

PROGRESSIVE DEMOCRATIC STUDENTS' UNION AND ORS.

SEPTEMBER 20, 1994

[P.B. SAWANT, S. MOHAN AND B.P. JEEVAN REDDY, JJ.]

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Andhra Pradesh Education Act, 1982, Ss. 2(12), 20(1) and (3)(b), 99 (xi) and (xii)—Andhra Pradesh Unaided Private Medical and Dental Colleges (Establishment, Management and Admission) Rules, 1992—Establishment of unaided private medical and dental colleges—Power to grant recognition and prescribe adequate financial provision for maintenance of educational institution vested exclusively in competent authority under the Act—Societies granted permission by State Government to establish medical and dental colleges on recommendation of expert committee constituted under the Rules—Held, in the absence of constitution of the competent authority the grant of permission was invalid from inception.

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Administrative Law—Delegated legislation—Excessive delegation—Andhra Pradesh Education Act, 1982, S.20(1), 99 (xi) and (xii)—Andhra Pradesh Unaided Private Medical and Dental Colleges (Establishment, Management and Admission) Rules, 1992—Act providing that no educational institution be established except in accordance with the Act or the Rules thereunder—Held, the disjunctive 'or' has to be read as adjunctive 'and' to save the provision from the vice of excessive delegation—Interpretation of Statutes.

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Administrative Law—Non-application of mind by authority—Government granting permission to twenty societies to establish medical and dental colleges on expert committee's recommendations—Societies formed only a few days before framing of Rules—Committee making spot inspections in casual manner—No collective application of mind by Committee or by minister or Chief Minister—Held, the whole exercise spells out a pre-determined approach and assumes a dubious nature—Held further, as head of Council of Ministers Chief Minister cannot escape attribution of the said approach—Constitution of India, Article 14—A.P. Government Business Rules, Rule 7.

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Based on the recommendations of an expert committee constituted

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- A under the Andhra Pradesh Unaided Private Medical and Dental Colleges (Establishment, Management and Admission) Rules, 1992 ('Rules') made under S.99 (xi) and (xii) of the Andhra Pradesh Education Act, 1982 ('Act'), twenty societies were granted permission by the Government of Andhra Pradesh to establish medical and dental colleges. Among these was
- B Janapriya Educational Academy ('Academy') a society managed by the wife and brother of the Appellant who was, at the relevant time, the Chief Minister of Andhra Pradesh.

Under S.20(1) of the Act, no private educational institution could be established "except in accordance with the provisions of this Act or the

C Rules made thereunder". The power to prescribe adequate financial provision for the establishment of an educational institution and grant or withdrawal of recognition was vested exclusively in the competent authority constituted under the Act. Without first appointing the competent

D authority under the Act, the State Government on May 22, 1992 framed the Rules eleven days after the Academy was formed. Notifications inviting applications were issued on May 25 and 28, 1992 and the last date for submission of applications was June 8, 1992. The Expert Committee was constituted under Rule 4 of the Rules on June 6, 1992. After conducting spot inspection of the land and other facilities offered by the applicants

E from June 18 onwards, the Committee formulated guidelines on June 28 and submitted its report containing recommendations on July 26, 1992. On the same day the Health Minister signed the file containing a summary of the Committee's conclusions without expressing any opinion. The Chief Minister on July 27, 1992 approved the names of the twenty societies recommended for the grant of permission.

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Allowing writ petitions filed by Respondent No. 1, the High Court quashed the permission granted to the twenty societies. The High Court on examining the records found that there were numerous irreconcilable discrepancies between the spot inspection reports and the Committee's

G recommendations. There was nothing to show whether the guidelines formulated by the Committee were seen by the Government or whether the Committee had in scrutinising and forwarding the applications, followed the guidelines. The Committee had not collectively deliberated to arrive at their final report and further the government has "reduced itself into a

H signing machine".

