be turned away From the shore of this vast sea of humanity

That is India" (Pcems by Rabindranath Tagore).

Indeed India has sent out to the world her message of goodwill enshrined and proclaimed in our National Anthem :

"Day and night, thy voice goes out from

land to land,

calling Hindus, Buddhists, Sikhs and Jains

round thy throne

and Parsees, Mussalmans and Christians.

Offerings are brought to thy shrine by

the East and the West

to be woven in a garland of love.

Thou bringest the hearts of all peoples

into the harmony of one life,

Thou Dispenser of India's destiny,

Victory, Victory, Victory to thee."

(Rabindranath Tagore)

It is thus that the genius of India has been able to find unity in diversity by assimilating the best of all creeds and cultures. Our Constitution accordingly recognises our sacred obligations to the minorities. Looking at the rights guaranteed to the minorities by our Constitution from the angle of vision indicated above, we are of opinion that Clause 7 (except Sub-clauses 1 and 3 which apply only to aided schools) and Clause 10 may well be regarded as permissible regulation which the State is entitled to impose as a condition for according its recognition to any educational institution but that Clause 20 which has been extended by Clause 3(5) to newly established recognised schools, in so far as it affects educational institutions established and administered by minority communities, is violative of Article 30(1)."

112. Mathew, J. speaking for a 9-Judge Bench of this Court in Ahmedabad St. Xavier's College Society (supra) laid down that; the State necessity cannot be foisted upon the minority. It was held:

"We find it impossible to subscribe to the proposition that State necessity is the criterion for deciding whether a regulation imposed on an educational institution takes away or abridges the right under Article 30(1). If a legislature can impose any regulation which it think necessary to protect what in its view is in the interest of the State or society, sounds paradoxical that a right which the Constitution makers wanted to be, absolute can be subjected to regulations which need only satisfy the nebulous and elastic test of State necessity. The very purpose of incorporating this right in Part III of the Constitution in absolute terms in marked contrast with the other fundamental rights was to withdraw it from the reach of the majority. To subject the right today to regulations dictated by the protean concept of state necessity as conceived by the majority would be to subvert the very purpose for which the right was given."

113. This Court in Suneel Jatley and Ors. v. State of Haryana and Ors. [(1964) 4 SCC 296] held that reservations for students coming from rural areas would be bad in law.

LOCAL NEEDS :

114. It is difficult to define precisely what would constitute "local needs". Mr. Venugopal refers to the Medical Council of India Regulations, 1999 for the purpose of showing the requirements necessary to be considered by the State Government for the grant of essentiality certificate. The State Government alone would be in a position to determine local needs which may be based, for instance, in the case of doctors, on the ratio of doctors to the population of the State. Other factors such as the percentage of the relevant minority in the State, the number of minority professional colleges belonging to that particular linguistic/religious minority in the State, percentage of poorer and backward sections in the State, total number of professional colleges therein, contends Mr. Venugopal, would be relevant factors. This may be so but similarly there are many more factors that would contribute to local needs. The criteria laid down in MCI Regulations no doubt provide for some guidelines for the purpose of determination of local needs but the same cannot be said to be exhaustive. Local needs would vary from State to State, Even development of a backward area may be a local need. Absence of good educational institutions in particular area may also be a local need. The State may, in pursuit of its policy for the development of the people, consider it expedient to encourage entrepreneurs for establishing educational institutions in remote and backward areas for the benefit of the local people. Local needs, therefore, cannot be defined only with reference to the State as a unit. For good reasons the State may not like to establish professional colleges or institutions only in their capitals.

ESSENTIALITY CERTIFICATE :

115. Although local needs, thus may have to be determined keeping in view the factors enumerated therein but it must also be noticed that no essentiality certificate is required to be given by the State in relation to engineering and other professional colleges. While laying down the law based on interpretation of a Constitution as well as a judgment, we cannot take a myopic view and hold that 'local needs' must be referable to the medical education. Furthermore, it may be difficult to give a restrictive meaning to the expression 'local needs' i.e. keeping the same confined to the area where the educational institution is sought to be established inasmuch as the right of minority extends to the entire State and, thus, the local needs may also have direct nexus having regard to the need of the State.

116. In State of Maharashtra v. Indian Medical Association and Ors. [(2002) 1 SCC 580], this Court did not decide the question as to whether the expression "technical education" occurring in Article 371(2)(c) of the Constitution is distinct and different from "medical education." The (SIC) questions which arise for consideration herein' did not arise there.

117. In Indian Medical Association case (supra), this Court was concerned with Maharashtra University of Health Sciences Act, 1998 wherein the question revolved round as to whether the essentiality certificate would be necessary for the State to establish a Government-run medical college. We cannot read the said judgment out of context.

INTERPRETATION OF A JUDGMENT :

118. A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal. [See Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Ors. v. N.C. Budharaj (Deceased) By. Lrs. and Ors. (2001) 2 SCC 721]

119. In Padma Sundara Rao (Dead) and Ors. v. State of T.N. and Ors.

, it is stated:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board ((1972) 2 WLR 537) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."
120. [See also Haryana Financial Corporation v. Jagadamba Oil Mills and Anr.

