

[CITED ORDER]

(2004) 8 Supreme Court Cases 139

(BEFORE RUMA PAL AND ARUN KUMAR, JJ.)

P.A. INAMDAR AND OTHERS

Petitioners;

Versus

STATE OF MAHARASHTRA AND OTHERS

Respondents.

SLPs (C) No. 9932 of 2004 with No. 9935 of 2004, WP No. 276 of 2004,

b) SLPs (C) Nos. 10780 and 11244 of 2004 and IAs Nos. 22, 26-28, 30, 31-33 & ... in WP (C) No. 350 of 1993, decided on July 15, 2004.

c) A. Constitution of India — Arts. 19(1)(g) & (6), 30(1), 26(a) and 15(4) — Right to establish and administer educational institutions — Autonomy of private unaided, minority and non-minority professional colleges, — Petitions raising issues relating to fixation of admission quotas and the holding of entrance examinations, all issues which related to interpretation of *T.M.A. Pai case*, (2002) 8 SCC 481 and *Islamic Academy case*, (2003) 6 SCC 697 — Matter referred to a larger Bench — Interim orders given for the academic year 2004-05 in respect of the fixation of admission quotas and entrance examinations

d) *Islamic Academy of Education v. State of Karnataka*, (2003) 6 SCC 697; *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481; *Shahal H. Musaliar v. State of Kerala*, (1993) 4 SCC 112; *T.M.A. Pai Foundation v. State of Karnataka*, (1993) 4 SCC 276; *T.M.A. Pai Foundation v. State of Karnataka*, (1994) 2 SCC 734; *T.M.A. Pai Foundation v. State of Karnataka*, (1995) 5 SCC 220; *T.M.A. Pai Foundation v. State of Karnataka*, (1996) 5 SCC 8; *Medical Council of India v. Madhu Singh*, (2002) 7 SCC 258, referred to

e) B. Constitution of India — Arts. 19(1)(g) & (6), 30(1), 26(a) and 15(4) — Words “their needs” occurring in *Islamic Academy case*, (2003) 6 SCC 697, p. 730, para 19 (see para 6 herein) — Held, refer to the needs of the minority or non-minority unaided professional college(s) and not the needs of the State.

Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697, clarified

f) C. Constitution of India — Arts. 19(1)(g) & (6), 30(1), 26(a) and 15(4) — Exception to the rule in *Islamic Academy case*, (2003) 6 SCC 697, at p. 728, para 16 (see para 11, herein) granted in respect of those institutions which had their own admission procedure for the last twenty-five years — Questions whether (a) the restriction of 25 years would apply in all cases, irrespective of the merits of the institutions or their background or whether such a restriction was contrary to the decision in *T.M.A. Pai case*, (2002) 8 SCC 481, (b) the decision in *Islamic Academy* in para 16, which limited the right of a minority unaided professional institution to hold an entrance examination on its own, was in the teeth of the pronouncement of the eleven-judge Bench decision in *T.M.A. Pai* in respect of the right of the minority to evolve its own procedure and method for admission, (c) the clarification of certain phrases such as “for example” and “particular type” occurring in the said para 16 of *Islamic Academy case*, and (d) whether the decision in *Islamic Academy* did not cover a situation when there is only the one professional institution belonging to the minority, in which case it would not be in a position to form an association at all, left open

Chronological list of cases cited

on page(s)

1. (2003) 6 SCC 697, *Islamic Academy of Education v. State of Karnataka* 140d-e, 140f, 140g, 140g-h, 141b-c, 141d, 141d-e, 141g, 142b-c, 142g-h, 143a-b, 143f, 143f-g, 143g-h, 144c, 144c-d, 144e-f, 145b, 145b-c, 145c-d, 146b a
2. (2002) 8 SCC 481, *T.M.A. Pai Foundation v. State of Karnataka* 140d-e, 142f-g, 143a-b, 143c, 144a, 144c a
3. (2002) 7 SCC 258, *Medical Council of India v. Madhu Singh* 146c a
4. (1996) 5 SCC 8, *T.M.A. Pai Foundation v. State of Karnataka* 143d-e a
5. (1995) 5 SCC 220, *T.M.A. Pai Foundation v. State of Karnataka* 143d a
6. (1994) 2 SCC 734, *T.M.A. Pai Foundation v. State of Karnataka* 143d b
7. (1993) 4 SCC 276, *T.M.A. Pai Foundation v. State of Karnataka* 143d b
8. (1993) 4 SCC 112, *Shahal H. Musaliar v. State of Kerala* 143c-d b