Dismissing the appeals, this Court

HELD : 1.1. The whole exercise undertaken by the State government for sanctioning the establishment of educational institutions in the absence of the constitution of the competent authority was invalid from its inception. In the absence of adequacy of financial provision prescribed by the competent authority under the Act, the Expert Committee appointed under the Rules could not scrutinise the applications nor could the government grant permission for the establishment of any educational institution. [701-C, E, F]

1.2. The scheme of the Act cannot be carried out without the constitution of the competent authority and in particular, no educational institution can be established without its formation. The reliance placed by the government on the Rules to justify its action of inviting applications was not well merited. [696-F, 701-D]

2.1. The disjunctive 'or' in S.20(1) of the Act has to be read as adjunctive 'and' to save it from the vice of excessive delegation. Even if the word 'or' is read as it is, the Rules so made cannot be in consistent with or contrary to the Act itself. [700-H, 701-A-B]

2.2. The power granted to the State Government under clauses (xi) and (xii) of S.99 of the Act cannot be utilised for displacing the competent authority and its functions and powers under the Act. Any such exercise will be a fraud upon the statute apart from rendering the Rules *ultra vires* the Act. [697-D]

3.1. The establishment of the grantee societies only a few days before the framing of the Rules, the invitation of applications within a few days thereafter, the casual manner of conducting spot inspections, the absence of any material to show application of mind by the Committee collectively or even by the Health Minister or Chief Minister and the non-consideration of another society which had applied for establishing a dental college at Nellore all spelt out a pre-determined approach on the part of the Government. The whole exercise reeks with illegalities and assumes dubious nature. [708-E-H, 709-A]

3.2. As head of the Council of Ministers and as the final authority who sanctioned the colleges to the respective societies, the appellant could

A not escape the attribution of the pre-determined approach. [709-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6121-22 of 1994.

B From the Judgment and Order dated 18.9.92 of the Andhra Pradesh High Court in W.P. Nos. 9824-25 of 1992.

K. Parasaran, A.D.N. Rao, A.T. Rao, B.S. Rao, Raghu and A.Subba Rao for the Appellant.

C V.R. Reddy, Additional Solicitor General, T.V.S.N. Chari, N. Nayyar and Vimal Dave for the Respondents.

The Judgment of the Court was delivered by

SAWANT, J. Leave granted.

D These two appeals are directed against the common judgment of the High Court delivered, among others, in two writ petitions, viz., W.P. Nos. 9824 and 9825 of 1992. The appellant who was one of the respondents in the said petitions was at the relevant time the Chief Minister of the State of Andhra Pradesh. The High Court by its impugned decision has quashed the permission granted to a society to start medical and dental colleges.

E The said Society was managed, among others, by the wife and brother of the appellant. In order to appreciate the controversy it is first necessary to refer to the relevant legal provisions.

F The establishment, recognition and conduct of educational institutions in the State are governed by the provisions of Andhra Pradesh Education Act, 1982 [hereinafter referred to as the "Act"]. Section 2 [12] of the Act defines "competent authority" to mean any person, officer or authority authorised by the State Government by notification to perform the functions of the competent authority under Act for such area or for such purposes as may be specified in the notification. The competent

G authority so notified by the Government, is entrusted with several duties and functions under the various provisions of the Act. These provisions are contained in Sections 20, 21, 24, 26, to 29, 31, 45, 49, 51, 60, 64, 69, 72, 79, 80 and 83. Under Section 20(3)(b), the competent authority is to prescribe adequate financial provision for the establishment of an educational institution.

H Under Section 21(1), it is competent authority which is empowered

to grant recognition to the educational institution subject to such conditions as may be prescribed in regard to accommodation, equipment, appointment of teaching staff, syllabi, text books and other matters relating thereto. Under Section 21 (2), the competent authority is empowered to withdraw the recognition or to take such other action as is deemed necessary on the occurrence of the event mentioned therein. Under Section 24(2), the management of every educational institution is required to nominate a person to manage the affairs of the institution and intimate such nomination to the competent authority. Under Section 24(3)(a), the competent authority is empowered to suspend the management and appoint a special officer till the reconstitution of the management. Under Section 24 (3)(b) the competent authority can take action against the manager of the educational institution if it is satisfied that he alone is responsible for the lapses or irregularities of the institution. Under Section 24 (4), the competent authority is even empowered to declare a person to be unfit to be manager of private educational institution and thereupon the management has to nominate another person as manager in his place. Under Section 26, private educational institutions cannot close down unless a notice of not less than one academic year has been given to the officer authorised by the competent authority in that behalf. Under Section 27 in case the private institution closes down or discontinues or its recognition is withdrawn, the management of the institution has to hand over to the competent authority the custody of all the properties, record and accounts of the institution in its possession. Under Section 31, the Government or the competent authority can authorise any officer not below such rank as may be prescribed, to exercise general powers of inspection over the working of any educational institution. Section 50 gives to the competent authority the right to cause an inspection of or an enquiry in respect of any educational institution, its accounts, its buildings, laboratories, libraries, workshops and equipment and also of the examinations, teaching and other work conducted or done by the institution and to cause an inquiry in respect of any other matter connected with the institution and advise the management on the action to be taken. The management has to report to the competent authority on the action taken within such time as the competent authority may direct. Under Section 51, every management has to furnish to the competent authority such returns, statistics and other information as the competent authority may, from time to time, require. When the management of an educational institution vests in the Govern-

