

(1991) 08 SC CK 0002

## Supreme Court of India

Case No: Civil Appeal No. 2898 of 1980

Osmania University and others

APPELLANT

Vs

A.V. Ramana and others

RESPONDENT

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**Date of Decision:** Aug. 2, 1991**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** AIR 1991 SC 2127 : (1992) 1 SCC 535 Supp**Hon'ble Judges:** P. B. Sawant, J; K. N. Singh, J**Bench:** Division Bench**Final Decision:** Allowed

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**Judgement**

1. The short question that falls for our consideration in the present appeal is whether the Evening Law College in question affiliated to the Osmania University conducts "part-time course of study" within the meaning of paragraph 11(c) of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974, hereinafter referred to as the "Order". If the answer is in the affirmative, the order is not applicable to the said college and the reservation of 85 per cent of the seats in favour of the local candidates is illegal. The question arises in the following context.

2. According to paragraph 5 of the order admission to 85 per cent of the available seats in the said college has to be reserved in favour of the local candidates leaving only 15 per cent of the seats for the non-local candidates. There is no dispute that the writ petitioners before the High Court, who are respondents before us, were not the local candidates. They were employees of the High Court and of the Andhra Pradesh Administrative Tribunal. Apprehending that they will have no chance of admission to the said college in the quota of 15 per cent of the seats, they approached the High Court by way of petition filed under Article 226 of the Constitution for striking down paragraphs 3, 4, 5, 6 and 8 of the order. It appears that the Division Bench of that Court had earlier dismissed a petition which was filed

by one of the present writ petitioners. The contention raised in the said petition was that the course of study provided in the said college was a part-time course solely for the benefit of the employed persons and, therefore, by virtue of paragraph 11(c) of the order, the said course was exempt from its provisions, and as a result the seats available for the course were free from the reservation in favour of the local candidates. This contention was negatived by the Division Bench holding that the course offered by the college was a full-time course. The present petition was, therefore, brought before a Full Bench and the Full Bench by the impugned decision reversed the earlier decision of the Division Bench and held that the said course was a part-time course and not a full-time course and was hence, outside the scope of the order by virtue of paragraph 11(c) of the same. The impugned decision thus held that reservation made by the order in favour of the local candidates was not applicable to the seats for the law course in the said college. In view of its decision on the nature of the course, the Full Bench did not decide the virus of paragraphs 3, 4, 5, 6 and 8 of the Order, nor are we concerned with it in the present appeal. Hence, the short question stated at the outset.

3. There is no dispute that the college, though called Evening Law College, and imparts tuition to the students during evening hours, is in all respects on par with the so-called day colleges. The duration of hours of study in the college is the same as that of the day college, viz., three hours. It offers the same syllabus as does a day college and its course is spread over the same number of years as is the course of a day college. The students appear for the same examination conducted by the same University and get the same law degree as do the students of the day college. What is further, the entrance examination held for admission is common to all the colleges including the Evening College in question. The only difference between the present college and the other colleges is that the admission to the present college is restricted only to the employed persons. It is, therefore, clear that the law course offered by the present college is as much as a full-time course as the one offered by any other law college. It is for this reason that the Division Bench of the same Court had earlier held that the law course offered by the present college was not a part-time course.

4. The only ground on which the Full Bench has upset the reasoning of the Division Bench is that the students in the present college are employed and, therefore, they do not devote their whole time to the course of study "as they devote a part of their time for their employment". We thought that the nature of the course of study, viz., whether it is part-time or full-time, depended upon the content, tuition and the duration of the course of study and not on who pursued the same. But the Full Bench appears to think otherwise. According to the Full Bench, those who are employed do not devote their full time for study whereas those who are not, do. The Full Bench further thinks, that as far as full-time courses are concerned the students are not permitted to take up any employment since they are expected to devote their whole time to the study of the course. We have not come across anywhere any

such restriction on the students of any full-time course. In fact, in many cases where there are neither morning nor evening full-time courses and students are obliged to attend day courses, the students take up employment in the other hours of the day and pursue their study. The extent of time a student devotes to his study depends upon him and not upon whether he is employed or not. Many times it is noticed that those who earn while they learn are more devoted to their study, for they pay for their education and are conscious of the value of the money they spend on it.

5. What is further, whether a course of study is part-time or full-time, is to be determined by the University concerned. In the present case, the University had pointed out to the Pull Bench that the law course offered by the present college was a full-time course by pointing out the facts stated earlier which were accepted by the Division Bench. Even the Central Government had supported the contention of the University. The University had further pointed out that it did conduct both part-time and full-time courses in some faculties, and whenever it does so, it declares in categorical terms which of the courses are part-time courses. When there is no such categorisation by the University, the course is deemed to be a full-time course. The University had also pointed out that whether a course is part-time or full-time depends upon the circumstances in each case, viz., the nature of the faculty, the nature of the course, syllabus, the duration of the course, the nature of instructions involved etc. In support of this, the University had given instances of some courses, viz., M.B., M.E. and M.Tech. In these three faculties, the part-time courses were spread over three years whereas the full-time courses were spread over only two years. The part-time courses were exclusively meant for employees. The Court disregarded these instances by drawing contrary inferences. The Court held that these instances show that the duration of the courses cannot be a criterion for determining whether a course is full-time or a part-time, because the duration for the part-time course was more than the full-time course. The Court further held that syllabus also cannot be a test because it was the same for the full-time and part-time courses. The Court proceeded to hold that ultimately it was "left to the ipse dixit of the University to designate whether the course is full-time or part-time course depending upon the circumstances.... It would not be safe or desirable to interpret it with reference to the meaning given to the expression "part-time course of study" by the University. That meaning would vary not only from the University to University but also from time to time or from course to course with respect to each University." We must confess that we have been unable to understand the reasons given by the Bench to discard the University's case.

6. In the circumstances, we are of the view that the High Court committed obvious errors in categorising the evening law course offered by the present college as a part-time course. The reasons given for such categorisation of the course are both unsound and insupportable. We, therefore, allow the appeal and set aside the impugned judgment and order of the High Court.

There will, however, be no order as to costs.