ORDER

IA No. 28

1. Issue notice returnable within one week. Dasti service is permitted. The petitioner seeks to fill the vacant seats, which remained vacant after the State has admitted the candidates who had succeeded in the common entrance test, with outside candidates who were successful in the examination held by the Association. c

State of Karnataka: IAs Nos. 31 and 33, WP No. 276 and SLP (C) No. 11244 of 2004

2. All these three cases relate to the interpretation put by a Bench of five Hon'ble Judges in *Islamic Academy of Education v. State of Karnataka*¹ on the eleven-Judge Bench decision in *T.M.A. Pai Foundation v. State of Karnataka*². d

3. In all these cases the immediate disputes relate to the fixation of quota in respect of unaided professional institutions and to the holding of examinations for admission into such colleges. We are of the view, that the issues raised should be referred to a larger Bench for final determination having regard to the nature of the controversy involved in these cases. e

4. The question then arises as to the interim measures to be taken by these colleges for the academic year 2004-05. It is stated by the State of Karnataka that pursuant to the decision of this Court in *Islamic Academy*¹ the State Government had fixed the quota for unaided or private minority professional institutions at 50:50 and in respect of other private unaided professional institutions at 75:25 i.e. 75% of the seats in these colleges would be filled in by the State Government and 25% by the management. The State Government has justified the fixation of such quota relying upon paragraphs 12 and 19 of the decision in *Islamic Academy*¹. It is submitted that as far as the unaided minority institutions are concerned, they had not complained against the fixation of the quota either to the State or to the Committee which has been set up in terms of the decision in *Islamic Academy*¹. The non-minority association's complaint to the Committee regarding the percentage as determined by the State Government has been rejected by the Committee. f
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1 (2003) 6 SCC 697

2 (2002) 8 SCC 481

a A writ petition was filed by the association of the non-minority unaided professional institutions before the High Court which is still pending. The matter was mentioned before the High Court at the instance of the State Government that it would seek clarification of the issues from this Court. It is pursuant thereto that the State Government has filed IA No. 33 to seek directions.

b 5. As far as the quota is concerned, the learned counsel appearing on behalf of the unaided minority institutions has stated that for the time being and strictly without prejudice they are willing to abide by the quota fixed by the State Government. As far as the non-minority institutions are concerned, they have drawn our attention to paragraph 21 of *Islamic Academy case*¹ and have submitted that this Court had permitted 50:50 quota as an interim measure. It is also stated that for the immediately preceding year i.e. 2003-04, since the admission had already been made on the basis of 75% and 25% pursuant to the directions issued by the State Government for that year, the non-minority institutions did not protest and agreed to allow the same to continue for that academic year as a one-time measure. They, however, insist that for this academic year, they should be permitted to admit the students on the basis of 50:50 percentage and the fixation of the percentage at 75:25 in favour of the State Government was wrong and based upon a misreading of *Islamic Academy*¹.

c 6. The sentence in the judgment of *Islamic Academy*¹ which appears to have created the debate between the parties is: (SCC p. 730, para 19)

e "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." (emphasis supplied)

f 7. According to the institutions the phrase "their need" refers to the need of the minority or non-minority unaided professional college(s). The State Government, on the other hand, has contended that the phrase meant local needs or the needs of the State Government and not that of the institutions. The issue will ultimately have to be resolved by a larger Bench. We are, *prima facie*, of the view that the phrase "their needs" in the sentence quoted above refers to the need of the institutions mentioned and not of the State.

g 8. In the circumstances, we are of the view that the interim measure as stated in paragraph 21 of *Islamic Academy*¹ namely, that the seats should be filled up by the institutions concerned in the ratio of 50:50 will be continued for this academic year purely as a temporary measure and without prejudice to the contentions of the parties for the purpose of the final disposal.

h 9. The next issue relates to the question as to who should hold the entrance examination for admission into these institutions. As far as the non-minority institutions are concerned, their association which has been recognised by the State Government has already held an entrance

examination and there is no dispute that admissions to the members of the association will be made on the basis of such entrance examination.