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- A ment, it is the competent authority under Section 60 (9) which pays to the person interested in the educational institution the amount payable under Section 60(8). Before the property of an education institution is requisitioned under Section 64, the Government may require that the permission of the competent authority has to be taken before the manager or any other person disposes of, structurally alters, leases or in any manner deals with the property of the institution until the expiry of such period not exceeding three months, as may be specified by the order of requisition. Again, under Section 69, it is the competent authority which has to pay the amount payable under the award of arbitrator when the property or the educational institution is acquired or requisitioned. Section 72 empowers the competent authority to authorize any authority to enter and inspect any property to be requisitioned or acquired, and to require any person to furnish such information relating to such property as may be specified in the order. While Section 79(2) requires a disciplinary inquiry against the delinquent employee of a private institution to be completed within two months from the date of the communication charges to him, the proviso to sub-section 3(b) thereof gives powers to the competent authority to extend the said period upto two months more. Section 80 gives power to the aggrieved employee to appeal to the competent authority. Under Section 83, retrenchment of any employee can be effected by the competent authority with the approval of the next higher authority. If, however, the management of the educational institution has to effect such retrenchment it has to take the approval of the competent authority.

- We have referred to the powers and functions of the competent authority under the Act *in extenso*, to bring out the important position which it occupies in the scheme of the Act. It is clear from the said provisions of the Act, that the scheme of the Act cannot be carried out without the constitution of the competent authority and in particular, no educational institution can be established without its formation. In considering the applications made for establishing educational institutions the prescribed authority has to have due regard that there is adequate financial provision for continued and efficient maintenance of the educational institutions as prescribed by the competent authority under Section 20 (3) (b). It is further the competent authority alone which can grant recognition to the educational institutions under Section 21 of the Act. Even if under section 20(1) a private educational institution is established in accordance

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with the rules made under the Act, the said rules cannot displace the competent authority or entrust the powers and functions of the competent authority to any other authority. It is true that Section 20 (1) of the Act states that no private educational institution shall be established except in accordance with the provisions of the Act or the rules made thereunder. However, the rules made under the Act can only appoint an authority to accept the application for establishment of the educational institution and to grant permission therefor. But while granting permission, the prescribed authority has, among other things, to take into consideration under Section 20(3) (b) as stated above, the requirement of adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority. The power granted to the State Government under clauses (xi) and (xii) of Section 99 to make rules with regard to the establishment or maintenance and administration of educational institutions and the grant of recognition to educational institutions and the conditions therefor cannot again be utilised for displacing the competent authority and its functions and powers under the Act. Any exercise of such power will be a fraud upon the statute apart from rendering such rules as *ultra vires* the Act. It is against this backdrop of the legal status of the competent authority and its functions and powers that we have to examine whether the reliance placed by the State Government on the Andhra Pradesh Unaided Private Medical and Dental Colleges (Establishment, Management and Admission) Rules, 1992 (hereinafter referred to as the "Rules") for defending its action in establishing an Expert Committee under the Rules to grant sanction for medical and dental colleges, is correct or not.

