

PETITIONER:
THAPAR INSTITUTE OF ENGINEERING AND TECHNOLOGY PATIALA TECHN

Vs.

RESPONDENT:
STATE OF PUNJAB & ANR. MAHARSHI DAYANAND UNIVERSITY

DATE OF JUDGMENT: 11/12/1996

BENCH:
KULDIP SINGH, S.C. AGRAWAL, B.P. JEEVAN REDDY

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NO.15577 OF 1996
(arising out of S.L.P. (C) No. 10224 of 1995)

WITH
WRIT PETITION (CIVIL) NO. 507 OF 1995

WITH
CIVIL APPEAL NO. 4101 OF 1995

J U D G M E N T

S.C. AGRAWAL, J. :

Special leave granted in S.L.Ps. (C) Nos. 10132 of 1995 and 10224 of 1995.

These appeals and the writ petition raise common questions relating to reservation of seats for wards of employees in the matter of admission to institutions imparting technical education. The appeals are directed against the judgment of the High Court of Punjab and Haryana dated September 2, 1994. We will first take up the appeals.

Civil Appeal No. 4101 OF 1995 relates to the Technological Institute of Textile and Science at Bhiwani in the State of Haryana (for short 'the T.I.T. & S.'). The T.I.T. & S. is a society registered under the West Bengal Societies Registration Act, 1961. It is running a technical institute which imparts education/training in Textile Technology, Textile Chemistry, Computer Science and Management Science leading to the award of B. Tech/M. Tech./M.M.S. Degrees. The T.I.T. & S. is affiliated to the Maharshi Dayanand University, Rohtak (hereinafter referred to as 'the respondent-University'). The T.I.T. & S. also owns and runs a textile mill under the same roof employing about 1500 workers wherein the students receive practical training under the actual mill working conditions. The normal intake in the B. Tech. Course of the T.I.T. & S. is 90 students each year and admission to these 90 seats is made according to merit on the basis of a competitive entrance test conducted by the respondent-University. In addition to the aforesaid 90 seats, the T.I.T. & S. has provided four additional seats for the wards of the employees of the appellant-Institute. These seats are available to the wards of only those employees who have put in minimum 10 years service in the T.I.T. & S. Two of these four seats are

available in Computer Science and the other two in Textiles. Out of these four seats two seats are earmarked for college staff and two seats for mill/school staff. As per the rules prescribed for admission effective since academic session 1991-92, in order to be eligible for admission the candidate is required to have at least 60% marks in the aggregate of three subjects (Physics, Chemistry and Maths) at 10+2 examination and admission is to be made on the basis of merit to be earned according to the marks secured in the Entrance Examination conducted by the respondent-University. Seats earmarked for college and mill/school staff can be inter-changed in case there is no eligible candidate in one particular group and if a seat allotted for Computer Course is not desired by the allottee, he shall be offered a seat in the Textile Course and, if any seat remains vacant, the requirement of service period may be relaxed with prior approval of the Chairman of the Society. Normally this facility for wards of the staff is available for one seat for one employee's child but in no case it can be extended to more than two children. The wards of the employees who secure admission on their own merit or on reserved seats of wards are eligible for freeship. The T.I.T. & S. does not receive any financial aid either from the State Government or the Central Government or the respondent-University or any other local authority. By letter dated July 15, 1993, the respondent-University conveyed its decision not to permit the T.I.T. & S. to continue with the reservation of seats for the wards of the staff of the T.I.T. & S. in the B. Tech Course in view of the judgment of this Court in J.P. Unni Krishnan and others v. State of Andhra Pradesh and others, 1993 (1) SCC 645, and the T.I.T. & S. was directed not to make any admission under this category. Feeling aggrieved by the said order of the respondent-University, the T.I.T. & S. filed a Writ Petition (C.W.P. No. 9296 of 1993) in the High Court of Punjab and Haryana which has been dismissed by the impugned judgment of the High Court dated September 2, 1994.