10. The dispute is with regard to the examination to be held by the minority institutions in this case i.e. 14 minority professional institutions, which were unaided and which formed an association. They registered themselves and applied to the Committee for permission to hold examinations for admission to the seats of the institutions which were members of their association. a

11. The necessity of forming the association was by reason of the following sentences in *Islamic Academy case*¹: (SCC p. 728, para 16) b

“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.” c

12. According to the State Government, it is clear from the aforesaid paragraph that the association would have to be of all the colleges of that type in the State. It is stated that there were 38 professional minority unaided professional colleges of which the association which is before this Court, represented only 14. The remaining colleges had agreed to abide by the merit list prepared on the basis of any entrance examination as held by the State and in some cases had agreed to abide by the results on the basis of the examinations held by non-minority unaided professional institutions COMED.K. It is stated that it was not open to the institutions to form a separate association and insist on holding a separate examination. In any event, it is pointed out that the prayer was not that the association should hold the entrance examination but that the individual institutions should be permitted to do so. d

13. According to the petitioners in SLP (C) No. 11244 of 2004, each institution had, prior to the decision in *T.M.A. Pai*² held their own examinations for admission to their institutions. As far as St. John’s Medical College, Bangalore and Islamic Academy Colleges are concerned, both these institutions were mentioned in paragraph 17 of *Islamic Academy case*¹. The claim of the institutions was, however, disputed. It is not clear whether this claim has since been resolved, as far as the Colleges of Islamic Academy are concerned. However, as far as St. John Hospital is concerned; the Committee permitted it to hold a separate examination for admission. As far as Islamic Academy is concerned, the dispute is still at large. This Court has only made an exception to the rule quoted earlier in respect of those institutions which e

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had their own admission procedure for the last 25 years. It is the submission of Islamic Academy that ever since it has been established the college in question has been holding separate entrance examinations and that this arrangement had been permitted by a series of orders passed by this Court in *T.M.A. Pai*². It is stated that the observation in *Islamic Academy*¹ restricting unaided minority professional institutions from holding their own examinations unless they had done so for the last 25 years would not apply to institutions which came into existence later. It is also submitted that there is no reason to restrict the right to hold the examination to only those institutions which had been in existence for 25 years or more. We need not go into these submissions at this stage as it would require us to go into the question whether the restriction of 25 years would apply in all cases irrespective of the merits of the institutions or its background or whether such a restriction was contrary to the decision in *T.M.A. Pai*². By way of an interim measure, we permit the Islamic Academy Education Colleges to hold separate entrance examinations in terms of the order dated 18-8-1993 as reported in *Shahal H. Musaliar v. State of Kerala*³, para 17 at pp. 117 and 118 and as continued from time to time by order dated 4-10-1993, reported in *T.M.A. Pai Foundation v. State of Karnataka*⁴, order dated 5-4-1994, reported in *T.M.A. Pai Foundation v. State of Karnataka*⁵, para 7 at pp. 740-41, order dated 11-8-1995, reported in *T.M.A. Pai Foundation v. State of Karnataka*⁶ at para 27, pp. 230-31 and order dated 9-8-1996, reported in *T.M.A. Pai Foundation v. State of Karnataka*⁷ at pp. 111-12.