3. The Rules in question, as the preface thereof shows, are purported to be made in exercise of the powers conferred by Sections 20 and 21 read with Section 99 of the Act and they relate to the grant of permission for establishment of unaided private medical and dental colleges under private sector in the State. Rule 3 of the said Rules requires that a notification shall be issued in daily newspapers calling for applications in the prescribed form from the societies desirous of establishing colleges under the private sector and specifying the last date for submitting the applications. The Societies have to make the applications to the Director of Medical Education. The applications have to specify the place at which the college is proposed to be established, and separate applications have to be submitted

- A in respect of each place. Every such application has to be accompanied by (a) a copy of the Constitution and Bye-laws/memorandum and Articles of Association of the Society with the particulars of the executive members thereof, (b) a list of members of the Society as on the date of making the application, (c) evidence of the financial viability of the Society and other requirements as prescribed in Annexure-I thereof, (d) in case the college is proposed to be located in private accommodation, evidence to show Society's ownership or its right to be in exclusive possession of the site and buildings, (e) in case the Society proposes to use a Government Hospital and its infrastructure facilities, it has to give an undertaking to Government to pay such charge as may be prescribed by Government; in addition, the Society's willingness to have its own infrastructure facilities after the maximum period of five years for which the Government may permit the use of such facilities, (f) evidence of other infrastructure facilities available, (g) non-refundable application fee of Rs. 20,000 for Medical College/Rs. 10,000 for Dental College, (h) consent letters of the persons who have given their willingness to serve on the teaching staff of the College.

- Rule 4 provides for constitution of a committee which is also called by the Government as Expert Committee, consisting of the (i) Director of Medical Education, (ii) eminent person from the medical field, and (iii) a representative of the University of Health Sciences, to scrutinize the applications received and forward them to the Government. The rule also provides that it is the Government which will select the Society for the establishment of medical or dental college at a particular place from amongst the applicants for the place and accord permission to the selected Society with such conditions as may be deemed necessary including the number of seats allowed. Rule 5 provides that the Society so selected will make its own arrangements to obtain affiliation from the University of Health Sciences and to obtain recognition of Medical or Dental Council of India after fulfilling the conditions laid down for them for the purpose. Rule 6 states that no financial aid or grant shall be given by the Government for the establishment or management of the College or for any other purpose. Rule 7 provides that the Society shall appoint a committee for the management of the College consisting of not more than 9 members and the committee shall include two nominees of Government and one nominee of the University of Health Sciences. Rule 8 provides for the qualification for the teaching staff and the teacher student ratio as per the standards laid down by University of Health Sciences and Medical or Dental Council

India. Rule 9 empowers a committee constituted by the managing committee to select the staff for appointment in the College. Rule 10 requires the Government to arrange to review the functioning of the college every year or at such other intervals as may be considered necessary and based on such review to issue such directions as may be necessary for the proper functioning or improvement in the functioning of the College. It also gives power to the Government to cancel the permission given to the College in case the management committee fails to comply with the given directions. It further prohibits the transfer of college from one place to another. It provides that the number of admissions shall be limited to the number of seats authorised, and shall not be exceeded without prior approval of the Government and Medical or Dental Council of India. It also prevents the change of ownership and management of the College without prior permission of the Government. Rule 11 enjoins that the fee structure of the College shall be as specified by the Government by an order from time to time. The last rule, viz., Rule 12 provides for admission, and states that admission to the colleges shall be per as the provisions in Section 3-A of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 as amended by the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) (Amendment) Act, 1992 and the Andhra Pradesh Professional Educational Institutions (Regulation of Admission into Under-graduate Professional Courses through Common Entrance Tests) Rules, 1989.

Annexure-I referred to in Rule 3 refers separately to Medical and Dental Colleges and documentary evidence required to be enclosed with the application for the said colleges. In case of Medical College, it requires documentary evidence of (j) owning a minimum of 50 acres of land without encumbrances and buildings for the College/Teaching Hospital/Hostels, etc. OR availability of 50 acres of land and resources of Rs. 5 crores in cash, assets, securities etc., to finance the construction of the required buildings as envisaged by the Medical Council of India and the University of Health Sciences, for maintenance thereof and for additions and alterations thereto according to requirement from time to time, (ii) availability of resources by way of bank balances, securities, liquid assets, etc. for procuring Medical equipment, Laboratory equipment, Library Books, Furniture etc. and their maintenance/replacement, (iii) availability of resources to meet recurring expenditure towards personnel employed, electricity and telephones etc., and (iv) a sketch plan of the site already owned or

