CASE NO.:
Writ Petition (civil) 350 of 1993

PETITIONER:
Islamic Academy of Education and another

RESPONDENT:
Vs.
State of Karnataka and others

DATE OF JUDGMENT: 14/08/2003

BENCH:
CJI V. N. KHARE, S. N. VARIAVA, K. G. BALAKRISHNAN & ARIJIT PASAYAT.

JUDGMENT:
JUDGMENT

(With S.L.P.(Civil) Nos. 11286/2003, 11391/2003, 11189-11195/2003,
W.P(Civil) Nos. 355/1993, 174/2003, T.P.(Civil) No. 286-288/2003,
S.L.P.(Civil) Nos. 3465-3466/2003, 3942-3943/2003, 4002-4003/2003,
9253-9254/2003, 10561/2003, W.P.(Civil) Nos. 261/2003, 275/2003,
280/2003, 289/2003)

V. N. KHARE, CJI for himself and for Variava, Balakrishnan and Pasayat, JJ.

On 31st October, 2002 eleven Judge Bench of this Court delivered the Judgment in the case of T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. (2002 (8) SCC 481). A brief history as to how a eleven Judge Bench of this Court came to decide this case is set out in para 3 of the judgment, which reads as under:

"3. The hearing of these cases has had a chequered history. Writ Petition No. 350 of 1993 filed by the Islamic Academy of Education and connected petitions were placed before a Bench of five Judges. As the Bench was prima facie of the opinion that Article 30 did not clothe a minority educational institution with the power to adopt its own method of selection and the correctness of the decision of this Court in St Stephens College versus University of Delhi was doubted, it was directed that the questions that arose should be authoritatively answered by a larger Bench. These cases were then placed before a bench of seven Judges. The questions framed were recast and on 6-2-1997, the Court directed that the matter be placed before a Bench of at least eleven Judges, as it was felt that in view of the Forty-second Amendment to the Constitution, whereby "education" had been included in Entry 25 of List III of Seventh Schedule, the question of who would be regarded as a "minority" was required to be considered because the earlier case-law related to the pre-amendment era, when education was only in the State Listâ\200¦â\200¦â\200¦â\200¦â\200¦."

After the Judgment was delivered, on 31st October 2002, the Union of India, various State Governments and the educational institutions understood the majority judgment in different perspectives. Different statutes/regulations were enacted/framed by different State Governments. These led to litigations in several Courts. Interim orders passed therein have been assailed before this Court. When these matters came up before a Bench of this Court, the parties to the writ petitions and special leave petitions attempted to interpret the majority decision in their own way as suited to them and therefore at their request all these matters were placed before a Bench of five Judges. It is under these circumstances that this Bench has been constituted so that doubts/anomalies, if any, could be clarified.

Most of the petitioners/applicants before us are unaided professional educational institutions (both minority and non-minority). On behalf of the petitioners/applicants it was submitted that the answers given to the questions, as set out at the end of the majority Judgment, lay down the true ratio of the Judgment. It was submitted that any

observation made in the body of the judgment had to be read in the context of the answers given. We are unable to accept this submission. The answers to the questions, in the majority Judgment in Pai's case, are merely a brief summation of the ratio laid down in the Judgment. The ratio decidendi of a Judgment has to be found out only on reading the entire Judgment. In fact, the ratio of the judgment is what is set out in the judgmen t
itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment. We, therefore, while giving our clarifications, are deposed to look into other parts of the Judgment other than those portions which may be relied upon.

Very briefly stated the other submissions were as follows:

On behalf of the petitioners/applicants it was also submitted that fixation of percentages of seats that could be filled in the unaided professional colleges both minority and non minority by the management, as done by various State Governments, was impermissible. It is further submitted that the private unaided professional educational institutions, had been given complete autonomy not only as regards the admission of students but also as regards the determination of their own fee structure. It was submitted that these institutions could fix their own fee structure, which could include a reasonable revenue surplus for purposes of development of education and expansion of the institution, and that so long as there was no profiteering or charging of capitation fees, there could be no interference by the Government. It was submitted that the right to admit students is an essential facet of the right to administer, and so long as