121. In General Electric Co. v. Renusagar Power Co., it was held:

"As often enough pointed out by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as words and expressions defined in statutes. We do not have any doubt that when the words "adjudication of the merits of the controversy in the suit" were used by this Court in State of U.P. v. Janki Saran Kailash Chandra , the words were not used to take in every adjudication which brought to an end the proceeding before the court in whatever manner but were meant to cover only such adjudication as touched upon the real dispute between the parties which gave rise to the action. Objections to adjudication of the disputes between the parties, on whatever ground are in truth not aids to the progress of the suit but hurdles to such progress. Adjudication of such objections cannot be termed as adjudication of the merits of the controversy in the suit. As we said earlier, a broad view has to be taken of the principles involved and narrow and technical interpretation which tends to defeat the object of the legislation must be avoided."
122. In Rajeshwar Prasad Mishra v. The State of West, Bengal and Anr. reported in AIR 1965 SC 1887, it was held:

"Article 141 empowers the Supreme Court to declare the law and enact it. Hence the observation of the Supreme Court should not be read as statutory enactments. It is also well known that ratio of a decision is the reasons assigned therein."
123. (See also Amar Nath Om Prakash and Ors. v. State of Punjab and Hameed Joharan (Dead) and Ors. v. Abdul Salam (Dead) by LRs. and Ors.).

124. It will not, therefore, be correct to contend, as has been contended by Mr. Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.

125. In Keshav Chandra Joshi and Ors. v. Union of India and Ors. [1992 Supp (1) SCC 272], this Court when faced with difficulties where specific guidelines had been laid down for determination of seniority in Direct Recruits Class II Engineering Officers' Association v. State of Maharashtra, held that the conclusions have to be read along with the discussions and the reasons given in the body of the judgment.

126. It is further trite that a decision is an authority for what it decides and not what can be logically deduced therefrom. [See Union of India v. Chajju Ram].

127. The judgment of this Court in T.M.A. Pai Foundations (supra) will, therefore, have to be construed or to be interpreted on the aforementioned

principles, The Court cannot read some sentences from here and there to find out the intent and purport of the decision by not only considering what has been said therein but the text and context in which it was said. For the said purpose the Court may also consider the constitutional or relevant, statutory provisions vis-a-vis its earlier decisions on which reliance has been placed.

FEE STRUCTURE :

128. On a bare reading of the relevant paragraphs of the judgment some of which are referred to hereinbefore, it is beyond any doubt that in the matter of determination of the fee structure the unaided institutions exercise a greater autonomy. They, like any other citizens carrying on an occupation, must be held to be entitled to a reasonable surplus for development of education and expansion of the institution. Reasonable surplus doctrine can be given effect to only if the institutions make profits out of their investments. As stated in paragraph 56, economic forces have a role to play. They, thus, indisputably have to plan their investment and expenditure in such a manner that the may generate some amount of profit. What is forbidden is (a) capitation fee and (b) profiteering.

However the different State Governments have prescribed different amounts by way of fees as would appear from the following:-

State Fee
Andhra Pradesh Rs. 22000 per annum
Delhi Rs. 45000 per annum
Gujarat Govt. Seats -Rs. 21,000

Management Seats - Rs. 50000
Haryana Rs. 40,000 per annum
Karnataka Rs. 47,590/-

For non-Karnataka Rs. 75,590

Kerala Rs. 37,100
Tamil Nadu Management Seat - Rs. 30000

Merit student - Rs. 25000

Uttar Pradesh Rs. 45,000 per annum
The expression 'Capitation fee' does not have any fixed meaning. The Legislatures of some of the States, however, have defined capitation fee. We way notice that in the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitalisation Fee) Act, 1982, Capitation fee has been defined as:

"capitation fee means any amount by whatever name called, paid or collected directly or indirectly in excess of the fee prescribed, under Section 4;"
129. Section 4 of the said Act states that any amount collected in excess of the fee so prescribed is prohibited in the following terms;

"Regulation of fee, etc. - (1) Notwithstanding anything contained in any other law for the time being in force, the Government, by notification, regulate the tuition fee or any other fee or deposit that may be received or collected by any educational institution or class or classes of such educational institutions in respect of any or all class or classes of students:

Provided that before issuing a notification under this sub-section, the draft of which shall be published, in the Tamil Nadu Government Gazette stating that any objection or suggestion which may be received by the Government, within such period as may be specified therein, shall be

considered by them.

(2) No educational institution shall receive or collect any fee or accept deposit in excess of the amount notified under Sub-section (1).

(3) Every educational institution shall issue an official receipt for the fee or deposit received or collected by it."

130. Once, however, it is held that such a provision would not constitute a reasonable restriction within the meaning of Clause (6) of Article 19, it must also be held that such a provision would not satisfy the test of permissible regulations within the meaning of Article 30 thereof.

131. The ground reality, however, cannot be lost sight of. It is true, as has been contended by the learned counsel appearing on behalf of the applicants, that the Central Government in answer to question raised in the Parliament has stated that the expenses incurred by the State for imparting education to the students is very high. It may vary from three lakhs to five lakhs. Some States, however, in their colleges charge about rupees five thousand per year; whereas the unaided institutions demand anything between rupees two lakhs to five lakhs.

132. Some State Governments unfortunately followed suit hiked fees and like many private unaided institutions the State of Haryana has also demanded the entire amount of fees for the whole course.

133. The fee structure, thus, in relation to each and every college must be determined separately keeping in view several factors including, facilities available, infrastructure made available, the age of the institution, investment made, future plan for expansion and betterment of the educational standard etc. The case of each institution in this behalf is required to be considered by an appropriate Committee. For the said purpose, even the book of accounts maintained by the institution may have to be looked into. Whatever is determined by the Committee by way of a fee structure having regard to relevant factors some, of which are enumerated hereinbefore, the management of the institution would not be entitled to charge anything more.