- A proposed to be acquired and its location in relation to other land marks in the area for locating the College/Teaching Hospital/Hostels and also rough sketch plan of the buildings already available or proposed to be constructed thereon showing the location of each room/hall with dimensions and the use to which it is proposed to be utilised. In case of Dental College,
- B the Annexure-I refers to (i) the requirement of owning a minimum of 10 acres of land without encumbrances and building for the College/Teaching Hospital/Hostels, etc. OR availability of 10 acres of land and resources of Rs. one crore in cash, assets, securities etc., to finance the construction of required building as envisaged by the Dental Council of India and the University of Health Sciences, for maintenance thereof and for additions
- C and alterations thereto according to requirement from time to time, (ii) availability of resources by way of bank balances, securities, liquid assets, etc. for procuring Medical equipment, Laboratory equipment, Library Books, Furniture etc. and their maintenance/replacement, (iii) availability of resources to meet recurring expenditure towards personnel employed, electricity and telephones etc., and (iv) a sketch plan of the site already
- D owned or proposed to be acquired and its location in relation to other land marks in the area for locating the College/Teaching Hospital/Hostels and also rough sketch plan of the buildings already available or proposed to be constructed thereon showing the location of each room/hall with dimensions and the use to which it is proposed to be put.
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4. A survey of the provisions of the Act relating to the status, powers and functions of the competent authority and of the provisions of the competent authority and of the provisions of the Rules shows that the rules are not, as indeed they cannot be, made to supplant the provisions of the Act but to supplement them and they have to be read as such. In the first

F instance, it has to be remembered that when the provisions of Section 20(1) read as :

- "20. Permission for establishment of educational institution: - (1)
- No private institution shall, after the commencement of this Act,
- G be established except in accordance with the provisions of this Act or the rules made thereunder."

(Emphasis supplied)

- they have to be read with the disjunctive 'or' as adjunctive 'and'. Unless so
- H read, the provisions will be invalid on account of excessive delegation

enabling the Government to make the rules supplant or substitute the provisions of the Act. To save the provisions of Section 20(1) from the said vice, the word 'and' has to be read for the word "or" in the relevant expression in the provisions. Even if we read the word 'or' as it is in the said provision, the expression "or the rules made thereunder" cannot be understood to mean that the Rules so made can be inconsistent, much less contrary, to the provisions of the Act itself. Hence the rules made on any of the subjects authorised by the Act including those made under Section 20, 21 or 99 of the Act have to be read consistent with and as supplementary to, the provisions of the Act on the subjects concerned.

Thus read, it is obvious that in the absence of the competent authority which is to be constituted under the Act and not the Rules, no private educational institution could be established after the commencement of the Act. Hence the reliance place by the State Government on the rules in question to justify the action of inviting applications for granting permission to establish education institutions, is not well-merited. The rules so far as they make provision to invite applications, to prescribe forms in which applications are to be made, to prescribe authority to whom the applications are to be submitted, to appoint an Expert Committee to scrutinise such applications and forward them to the State Government only supplement the provisions of the Act and are not inconsistent with its provisions. But in the absence of the adequacy of financial provision for continued and efficient maintenance of the educational institution prescribed in the competent authority under the Act, the Expert Committee appointed under the Rules cannot scrutinize the said applications nor can the Government grant permission for the establishment of any educational institution. The function of prescribing the adequate financial provision for the said purpose has been assigned by the Act to the competent authority alone which as pointed out earlier, plays a dominant role and has an important say in the matter of establishment, recognition and the control and management of the educational institutions. The legislature has created such authority advisedly since it appears from the scheme of the Act that it intended to established an independent authority for the purpose, free from political and other influences in its day to day functioning. As will appear from the provisions of the Act, the competent authority is to be a permanent body for such area or for such proposes as may be specified in the notification constituting it, for discharging the various functions and exercising the various powers unlike the *ad hoc* Expert

- A Committee under Rule 4 of the Rules which is to be appointed every year for the limited purpose of scrutinising the applications received and for forwarding them to the Government. It is further intriguing that when the power of granting recognition to the educational institutions is entrusted exclusively to the competent authority how in the absence of the competent authority the institutions permitted to be established under the Rules, can validly send up candidates for examination for the relevant courses of study. It is not necessary for us to analyse provisions of the Act and the Rules any further since according to us view of what is pointed out about the whole exercise undertaken by the State Government in the present case for sanctioning the establishment of the educational institutions in the absence of the constitution of the competent authority was invalid from its inception. On this short ground, the writ petitions were entitled to succeed.

