

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

Petition(s) for Special Leave to Appeal (Civil) No(s).23851/2010

(From the judgement and order dated 09/08/2010 in SCA No. 7570/2009
of The HIGH COURT OF GUJARAT AT AHMEDABAD)

CHARUTAR AROGYA MANDAL Petitioner(s)

VERSUS

STATE OF GUJARAT & ANR. Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned
Judgment and prayer for interim relief and office report)

Date: 15/09/2010 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. K.V. Vishwanathan, Sr. Adv.
Mr. Dhval Dave, Adv.
Mr. Nikhil Goel, Adv.
Mr. Naveen Goel, Adv
Mr. A.Venayagam Balan,Adv.

For Respondent(s) Mr. Shyam Divan, Sr. Adv.
Ms. Hemantika Wahi, Adv.
Ms. Jesal, Adv.

Mr. Gaurav Goel, Adv.
Ms. Garima Parshad, Adv.

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

Leave granted. Heard.

The appeal is disposed of in terms of the signed
order.

(Ravi P. Verma) (M.S. Negi)
Court Master Court Master
[Signed reportable order is placed on the file]

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8077 OF 2010
[Arising out of SLP(C) No.23851/2010]

Charutar Arogya Mandal ... Appellant

Vs.

State of Gujarat & Anr. ... Respondents

O R D E R

R.V.RAVEENDRAN, J.

Leave granted. Heard.

2. The appellant Society runs Pramukh Swami Medical College in the State of Gujarat, which is an unaided college with a sanctioned intake of 100 students for MBBS Course. As per the provisions of the Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 ('Act' for short), 75% of the sanctioned seats in unaided colleges are 'Government Seats' and remaining 25% are 'management seats'. The 25% management quota has two components -- 15% earmarked as NRI seats and 10% as management seats. In this appeal, we are concerned with the filling of the ten percent management seats. The Act requires the said ten percent management seats to be filled by the college management on the basis of inter-se merit list of students to be admitted against the management seats. The Gujarat Professional Medical Educational Courses (Regulation of Admission and Payment of Fees) Rules, 2009 ('Rules' for short) require all the ten percent management seats in all the unaided colleges to be filled by a Consortium (that is, an Association of Unaided Colleges/Institutions formed to facilitate admission to management seats) by adopting a single window system on the basis of inter se merit list of candidates whose names appear in the merit list prepared by the Admission Committee.

3. The appellant decided to allot all its ten percent management seats to deserving meritorious poor students who cannot pursue MBBS Course due to financial constraints. It therefore formulated a scheme for admission of meritorious economically weaker section students whose annual family income was not more than Rs.2 lakhs, and who had secured a

minimum of 80% marks (or 75% marks as decided by the appellant) in the 12th standard Examination in Science Stream and the Gujarat Common Entrance Test (GUJCET). The admissions would be strictly in the order of inter se merit. The selected students are required to pay only a token fee of Rs.5,000/- per annum (as against the normal fee of Rs. four lakhs for management seats fixed by the Fee Regulatory Committee). The balance tuition fee of Rs.3.95 lakhs is given as a 'scholarship', either by the college and/or any philanthropic organization. The students so admitted will be provided free boarding and lodging, free selected books, free dissection sets etc. The students admitted under the scheme will have to give an undertaking that he/she would render remunerated services in rural area for at least three years from the date he/she graduates. The admissions under the said scheme will be subjected to a four level scrutiny including a personal surprise visit to the house of the aspiring student to confirm the annual income of the family of the appellant and to ensure the bonafides of the applicants. The appellant-college adopted and implemented the said scheme of admissions for filling up ten percent management seats for the academic year 2008-2009.

4. Out of the six unaided colleges in the State, only the appellant has such a charitable scheme for economically disadvantaged students. The other five colleges allot management seats on regular fee basis and are not interested in such free admission schemes. As it was not possible for the appellant's college to be a part of any Consortium or Association for making admissions to the management seats, appellant requested the respondents to permit its college to admit meritorious economically disadvantaged students, by adopting its own admission procedure under its scheme. But by letters dated 2.7.2009,

14.7.2009 and 15.7.2009, the Admission Committee insisted

that all unaided Medical Colleges should either form a Consortium for making admissions to management seats or

should make admissions through the State Admission

Committee. Therefore, the appellant filed a writ petition

(SCA 7570 of 2009) seeking a direction to respondents to

permit the management seats in its medical college to be

filled by following its Scheme followed by it during the

academic year 2008-2009. The appellant also sought

cancellation and withdrawal of the communications requiring

the appellant to join the Consortium of unaided colleges

for filling up of the management seats. By interim order

dated 4.8.2009, the High Court directed that for 2009-2010

admissions, the State Government may permit the college to

follow the procedure followed in 2008-2009, subject to the

admission list being finalized with the approval of the

Admission Committee.