134. While determining the fee structure, safeguard has to be provided for so that professional institutions do not become auction houses for the purpose of selling seats. Having regard to the statement of law laid down in para 56 of the judgment, it would have been better, if sufficient guidelines could have been provided for. Such a task which is a difficult one has to be left to the Committee. While fixing the fee structure the Committee shall also take into consideration, inter alia, the salary or remuneration paid to the members of the faculty and other staff, the investment made by them, the infrastructure provided and plan for future development, of the institution as also expansion of the educational institution. Future planning or improvement of facilities may be provided for. An institution may want to invest in an expensive device (for medical colleges) or a powerful computer (for technical college). These factors are also required to be taken care of. The State must evolve a detailed procedure for constitution and smooth functioning of the Committee.

135. While this Court has not laid down any fixed guidelines as regard fee structure, in my opinion, reasonable surplus should ordinarily vary from 6% to 15%, as such surplus would be utilized for expansion of the system and development of. education.

136. The institutions shall charge fee only for one year in accordance with the rules and shall not charge the fees for the entire course,

137. Profiteering has been defined in Black’s Law Dictionary, Fifth edition as:

"Taking- advantage of unusual or exceptional circumstances to make excessive profits."

138. With a view to ensure that an educational institution is kept within its bounds, and does not indulge in profiteering or otherwise exploiting its students financially, it will be open to the statutory authorities and in its absence by the State to constitute an appropriate body, till appropriate statutory regulations are made in that behalf.

139. The respective institutions, however, for the aforementioned purpose must file an appropriate application before the Committee and place before it all documents and books of accounts in support of its case.

140. Fees once fixed should not ordinarily be changed for a period of three years, unless there exists extra-ordinary reason. The proposed fees, before indication in the prospectus issued for admission, have to be approved by the concerned authority/ Body set up. For this purpose the application should not be filed later than April of the preceding year, of the relevant education session. The authority/ Body shall take the decision as regards fees chargeable later by October of the year concerned, so that it can form part of the prospectus. No institution should charge any fee beyond the amount fixed and the fee charged shall be deposited in a nationalised bank. In other words, no employee or any other person employed by the Management shall be entitled to take fees in cash from the students concerned directly, The statutory authority may consider the desirability of framing an appropriate regulation inter alia to the effect that in the event it is found that the management of a private unaided professional institution has accepted any amount other than the fees prescribed by the Committee, it may have to pay a penalty ten to fifteen times of the amount so collected and in a suitable case it may also lose its recognition or affiliation,

141. However, there cannot be any doubt that before any such order is passed the institutions concerned shall be entitled to an opportunity of being heard. For the aforementioned purpose, the State shall set up a machinery to detect cases where amounts in excess of permitted limit are collected as it is the general experience that students pay a huge amount.

142. However, if for some reason, fees have already been collected for a longer period the amount so collected shall be kept in a fixed deposit in a nationalized bank against which no loan or advance may be granted so that the interest accrued thereupon may enure to the benefit of the students concerned. Ordinarily, however, the management should insist for a bond from the concerned students.

COMMON ENTRANCE TEST AND PERCENTAGE OF SEATS :

143. Paragraphs 48 to 66 appear under the heading "Private unaided non-minority educational institutions" whereas paragraphs 67, 68 and 69 appear under the heading "Private unaided professional colleges". The observations made by the bench, however, having regard to paragraphs 58 and 59 are referable to both to the minority and non-minority unaided institutions. Paragraph 68 in no uncertain terms lays emphasis on merit for the purpose of admission to professional institutions.

144. However, paragraphs 58 and 59 also deal with professional institutions although discussions appear under different heading. This, however, would not minimise the importance of the statement of law made therein.

145. Paragraph 68 does not state that the statement of law made therein, applies only to the minorities, as for the purpose of local needs it refers to different percentages both for minority aided and non-minority unaided professional colleges. It cannot, therefore, be said that paragraph 68 has to be read in isolation and paragraphs 58 and 59 of the judgment would be irrelevant for the said purpose. If the said paragraphs are read conjointly, there cannot be any doubt that merit must be at the forefront. For the said purpose professional and higher educational institutions have

been clubbed together.

146. A dichotomy has arisen in view of the findings of the bench occurring in paragraphs 58 and 59 on the one hand and 68 of the judgment on the other. Paras 68 refers to private unaided professional colleges which would include both minority and non-minority as would appear from the following :

"The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges.
147. Paragraph 58 clearly states that the merit must play an important role. In no uncertain terms, it is directed :

"While seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate observations made in this judgment in the context of admissions to Unaided institutions. "
148. It, therefore, takes into its fold inter se merit between minority and non-minority students.

149. Paragraph 59 contains illustration as to how the merit is usually determined. It may be true that paragraph 59 being illustrative in nature, other options at the hands of the minority institutions are not excluded but a confusion has certainly crept in as therein both minority and non-minority have been clubbed together.

150. A Paragraph 59 deals with how to determine the merit by giving illustration. Thus, it does not rule out any other method for determining the merit which may also include marks obtained in qualifying examination. Paragraphs 58, as and 68, in my opinion, must be allowed to be given effect to and read conjointly for the said purpose.