- However, since allegations have been made in the writ petitions against the appellant alleging bias in favour of one of the Societies was granted permission to establish a medical and a dental college, it is necessary to refer briefly, to the relevant facts, and the findings of the High Court on the same.

- The Janapriya Educational Academy (the "Academy" for short) is a Society of which, admittedly the appellant's brother is the Secretary and his wife is a Treasurer. The Academy was granted permission to set up both a Medical and a Dental College at Nellore and the allegation is that permission is vitiated by personal *mala fides* of the appellant who was then the Chief Minister. It was based, according to the allegation, on corrupt and dishonest considerations since the appellant himself was associated with the said Academy through his close relations. To this allegation, the reply of the appellant is that it was the Expert Committee appointed under the Rules which had made recommendations granting permission to several other Societies to start educational institutions all over the State and those recommendations were accepted by him in to while granting the permission to the societies. The facts, in this behalf as are summarised in paragraph 15 of the impugned judgment are as follows :

- The Academy was formed on 11th May, 1992 (it must be remembered in this context that the Rules in question were framed on 22.5.1992). Its Secretary, Shri N. Padmanabha Reddy is admittedly the appellant's brother and its Treasurer Smt. N. Rajyalakshmi is the appellant's wife. The

applications for starting the Medical and Dental Colleges was signed by the brother on behalf of the Academy. It is not disputed that while for Medical College at Nellore there were no other applications, for the Dental College at that place, there was one more application. It is further not disputed that although the applications scrutinised by the Expert Committee went to the appellant as Chief Minister through the Minister of Health, it was the appellant's approval as per the A.P. Government Business Rules which gave finality to the decision to grant permission to establish the colleges in question. Even otherwise, Rule 7 of the said Rules of Business makes the entire Council or Minister collectively responsible for all executive orders whether such orders are authorised by an individual Minister on a matter pertaining to his portfolio or as a result of discussion at a meeting of the Council or otherwise. The further facts in this behalf are that Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, was amended by introducing Section 3A therein which came into force on 15.4.1992. The said Section reads as follows :—

"3A. Notwithstanding anything contained in section 3 but subject to such rules as may be made in this behalf and the Andhra Pradesh Educational Institutions (Regulation of Admission) Order, 1974, it shall be lawful for the management of any unaided private engineering college, medical college, dental college and such other class of unaided educational institutions as may be notified by the Government in this behalf to admit students into such colleges or educational institutions, to the extent to one half of the total number of seats from among those who have qualified in the common entrance test or in the qualifying examination, as the case may be, referred to in sub-section (1) of section 3 irrespective of the ranking assigned to them in such test or examination and nothing contained in section 5 shall apply to such admissions.

The intention of the amendment was obvious. It was to permit the managements to admit students irrespective of their ranking in the entrance examination and to enable them to collect capitation fee, i.e., fee in excess of that permitted to be levied by the Government under Section 7 of that Act. It is thereafter that most of the Societies which filed applications were registered. As stated earlier, the Academy was registered only on 11th May, 1992. The Rules in question were framed on 22nd May,

