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W.P(C)No. 350 OF 1993
ITEM NO. 37
COURT No.2

SECTION X

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

I.A. NOS. 23-24 IN
WRIT PETITION @ NO. 350/1993

Islamic Academy of Education & Anr.

Petitioner(s)

Versus

State of Karnataka & Ors.

Respondent(s)

(For impleadment and directions)

DATE : 05/12/2003 This/These matter/matters was/were
called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU

HON'BLE MR. JUSTICE G.P. MATHUR

For Petitioner(s)Mr. Bharat Sangal, Adv.

For Respondent(s) Mr. Sanjay R Hegde, Adv.
Mr. Anik K Mishra, adv.

M/s Arputham Aruna & Co.(NP)

Mr. PH Parekh, Adv.
Mr. E.R. Kumar, Adv.
Mr. Rohit Alex, Adv.
Mr. Sanand Ramakrishnan, Adv.
for M/s P.H. Parekh & co.

Mr. Ejaz Maqbool, Adv.

Mr. Ravindra K Adsure, Adv.
Mr. Mukesh K Giri, Adv.

Mr. Harish N Salve, Sr. Adv.
Mr. Ranjit Kumar, Sr. Adv.
Mr. R Santhan Krishnan, Adv.
Mr. D Mahesh Babu, adv.

For UOIMr. K.C. Kaushik, Adv.
Mr. S Wasim A Qadri, Adv.
Mr. D.S. Mahra, Adv.
Mrs. Anil Katiyar, Adv.

For M/O HRDMr. S Wasim A Qadri, Adv.Ms. Anil Katiyar, Adv.

Mr. V.R. Reddy, Sr. Adv.

Mrs. K Amareswari, Sr. Adv.

Mr. T.V. Ratnam, Adv.

Mr. K Subba Rao, Adv.

Mr. Jatinder K Bhatia, Adv.

Ms A Subhashini, Adv.

UPON hearing counsel the Court made the following
O R D E R

The applications are allowed in terms of the signed order.

[Charanjeet Kaur]
Court Master

[Om Prakash]
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. Nos. 23-24 IN

WRIT PETITION @ NO. 350 OF 1993

Islamic Academy of Education & Anr.

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Petitioner (s)

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State of Karnataka & Ors.

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Respondent (s)

O R D E R

These applications have been filed pursuant to the directions issued by this Court in Islamic Academy of Education and Anr. vs. State of Karnataka and Ors. - 2003 (6) SCC 697. The contention put forth on behalf of the applicant Aizza college of Engineering and Technology is that total number of seats that have been sanctioned to the college are 270. Out of the said seats 30 per cent are to be filled up by the Convenor of the State out of the successful candidates from the general quota. The number of seats under 30% quota are 81 and out of the said 81 seats the Convenor could allot only 45 students. In the 55 % seats to be filled up by the institution numbering 148, only 32 students belonging to minorities approached and were granted admission. As all the other seats were lying vacant the institution announced availability of seats to all the students and only 53 non minority students came and took admission in the management quota of 55%. There are 63 vacancies still available in the said quota. These seats could not be filled up due to

insistence on admitting only those students who have qualified in EAMCET examination. They have filed an application to fill up these seats out of those students who have not qualified in the EAMCET examination or taken such examination but who are otherwise eligible under the admission rules. Opposing this application Shri V.R. Reddy, learned senior advocate drew our attention to the procedure set out by this Court in the case of Islamic Academy (supra) which is as under :

"That brings us to the question as to how the management of both minority and non-minority professional colleges can admit students in the quota allotted to them. Undoubtedly, the majority

judgment has kept in mind the sad reality that there are a large number of professional colleges which indulge in profiteering and/or charging of capitation fees. It is for this reason that the majority judgment provides that in professional colleges admission must be on the basis of merit. As has been rightly submitted, it is impossible to control profiteering/charging of capitation fees unless it is ensured that admission is on the basis of merit. Also, as has been rightly pointed out, if a student is required to appear at more than one entrance test it would lead to great hardship. The application fees charged by each institute, even though they may be only Rs. 500 to Rs. 1000 for each institute, would impose a heavy burden on the students who will necessarily have to apply to a number of colleges. Further, as has been rightly pointed out, students would have to arrange for transport from and to and stay at various places if they have to appear for individual tests conducted by each college. If a student has to go for test to each institute it is possible that he/she may not be able to reach, in time,

the venue of a test of a particular institute. In our view what is necessary is a practical approach keeping in mind the need for a merit-based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by itself or by the State/University". The words "common entrance test" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice-board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on the basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on the basis of inter se merit amongst those students. The list of students admitted, along with the rank number obtained by the student, the fees collected and all such particulars and details as may be required by the concerned authority or the

Committee must be submitted to them forthwith. The question paper and the answer papers must be preserved for such period as the concerned authority or Committee may indicate. If it is found that any student has been admitted de hors merit, penalty can be imposed on that institute and in appropriate cases recognition/affiliation may also be withdrawn."

and he submitted that this Court has set out as to how the management in professional minority colleges will admit students under the quota allotted to them. It is his submission that only in terms thereof admissions could be made and not contrary to it. It is also submitted that a writ petition filed by the petitioner has been dismissed by the High Court wherein the petitioner had challenged the GO prescribing the mode of selection of students. But that circumstance does not carry the matter any further. In the present case the question is not whether the applicant does not want to follow the G.O. but that even after following the terms and conditions prescribed in the G.O., and in the decision in Islamic Education Society, if the seats are vacant whether the same could be filled up by sources other than what is mentioned therein. If after following the procedure prescribed in the decision of Islamic Education Society and the G.O. if seats are still vacant, we think those seats should not remain unfilled if it is possible to fill up the same, particularly, when there are no students available who have qualified in the EAMCET. Therefore, these applications are allowed enabling the applicant to fill up the vacant seats even if students have not passed the EAMCET examination but who fulfil other conditions of admission. There shall be an order to that effect.

.....J[S. RAJENDRA BABU]

.....J [G.P. MATHUR]

NEW DELHI,
December 5, 2003.