151. Paragraph 68 should be read in five parts :

(1) A difference is sought to be made as regards rules and regulations applicable to the aided institutions vis-a-vis unaided professional institutions. (This shows that the regulations relating to admission of students shall be less rigid for unaided institutions as compared to aided institutions);

(2) While conceding autonomy to the unaided professional institutions (both minority and non-minority), it is mandatory that the principle of merit cannot be foregone or discarded (This shows that role played by merit must be given due importance);

(3) The conditions may be laid, down by the University or the other statutory bodies entitled to grant recognition to provide for merit based selection. (The same, however, in my opinion, would not mean that no condition other than those imposed at the time of grant of recognition can be imposed by way of legislation or otherwise inasmuch as the field of imparting education in professional institutions is governed by statutes. To the said extent, it has to be read down) ;

(4) The management of a private unaided professional colleges for the purpose of admitting students will have options :- (a) to hold a common entrance test by itself; or (b) to follow the common entrance test held by the State or the University. The students belonging to the management quota may be admitted having regard to the common entrance test either held by the management or by the State/University although the test may be common. So far as students belonging to poorer or backward section of society is concerned. their seats will have to be filled up on the basis of

counselling by the State agency. (As would appear from the discussions made hereinafter, it cannot be taken to its logical conclusin);

(5) The percentage of management quota and the rest is required to be prescribed having regard to the local needs, (However, the percentage for minority unaided and non-minority unaided institutions may be different).

152. It is not correct to say that only because two different expressions "certain" and "different" have been mentioned at two places in para 68, they connote two different meanings. They will have to be read in the context in which they have been used. As a logical corollary, it will also be incorrect to say that minority unaided institutions can fill up all the seats from amongst the students belonging to their community whereas the non-minority unaided institutions will have no such right. The very fact that different percentages are to be fixed up for minority unaided and non-minority unaided institutions is itself a clear pointer to show that although different percentages may be prescribed therefor; but both minority unaided and non-minority institutions, can admit the students of their choice to the extent of the percentage so prescribed, albeit without giving a go bye to the merit criteria.

153. Thus, reservation can be made out of the candidates who have been found to be meritorious on the above basis. For instance, if 100 students qualify on merit either through a school leaving examination or a common entrance test, reservation can be made for certain percentage of students. The balance of the seats can then made available to students who belong to non-minority community including poorer or backward section of society as mentioned in paragraph 63 of the judgment. This will not only take care of admission with regard to meritorious candidates including minority candidates for whom a reservation is made but also for other students as for the local needs of the State.

154. If it is to be held that in a case of minority institution all the seats could be filled in by members of their community/language, if available, the same would run counter to para 68 of the Judgment which says about certain percentage which can never be 100%. The expression "different percentages" occurring in para 68 would clearly mean there cannot be any fixed percentage. In a given case it may be more than 90% but in another it may be less than 50%. Different percentages must be worked out in terms of the need of the institution. It has nothing to do with minority or non-minority; aided or unaided.

155. The dictum of the court in St. Stephen vis-a-vis T.M.A. Pai Foundation must be read in that context. It cannot be said as a matter of legal proposition that in each and every case the minority educational institutions would be entitled to fill up more than 50% of the seats from amongst the students of their choice and that too irrespective of merit. The fact that even students belonging to minority community take admission in colleges rim or aided by the State or other private unaided colleges cannot be lost sight of. On taking into consideration all the relevant criteria only the percentage can be worked out. It would be, in my considered opinion, wrong to compare the unaided institutions always with aided institutions. St. Stephen should be understood in proper perspective. What is explained in T.M.A. Pai (supra) is that there cannot be any fixed percentage. Each case will have to be considered on its own merit. Need of the institution should be the prime concern. Percentage will have to be worked out having regard to the need only.

156. For the purpose of achieving excellence in a professional institution, merit indisputably should be a relevant criterion. Merit, as has been noticed in the judgment, may be determined in various ways (Para 59). There cannot be, however, any fool-proof method whereby and whereunder the merit of a student for all times to come may be judged. Only, however, because a student may faro differently in a different situation and at different point of time by itself cannot be a ground to adopt different standards for

judging his merit at different points of time. Merit for any purpose and in particular for the purpose of admission in a professional college should be judged as far as possible on the basis of same or similar examination. In other words, inter se merit amongst the students similarly situated should be judged applying the same norm or standard. Different types of examinations, different sets of questions, different ways of evaluating the answer books may yield different results in the case of the same student.

157. Selection of students, however, by the minority institutions even for the members of their community cannot be bereft of merit. Only in a given situation less meritorious candidates from the minority community can be admitted vis-a-vis the general category; but therefor the modality has to be worked out. For the said purpose de facto equality doctrine may be applied instead of do jure equality as every kind of discrimination may not be violative of the equality clause. (See Pradeep Jain v. Union of India -).

158. It may be true that some self-financed professional Institutions have been permitted to hold their own examination so as to enable the management to fill up their seats from its own quota, as fixed by (sic) regard to holding of an impartial and transparent test, the same has to be examined by the State/University. We may, however, place on record that the State of Maharashtra has placed before us a chart showing that some of the students had appeared at two examinations and one who got only 8% in the common entrance test held by the State, passed the examination held by the management. From the above chart supplied to us by the state of Maharashtra, it appears that only three students who had appeared both at the common entrance test held by the State and the management had passed the common entrance test held by the State whereas a large number of students had passed the test held by the management, although they could not pass the Common Entrance Test. The merit of the students whether belonging to the minority community or otherwise, thus, may be required to be placed on more rigid test.