5. The High Court disposed of the said writ petition by

order dated 9.8.2010, with the following directions,

without considering the various contentions raised by the

appellant on merits :

"In the facts and circumstances, instead of giving any finding on merit and to ensure that admissions are made in accordance with Rules in future, particularly 10% seats of management quota, the following order is passed :

(i) The State Government will constitute a "Consortium" within one week to ensure admissions in the academic session 2010-2011. The "Consortium" will complete all formalities and forward names of the candidates against management quota to different Professional Medical Educational Colleges and Institutions by 31st August, 2010.

(ii) If the State Government fails to constitute "Consortium" by 16th August, 2010 and fails to notify any advertisement by 17th August, 2010, the petitioner Trust may proceed by following procedure laid down under the Act and Rules for selection of candidates. Selection should be confined amongst the students who have applied pursuant to an advertisement issued by the petitioner Trust.

(iii) The management of different Professional Medical Educational Colleges and Institutions will constitute "Consortium" for the selection, or the subsequent academic session 2011-12 onwards, "Consortium" must be constituted by 30th September, 2010 failing which the State Government will call management and will ensure constitution of "Consortium" by 30th October, 2010 on whose recommendation, Professional Medical Colleges and Institutions will fill up management quota for the session 2011-12 onwards."

6. Aggrieved by the refusal of the High Court to consider its contentions on merits, the appellant has challenged the decision of the High Court in this appeal. It contends that as no other unaided college is willing to give its seats free (or for a token annual fee of Rs.5000/-) to economically disadvantaged students, it is not able to join the other unaided colleges to form a consortium for making admissions to management seats. The respondents contend that permitting a single college to have its admission procedure would be opposed to the Scheme of the Act which contemplates admissions only through the State Admission Committee or through a Consortium. It is submitted that if the appellant is not willing to join the Consortium, it should make admissions through the State admission Committee.

7. We may refer briefly to the relevant provisions of the Act. Section 3 provides that all admissions to Professional Medical Courses should be made in accordance with the provisions of the Act and any admission made in contravention of the provisions of the Act shall be invalid. Section 4 provides that the Admission Committee shall guide, supervise and control the entire process of admission of students to the professional educational colleges. Section 5 authorises the Admission Committee to prepare the merit list of students. Section 10 of the Act relates to the powers of the Fee Regulatory Committee. Sub-

section (1) thereof provides that the Fee Regulatory Committee constituted by the State Government shall determine the fee structure for admission of students in professional courses; and that the Committee may determine different fee structures for admission of students in different professional courses for different professional colleges/ institutions. Sub-section (3) provides that the fee structure determined by the Fee Regulatory Committee shall be binding on the unaided professional educational colleges/institutions for a period of three years; and the fee determined by the Committee made applicable to a student who is admitted to a professional educational college/institution, in a particular academic year, shall be continued for the entire period of the course and shall not be revised till the completion of his professional course. Sub-section (4) bars the unaided professional colleges/institutions from charging or collecting any fee other than the fee determined by the Committee under sub-section (1). Section 11 enumerates the factors to be considered in determining the fees to be charged, which included the location of the professional college, nature of professional course, available infrastructure, expenditure on administration and maintenance, reasonable surplus required for the growth and development. Section 12 prohibits charging or collection of capitation fee by any Unaided Professional Educational College/Institution.

8. In T.M.A. Pai Foundation v. State of Karnataka - 2002 (8) SCC 481, this court declared that every institution is free to devise its own fee structure subject to the limitations that there can be no capitation fee or profiteering, directly or indirectly. This court also clarified that charging of fees in a manner that a reasonable surplus is left to meet the cost of expansion

and augmentation of facilitates, would not amount to profiteering. In Islamic Academy of Education v. State of Karnataka - 2003 (6) SCC 697, this court directed the state governments to set up two committees -- one to regulate admissions and the other to regulate the fee structure. The fee structure committee was authorized to decide whether the fees proposed by a college were justified or whether they amounted to profiteering or charging capitation fee; and if necessary to prescribe a fee structure different from what was proposed by the institutions. In P.A.Inamdar v. State of Maharashtra - 2005 (6) SCC 537, this Court reiterated that while every institution is free to devise its own fee structure, the same can be regulated to prevent profiteering and to ensure that no capitation fee is charged, either directly or indirectly, or in any form; that if capitation fee and profiteering are to be checked, the method of admission has to be regulated so that the admissions are based on merit and are transparent and the students are not exploited; and that it is, therefore, permissible to regulate admissions and fee structure for achieving the same. This Court further held:

"...Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.

Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of student community. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on a uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee-structure. We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being

quasi-judicial in nature, would always be subject to judicial review."

The entire object of constituting Committees for regulating the admission procedures and determining the fee structure in regard to unaided colleges is to ensure that the colleges do not indulge in profiteering or capitation fee.

9. If any college, out of charitable or philanthropic motive, wants to extend a helping-hand to the economically weaker sections of the student community by providing a scheme for free admission to the ten percent management quota seats, there is no need for the Fee Regulatory Committee to determine and fix the 'fees' chargeable by the college for such free management seats. Nor will it be necessary for such a college (which wants to admit economically backward students without any fee or a token fee) to be a part of a Consortium of unaided colleges which want to charge fees.

10. If other unaided colleges are willing to have such a free admission scheme for meritorious poor, then there will be a need for a Consortium of such like minded colleges for making admissions to such management seats. But where only one college has such a scheme for giving all its ten percent management seats to meritorious students belonging to economically weaker sections, it may not be possible or permissible to subject such college to the common admission procedure applicable for payment seats. But it will however be necessary to ensure that such a Scheme is not a camouflage for making illegal or irregular admissions or for clandestinely charging capitation fee or for profiteering. Having regard to the object and purpose of the Act, such schemes will have to be submitted by the college concerned to the Admission

Committee and the Fee Regulatory Committee for verification and approval; and only after the Scheme is approved by such Committees, the colleges can make admissions in terms of the Scheme.

11. The provisions of the Act and the rules are intended to prevent profiteering or charging of capitation fee, and not to prevent or discourage any charitable effort by any college to encourage or provide free education for economically weaker sections. Such Schemes for benefiting economically weaker sections require to be encouraged by the State and its authorities. The fact that there is only one unaided college willing to admit students free of any fees in regard to ten per cent management seats and the fact that it cannot therefore be a part of a fee charging consortium of unaided colleges, cannot by itself be a ground to deny the college to have a scheme extending the benefit of free admissions to meritorious poor students, in regard to management seats. Therefore, the High Court ought to have considered the request of the appellant on merits, with reference to the provisions of the Act and the Rules, especially as the issue will arise every year and may arise with reference to other colleges also. In fact, the High Court by order dated 30.7.2010, had proposed to examine the merits of the contentions in regard to management seats. But it failed to do so.

12. In so far as the admission for the current year (2010-2011), the second respondent Committee has taken a very fair and positive stand. It was submitted by its counsel that the Committee will have no objection for the appellant's college implementing the scheme in a transparent manner after being duly approved by the Committee, subject to any monitoring measures. It was

further submitted that the Committee has no objection for the admission procedure followed by the appellant for the year 2008-09 (set out in para 3 above) being followed for the admissions to the ten percent management seats for the academic year 2010-2011 also subject to the college suitably modifying Clause (3) of the Agreement/Bond (which is required to be executed by the students and/or their guardians). He submitted that the said clause extracted below, may cause undue hardship to the students.

"That the Mandal provides scholarship on year to year basis. If the student is not able to clear his/her studies in first attempt in the respective year the Mandal will not grant scholarship for the ensuing year. Also the awarded scholarship would have to be refunded with 10% interest in one instalment."

As rightly pointed out by the Committee, a poor student being made liable to pay the tuition fee with interest, if he fails in the examination, will be impractical and cause great hardship. Learned counsel for the appellant therefore readily agreed to amend the clause as follows:

"That the Mandal provides scholarship on year to year basis. If the student is not able to clear his/her studies in first attempt in the respective year the Mandal will not release further scholarship until the student clears the examination."

13. In view of the above, we dispose of this appeal as follows :

(i) The order of the High Court is set aside, the matter is remanded to the High Court for consideration and expeditious disposal of the writ petition on merits, in the light of the above observations.

(ii) Insofar as the admissions for academic year 2010-2011 for the management seats is concerned, the appellant college is permitted to follow the same procedure as it adopted for 2008-2009 (set out in para 3 above) and make admissions subject to the change in regard to Clause (3) in the Agreement/Bond referred to in para 12 above.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
September 15, 2010.

.....J.
(H.L. GOKHALE)