- A 1992 as pointed out above. The Government issued notifications on 25th May, 1992 and 28th May, 1992 inviting applications for permission to establish Medical, Dental and Engineering Colleges. Last date for submission of applications was 8th June, 1992, i.e., a margin of barely 15 days. The Expert Committee was constituted on 6th June, 1992. The Rules required the applicants for permission to establish Medical Colleges to have 50 acres of land without encumbrances and buildings for the College/teaching hospital/hostels etc. or 50 acres of land and resources worth Rs. 5 crores in cash, assets, securities etc. The land and the resources with the applicants for dental colleges were expected to be of the order of 10 acres and Rs. 1 crores respectively. All this had to be fulfilled before 8th June, 1992. On 17th June 1992 the Government took a decision that Government land wherever available would be allotted to applicants at the prevailing market price for establishment of Medical/Dental Colleges. The members of the Expert Committee appointed under the Rules conducted spot inspection of the land and other facilities offered by the applicants from 18th June, 1992. The Committee formulated its guidelines on 28th June, 1992 and submitted its report on 26th July, 1992. On the same day, the Health Minister saw and signed the file without expressing any opinion one way or the other. The Chief Minister, i.e., the appellant approved paragraph 5 of the file on 27th July, 1992 which contained the names of 20 grantees for permission to open 12 Medical and 8 Dental Colleges. The note in the file does not indicate that except the report of the Committee there was any other material and it is not disputed that the Government accepted the report of the Committee *in toto*. The High Court has further recorded that the report which the Health Minister and the appellant as Chief Minister saw purported to be a summary of the conclusions arrived at by the Expert Committee.
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The High Court has then pointed out discrepancies between the spot inspection reports, the scrutiny of those reports and the final recommendations while referring to the applications of four societies as examples. In case of Rajaraja Narendra Academy of Science and Technology (Respondent 6 to the writ petition) the comment about the enclosures relating to financial liquidity of that Society is as follows :

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- H "The above letter from the Bank is not a substitute for possession of Rs. 4.00 crores worth of liquid assets".

The remarks which were offered on the same comment were as follows : A

"The Society has also not indicated whether it would be using the facilities of the Government Hospital not furnished any undertaking in that respect. B

All other formalities as per Rules have been complied with."

In respect of Indur Medical Educational Society, Nizamabad (Respondent No. 17 in the writ petition) the Committee's comment is as follows : C

"Land 15.00 K.Ms away from Nizamabad town on Bondhan road. Wet land. Sugar Cane cultivation, Road side location."

The remarks in respect of said comments were as follows :

"Very congested and polluted (Foul smell during sugarcane crushing season). Temporary facilities in other educational institutions." D

In respect of Madugula Karistha Reddy Memorial Education Society (Respondent No. 10 in the writ petition), the following comment appears:

"This is no substitute for a Bank Guarantee for Rs. 4.00 crores guaranteeing due performance of the commitment by the Society. E

All other documents as required by Rules (Gazette Notification) have been furnished"

In respect of land, the comment is as follows : F

"The land has got access to the main road but the ownership is disputed and has to be carefully verified."

As regards Sidhartha Academy of General and Technical Education (Respondent No. 21 in the writ petition), it is stated that the land is not ideally situated to locate Dental College or institution. Further comments are as follows : G

"The above enclosures appear to have been furnished in lieu of the Rs. 80.00 lakhs requirement. This Cannot be accepted." H

- A (3) Sale Deeds (Registered) in respect of 10 Acres - 48 Cents of land.

The remark is as follows :

- B "The requirement of liquid assets to the tune of Rs. 80.00 lakhs has not been properly met."

It has to be remembered that all these institutions have been granted permission to establish colleges.

- C The High Court after quoting these instances has stated that they have selected those instances only as sample examples of the other irreconcilable discrepancies between the spot inspection reports, the alleged summary of such reports and the conclusions based thereon which alone were forwarded to the State Government. In other words, the Committee's entire report was not forwarded for the State Government.

- D The High Court has also pointed out that it is not correct to say that there was only the Academy which had applied for a Dental College although it may be true with regard to its application for Medical College. There was another institution called Nellore Education Foundation which had applied for establishment of a Dental College at Nellore. That Society had produced bank deposit receipts of US \$2 lakhs and Rs. 1.60 lakhs in Indian currency. It had also offered 10 acres of land in Nellore with agreements of sale to support their claim that they were in possession of the necessary land. The sponsors and members of the Society were highly qualified non-resident Indians including post-graduates in Medicines. The application was supported by sufficient financial liquidity. The Committee had not made either in its report or in the summary of its conclusions even a mention of the Society or of any inspection of the land or other facilities which the Society had offered. No reason further was given by the Committee why the Society's application was not considered at all. The High Court has, therefore, concluded that the Expert Committee had not applied its mind to relevant considerations with any uniformly applicable standards nor did it discharge its duty in a proper manner with seriousness which the situation demanded. The High Court further found that the inspections were conducted not by the Committee but by individual members on their own separately and independently. In fact, the guidelines were formulated by the Committee on 28th June, 1992. The record also did not
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show that these guidelines for selection and elimination of applicants were seen by the Government. In other words, the Expert Committee set its own standards. Therefore, whether the Committee had while scrutinising and forwarding the applications followed its own guidelines or not was also not scrutinised by the Government. The Committee, however, did not refer to these guidelines in its report anywhere. There were also no proceedings of the Committee in the files which were given to the High Court to show that they had collectively deliberated to arrive at their final report and recommendations. The High Court, therefore, faulted the entire proceedings and the submission of the report of the Committee. A B

