

PETITIONER:
SHRI CHANDER CHINAR BADA AKHARA UDASIN SOCIETY & ORS.

Vs.

RESPONDENT:
THE STATE OF J & K AND ORS. ETC.

DATE OF JUDGMENT: 11/09/1996

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
AHMADI A.M. (CJ)
KIRPAL B.N. (J)

CITATION:
JT 1996 (8) 89

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T

N.P.SINGH, J
Leave granted.

Appellant No.1 Shri Chander Chinar Bada Akhara Udasin Society (hereinafter referred to as the Society) is a society registered under the J & K Society Registration Act, the primary object being to promote medical education by establishing medical colleges, hospitals and child welfare centres. A proposal was submitted to the State Government for setting up a medical college and a private hospital in Jammu, in the year 1988~ The State Government allotted 356 kanals of land for the proposed medical college and charitable hospital. A further allotment of 250 kanals of land is said to have been made by the State Government. The State Government recommended to the Jammu University for grant of affiliation to the proposed medical college to be set up by the society. The State Government also requested the Medical Council of India to grant approval/recognition to the said medical college. Inspection was made by the representatives of the Medical Council of India in respect of infrastructure including the teaching facilities. In due course temporary recognition of the institution was granted. It is said that the Society approached the State Government to issue necessary guidelines and to frame rules to regulate the admissions to the medical college established by the Society. The Society in its communication undertook to make admissions in accordance with the directions of the Supreme Court of India in the case of J.P.Unnikrishnan vs. State of A.P. & Ors., (1993) 1 SCC 645 and other directions issued by this Court. The last such communication was addressed by the Society to the State Government on 17.10.1995 saying that although it had got recognition from the Government of India, but no rules/regulations were being framed by the State Government for admissions to the said medical college.

The State Government had issued an advertisement on

6.7.1995 inviting applications from eligible candidates for appearing at the entrance test for admission to the two governments medical colleges. But while issuing such advertisement the State Government did not invite applications for the admission into the medical college of the Society. In the brochure published by the State Government for information to the candidates, who may be willing to seek admission, nothing was said about the medical college in question. which was necessary in view of the judgments and Orders of this Court for filling up the 'merit seats' and the 'payment seats'

It is further the case of the Society that when people of the State of J & K learnt about the medical college of the Society, they approached the management for seeking admission and some applications were also submitted to the management. However, no action was taken on such applications, as no instructions had been received from the State Government.

Some students seeking admission in the medical college in question,, filed a writ petition before the High Court of Jammu & Kashmir making a grievance in respect of failure on the part of the State Government to frame necessary rules/guidelines to regulate admission to the medical college of the Society which had deprived them of the opportunity of seeking admission against the 'merit seats' or the 'payment seats'. The appellant-society was impleaded as a respondent to the said writ petition. Counter affidavit was filed on their behalf. All necessary records and information were placed before the High Court. In spite of the several opportunities being given to the state government, no affidavit on their behalf was filed. By an order dated 27.11.1995, the learned single Judge constituted a Committee consisting of:

"(a) Mr. Justice J.N.Bhat, (Rtd.)
Judge of J&K High Court :
Chairman.

(b) Mr. A.M.Watali, former member
J&K Public Service Commission:

(c) Dr. Krishan Lal Gupta, Former
Director, Health Services, J & K
state:

(d) Prof. Vidya nath Gupta, formerly
Prof. and Head, Department of Hindi
University of Jammu:
Member."

A direction was given to the said Committee to immediately proceed with the selection process for admission of students in the 1st year MBBS course of the said medical college. An option was given to invite or call for applications by publication through recognised modes including issuance of an advertisement in at least one leading newspaper having wide circulation. In the order, the learned Judge observed that the selection Committee may conduct oral interviews of the candidates for short-listing the applicants on basis of their inter se merit. The first meeting of the aforesaid Committee is said to have been held on 29.11.1995. An advertisement was issued on 4.12.1995 inviting applications from eligible candidates in respect of the following four categories:-

"(a) 50% merit seats from permanent
resident of the State of J&K;

(b) 20% payment seats from
permanent resident of the State of
J&K;

(c) 15% payment seats from

candidates outside the State of J&K; and
(d) 15% from NRI's and foreigners."

The advertisement was published in the Indian Express in its issue dated 4.12.1995. In the said advertisement, 11.12.1995 was fixed as the last date for receipt of the applications saying that the interviews of the candidates shall be held between 15.12.1995 and 17.12.1995. It is the case of the Society that after the interviews were so held, a merit list was prepared on basis of the percentage of marks secured by the applicants at the Higher Secondary School Examination or equivalent examinations and the marks secured at the interview. The report of the Selection Committee was forwarded on 19.12.1995, which was placed on the notice board on 20.12.1995. Candidates so selected were admitted between 20.12.1995 to 25.12.1995. The teaching commenced from 26.12.1995.

