

(2011) 08 AHC CK 0182

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No"s. 29280 and 44655 of 2011

Committee of Management
Shibli National Post Graduate
College

APPELLANT

Vs

State of U.P. and Others

Saneedp Kumar Yadav and
Others Vs Principal, National
Shibli College, Azamgarh and
Others

RESPONDENT

Date of Decision: Aug. 9, 2011

Acts Referred:

- Constitution of India, 1950 - Article 30

Hon'ble Judges: V.K. Shukla, J

Bench: Single Bench

Judgement

V.K. Shukla, J.

Shibli National Post Graduate College, Azmgarh in Civil Misc. Writ Petition No. 29280 of 2011 has approached this Court with request for declaring provisions of Uttar Pradesh State Universities (Regulation of Admission to course of instructions for Degree in Education in affiliated, associated and constituent college) order 1987 to be ultra vires the U.P. State Universities Act 1973 and Article 30(i) of the Constitution, and further prayer has been made to direct the Respondents to make admission against 50% of the seats in Bachelor of Education Course under minority quota for the academic session 2011-2012 and each succeeding academic session.

2. Civil Misc. Writ Petition No. 43128 of 2011 and Civil Misc. Writ Petition No. 44655 of 2011 have been filed by the Petitioners of aforementioned writ petition for issuing writ in the nature of mandamus directing the Shibli National Post Graduate College, Azmgarh to take admission in B. Ed. 2011-2012 as per the list sent by Mahatma Jyotiba Phule Rohilkhand University Bareilly to Shibli National Post

Graduate College, Azamgarh.

3. Shibli National Post Graduate College, Azamgarh, affiliated to Veer Bahadur Singh Purvanchal University, Jaunpur, is minority institution and there are 100 seats allotted to them to conduct the classes of B. Ed. students. State Government has resolved to conduct joint entrance examination from the academic session 2007-2008. For Session 2011-2012, Mahatma Jyotiba Phule Rohilkhand University Bareilly was entrusted with the job of conducting entrance examination. Examination in question was held and Petitioners of Civil Misc. Writ Petition No. 43128 of 2011 and Civil Misc. Writ Petition No. 44655 of 2011 qualified the said entrance examination and have been called for counseling and in the counseling, they have been allocated Shibli National Post Graduate College, Azamgarh. Thereafter, as Shibli National Post Graduate College, Azamgarh accepted only list of 50 candidates and qua remaining 50 candidates, college in question refused to take admission on the ground that 50% seats is reserved for minority students and further institution in question has got right to conduct its own examination and to accord admission. In this background Civil Misc. Writ Petition No. 29280 of 2011 had been filed in the past by Shibli National Post Graduate College, Azamgarh. Students in their turn have filed Writ Petition No. 43128 of 2011 and 44655 of 2011.

4. All these three writ petitions have been clubbed and have been taken up for final hearing/disposal with the consent of the parties.

5. Sri. Ashok Khare, Senior Advocate, appearing with Sri Faheem Ahmad, Advocate contended with vehemence that the institution in question is entitled to fill up 50% of the seats by holding its own examination in free, fair and transparent manner and as such recommendation to take admission of 50 students is bad.

6. Sri. K.P.S. Yadav, Advocate alongwith Sri S.P. Yadav, Advocate of Civil Misc. Writ Petition No. 43128 of 2011 and Sri V. Singh, Advocate appearing alongwith Sri Amit Singh, Advocate of Civil Misc. Writ Petition No. 44655 of 2011, contended that Petitioners of both these writ petitions have secured place on merit and they are entitled to get admission, they should not be penalized on account of fault of the part of the University concern.

7. Sri. Vivek Verma, Advocate contended that Petitioners of both these writ petitions, who have made place themselves on merit, they would be accorded admission at Jagdish Saran Hindu (P.G) College, Amroha, District Moradabad which is also aided institution and their interest would be fully protected.