Civil Appeals arising out of S.L.Ps. Nos. 10132 of 1995 and 10224 of 1995 relate to the Thapar Institute of Engineering & Technology, Patiala (for short 'the T.I.E.T.') and the Thapar Polytechnic which have been established and are being run by the Patiala Technical Education Trust. As per declaration of the Central Government dated December 30, 1985 under Section 3 of the university Grants Commission Act, 1956, the T.I.E.T. is deemed to be a university for the purpose of the said Act. The T.I.E.T. imparts education at the Graduate and Post-Graduate level. At the under-graduate level it awards degree in Bachelor of Engineering and at the post-graduate level it awards the degree in Master of Engineering. In the T.I.E.T. there are 180 seats in various courses for award of degree in Bachelor of Engineering 2% seats are reserved for the children of employees of the T.I.E.T. and the Patiala Technical Education Trust and 5% seats are reserved for the children of employees of Thapar Group of Companies. The candidates for these seats are to be sponsored by the Patiala Technical Education trust. The T.I.E.T. receives maintenance grants for running expenses from the Government of Punjab. The Thapar Polytechnic conducts three year courses. Admission to these courses is made on the basis of merit to be determined in Joint Competitive Entrance Test conducted by the Punjab Government through Punjab School Education Board. Provision is, however, made for reservation of 2% seats for wards of employees of the T.I.E.T. and the Thapar Polytechnic to be nominated by the Patiala Technical Education Trust. The

nomination is made on the basis of relative merits of candidates but the nominated candidates are not required to appear in the Common Entrance Test. The Polytechnic receives grant for running expenses from the State Government. The Government of Punjab, by its letter dated September 16, 1991 addressed to the Director of Technical Education and Industrial Training, Punjab, communicated that in view of the pronouncement of the High Court of Punjab and Haryana that reservations in admission are discriminatory and unconstitutional, reservation in admission for wards of employees working in the Department/Institutions cannot be justified on the plea that it is done as a measure of welfare and that the Government had decided that with effect from the academic session 1991-92 onwards there shall be no reservation in admissions for wards of employees of Department/Institutions and that such reservations, wherever stipulated in (a) Diploma level courses in Government/Private aided/Private unaided Institutions affiliated with the State Board of Technical Education, and (b) Certificate level courses in all such like Institutions under the purview of the Industrial Training wing of the said Department, shall stand cancelled with immediate effect. As regards Degree level courses in such like Institutions, falling within the purview of the said Department and affiliated with State Board of Technical Education, it was directed that since admission had already been finalised for the academic session 1991-92, the decision would be applicable in their case with effect from the next academic year, i.e., 1992-93. The T.I.E.T. filed a Writ Petition (Writ Petition No. 1745 of 1992) in the High Court and another Writ Petition (Writ Petition No. 1744 of 1992) was filed by the Patiala Technical Education Trust assailing the said order of the Government of Punjab dated September 16, 1991. Both these Writ Petitions have been dismissed by the impugned judgment of the High Court dated September 2, 1994.

The High Court has held that in view of the decision of this Court in J.P. Unni Krishnan & Ors. (supra) no quota can be reserved for the management or for any family, caste or community which may have established the college. The High Court has rejected the contention that J.P. Unni Krishnan (supra) was not applicable. The High Court has also placed reliance on the decisions of this Court State of Gujarat v. Meghji Pethraj Shah Charitable Trust & Ors., 1994 (3) SCC 552, and Chairman/Directed, Combined Entrance Examination (CEE) 1990 v. Osiris Das & Ors., 1992 (3) SCC 543, and has held that the orders impugned in the writ petitions do not suffer from any illegality or unconstitutionality.