159. While considering this question, we may not also loose sight of the fact that a student who aspires to take admission in a professional college keeping in view the extent of competition he has to face, would like to appear in as many examinations as possible. For the said purpose he or she may not choose only one State. Even in a State like Karnataka, as has been noticed in T.M.A. Pai Foundation (supra), a large number of private institutions exist. But, if they are permitted to hold their own examinations, not only the students will have to purchase different admission former which as noticed hereinbefore, may cost between Rs. 500/- to Rs. 1,000/- but he may be asked to appear in examinations at various places on the same day or on the next day and having regard to the distance, the transport facilities and other factors, he may not be able to appear therein. Travelling from place to place for the purpose of appearance at the examinations in quick succession would also entail a huge expenditure. It may also be difficult, to direct that such examinations be held with sufficient time gap. The fact remains that in terms of this judgment each State will be entitled to hold their own examinations. We are also not oblivious of the fact that allegations have been made that some institutions even may not sell an admission form unless it is assured of a hefty sum at the time of admission. It may be true that the States like Karnataka, Kerala and Tamil Nadu have permitted the minority institutions to conduct their own examinations for the purpose of admitting the students of their choice. Some institutions have pointed out, that they have been holding such examinations for a long long time on all-India basis and fairness and transparency of such examinations have never been questioned by any State or the statutory authorities. We do not intend to go into the correctness or otherwise of the said plea. However, their cases may be considered separately by the appropriate body if any occasion arises therefor. While granting the right to determine the suitability of a candidate on the basis of marks obtained in the qualifying examination or on the basis of their own examination, or an "examination conducted by the

State, merit cannot be sacrificed. Some mechanism as far as practicable must be found out also for the purpose of judging the inter se merit.

160. Furthermore, answers to Questions 5 (a) and (c), would go to show that the minority unaided institution have a right to evolve their own machinery for admitting the students on the basis of merit subject of course to passing the fairness and transparency test. Even for non-minority professional institutions such a right has been recognised. There is no mechanism which would ensure fairness or transparency of the examination held by each and every unaided professional institution. A suggestion has been mooted out that Associations/Federations of private institutions have been formed. It may, thus, be possible to protect the right of the minority if such Associations/Federations take a decision in this behalf in consultation with the statutory authorities or the concerned State as regards holding of a common entrance test for the said purpose.

161. We may notice that Mr. R.N. Trivedi, learned Additional Solicitor General, has submitted that the Central Government may hold such all-India examinations but there are practical difficulties in this behalf, as has been rightly pointed out by Mr. Venugopal. The need of each State must be judged separately. A number of students may like to take a chance of taking admission in more than one State. Unless proper mechanism and requisite infrastructure therefor is created, as at present advised, it may not be possible for the Central Government to hold any examination on all-India basis. There is another aspect of the matter which cannot be lost sight of. There must be an agency which would have to determine the equivalence of several examinations. Many universities have adopted such a mechanism. The standard of education varies from State to State or university to university or board to board. In such a situation, equivalence of degrees must be considered for the said purpose by an appropriate authority.

162. In the aforementioned premise, I am of the opinion that the right of the minorities should be protected and fairness and transparency in holding such examinations would also be maintained if the minority institutions come to a consensus through their association or federation to hold a common test under the supervision of a monitoring committee which may be subject to verification at a later stage by taking recourse to : (1) report back system; (2) all answer papers may be preserved: and (3) in case of dispute some independent agency may determine the same.

163. It goes without saying that having regard to the number of institutions vis-a-vis number of candidates with reference to the local needs, it will be open to the State/university to fix higher cut-off marks than prescribed by the Medical Council of India or the All India Council for Technical Education. So far as common entrance test proposed to be held by the Federation/Association of private unaided professional institutions is concerned, the modalities and the detailed procedure therefor must be worked out so that it may not cause any undue inconvenience to either the students or the institution(s). By way of an example, we may state that if a common entrance test is held under the auspices of the Federation/Association, it must clearly spell out that those who belong to minority community, whether based on religion or language, shall be admitted only in the institutions run by such community and not in the institutions run by the other community at the first instance. Only in the event the seats remain unfilled up, they would clearly be filled up by the students belonging to the general category including those who do not belong to that particular community running the institution. Similarly, the mode and manner in which the expenses are to be incurred for holding the examinations, the apportionment thereof as well the disbursement of the amount earned by way of selling the admission forms etc. have to be worked out by the Committee.

164. The minority institutions imparting professional courses may have a legal or constitutional right to hold their own examination; but a serious consideration is required to be bestowed as to whether for the purpose of

judging merit they should opt for the Common Entrance Test held by the State. Such a course, if resorted to, would not only be helpful for determining the inter se merit between the students/candidates but also would be. sufficient to be indicative of the fact how and to what extent the students belonging to minorities lag behind the majority so that special efforts can be made to bring their standard up to the national level.

165. The quota of seats to be filled up by the State Government for the poor or weaker sections of society may be fixed on the basis of the entrance test held by the concerned State Government or the University. Economic disability of a meritorious student should come to the forefront for determining criteria as regard poor or weaker sections of the society.

166. There cannot, however, be any gain-saying that the appropriate statutory authority on a deeper consideration of the matter may prescribe a suitable method for the purpose of determining the merit as also the fair and transparent manner in which such examinations can be conducted. Such a power exists under the UGC Act, MCI Act and AICTE Act. The relevant enactments wherein these statutory authorities have been created provide for such law. However, assuming such a machinery is not evolved, the State may constitute a body which may be headed by a person who has been a judge of the High Court to be nominated by the Chief Justice thereof. Standard of education at no cost shall be given a go by.

