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W.P(C)No. 350 OF 1993  
ITEM No.1

Court No. 4

SECTION X  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

IA No.34-35 In  
Writ Petition(Civil) No.350/1993

ISLAMIC ACADEMY OF EDUCATION & ANR.

Petitioner (s)

VERSUS

STATE OF KARNATAKA & ORS.

Respondent (s)

(for clarification/modification of Court's order dated 14.8.03 and office report)

Date : 9/08/2004 These Petitions were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL  
HON'BLE MR. JUSTICE ARUN KUMAR

For Petitioner (s) Mr. H.N.Salve, Sr. Adv.

Mr. Bharat Sangal, Adv. (NP)

In SLP 11244/04 Ms. Mohini Bhat, Adv.

Mr. Naveen R. Nath, Adv.

Ms. Hetu Arora, Adv.

Ms. Anitha Shenoy, Adv.

For Respondent (s)

Mr. Sanjay R. Hegde, Adv.

Mr. Bhavanishankar V. Godnis, Adv.

Mr. Shiv Kumar Suri, Adv.

Ms. Smita Inna, Adv.

Ms. A. Subhashini, Adv. (for State of Goa)

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Mr. Maninder Singh, Adv.

Mrs. Pratibha M. Singh, Adv.

Mr. Angad Mirdha, Adv.

Mr. Kiritman Singh, Adv.

Mrs. D. Bharathi Reddy, Adv. (for State of A.P.)

Mr. B. Vikas, Adv.

Mr. A. Mariarputham, Adv. for

M/s Arputham, Aruna & Co., Advs.

Mr. Jasbir Singh Mallick, Adv. for

Ms. Kamakshi S. Mehlwal, Adv.

Mr. H.N. Salve, Sr. Adv.

Mr. K.K. Venugopal, Sr. Adv.

Mr. S.U.K. Sagar, Adv.

Ms. Bina Madhavan, Adv.

Mr. Shashikiran Shetty, Adv.

Mr. Avinash Avhad, Adv.

Ms. Divya Nayar, Adv.

Ms. Pooja Nanekar,adv.for  
M/s. Lawyer's Knit & Co.Advs.

Mr. Ejaz Maqbool,Adv.

Mr. Anil Kumar Tandale,Adv.

Mr. S.N. Bhat,Adv.

M/s. P.H.Parekh & Co.Advs.  
Mr. D.P.Mohanty,Adv.

Mr. Mukesh K.Giri,Adv.

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Mr. D.Mahesh Babu,Adv.

Mr. R.K.Adsure,Adv.

Mr. G.Ramakrishna Prasad,Adv.

Ms. A.Subhashini,Adv.

Ms. S.Wasim Qadri,Adv.  
Mrs. Anil Katiyar,adv.

Mr. T.V.Ratnam,Adv.

Mrs. M.Qamaruddin,Adv.

UPON hearing counsel the Court made the following

O R D E R

The applicants have sought clarification of the judgment dated 14.8.2003 passed in the matter of Islamic Academy of Education and Anr. vs. State of Karnataka & Ors. which has since been reported in 2003 (6) SCC 697. The clarification which has been sought in this application pertains to the right of the management of private unaided colleges to admit NRI/foreign students upto 15% of the seats reserved for the management quota and to allow them to have a separate system of judging the merit of such students and to have fees fixed as far as the students we re concerned.

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The State respondents have opposed the application on the ground that Committee which was set up pursuant to the decision of this Court in Islamic Academy of Education (supra) had not been made party to these proceedings. It is further submitted that any order on this application might involve a modification of the decision of the five Judge Bench and this court should not therefore entertain the application. The third submission is that since the main application had been disposed of on 18th December, 2003, there was no scope of filing any interim application at this stage. Reliance has also been placed on the decision of this Court in State of U.P. vs. Braham Dutt Sharma reported in 1987 (2) SCC 179 paragraph 10.

Learned counsel appearing on behalf of the applicants has pointed out that the Committee was not functioning as the retired High Court judge who had been appointed to head the Committee had resigned. It is also pointed out that the applicant was not a party to the decision in Islamic Academy Education and therefore entitled to file an application for clarification of that judgment.

Prima facie, we are of the view that it is not necessary to make the committee a party to this application

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because it is supposed to function in a quasi judicial capacity. Furthermore , it is conceded by the learned counsel appearing on behalf of the State that the Committee has in fact not taken any decision on the issues which have been raised by the applicant today before us. We are also prima facie of the view that an application for clarification of the decision of this court may be entertained and the principle enunciated in 1987(2) SCC 179 does not apply. Learned counsel for the State could not point out whether the Islamic Academy of Education decision in terms refers to the right of the management to induct students in the management quota from NRI students.

As to what could be the ultimate clarification which this Court may give on this application would necessarily have to be decided by a larger Bench to which similar applications have already been referred. However, there is nothing in law to stop this court nor is it disempowered from passing an order granting interim relief. Since the academic session concerned is the session 2004-2005 which has already commenced and keeping in view the fact that there is a time frame which has been prescribed by the Medical Council of India for holding admission in the medical colleges, we are of the view that

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question of interim relief has become imperative and does not brook delay. Having regard to the circumstances of the case and considering that even the restrictions imposed by the decision of this Court in Unnikrishnann vs. State of A.P. and Ors. (1993 (4) SCC 645 (which have been held to be undue restrictions in the decision in TMA Pai Foundation vs. State of Karnataka (2002 (8) SCC 481)) had allowed the admission of NRI students against the management quota, we pass an interim order allowing the applicants to admit NRI students against its quota as prayed for.

Let this application be placed alongwith other applications which have been directed to be placed before the CJI for clarification of the decision of this court in Islamic Academy of Education (supra).

[SUMAN WADHWA][MADHU SAXENA)  
COURT MASTER COURT MASTER