admission to the unaided educational institutions is on a fair and transparent basis and on the basis of merit, government cannot interfere. It was submitted that these institutions are entitled to fill up all their seats by adopting/evolving a rational and transparent method of admission which ensures that merit is adequately taken care of. It was submitted that in any event the institutions should be given a choice and be allowed to admit students on basis of the ICSC or SSC or other such examination. It was also suggested that educational institutions of a particular type may be permitted to associate themselves for the purposes of holding a common entrance test in each State. On behalf of minority institutions, it was submitted that they are entitled to fill up all the seats w ith
students of their own community/language. On behalf of non-minority institutions, it was submitted that they also had a fundamental right to establish and administer educational institutions and that the majority Judgment puts them on a par with the minority institutes.

As against this, on behalf of the Union of India, various State Governments and some students, who sought to intervene, it was submitted that the right to set up and administer an educational institution was not an absolute right, and this right is subject t o
reasonable restrictions and that this right is subject (even in respect of minority institutions) to national interest. It was submitted that imparting education was a State function but, due to resources crunch, the States were not in a position to establish sufficient number of educational institutions. It was submitted that, because of such resources crunch, the States were permitting private educational institutions to perform State functions. It was submitted that the Union of India, the States, Universities had statutory rights to fix the fees and to regulate admission of students in order to ensure (a )
that there was no profiteering; (b) capitation fees were not charged; (c) admissions were based on principles of merit and (d) to ensure that persons from the backward classes and poorer sections of society also had an opportunity to receive education, particularly, professional education. It was submitted that if these educational institutions were permitted to have their own tests for admission, the students would be put to undue harassment and hardship inasmuch as they would have to pay for application forms in various colleges and appear for tests in various colleges. It was pointed out that even if each institution charged Rs. 500 to Rs. 1000 a student would ultimately have to pay a large amount by way of application fees as, in the absence of a common entrance test and admission procedure the students would have to apply to a number of colleges. It is

submitted that the students would also have to spend for transport from and to each college and may find it difficult, if not impossible to travel, from one college to another,

to appear in all the tests. It was submitted that unless it was ensured that colleges admit students strictly on the basis of merit at a common entrance test, it would be impossible to ensure that capitation fees were not charged and that there was no profiteering. It was pointed out that some colleges do not even issue admission forms unless and until the student agrees to pay a hefty sum. It was submitted that the majority Judgment clarified that Article 30 had been enacted not for the purposes of giving any special right or privileges to the minority educational institutions, but to ensure that the minorities had equal rights with the majority. It was submitted that minority educational institutions cannot claim any higher or better rights than those enjoyed by the non-minority educational institutions.

Both sides relied upon various passages from the majority judgment in support of the respective submissions. These passages are reproduced hereinafter.

In view of the rival submissions the following questions arise for consideration:
1) whether the educational institutions are entitled to fix their own fee structure;
2) whether minority and non minority educational institutions stand on the same footing and have the same rights;
3) whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100%, and if not to what extent; and
4) whether private unaided professional colleges are entitled to admit students by evolving their own method of admission;
Question No. 1.
So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of

the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In paragraph 56 of the judgment it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the

teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment imparting of education is essentially charitable in nature. Thus the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profits/surplus cannot be diverted for any othe r
use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, there are statutes/regulations which govern the fixation of fee s
and as this Court has not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment in TMA PAI's case the respective State Governments concerned authority shall set up, in each State, a committee headed by a retired High Court judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short 'MCI') or the All India Council for Technical Education (in short 'AICTE'), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that total number of members of the Committee shall not exceed 5. Each educational Institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee.. The Committee will be at liberty to approve the fee structure or to propose some other fee

which can be charged by the institute. The fee fixed by the committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to

apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations the same would amount to charging of capitation fee. The Governments/appropriate authorities should consider framing appropriate regulations, if not already framed, whereunder if it is found that an institution is charging capitation fees or profiteering that institution can be appropriately penalised and also face the prospect of losing its recognition/affiliation. It must be mentioned that during arguments it was pointed out to us that some educational institutions are collecting, in advance, the fees for the entire course i.e. for all the years. It was submitted that this was done because the institute was not sure whether the student would leave the institute midstream. It was submitted that if the student left the course in midstream then for the remaining years the seat would lie vacant and the institute would suffer. In our view an educational institution can only charge prescribed fees for one semester/year. If an institution feels that any particular student may leave in

midstream then, at the highest, it may require that student to give a bond/bank guarantee that the balance fees for the whole course would be received by the institute even if the student left in midstream. If any educational institution has collected fees in advance, only the fees of that semester/year can be used by the institution. The balance fees must be kept invested in fixed deposits in a nationalised bank. As and when fees fall due for a semester/year only the fees falling due for that semester/year can be withdrawn by the institution. The rest must continue to remain deposited till such time that they fall due. At the end of the course the interest earned on these deposits must be paid to the student from whom the fees were collected in advance.