8. After respective arguments have been advanced, request of the Committee of Management of Shibli National Post Graduate College, Azamgarh is being adverted to wherein request has been made for declaring provisions of Uttar Pradesh State Universities (Regulation of Admission to course of instructions for Degree in Education in affiliated, associated and constituent college) order 1987 to be ultra vires the U.P. State Universities Act 1973 and Article 30(i) of the Constitution, and

further prayer has been made to direct the Respondents to make admission against 50% of the seats in Bachelor of Education Course under minority quota for the academic session 2011-2012, based upon their own free, fair transparent examination and for each succeeding academic session.

9. The issue which has been sought to be raised by the college concern, has already been examined on three occasions by Hon'ble Apex Court. In [T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others](#), the questions raised was concerning fee structure of minority and non-minority educational institutions and whether private unaided professional colleges are entitled to fill up their seats to the full extent by their own method of admission. The Bench considering of eleven Judges of the Apex Court, answered eleven questions. The discussion on issue No. 3 is relevant for our purpose. The issue is as follows:

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

As stated earlier, there were two facets of the matter, one was regarding fee structure and the second was regarding procedure of admissions. In the present matter, we are concerned with the procedure of admissions only. Paras 59 and 68 of the judgment have been pressed into service by the Petitioners. Paras 58 and 66 are also relevant. These paras read as follows:

58. For admission into any professional institution, merit must play an important role. While it may not 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.

....

66. In the case of private unaided educational institutions, the authority granting recognition or affiliation can certainly lay down conditions for the grant of recognition or affiliation; these conditions must pertain broadly to academic and educational matters and welfare of students and teachers-but how the private

unaided institutions are to run is a matter of administration to be taken care of by the management of those institutions.

67. We now come to the regulations that can be framed relating to private unaided professional institutions.

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego 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 meritbased 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 principle may be applied to other non-professional but unaided educational institutions viz. graduation and post graduation non-professional colleges or institutes.

10. In the said judgment, issue No. 5 (a)(b) dealt with the right of minority students, in the matter in following terms.

Q. 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?

A. A minority institution may have its own procedure and method of admission as well as selection 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 maladministration. 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.

Q. 5. (b) Whether the minority institution's right of admission of students and to lay down procedure and method of admission, if any, would be affected any way by the receipt of State aid?

A. 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 quo 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 advise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institution, it will be permissible for the Government or the University to provide that consideration should be shown to the weaker section of the society.

11. It so happened as stated by the Apex Court in its subsequent judgment that the judgment in *Pai Foundation* was understood by Union of India, various State Governments and educational institutions in different perspectives (as stated in para 1 of the subsequent judgment in [Islamic Academy of Education and Another Vs. State of Karnataka and Others](#), The judgment of the Constitution Bench was rendered by Hon"ble Khare, C.J.I. on behalf of the majority of the Judges, while Justice Sinha wrote a separate judgment. As stated in para 2 of that judgment, it had become necessary to clarify judgment in *Pai Foundation*. The Court framed four questions for its consideration. These four questions are as follows:

- (1) Whether the educational institutions are 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 entitle to admit students by involving their own method of admission.

12. While commenting on the common entrance test vis-a-vis minority institution, the Court observed in para 16 as follows:

16.... Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by the 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 test conducted 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 the 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

exercise 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 the basis of the merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on the basis of inter se merit amongst those students. The list of students admitted, along with the rank number obtained by the students, 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 indicate. 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.

13. This judgment led to another judgment in *P.A. Inamdar v. State of Maharashtra*, reported at (2005) 6 SCC 537. This judgment became necessary, as stated in para 4 of *Inamdar*'s judgment, since some of the main questions remained unsettled even after the judgment of the Constitution Bench in *Islamic Academy* (supra), this Bench framed four questions. Those four questions are as follows:

(1) To what extent can the State regulate admissions made by unaided (minority or non-minority) educational institutions? Can the State enforce its policy of reservation and/or appropriate to itself any quota in admissions to such institutions?

(2) Whether unaided (minority and non-minority) educational institutions are free to advise their own admission procedure or whether the direction made in *Islamic Academy* (supra) for compulsorily holding an entrance test by the State or association of institutions and to choose there from the students entitled to admission in such institutions, can be sustained in light of the law laid down in *Pai Foundation* (supra)?