14. It is made clear that this order is limited to Islamic Academy Education Colleges alone.

State of Maharashtra: SLPs (C) Nos. 9932 and 9935 of 2004

15. These special leave petitions relate to a single minority unaided professional institution in the State of Maharashtra. The issue has arisen in connection with M.A. Rangoonwala College of Dental Sciences and Research Centre, Pune. It is the only minority dental college in the State. The dental college had applied for permission to hold separate examinations as far as its institution was concerned, before the Committee set up pursuant to the decision of this Court in *Islamic Academy*¹. The Committee rejected the request on the ground that *Islamic Academy*¹ did not permit a single institution to hold separate entrance examinations and there would have to be an association of colleges or institutions before any permission could be considered to be granted. The college then filed a writ petition before the Bombay High Court. This was rejected and hence the special leave petition.

16. It is the submission of learned counsel in support of the petition that the decision in *Islamic Academy*¹ in paragraph 16 which limits the right of a

3 (1993) 4 SCC 112

4 (1993) 4 SCC 276

5 (1994) 2 SCC 734

6 (1995) 5 SCC 220

7 (1996) 5 SCC 8

minority unaided professional institution to hold an entrance examination on its own was in the teeth of the pronouncement of the eleven-Judge Bench decision in *T.M.A. Pai*² in respect of the right of the minority to evolve its own procedure and method for admission. In support of this submission, reference has been made to paragraph 58 as well as the answers to Questions 4 and 5(a) of the majority view as well as the views of Khare, J. (as he then was) at paragraph 229, Quadri, J. at paragraph 247, Pal, J. at paragraphs 35-55 and Variava and Bhan, JJ. at paragraph 450 to submit that all eleven Judges had unanimously agreed that as far as the minority unaided professional institutions were concerned, they could evolve their own procedure. The learned counsel appearing on behalf of the petitioner has submitted that even assuming that there was no conflict between the decision in *Islamic Academy*¹ and *T.M.A. Pai*², nevertheless, there are certain phrases which would require clarification such as the phrase "for example" as well as the phrase "particular type", etc. It is also submitted that the decision in *Islamic Academy*¹ does not cover a situation when there is only the one professional institution belonging to the minority in which case it would not be in a position to form an association at all.

17. As we have already indicated above, we do not think that it would be appropriate for us to finally decide these issues. We are limiting ourselves to the grant of an interim order considering the urgency expressed for the academic year 2004-05. When the matter was moved before us as a special leave petition, we had passed an interim order on 28-5-2004 after notice to the State permitting the petitioner to hold the entrance examination but made it clear that the admissions made on the basis of such entrance test would be purely provisional and subject to further orders of this Court. Subsequent to this an affidavit has been filed by the State Government and the interim application is being finally disposed of.

18. The learned counsel appearing on behalf of the State has submitted that the decision in *Islamic Academy*¹ as it stands today clearly provides for only two methods of admission to a college, namely, either through the common entrance test held by the State or by the recognised association. There was no third method. It is submitted that in this case examinations have already been held by the State as well as by the association of unaided professional medical and educational colleges on 22-5-2004 and 30-5-2004 respectively. Pursuant to the interim order the dental college in question has also held separate examination on 20-5-2004. On the basis of the examinations as held admissions have been made till now on the basis of the examination held by the institution itself. No admissions to the petitioner college have been made on the basis of CET or the entrance examination held by the non-minority association.

19. As far as the State of Maharashtra is concerned, it has fixed the quota at 75:25 in respect of minority professional institutions i.e. 75% in favour of the institution and the balance in favour of the State Government. The institution in this case has already admitted 70% of its quota by holding its examination and is in the process of admitting the rest. Having regard to the

facts of the case, we permit the petitioner to conclude the process as far as the management quota alone is concerned. This interim order will continue until the disposal of the special leave petition.