Question No. 2

The next question for consideration is whether minority and non minority educational institutions stand on the same footing and have the same rights under the Judgment. In support of the contention that the minority and non minority educational institutions had the same rights reliance was placed upon paragraphs 138 and 139 of the Judgment. These read as follows:

"138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities; thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-Ã -vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St. Xaviers College case, at page 192, that "the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality." In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do."

"139 Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities

are assured maximum autonomy in relation thereto; e.g., method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the condition of recognition, which cannot be such as to whittle down the right under Article 30."

Undoubtedly at first blush it does appear that these paragraphs equate both types of educational institutions. However on a careful reading of these paragraphs it is evident that the essence of what has been laid down is that the minority educational institutions have a guarantee or assurance to establish and administer educational institutions of their choice. These paragraphs merely provide that laws, rules and regulations cannot be such that they favour majority institutions over minority institutions. We do not read these paragraphs to mean that non minority educational institutions would have the same rights as those conferred on minority educational institutions by Article 30 of the Constitution of India. Non minority educational institutions do not have the protection of Article 30. Thus, in certain matters they cannot and do not stand on similar footing as minority educational institutions. Even though the principle behind Article 30 is to ensure that the minorities are protected and are given an equal treatment yet the special right given under Article 30 does give them certain advantages. Just to take a few examples, the Government may decide to nationalise education. In that case it may be enacted that private educational institutions will not be permitted. Non minority educational institutions may become bound by such an enactment. However, the right given under Article 30 to minorities cannot be done away with and the minorities will still have a fundamental right to establish and administer educational institutions of their choice. Similarly even though the government may have a right to take over management of a non minority educational institution the management of a minority educational institution cannot be taken over because of the protection given under Article 30. Of course we must not be understood to mean that even in national interest a minority institute cannot be closed down. Further minority educational institutions have preferential right to admit students of their own community/language. No such rights exist so far as non minority educational institutions are concerned.

Questions Nos. 3 and 4

Questions 3 and 4 pertain to private unaided professional colleges. Thus all observations in answer to questions 3 and 4 are therefore confined to such educational institutions.

In order to answer the third and fourth questions it is necessary to see the manner in which the majority judgment is framed and to consider certain paragraphs of the judgment. The majority judgment considered various aspects under different heads. The 3rd head is "In case of private institutions, can there be government regulations and, if so, to what extent?". This is further divided into four subheadings viz. "Private unaided non minority educational institutions"; "Private unaided professional colleges"; "Private aided professional institutions (non minority)" and "Other aided institutions". The paragraph which has been strongly relied upon is paragraph 68 which is under the sub-heading "Private unaided professional colleges". The said paragraph reads as under:

"68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counseling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different

percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and post graduation non-professional colleges or institutes."

Reliance was also placed on paragraphs 58 and 59 which read as follows:

"58. For admission into any professional institution, merit must play an important role. While it may be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions."

"59. Merit is usually determined for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies."

Based on the above paragraphs it had been submitted, on behalf of the Union of India, various State Governments and students that the majority Judgment makes a clear distinction between professional educational institutions (both minority and non minority) and other educational institutions i.e. schools and undergraduate colleges. The submission was that in professional institutions merit had to play an important role and that excellence in professional education required that for purposes of admission merit is determined by Government agencies. It is submitted that paragraph 68 provides that in unaided professional colleges only a "certain" percentage of seats can be reserved for admission by the management. It is submitted that the said paragraph provides that it is permissible for the University or the Government to require a private unaided professional institute to provide for a merit based selection. It was submitted that paragraph 68, read with paragraph 59, lays down that in unaided professional colleges merit is to be determined by a common entrance test conducted by Government agencies.