167. Furthermore, any institution if it thinks proper and expedient, may file an application for grant of exemption so as to enable it to hold its own examination. An application in this behalf should be filed by the end of April of the previous year in which such examination is sought to be held. The aforementioned body would pass an appropriate order within three months from the date of receipt of such representation upon giving an opportunity of hearing and placing of material in support of its stand, to the institution concerned.

168. Several States like State of Tamil Nadu, Karnataka and Kerala have permitted the educational institutions to hold their own examination for the purpose of admitting students within their quota. Some of the States like Maharashtra and Gujarat insist on admitting the students through Common Entrance Test. The following chart gives a glimpse as to how different States understood the judgment of this Court differently:

State Govt. Admissions management
Andhra Pradesh 85% 15%
Delhi 95% 15% Max
Gujarat 85% 15%
Haryana 15% AIEEE 15%
70% CEET 2003
Karnataka 75% 25%
Kerala 50% 50%
Orissa 85% 15%
Tamil Nadu 50% 50%
Uttar Pradesh 85% 15%
Chhattisgarh 60% 40%
Maharashtra 85% 15% seats also filled the common entrance list) (These must be from State test

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169. Unless there exists any exigency normally the institutions will have

the right to admit a higher percentage of students depending upon their need. However all such students must be admitted only on merit. In the event, some seats remain vacant, they must be filled by general category students strictly on merit.

170. As noticed hereinbefore, different States and different High Courts have laid down different percentages of seats for management and the State. The learned counsels appearing on behalf of parties have submitted that this Court may, with a view to avoid any future controversy, fix a definite percentage for the said purpose. We are afraid that it is not possible. Different institutions may he established by different minority communities. The need of the minority community may differ from State to State. The need of the minority community may have a nexus with the population belonging to that community in that State. It will further depend upon various other relevant factors. By way of example, we may say that in a State where the Percentage of a particular religion may be 30 or 35, the minority institution established by members of that religion may have a higher stake than the members of the community professing a religion but the population of which is negligible. Similar may be the case with minority institutions based on language.

171. The percentage of seats will also depend upon the need of the community in a particular State as also the need of the institution itself. The nature of the professional course would also have relevance. All these factors must be taken into consideration by the appropriate committee or Body so long a statutory regulation is not framed in this behalf.

172. Furthermore, the need of the community vis-a-vis the local needs must be judged upon taking into consideration the relevant factors and ignoring irrelevant ones. In terms of Paragraph 68 of the judgment, local need would be a relevant factor for the purpose of determining the percentage of students who would be admitted on non-minority quota. Local needs, if it is compelling state interest, will have, a primacy over the need of the minority community and in that view of the matter it would not be correct to lay down a proposition of law that the need of that community in the State would be paramount. Each case, thus, has to be considered on its own merit and no hard and fast rule can be laid down therefor.

173. For the aforementioned purpose also, a machinery should be evolved in the respective States, the decision of which shall be final and binding.

174. However, there may not be any permanent Committee functioning as a tribunal. Such a body, if any, must be created under a statute. A tribunal with an adjudicatory power should not be directed to be created by this Court in exercise of its power under Article 142 of the Constitution of India. This, direction is only interim in nature and is being issued in the interest of all concerned. It is, therefore, clarified that the body created in terms of this judgment would function only so long a statutory body, if any, does not come into being by reason of a statute or statutory rules. The Legislature or the rule making authority may, however, lay down the procedure for proper functioning thereof.

MERIT :

175. Technical profession in general and medical profession in particular in all countries and in all ages has been considered to be a noble profession. To acquire excellence, these professions demand a very high calibre, which criteria can be satisfied only by the meritorious students. If we want to achieve very high standard which would be comparable to the standard of the developed countries, then merit and merit alone should be the basis of selection for the candidates.

176. Secondly, not only to maintain high standard of education, but also to maintain uniformity of standard, the right of selection of candidates for any professional course cannot be left to the discretion of any individual

management. Efforts must be made to find out one single standard for all the institutions.

177. Thirdly, to ensure high standard of education and for that purpose to ensure admission to the most eligible candidates, requiring merit in a poor country like ours, the tuition and other fees should be within the reach of common people.

178. So far as minority institutions are concerned, merit criteria would have to be judged like a pyramid. At the kindergarten, primary, secondary levels, minorities may have 100% quota. At this level the merit may not have much relevance at all but at the level of higher education and in particular professional education and post graduate level education, merit indisputably should be a relevant criteria. At the post-graduation level, where there may be a few seats, the minority institutions may not have much say in the matter. Services of doctors, engineers and other professionals coming out from the institutions of professional excellence must be made available to the entire country and not to any particular class or group of people, All citizens including the minorities have also a fundamental duty in this behalf.

HUMAN RIGHTS ASPECTS OF SELECTION ON THE BASIS OF MERIT :

179. This aspect of the matter may also be considered from Human Rights angle.

180. Rights of minorities, on the one hand, and rights of persons to have higher education and right of development should be so construed so as to enable the Court to give effect thereto.

181. The Universal Declaration of Human Rights, 1948 provides for 27 rights. Right of Education is also one of the human rights. Article 26 reads thus:

"(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. "

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children. "

(Emphasis Supplied)

182. Article 3 of Convention Against Discrimination in Education (1960) reads thus:

"Article 3 undertakes "to ensure, by legislation, where necessary, that there is no discrimination in the admission of pupils to educational institutions; not to allow any difference of treatment by the public authorities between nationals, except on the basis of merit' or need, in the matter of school fees and the grant of scholarships..to give foreign nationals resident within their territory the same access to education as that given to their own nationals."