At the same time, the High Court had also observed as follows : C

"..... We are unable to accept this highly technical plea, once we find that the impugned act amounted to mischievous executive action as in *Chatanya Kumar*."

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"..... We do not propose to enter this controversial region for the reason that we are not basing our decision on any allegations of *mala fides*. We have made the position clear even at the commencement of the judgment."

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"..... Suffice it for us to say that there is considerable force in the submission of counsel for petitioners that the report produced earlier is not an exact reproduction of what is now claimed to be the original which the Advocate General has produced later. We do not, however, propose to rest our conclusions on this aspect alone. We will revert to this later." F

Ultimately, the High Court has drawn the following conclusions in the writ petitions which are the subject matter of the present appeals : G

"We are of the opinion that the Government abdicated its jurisdiction as the competent authority to grant or refuse permission to establish educational institutions under Sections 20 and 21 of A.P. Education Act, 1982 read with Rule 4 of the 1992 Rules. Professedly, it looked on in careless abandon, perhaps even en- H

- A encouraged the Committee to arrogate the power and jurisdiction which the statute and the Rules confided only in the Government. On the pleadings, the Government reduced itself into a signing machine and issued the 20 orders impugned in these writ petitions only because the Committee had selected the applicants. Obviously,
- B it did not consider the applications in exercise of its statutory duty. Those orders are evidently invalid and are liable to be set aside."

We are not concerned in these appeals with the part of the impugned judgment which deals with the other writ petitions.

- C We have already pointed out that in the absence of the constitution of the competent authority as defined under Section 2 (12) of the Act no permission could have been given under the Act to establish any educational institution. Even the attempt made by the Government by framing
- D the Rules in question to grant permission to the respective Societies to establish medical and dental colleges reeks with so many illegalities and irregularities as pointed out by the High Court, that one cannot but come to the conclusion that the whole exercise assumes a dubious nature. To mention only a few of the factors which spell out a pre-determined approach on the part of the Government to sanction colleges to the grantee-
- E Societies, they are: (1) the establishment of the grantee-Societies only a few days before the framing of the Rules indicating the prior knowledge on the part of the said societies of the framing of the Rules indicating the prior knowledge on the part of the said societies, of the proposed framing of the rules, (2) invitation of the applications within a few days of the framing of
- F the Rules and leaving a margin of not more than 15 days for making the applications, (3) the casual and make-believe manner in which the Expert Committee made the spot inspection of the details given by the applicant-
- G Societies in their applications, (4) the want of any record to show that any collective mind was applied for making the report and the recommendations on the basis of the spot inspection which was evidently done by individual members of the Committee independently, (5) the absence of any material to show that the inadequacies pointed out even in such spot inspections were ever remedied, (6) the absence of material to show that the guidelines which were formulated by the Committee and not referred to in the report, were followed by it and were ever seen by the Government,
- H (7) the absence of any material to show that the Government, whether the

Minister for Health or the appellant as the Chief Minister had applied his mind to the entire report and examined whether the recommendations made by the Committee were in conformity with the guidelines formulated by the Committee itself, and (8) the non-consideration by the Committee of another Society which had applied for Dental College at Nellore. As the head to the Council of Minister and as the final authority who sanctioned the colleges to the respective societies, the appellant cannot escape the attribution of the said approach.

We are, therefore, satisfied that the impugned order of the High Court invalidating the sanction given for the establishment of the Colleges in question is both proper and valid and needs no interference. The appeals are, therefore, dismissed with costs.

S.M.

Appeals dismissed