A Letters Patent Appeal against the order dated 27.11.1995, aforesaid of the learned single Judge, had been filed on behalf of the State Government, which was listed before the Division Bench on 27.12.1995. On the basis of the caveat filed on behalf of the Society, the parties were heard on the aforesaid date. After hearing the parties, the appeal filed on behalf of the State Government, was admitted and the operation of the order of the learned single Judge was stayed. Ultimately, the Appeal filed on behalf of the State and the appeals filed on behalf of others were allowed on 22.3.1996. The order of the learned single Judge was set aside. The present appeals have been filed against the said judgment of the Division Bench.

From the judgement of the Division Bench, it shall appear that after taking into consideration the different aspects of the controversy as well as the predicament of the students who claimed to have been admitted in the medical college aforesaid, the following directions were given:-

"To conclude, considering these several aspects, we make the following orders:

(1) These appeals are allowed. The order of the learned Single Judge passed on OWP No.379/1995 dated November 27, 1995 is set aside.

(2) We issue a writ of Mandamus to the State Govt. to issue a Notification calling for application from the eligible candidates in the prescribed form for appearing in the common viva voce entrance examination. There shall be no common entrance written examination. Notification calling for application shall be published in one local Daily Vernacular language and in one daily widely circulated English newspaper. Petitioners, the contesting respondents, the appellants of the LAPs who have already applied need not apply once again except those who have not applied.

(3) The last date for receiving the applications in the prescribed form shall be 5th April, 1996. Applications received after the date fixed above either by post or

by hand would not be entertained.

(4) The Roll Nos. to the eligible candidates shall be supplied by the 8th April, 1996. The date for holding the common entrance viva voce examination is fixed as 10th April, 1996.

(5) The Competent Authority shall make selection and announce the results on or before 17th April, 1996. The selection list so prepared shall be got published in atleast two leading local dailies of Srinagar and Jammu and it shall also be displayed at the office of Competent Authority, Entrance Examination in Jammu and Srinagar.

(6) Out of 100 marks awarded for selection of the candidates, 75% shall be for academic qualification and 25% shall be for common Entrance Viva Voce Examination.

(7) The number of 100 seats shall be filled up by selecting candidates from the order of merit.

(8) At least 50% of the seats out of the 100 seats shall be filled up by the nominees of the Govt. or University as the case may be, hereinafter referred to as free seats. These students shall be selected on the basis of merit determined on the basis of merit list by such criteria as may be determined by the Competent Authority or appropriate Authority as the case may be. The remaining 50% of the seats (payment seats) shall be filled up by those candidates who are prepared to pay the fee prescribed therefor and who have complied with the instructions regarding deposit and furnishing of cash security/Bank guarantee for the balance of the amount. The allotment of students against payment seats shall also be done on the basis of inter se merit determined on the same basis as in the case of free seats.

(9) In so far as the reservation of the seats for persons claiming constitutionally permissible reserved, the SRO issued by the State of J&K in relation to the reservation of seats shall be followed.

(10) In so far as the fixation of the scale of fee payable by these students, the State Govt. shall constitute a committee within a period of ten days and that committee shall fix the scale of fee payable by the students in accordance with the guidelines

contained in the scheme of Unni Krishnan J.P. (AIR 1993 SC 2173)

It is apparent from the order aforesaid that a writ of mandamus was issued to the State Government to invite applications from eligible candidates in prescribed form for appearing in the common viva voce entrance examination. However, there is a specific direction that no common entrance written examination shall be held. 5th April, 1996 was as the last date for receiving the applications in the prescribed form. Thereafter a time schedule was prescribed in respect of common viva voce entrance examination, selection and announcement of the result. A direction was also given that out of 100 marks awarded for selection of the candidates. 75% shall be for academic qualification and 25% shall be for common entrance viva voce examination.

According to the appellant-society, there was no justification on the part of the Division Bench to interfere with the directions given by the learned single Judge, which were just and proper. It was pointed out that under the predicament under which the appellant-society and the applicants had been placed because of the inaction on the part of the State Government, the learned single Judge had no option but to constitute a Committee of persons mentioned above for selecting the applicants for admission in order to save them from loosing an academic session, for no fault of theirs.