(3) Whether *Islamic Academy* (supra) could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions?

(4) Can the admission procedure and fee structure be regulated or taken over by the Committees ordered to be constituted by *Islamic Academy* (supra)?

14. In the said judgment, following view has been taken:

136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State.

The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of date. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting the common entrance test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the students' community from harassment and exploitation. Holding of such common entrance test followed by centralized counselling or, in other words, single-window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen.

137. *Pai Foundation* has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure there for subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above said triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy all or any of the tripartite tests, indicated herein above, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

15. It needs to be specifically stated that having regard to the larger interest and welfare of the students' community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralized and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis. Till regulations are

framed, the Admission Committees can oversee admissions so as to ensure that merit is not the casualty.

16. All these judgment in respect of B. Ed admission have been considered by Full bench judgment of this Court in Civil Misc. Writ Petition 34114 of 2007 (Tuples Education Society and Anr. v. State of U.P. through its Principal Secretary, Higher Education Government of Uttar Pradesh, Lucknow and another) and therein following view has been taken which is being extracted below:

A reference to all these three judgments makes certain things very clear. Firstly, the main judgment in *Pai Foundation* (supra) rendered by eleven Judges emphasized merit for admission, at the same time fairness and transparency. For determining merit, it is stated in para 59 that it is usually determined in the qualifying examination or school-leaving certificate followed by an interview or by a common entrance test. In para 68, it did not rule out the University or the Government to require, at the time of granting recognition to private unaided institutions, to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. What is most important is that this is stated in the first part of para 68. Therefore, even if this paragraph is split into two parts, as read in *Inamdar*'s case, the first part itself permits a University to require a private unaided institution to give admissions on the basis of merit-based selection. It is stated that at the same time sufficient discretion be given to the management. In the present case, the Government Order permits the management of private unaided institutions to have 15% of the candidates of their own and non-minority institutions to have 50% candidates of their own. Thus sufficient discretion in the present case is already available. But the selection procedure is however done by the University. Besides, we cannot merely read paras 59 and 68. We must also read the answer of question No. 5 (b) to the question referred above in *Pai Foundation* (supra). The answer clearly permits such an admission test at the admission or at the entrance level. If it is so provided and University so insists thereon, it cannot be said to be bad in law. A Committee is constituted to oversee these admissions as per the judgment in *Islamic Academy* (supra). This is a temporary measure. Even para 155 of *P.A. Inamdar* (supra) permits the State Government to come out with appropriate legislation. The Committees regulating admission procedure and fee structure shall continue to exist under *Inamdar*'s judgment (supra) until the regular arrangement is made.

45. In all these cases, the Apex Court was concerned with admissions to professional courses though with emphasise on engineering and medical admissions. The provisions of various State Acts and concerning those with degrees in B. Ed. and other educational courses were not before the Apex Court. The last judgment on this issue has permitted the State Government to come out with detailed well-thought out legislation. The Government Orders prescribing the procedure for admission and allowing the Universities to hold examinations at the University level

held the field during the two relevant years. As pointed out earlier, this arrangement is not in conflict with the regulations framed by NCTE. In the circumstances, the procedure laid down in these three judgments cannot, in any manner, lead the Court to hold the examinations held by the Universities to be bad in law. As read by us, once any such procedure for admission is prescribed, the private admissions on the basis of last qualifying marks cannot be permitted under the NCTE Regulation 3 (b) as well. That apart, Justice Tilhari Committee itself has given finding that the conduct of the Association of the private institutions was not fair, transparent and non-exploitative.

46. In the circumstances, we answer these issues as follows:

1. Whether the admissions to private unaided (minority and non-minority) colleges imparting education for Bachelor of Education Courses recognized by NCTE and affiliated to the University can be made by any method other than by holding a common entrance test either by the State/Universities or by all the colleges of the State coming together as provided in P.A. Inamdar's case?

Ans.