In the context of admission to an institution imparting higher education in professional courses a question has often arisen whether the State can make provision giving preferential treatment to candidates seeking admission to the institution. In dealing with this question the approach of this Court has been that such preferential treatment must be consistent with the mandate of Article 14 of the Constitution guaranteeing equality of opportunity and that though reasonable classification is permissible, such classification must have a reasonable nexus with object of the rules providing such admission, namely, to select the most meritorious amongst the candidates to have advantage of such education. Applying this test this Court has struck down, as violative of Article 14 of the Constitution, provision for allotment of seats in medical college in the State amongst the various districts in the State in the ratio of the population of each district to the total

population of the State. [See ; Minor P. Rajendran v. State of Madras & Ors., 1968 (2) SCR 786]. Similar provision for distribution of seats on unit basis was also struck down. [See : A. Peeriakaruppan, Etc. v. State of Tamil Nadu & Ors., 1971 (2) SCR 430]. University wise distribution of seats has, however, been upheld on the ground that the universities are set up for satisfying the educational needs of different areas where they are set up and those attached to such universities have their ambitions to have training in specialised subjects like medicine satisfied through colleges attached to their own universities. [See : D.N. Chanchala v. State of Mysore & Ors., Etc., 1971 Supp. SCR 608]. It has been laid down that university wise preferential treatment may be consistent with the rule of equality of opportunity where it is calculated to correct an imbalance or handicap and permit equality in the larger sense. [See : Jagdish Saran & Ors. v. Union of India & Ors., 1980 (2) SCR 831, at p. 849]

The Court has insisted that while nominating candidates for admission the concerned authority should follow the criterion of merit and has viewed with disfavour the conferment of discretion in this regard on the founder of the institution or the person/persons in management of the institution. In Suman Gupta & Ors., Etc. v. State of J & K & Ors., 1983 (3) SCR 985, there was an arrangement among some of the States under which a certain percentage of the seats in Medical Colleges was reserved for candidates from other States on a reciprocal basis. The nominations made by the State Governments against these seats were challenged on the ground that the same were made by the State Governments in their absolute and arbitrary discretion. It was held that the principle adopted by the State Governments of nominating candidates in their absolute and unfettered choice to seats in medical colleges outside the State was invalid being violative of Article 14 of the Constitution. The Court directed the Medical Council of India to formulate a proper constitutional basis for determining the selection of candidates for nomination to seats in Medical Colleges outside the State and that until a policy is so formulated and concrete criteria are embodied in the procedure selected, the nominations shall be made by selecting candidates strictly on the basis of merit, the candidate nominated being those, in order of merit, immediately below the candidates selected for admission to the Medical Colleges of the home States. Similarly, in K. Sujatha v. Marathawada University & Ors., 1995 Supp. (1) SCC 155, admission to 20% of the seats was at the discretion of the management of the Medical College. It was argued that these seats were not the open merit seats. Rejecting the said contention, it was held that there cannot be different eligibility rules for candidates admitted from different sources.

In J.P. Unni Krishnan (supra) a Constitution Bench of this Court was dealing with admission to private unaided/aided recognised/affiliated educational institutions conducting professional courses such as medical, engineering courses etc. and charging of the capitation fees by the management of the institution for the purpose of admission. As regards aided institutions it was held that they have to abide by the rules and regulations as may be framed by the Government and/or recognising/affiliating authorities in the matter of recruitment of teachers and staff, their conditions of service, syllabus, standard of teaching and so on and, in particular, in the matter of admission of students, they have to follow the rule of merit and merit

alone subject to any reservation made under Article 15 and they shall not be entitled to charge any fees higher than what is charged in Governmental institutions for similar courses [p. 749]. As regards unaided institutions which are recognised/affiliated it was held that it may not be insisted that the private educational institution shall charge only that fee as is charged for similar courses in governmental institutions and that private educational institutions are entitled to charge a higher fee not exceeding the ceiling fixed in that behalf since they have to meet the cost of imparting education on their own resources and the main source apart from donations/charities, if any, can only be the fees collected from the students. At the same time, it was laid down :-

"No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory - in the interest of general public - upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of student. Since the recognizing/affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. Affiliation/recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or University is justified or is entitled to grant recognition/affiliation without imposing such conditions. Doing so would amount to abdicating its obligations enjoined upon it by Part III; its activity is bound to be characterised as unconstitutional and illegal. To reiterate, what applies to the main activity applies equally to supplemental activity. The State cannot claim immunity from the obligations arising from Articles 14 and 15. If so, it cannot confer such immunity upon its affiliates."