Paragraph 68 of the majority judgment in Pai’s case can be split into seven parts :-

Firstly, it deals with the unaided minority or non-minority professional colleges.

Secondly, it will be unfair to apply the rule and regulations framed by the State Government as regards the government aided professional colleges to the unaided professional colleges.

Thirdly, the unaided professional institutions are entitled to autonomy in their administration; while at the same time they should not forego or discard the principles of merit.

Fourthly, it is permissible for the university or the Government at the time of granting recognition to require an unaided institution to provide for merit based admission while at the same time giving the management sufficient discretion in admitting students.

Fifthly, for unaided non-minority professional colleges certain percentage of seats can be reserved for admission by the management out of those students who have passed the common test held by itself or by the State/University and for applying to the college/university for admission, while the rest of the seat may be filled up on the basis of counseling by the State agency.

Sixthly, the provisions for poorer and backward sections of the society in unaided professional colleges are also to be provided for.

Seventhly, the prescription for percentage of seats in unaided professional

colleges has to be done by the government according to the local needs. A different percentage of seats for admission can be fixed for minority unaided and non-minority unaided professional colleges.

Undoubtedly the majority judgment makes a distinction between private unaided professional colleges and other educational institutions i.e. schools and undergraduate colleges. The subheading "Private unaided professional colleges" includes both minority as well as non minority professional colleges. This is also clear from a reading of paragraph 68. It appears to us that this distinction has been made (between private unaided professional colleges and other educational institutions) as the Judgment recognises that it is in national interest to have good and efficient professionals. The Judgment provides that national interest would prevail, even over minority rights. It is for

this reason that in professional colleges, both minority and non-minority, merit has been made the criteria for admission. However a proper reading, of paragraph 68, indicates that a further distinction has been made between minority and non minority professional colleges. It is provided that in cases of non minority professional colleges "a certain percentage of seats" can be reserved for admission by the management. The rest have to be filled up on bases of counseling by State agencies. The prescription of percentage has to be done by the Government according to local needs. Keeping this in mind provisions have to be made for the poorer and backward sections of the society. It must be remembered that, so far as medical colleges are concerned, an essentiality certificate has to be obtained before the college can be set up. It cannot be denied that whilst issuing the

essentiality certificate the respective State Governments take into consideration the local needs. These aspects have been highlighted in a recent decision of this Court in State of Maharashtra vs. Medical Association and others [2002 (1) SCC 589]. Whilst granting the essentiality certificate the State Government undertakes to take over the obligations of the

private educational institution in the event of that institution becoming incapable of setting of the institution or imparting education therein. A reading of paragraphs 59 and 68 shows that in non minority professional colleges admission of students, other than the percentage given to the management, can only be on the basis of merit as per the common entrance tests conducted by government agencies. The manner in which the percentage given to the management can be filled in is set out hereinafter.

Paragraph 68 provides that a different percentage can be prescribed for unaided minority institutions. That the same yardstick cannot be applied to both minority and non minority professional colleges is also clear from the fact that paragraph 68 also falls under main heading "In case of private institutions, can there be government regulations and, if so, to what extent?". Paragraph 47, which is one of the first paragraph under this heading, inter-alia provides as follows:

> "It is appropriate to first deal with the case of private unaided institutions and private aided institutions that are not administer the by linguistic or religious minorities. Regulations that can be framed relating to minority institutions will be considered while examining the merit an effect of Article 30 of the Constitution."

Whilst discussing Article 30 under heading "To what extent the rights of aided private minority institutions to administer can be regulated" reliance has been placed, in the majority Judgment, on previous judgments in the cases of Re Kerala Education Bill (AIR 1958 Supreme Court page 956); Rev Sidhajbhai V State of Bombay (1963 (3) SCR page 837); Rev Father Proost V State of Bihar (AIR 1969 Supreme Court page 465); State of Kerala V Very Rev Mother Provincial (1970 2 SCC page 417); Ahmedabad St Xaviers College Society V State of Gujarat (1974 (1) SCC page 717). All these cases have recognised and upheld the rights of minorities under Article 30. These cases have held that in the guise of regulations, rights under Article 30 cannot be abrogated. It has been held, even in respect of aided minority institutions that they must have full autonomy in administration of that institution. It has been held that the right to administer includes t he
right to admit students of their own community/language. Thus an unaided minority professional college cannot be in a worse position than an aided minority professional