No

2. Whether the judgment rendered by learned Single Judge on 14.12.2006 in Writ Petition No. 5674 (M/S) of 2006: U.P. Management Association of Self Finance Teachers Training Colleges v. State of U.P. and Ors. has correctly appreciated the TMA Pai, Islamic Academy and P.A. Inamdar's case and has laid down correct law?

Ans.

Yes

2 Whether in the absence of any common entrance test held by all the colleges coming together or a common entrance test conducted by the State Government or all the Universities in the State the admissions can be made through the entrance examination held by individual universities providing list of students through counselling to these colleges?

Ans. Yes 4. Whether the entire process of admissions to these colleges must be left to the supervision of the Justice H.N. Tilhari (Retd.) Committee constituted by the State Government in terms of the decisions issued in P.A. Inamdar's case?

Ans. Yes 5. Whether for the session 2005-06 the students admitted to the management of the private unaided colleges imparting education for B. Ed. recognized by NCTE and affiliated to Veer Bahadur Singh Purvanchal University, Jaunpur on the basis of their procedure of admission can be said to be properly and legally admitted students and entitled for the study examination and the declaration of the result.

Ans.

No

2 Whether the decision of the Division Bench of Lucknow in Special Appeal No. 263 of 2007: Dr. Bhim Rao Ambedkar University, Agra v. S.S. College, Barbarpur, Sikandara, Agra and Anr. lays down the correct law and covers the issues involved in the present writ petition.

Ans.

No

47. In view of the answers to these six issues, these two writ petitions, which are placed before us will be sent down to the concerned learned Single Judges for decision in the light of this judgment. The other writ petitions, which were connected with these two writ petitions, or whose papers were produced will be de-linked and placed before the concerned learned Single Judges for decision in accordance with the law laid down in this judgment.

48. There shall be no order as to costs.

17. On the parameter of the judgment of Hon"ble Apex Court and as considered by Full bench of this Court, as far as right of minority institution to fill up 50% seats is concern, same is not disputed. Minority colleges are entitled to fill up their quota with their own students on the basis of inter-se merit amongst those students who have undertaken common entrance test and stand on merit. The merit has to be determined through common entrance test. Merit list would be prepared and on the basis of the aforementioned merit, status list of the students alongwith their respective rank number and marks obtained by the said students, the fees to be collected and all such particulars and details as may be required be send to the concerned institution. Said procedure would balance merit based admission on transparent basis of even 50% of the students, who are to be admitted in minority quota and 50% in the institution concern from open category, in such a situation as far as Petitioner"s institution is concern, it cannot be given authority to take its own examination and accord admission against 50% seats meant for minority quota. Once State Government has resolved to hold common entrance test then even minority college will have to fill up their quota with their own students on the basis of the inter-se merit amongst those students. Hon"ble Apex Court, in the case of Modern Dental College v. State of M.P. 2009(7) SCC 151 has taken the view, that any other provision, which runs contrary to the dictum laid down in th case of P.A. Inamdar, has to be held ultra vires. The request made by Petitioners institution, is counter to the dictum of P.A. Inamdar (supra) as such request made by Petitioner, cannot be acceded to Consequently, for academic session 2011-2012 Mahatma Jyotiba Phule Rophilkhand University, Bareilly is directed to transmit entire list of students strictly on merit belonging to the minority community to the institution

namely Shibli National Post Graduate College, Azmgarh for filling up 50% of the quota meant for minority institution of their candidates, within four weeks, and as far as Petitioners of Civil Misc. Writ Petition No. 43128 of 2011 and Civil Misc. Writ Petition No. 44655 of 2011 are concerned, University has undertaken before this Court, and Petitioners of aforementioned writ petition have also accepted that they have no objection in joining at Jagdish Saran Hindu (P.G.) College, District Moradabad which is also aided institution, consequently Mahatma Jyotiba Phule Rohilkhand University, Bareilly is directed to take further follow up action in respect of Petitioners of two writ petitions by asking the college concern to forthwith provide admission to said students, on formalities required to be fulfilled.

18. With these observations, all the three writ petitions are disposed of. No order as to cost.