[p. 755]

In J.P. Unni Krishnan (supra) this Court has evolved a Scheme which every authority granting recognition/affiliation shall impose upon the institutions seeking such recognition/affiliation. It has been observed

that the idea behind the Scheme is to eliminate discretion in the management altogether in the matter of admission because it is the discretion in the matter of admission that is at the root of the several ills complained of. The Scheme is in the nature of guidelines which the appropriate Governments and recognising and affiliating authorities are required to impose and implement in addition to such other conditions and stipulations as they may think appropriate as conditions for grant of permission, grant of recognition or grant of affiliation, as the case may be. The Scheme postulates that at least 50% of the seats in every professional college shall be filled by the nominees of the Government or University, as the case may be, and the students for these seats shall be selected on the basis of merit determined on the basis of a common entrance examination where it is held or in the absence of an entrance examination, by such criteria as may be determined by the competent authority or the appropriate authority, as the case may be. The remaining 50% seats shall be filled by those candidates who are prepared to pay the fee prescribed therefor and who have complied with the instructions regarding deposit and furnishing the case security/Bank guarantee for the balance of the amount. As regards 'payment seats' it has been prescribed :-

"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. There shall be no quota reserved for the management or for any family, caste or community which may have established such college."

[p. 758]

The aforesaid requirement in the Scheme evolved by this Court in J.P. Unni Krishnan (supra) that the admission to professional colleges shall be made on the basis of merit gives effect to the law laid down by this Court that admission in professional colleges must be made on the basis of merit so as to secure the best possible talent.

In the State of Gujarat & Ors. v. Meghji Pethraj Shah Charitable Trust & Ors. (supra), the M.P. Shah Medical College was established in Jamnagar in 1954 by the then State of Saurashtra and Shri M.P. Shah had donated Rs. 15 lakhs for establishing the college. Initially the College had 60 seats and as per the arrangement between Shri M.P. Shah and the then Chief minister of the State, Shri Shah was entitled to nominate students for admission to the extent of 10% of the total strength admitted every year and this arrangement was to continue on a permanent basis. In course of time, the annual intake of students in the college rose to 175 and in 1964 the Government of Gujarat decided to reserve 12 seats for nominees of the donor and in the meanwhile Shri Shah had designated the M.P. Shah Charitable Trust as his nominee. After the decision in J.P. Unni Krishnan (supra), the Government of Gujarat resolved to discontinue the 12 donor seats in the M.P. Shah Medical College. The Trust filed a writ petition in the Gujarat High Court challenging the validity of the said resolution of the Government of Gujarat which was allowed. The said decision of the High Court was reversed by this Court and the resolution of the Government of Gujarat was upheld. It was observed :-

"Now, where an individual or an organisation which establishes and runs a medical college (recognised

by State or affiliated to a university) is not entitled, according to Unnikrishnan to admit students on its own, or in its discretion, it is inconceivable that a person or a body which has assisted in setting up of a government medical college would be permitted to have a quota of its own to which it can nominate students of its own choice. There is no room for such an arrangement in law."

[. 566]

Shri Kapil Sibal, the learned senior counsel appearing for the T.I.T. & S. in Civil Appeal No. 4101 of 1995, has urged that it is permissible to make reservation for the wards of the employees in the institution for the purpose of admission to the institution since the T.I.T. & S. is an unaided institution. He has placed reliance on the following observations of this Court in *Chitra Ghosh & Another v. Union of India and Others*, 1970 (1) SCR 413, :-

"It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentiality is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification."