183. Apart from the aforementioned rights, Right to Development is also a human right. "Development" connotes an ongoing process. An economic prosperity or elimination of poverty is not the only goal to be achieved but along with it allows individuals to lead a life with dignity with a

view to participate in the Governmental process so as to enable them to preserve their identity and culture.

184. We may refer to the UN Declaration on the Right to Development, 1986. The Declaration describes development as a comprehensive economic, social, cultural and political process, which aims at constant improvement of well being of people and of individuals on the basis of their active, free and meaningful participation in the process.

185. In the UNESCO Convention against Discrimination in Education, the States parties agree (Article 5[c]) that "it is essential to recognize the right of members of national minorities to carry on their own educational activities, including, the maintenance of, schools and, depending on the educational policy of each State, the use or the teaching of their own language," and set out the circumstances in which this right may be exercised. The European Convention on Human Rights contains a provision (Article 14) in which "association with a national minority" is listed among a series of grounds upon which discrimination is prohibited. The International Covenant on Civil and Political Rights, adopted by the UK General Assembly in 1966, includes an article on the rights of persons belonging to minorities which reads:

"Article 27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members or their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

186. Among the decisions of principal organs of the United Nations which have dealt with, the question of special protective measures for ethnic, religious, or linguistic groups are three resolutions of the General Assembly: (1) on the future government of Palestine, (2) on the question of the disposal of the former Italian colonies and (3) on the question of Eritrea. In addition, the Statue of the City of Jerusalem, approved by the Trusteeship Council, on 4 April 1950, provides special protective measures for ethnic, religious, or linguistic groups in articles dealing with human rights and fundamental freedoms, the legislative council, the judicial system, official and working languages, the educational system and cultural and benevolent institutions, and broadcasting and television.

187. From the texts of the "instruments and decisions mentioned above, it may be inferred that the term "minority" is applied internationally to two distinct categories of persons: (a) minorities whose members desire equality with dominant groups in the sole sense of non- discrimination, and (b) those whose members desire equality, with dominant groups in the sense of non-discrimination and the recognition of certain special rights and the rendering of certain positive services. The kind of ''minority rights" that they feel they are entitled to claim if their equality within the State is to be real includes one or more of the following:

(a) provision of adequate primary and secondary education for the minority in its own language and its cultural traditions;

(b) provision for maintenance of the culture of the minority through the establishment and operation of schools, libraries, museums, media of information, and other cultural and educational institutions;

(c) provision of adequate facilities to the minority for the use of its language, either orally or in writing, in the legislature. before the, courts, and in administration, and the granting of the right to use that, language in private intercourse;

(d) provision for respect of the family law and personal status of the minority and their religious practices and interests; and

(e) provision of a certain degree of autonomy.

188. Several areas are sought to be secured wherefor the struggle continues. The gap between the developed and the developing countries is a yawning one. Whereas there has been a rapid economic growth in a few countries bringing millions of people out of poverty, narrowing the gap between haves and have-nots, a large number of countries have seen the gap grow and poverty increase. Development and the eradication of poverty vis-a-vis human rights must be seen in that perspective.

189. The right to establish professional colleges both by minorities and non-minorities has been found in Article 19(1)(g) as also Article 30 of the Constitution of India. These rights vis-a-vis restrictions and limitations thereupon should be construed not only from economic point of view but also having regard to the international treaties, declarations and conventions on Human Rights. The right of a minority is a human right so also the right of development. Thus, subject to reasonable restrictions, any unaided institution imparting professional courses may although exercise greater autonomy in the matter of management and determination of the fee structure, it will have a limited right so far as the right to admit students is concerned. T.M.A. Pai Foundation says that merit shall be the criteria. Right of development finds place in WTO and GATT. It takes into consideration globalisation and opening up of economy. Excellence in professional education must be viewed from the economic interest in the country. In order to compete with the other developed countries, GDP of India should be around 15% instead of present rate of 5%. This can be achieved only by producing students of excellence, which can be achieved only by encouraging institutions of excellence imparting professional education to those who are meritorious. Giving encouragement to the students, having better merit will, thus, have a direct nexus with the economic and consequently the national interests of the country. The right of development from the human right point of view must be construed liberally. When there are two competing human rights namely human rights for the religious minorities and the human rights for development, having regard to the economic and national interest of the country in the matter of admission of students, the latter should be. allowed to prevail subject to protection of the basic minority rights. The State may have to strike a delicate balance, between these two competing rights. Furthermore, the right to admit students may vary from course to course, discipline to discipline. At the stage of post graduate level, there may be only one seat or two seats, and, thus, in such a situation the right of the minority institutions to admit a student may be less than in the case of non-professional course.

190. "Proper education", Nani Palkhiwala said, "should lead to civilization." Recently, in Kapila Hingorani v. State of Bihar , a Bench of this Court noticed the following observations of Field, J. in Munn v. Illinois [(1877) 94 US 113] as to what is "Life", which was in the following terms :

"something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed."

191. Therein it was noticed :

"The right to development in the developing countries is itself a human right. The same has been made a part of WTO and GATT. In 'The World Trade Organization, Law, Practice, and Policy (Oxford) by Matsushita Schoenbaum and Mauroidis at page 389, it is stated:

"The United Nations has proclaimed the existence of a human right to development. This right refers not only to economic growth but also to human welfare, including health, education, employment, social security, and a wide-range of other human needs. This human right to development is vaguely defined as a so-called third-generation human right that cannot be implemented in the same way as civil and political human rights. Rather, it

is the obligation of states and intergovernmental organizations to work within the scope of their authority to combat poverty and misery in disadvantaged countries."