college. It is for this reason that paragraph 68 provides that a different percentage can be fixed for unaided minority professional colleges. The expression "different percentage for minority professional institutions" carries different meaning than the expression "certain percentage for unaided professional colleges." In fixing percentage for unaided minority professional colleges the State must keep in mind, apart from local needs, the interest/need of that community in the State. The need of that community, in the State, would be paramount vis-a- vis the local needs.

It must be clarified that a minority professional college can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student is more meritorious. However, whilst selecting/admitting students of their community/language the inter-se merit of those students cannot be ignored. In other words whilst selecting/admitting students of their own community/language they cannot ignore the inter-se merit amongst students of their community/language. Admission, even of members of their community/language, must strictly be on the basis of merit except that in case of their own students it has to be merit inter-se those students only. Further if the seats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by government agencies.

That brings us 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 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 tests 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 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 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.

At this juncture it is brought to our notice that several institutions, have since long, had their own admission procedure and that even though they have been admitting only students of their own community no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and that they stand on a different footing from other minority non-aided professional institutions. It is submitted that their cases are not based only on the right flowing fr
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Article 30(1) but in addition they have some special features which requires that they be permitted to admit in the manner they have been doing for all these years. A reference is made to few such institutions i.e. Christian Medical College, Vellore, St. Johns Hospital, Islamic Academy of Education etc . The claim of these institutions was disputed. However we do not think it necessary to go into those questions. We leave it open to institutions which have been established and who have had their own admission procedure for, at least, the last 25 years to apply to the Committee set out hereinafter.

Lastly, it must be mentioned that it was urged by learned counsel for the appellant that paragraph 68 of the majority judgment only permits University/State to provide for merit based selection at the time of granting recognition/affiliation. It was also submitted that once recognition/affiliation is granted to unaided professional colleges, such a stipulation cannot be provided subsequently. We are unable to accept this submission. Such a provision can be made at the time of granting recognition/affiliation as well as subsequently after the grant of such recognition/affiliation.

We now direct that the respective State Government do appoint a permanent Committee which will ensure that the tests conducted by the association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice Chancellors of University in that State so that the total number of persons on the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper/s, to know the names of the paper setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner. The Committee shall have power to permit an institution, which has been established and which has been permitted to adopt its own admission procedure for the last, at least, 25 years, to adopt it
s
own admission procedure and if the Committee feels that the needs of such an institute are genuine, to admit, students of their community, in excess of the quota allotted to them by the State Government. Before exempting any institute or varying in percentage of quota fixed by the State, the State Government must be heard before the Committee. It is clarified that different percentage of quota for students to be admitted by the management in each minority or non-minority unaided professional college/s shall be separately fixed on the basis of their need by the respective State Governments and in case of any dispute as regards fixation of percentage of quota, it will be open to the management to approach the Committee. It is also clarified that no institute, which has not been established and which has not followed its own admission procedure for the last, at least, 25 years, shall be permitted to apply for or be granted exemption from admitting students in the manner set out hereinabove.

Our direction for setting up two sets of Committees in the States has been passed under Article 142 of the Constitution of India which shall remain in force till appropriate legislation is enacted by the Parliament. The expenses incurred on the setting up of such

Committees shall be borne by each State. The infrastructural needs and provision for allowance and remuneration of the Chairman and other members of the Committee shall also be borne by the respective State Government.

So far as the year 2003-2004 is concerned, time is running out as the outer time limit for admission is fast approaching or has gone. To meet the urgent situation without going into the issues involved in the various petitions/applications, we direct that the seats be filled up by the institution and the State Governments in the ratio 50:50. However, if by any interim order, this Court has permitted any institution to fill up a higher percentage of seats and the seats have been filled up accordingly, the same shall not be disturbed. It is made clear that due to the time constraint this arrangement has been made, without deciding the contentious issue involved in various pending cases.

With these clarifications we now direct that all the matters be placed before the regular benches for disposal on merits.

All Interlocutory applications as regard interim matters stand disposed of.