[pp. 418, 419]

The said contention of the learned counsel and his reliance on the observations in *Chitra Ghosh (supra)* proceed on a misapprehension about the correct position. In the cases in hand, we are not required to consider the validity of grant of preferential treatment to the wards of employees in the institution in the matter of admission by the State, as defined in Article 12 of the Constitution. It is a converse case. Here the State, viz., The Maharashtra Dayanand University, has directed the T.I.T. & S. not to give such preferential treatment and the validity of the said direction is being challenged by the institution. In giving the impugned direction the respondent-University is only giving effect to the law laid down by this Court in *J.P. Unni Krishnan (supra)* regarding admission to unaided educational institutions. Since the T.I.T. & S. is affiliated with it the respondent-University as the

affiliating authority is bound to ensure that in the matter of admission to the institution there is no violation of the right to equality of opportunity guaranteed under Article 14 of the Constitution.

In Chitra Ghosh (supra) this Court was dealing with validity of reservation of certain number of seats in a medical college run by the Central Government for candidates falling in specified categories and admission was to be made against those seats on the basis of nomination by the Central Government. The admission of the students on the basis of nomination by the Central Government was challenged on the ground that these students had obtained less percentage of marks than the appellants in that case and reliance was placed on the judgment of the Full Bench of the Patna High Court in Umesh Ch. Sinha v. V.N. Singh, Principal, P.M.C. & Hospital & Ors., ILR 46 Patna 616, where preferential treatment had been given to the employees of the Patna University in the matter of admission to the Patna Medical College and the High Court had held that there was no reasonable nexus between the principle governing admission to the college on the one hand and the precunniary difficulties or the meritorious services rendered by the employees of the Patna University on the other and that preferential treatment to the children of these employees would amount to favouritism and patronage. Distinguishing the said decision of the Patna High Court, this Court has said :-

"There is no question of any preferential treatment being accorded to any particular category or class of persons desirous of receiving medical education in the present case. The mere fact that the Central Government has to make the nominations with regard to the reserved seats cannot be considered to be preferential treatment of any kind. As the candidates for the reserved seats have to be drawn from different sources it would be difficult to have uniformity in the matter of selection from amongst them. The High Court was right in saying that the standards of the examinations passed by them, the subjects studied by them and the educational back-ground of each of them would be different and divergent and therefore the Central Government was the appropriate authority which could make a proper selection out of those categories. Moreover, this is being done with the tacit approval and consent of the Medical Course Admission Committee."

[pp. 419, 420]

The question whether reservation in the matter of admission is permissible forwards of employees of the institution was considered by this Court in Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das & Ors. (supra). It relates to the G.B. Pant University, which is aided and financed by the Government of U.P. The Government of U.P. had issued a notification directing that admission of the students to the various

Engineering Institutions in the State shall be made in order of merit and through a Combined Entrance Examination to be conducted by an Admission Committee. The G.B. Pant University made provision for reserving 5% seats over and above the sanctioned strength of seats for sons and wards of the employees of the University for admission to the B. Tech course. The State Government insisted that any such reservation was not justified and would be contrary to constitutional provisions. The University accepted the said directions issued by the State Government and decided to do away with the reservation. In writ petitions filed by the students who failed to qualify for admission in the general category of candidates and were claiming admission against the reserved quota, interim orders were passed by the Allahabad High Court for giving provisional admission. Setting aside the said orders of the High Court, this Court has held :-

"There is no dispute that the G.B. Pant University is aided and financed by the State Government and the University is an instrumentality of the State. Any instrumentality of the State cannot give preferential treatment to a class of persons without there being any justification for the same. The reservation of seats for admission to the B. Tech course in favour of the sons and wards of the employees of the University is violative of the doctrine of equality enshrined under Article 14 of the Constitution. There is no rational for the reservation of the seats in favour of the sons and wards of the employees of the University nor any such reservation has any rational nexus with the object which is sought to be achieved by the University. The State Government, in our opinion, rightly insisted on the University to do away with the reservations in favour of the sons and wards of the employees."