[Emphasis supplied]

192. Poverty to a great extent can be combated through education.

193. Having regard to globalisation and opening up of the market, the State expects various medical colleges and educational institutions and universities to move in. Under WTO and GATT human development has taken its firm root. A decent life to the persons living in the society in general is perceived.

194. In the said scenario this Court in Kapila Hingorani (supra) observed:

"The States of India are Welfare States. They having regard to the constitutional provisions adumbrated in the Constitution of India and in particular Part IV thereof laying down the Directive Principles of the State Policy and Part IVA laying down the Fundamental Duties are bound to preserve the practice to maintain the human dignity."

195. To achieve this, the promotion of human development and the preservation and protection of human rights proceed from a common platform. Both reflect the commitment of the people to promote freedom, the well-being and dignity of individuals in society. Human development as a human right has a direct nexus with the increase in capabilities of human beings as also the range of things they can do. Human development is eventually in the interest of society and on a larger canvas, it is in the national interest also. As a human right, human development finds its echo in several areas as for example in excellence in professional education, be it the study of medicine, engineering or law. Progress and development in these fields will not only give a boost to the economy of the country but also result in better living conditions for the people of India.

196. In T.M.A. Pai Foundation's case (supra), this Court called upon the private unaided institutions including the minority educational institutions to fulfill the hopes and aspirations of the meritorious students and in particular the meritorious socially and educationally backward students. Higher education as contained in Article 26 must be based on merit. The competing human rights of the minorities vis-a-vis any other citizen, thus, requires a delicate balance.

197. Furthermore Article 51A(j) enjoins a duty of every citizen of India inter alia to strive towards excellence in all spheres of individual and collective activity so that the national constantly rises to higher levels of excellence and achievement.

198. In T.M.A. Pai Foundation (supra), this Court in no uncertain terms said that merit would be the first criteria for imparting professional education. It must be given full effect with the aid of these additional reasons.

RECOGNITION/AFFILIATION :

199. Although the minorities have a right to establish institutions of their own choice, they admittedly do not have any right of recognition or affiliation for the said purpose. They must fulfil the requirements of law as also other conditions which may reasonably be fixed by the appropriate Government or the university.

200. In T.M.A. Pai Foundation (supra) it was laid down that certain conditions can be imposed as regards admission of students, mode of holding examinations at the time of grant of recognition. A question has been raised by Mr. Nariman that once recognition has been granted, no further restriction can be imposed. We do not agree. There exist some institution

in this country which are more than a century old. It would be too much to say that only because an institution receives recognition/affiliation at a distant point of time the appropriate Government is denuded of its power to lay down any law in imposing any fresh condition despite the need of change owing to passage of time. Furthermore, the Parliament or the State Legislatures are not denuded of its power having regard to restrictions that may satisfy the test of Clause (6) of Article 19 of the Constitution of India or regulations in terms of Article 30 depending upon the national interest/public interest and other relevant factors. We, however, wish to emphasise that the State/University while granting recognition or the affiliation cannot impose any condition in furtherance of its own needs or in pursuit of the Directive Principles of State Policy.

AN EPILOGUE :

201. It is unfortunate that a Constitution Bench had to be constituted for interpreting a 11-Judge Bench judgment. Probably in judicial history of India, this has been done for the first time. It is equally unfortunate that all of us cannot agree on all the points, despite the fact that the matter involves construction of a judgment. In the name of interpretation we have to some extent, however little it may be re-written the judgment. We have laid down new laws and issued directions purported to be in terms of Article 142 of the Constitution. We have interpreted T.M.A. Pai; but we have also made endeavours to give effect to it. In some areas it was possible; in some other it was not.

202. We have refrained ourselves from expressing any opinion at this stage as to whether grant of settlement of Government land at a throw-away price or allowing the private institutions to avail the facilities of Government hospitals would amount to grant of aid or not. We have also not expressed any opinion on cross-subsidy.

203. The supervisor courts in India exist for interpretation of Constitution or interpretation of statutes. They cannot evolve a fool-proof system on the basis of affidavits filed by the parties or upon hearing their counsel. Certain details of vexing problems on the basis of the interpretation given by this Court must be undertaken by the statutory bodies which have the requisite expertise. It is expected that statutory bodies would be able to perform their duties for which they have been established. The doors of the Court should not be knocked every time, if a problem arises in implementation of the judgment, however slight it may be. The court has its own limitations. The problems which can be sorted at the ground level by holding consultations should not be allowed to be brought to the Court. It is, in that view of the matter, we have thought it fit to direct setting up of committees for the aforementioned purposes.

204. In the present constitutional set up having regard to Entry 66, List I of the Constitution of India, the legislative power of the State may be very limited; the extent whereof may have to be determined in appropriate cases. But the sake of the State in such matters is also not minimal. The State has to evolve its own policies generating the source of employment.

205. We have come across several schemes framed by the States in terms whereof incentives are being given to the private industries for generating employment or reduction in taxes is being proposed if graduates are employed. The respective States, therefore, must apply its mind while granting essentiality certificate inasmuch as the human resource development problems will have to be faced by it. In evolving a sound policy decision in this behalf, the statutory bodies shall also have to lend their ears to the respective State Governments while granting permission for establishment of the professional educational institutions. The Human Resource Development Ministry of the Central Government should also play its role.

206. The I.As. for clarification are,thus, disposed of. The writ petitions

may now be placed before appropriate Benches for disposal. In the facts and circumstances of this case, there shall be no order as to costs.