It is true that when the Society requested the State Government to frame necessary rules/guidelines to regulate the admissions in the medical college of the Society, the State Government should have taken appropriate and immediate steps and there was no sense in shelving the said issue by ignoring it outright. The learned counsel, who appeared on behalf of the State, could not give any explanation as to why the necessary guidelines were not issued to the Society in respect of the admissions in the medical college aforesaid. But the fact remains that the learned Single Judge on the writ petition filed on behalf of the students adopted a procedure and fixed a time schedule in respect of admission of the applicants, which are not consistent with the orders and directions issued by this Court in different cases, indicating the procedure for admission in private medical colleges. There is no dispute that the advertisement inviting applications from eligible candidates was issued on 4.12.1995 and 11.12.1995 was fixed as the last date for receipt of the such applications i.e. within a week, which according to us, was per se an arbitrary time limit fixed for receipt of the applications. It is said that the interviews were held Between 15.12.1995 and 17.12.1995 and the selection list was forwarded on 19.12.1995. The selected candidates are said to have been admitted between 20.12.1995 and 26.12.1995 and classes are said to have commenced since 26.12.1995 itself. Admittedly, the Division Bench passed an interim order staying the operation of the judgment of the single Judge only the next day i.e. 27.12.95 In this background, it is difficult to accept the claim made on behalf of the Society as well as applicants who are said to have been admitted in the said medical college, that their studies commenced since 26.12.1995 and as such on equitable grounds they should be allowed to pursue their studies.

It is unfortunate that due to the indifferent attitude of the State Government and haste shown by the appellant-society, the so-called selected candidates, who are said to have been admitted, are virtually on the roads. But only on equitable grounds, a procedure which is not sanctioned by law cannot be approved only to mitigate the hardship of such

candidates who have sought admissions in the medical college aforesaid. But at the same time many of the directions given by the Division Bench also cannot be approved. It has directed that selection be made on basis of common viva voce entrance examination and no common entrance written examination be held. According to the direction of the Division Bench, 75% marks have been allotted for academic qualification and 25% marks for the viva voce examination. It need not be pointed out that the percentage of marks secured by different applicants at different types of examinations at the higher secondary stage cannot be treated as uniform. Some of such examinations are conducted at the state level, others at the national level including the Indian School Certificate examination. The percentage secured at different examinations are bound to vary according to the standard applied by such examining bodies, which is a well known. As such a common entrance examination has to be held. The counsel appearing for the parties could not justify the awarding of 25% marks for viva voce examination in view of the several judgments of this Court in connection with admission in educational institutions; one such judgment being from the State of J&K itself in the case of Ajay Hasia etc vs. Khalid Mujib Sehravadi and others etc., AIR 1981 SC 487 = (1981) 1 SCC 722.

The learned counsel appearing on behalf of the State informed the Court that pursuant to the direction given by the Division Bench, an advertisement was issued on 27.3.1996 by the State Government, notifying the conditions of eligibility for admission in the said medical college. From the said advertisement it appears that one of the conditions is that the candidate must be permanent resident of J & K. There was no such direction given by the Division Bench. Apart from that any such condition is not consistent with the different judgments and orders of this Court. Mr. Verma, learned senior counsel, immediately offered to rectify the same and to abide by any direction given by this Court.

Taking all the facts and circumstances into consideration, we are of the view that for one reason or the other, now it is not possible to complete the admission in the said medical college for the session which has already commenced. As such the only reasonable course shall be that a fresh advertisement be issued for the next academic session in accordance with law in the light of directions given by this Court in the cases of J.P. Unnikrishnan vs. State of AP & Ors. (supra). T.M.A. Pai Foundation & Ors. vs. State of Karnataka, (1993) 4 SCC 276, Manipal Academy of Higher Education vs. State of Karnataka & Ors. (1994) 2 SCC 201 and in the case of T.M.A.Pai Foundation and Ors. vs. State of Karnataka and Ors., (1995) 5 SCC 220. The advertisement inviting applications should be given proper publicity and thereafter the seats should be earmarked and allotted in terms of the judgments aforesaid which prescribe the procedure for admission by the private medical colleges. Seats shall also be reserved for NRI within the percentage fixed in those judgments. The State Government shall extend all cooperation and help so that proper selections are made as per directions of this Court and the appellant-society which has established the medical college is able to pursue its goal by making the medical college functional, which shall be in the interest of the State of J & K itself. The learned counsel appearing for the State of J&K assured this Court that all necessary steps shall be taken promptly.

In the result, the appeals are dismissed but at the same time in view of the directions given above, it has to

be held that we are not approving the directions given by the Division Bench. Now, the steps have to be taken by the appellant-society and the State Government in accordance with the different directions given by this Court for admission in the private medical colleges. There shall be no orders as to cost.

JUDIS