[pp. 545, 546]

In so far as Civil Appeal No. 4101 of 1995 is concerned, the letter of respondent-University dated January 15, 1993 directing the T.I.T. & S. not to continue with the reservation of seats for wards of the staff of the T.I.T. & S. in the B. Tech. Court was taken in pursuance of the decision of this Court in J.P. Unni Krishnan (supra) and is in consonance with the law laid down in Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das & Ors. (supra) since the T.I.T. & S. is affiliated to the respondent-University. It is no doubt true that the four additional seats for which reservation was made for the wards of the college and mill/school staff of the T.I.T. & S. are in addition to 90 seats and admission is made on the basis of marks obtained in the Entrance Examination conducted by the respondent-University. But for the purpose of admission to these four seats a separate merit list is drawn in respect of the candidates who are eligible for these seats and admission is not made according to merit as reflected in the common merit list. Such reservation in

favour of wards of the college and mill/school staff of the T.I.T. & S. does not satisfy the test of admission being given strictly on the basis of merit as laid down by this Court and has been rightly held to be impressible by the High Court. The said appeal is, therefore, liable to be dismissed.

In Civil Appeal arising out of S.L.P. (Civil) No. 10132 of 1995 there was reservation to the extent of 2% of seats for wards of the employees of the T.I.E.T. and the Patiala Technical Education Trust and there was reservation to the extent of 5% of seats for wards of the employees of the Thapar group of industries. In Civil Appeal arising out of S.L.P. (Civil) No. 10224 of 1995, there was reservation to the extent of 2% of seats for wards of employees in the Thapar Polytechnic and the Patiala Technical Education Trust. The T.I.E.T. and the Thapar Polytechnic receive maintenance grants from the Government of Punjab and are Government aided educational institutions. It is no doubt true that the T.I.E.T. has been declared to be a "deemed university" by the Central Government under the provisions of the University Grants Commission Act, 1956. But this does not mean that it is permissible for the T.I.E.T. to depart from the principle laid down by this Court that admission should be made strictly on the basis of merit. The position of the T.I.E.T., a deemed University, cannot be better than that of the G.B. Pant University which is a full fledged University and in view of the decision of this Court in Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das & Ors. (supra) it must be held that it was not permissible for the T.I.E.T. to reserve 2% of the seats for the wards of the employees of the T.I.E.T. and the Patiala Technical Education Trust and 5% of seats for the children of employees in the Thapar group of industries. The reservation of 2% of seats in the Thapar Polytechnic for wards of employees in the Thapar Polytechnic and the Patiala Technical Education Trust was also impressible in view of the law laid down by this Court in J.P. Unni Krishnan (supra) and Chairman/Director, Combined Entrance Examination (CEE) 1990 v. Osiris Das & Ors. (supra). The directions contained in letter of the Government of Punjab dated September 16, 1991, being in consonance with the said decisions, have been rightly upheld by the High Court and both the appeals are, therefore, liable to be dismissed.

Writ Petition No. 507 of 1995 has been jointly filed by the T.I.E.T. and the Patiala Technical Education Trust under Article 32 of the Constitution for quashing Memo dated June 6, 1995 addressed by the Director, Technical Education and Industrial Training, Punjab (Technical Education Wing) to the Co-ordinator, Punjabi University, Punjab and a copy is endorsed to the Director of the T.I.E.T. In the said Memo dated June 6, 1995, issued by the Director of Technical Education and Industrial Training, Punjab, to the Punjabi University, Patiala, it is stated that reservation proposed by the T.I.E.T. in respect of 10 seats under paragraph 3(d) of the Brochure-cum-Application form for admission on CET - 1995 providing for 10 seats for Thapar Organisation is not legally sustainable and should not be reflected in the Admission Brochure and reference has been made to the judgment in J.P. Unni Krishnan (supra). The said Memo is challenged in the writ petition on the ground that the T.I.E.T. is a "deemed university" under the University Grants Commission Act and that the decision in J.P. Unni Krishnan (supra) has no application to university employees. While dealing with Civil Appeal arising out of S.L.P. (Civil) No. 10132 of 1995, we have considered this

submission and have held that the such reservation of seats in the T.I.E.T. is not permissible. For the same reasons, it must be held that the direction contained in the Memo dated June 6, 1995 does not suffer from any infirmity and the Writ Petition is also liable to be dismissed.

In the result, the Civil Appeals as well as the Writ Petition are dismissed. But in the circumstances, there is no order as to costs.

JUDIS