20. SLP (C) No. 9935 of 2004 relates to an association of five Unani minority unaided medical colleges. They have similarly held an entrance examination and admitted students pursuant to the order passed by this Court. Interim relief granted in SLP (C) No. 9932 is also granted in this SLP. *State of Andhra Pradesh in IA No. 30 of 2004 in WP No. 350 of 1993*

21. This application has been filed in *Islamic Academy*¹ matter. The applicant is an association of fourteen professional engineering colleges of which twelve are engineering colleges and two are pharmaceutical colleges. They applied for recognition before the Committee set up under *Islamic Academy case*¹. The Committee rejected their application and as such they were not permitted to hold any examination for admission to the colleges which are members of their association. They have also raised issues relating to the scope and effect of the decision in *Islamic Academy*¹. It is prayed that by way of an interim measure the same procedure should be followed as was followed in the immediately preceding year. It is stated that this year, 9000 students belonging to the minority community of Muslims had sat in the common entrance examination which has been held by the State Government. Of the 9000 candidates, 5450 were successful but it was found on further scrutiny that 1000 eligible candidates were ineligible as they had not passed the higher secondary examination. This meant that only 4450 students of this minority would gain admission into colleges on passing of CET. It is submitted that in the previous year the applicant which was then only an unregistered association had held a common entrance test called MEMCET. The State Government, however, refused to recognise MEMCET examination last year. Nevertheless, after admitting the candidates who had opted for the minority institutions on the basis of their results in CET examination several seats remained unfilled. In fact after the successful CET candidates had been admitted against the minority quota, the institutions admitted the persons on the basis of MEMCET examination against the management quota. The State Government then permitted all colleges to admit students only on the basis of the higher secondary result without any entrance test at all. Despite all this, only 10% out of the 30% of the government quota was filled leaving 20% vacant seats in the minority institutions causing loss to the institutions.

22. As at present the quota has been fixed at 70% for the minority institutions and 30% for open admissions. Out of the 70 per cent, 55% has been allocated to the management i.e. 55% for minority students, 15 per cent for management quota and 30% for State Government quota. The association is yet to hold its examination. However, having regard to the facts of the case, we permit the admission of CET successful minority candidates against the 55% quota, if they so choose. The State Government will be permitted to fill the 30% quota also out of CET candidates who need not necessarily belong

to the minority community on the basis of merit and according to the choice of the candidate. In respect of 15% management quota and the balance seats if remaining after making an adjustment of the successful candidates as particularised above, it will be open to the institutions concerned to admit them on the basis of the entrance test or MEMCET which may be held by them for this year. It is being made clear that by this order we do not intend to decide as to whether the petitioner association is entitled to ask for separate examination or whether the petitioner is an association, whether *Islamic Education*¹ has limited rights of the minority to associations alone nor do we decide the appropriateness of MEMCET examination. It is made clear that this order is restricted to the members of the petitioner colleges:

23. It is made clear that by way of these orders that we have passed today, we do not intend in any fashion to relax the schedule which has been fixed by the Medical Council of India in accordance with *Madhu Singh case*⁸.

24. Let these matters be placed before the Hon'ble the Chief Justice for appropriate directions for constituting a larger Bench.

25. IA No. 22 of 2004 is dismissed as infructuous.

26. IAs Nos. 26-27 and ... in WP No. 350 of 1993 will be listed after one week.

IA No. 32 of 2004

27. Adjourned to 21-7-2004.

28. SLP (C) No. 10780 of 2004 is delinked.

(2004) 8 Supreme Court Cases 146

(BEFORE ARIJIT PASAYAT AND C.K. THAKKAR, JJ.)

HARI RAM

Appellant;

Versus.

STATE OF U.P.

Respondent.

Criminal Appeal No. 827 of 2004[†], decided on August 9, 2004

A. Penal Code, 1860 — S. 34 — Applicability of — Proof — Held, overt act on the part of the accused need not be proved — Liability arises if the criminal act was done in furtherance of common intention of the persons who join in committing the crime — Thus, meeting of minds of all the accused to commit the offence, which may be pre-arranged or on the spur of the moment but necessarily before the commission of crime, held, must be established — Common intention can be inferred from the circumstances — Acts of all the accused need not be same or identical but must be actuated by the same common intention — On facts, held, S. 34 rightly applied

⁸ *Medical Council of India v. Madhu Singh*, (2002) 7 SCC 258

[†] Arising out of SLP (Crl.) No. 4467 of 2003. From the Judgment and Order dated 11-7-2003 of the Orissa High Court in Crl. A. No. 2098 of 1981