10
EDUCATION LAW

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I INTRODUCTION

AFTER THE *Inamdar*[1] judgment in the year 2005, the greatest challenge in the education sector was the issue of affirmative action in private, unaided educational institutions. The issue first came up for consideration in *T.M.A. Pai Foundation* v. *State of Karnataka*,[2] which was later, clarified in *Inamdar*. Even though the Supreme Court in *Inamdar* struck down the state-imposed reservation in unaided educational institutions, on the ground that it would constitute serious encroachment upon the rights and autonomy of the private educational institutions which is guaranteed under article 30(1) of the Constitution, the court urged the government to enact a comprehensive legislation to cater to the needs of social justice in the society.[3]

Towards this end and to nullify the effect of the Supreme Court judgment, the central government enacted the Constitution (93rd Amendment) Act, 2006.This amendment added a new clause (5) to article 15, empowering the state to make special provisions to ensure admission to SC/ STs and SEBCs in all educational institutions both in private and public, except in the minority educational institutions.[4] The amendment was clearly intended to bring all private institutions, whether aided or unaided within the purview of the policy of reservation adopted by the government. Pursuant to the incorporation of article 15(5) the Union Government enacted the Central

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1 *P.A. Inamdar* v. *State of Maharashtra*, AIR 2005 SC 3226 (hereinafter referred to as *Inamdar*).

2 (2002) 8 SCC 481. Striking a balance between the regulatory powers of the state and the autonomy of educational agencies, the court held that barring a certain percentage of seats falling under 'management quota', the government may fill seats in un-aided non-minority institutions through state agencies.

3 *Id.* at 609.

4 Art.15 (5) reads as follows: -
"Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the state from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions referred to in clause (1) of article 30."

Educational Institutions (Reservations in Admissions) Act, 2006[5] to extend 27% reservation in admission to the OBCs in all central educational institutions.

Although the government has amended the Constitution again, as an alternative to the question raised in *Inamdar* on the issue of reservation in private sector, the only new dimension added in the 93rd Amendment was the provision empowering the government to extend its reservation policy to unaided non-minority private educational institutions. Unfortunately, the following legislation has taken away this new dimension by confining the operation of the Act only to the 'Central Educational Institutions'.[6]

The object of the Act was to introduce reservation in 'Central Educational Institutions' and not in any other private unaided institutions. It thereby restricted the whole objective of the 93rd Amendment Act. In spite of these various developments, in effect, the power of the state to regulate the private, un-aided non-minority educational institutions is still governed by the *Inamdar* judgment. Ultimately, the constitutional validity of the 93rd Amendment as also the validity of the Act was challenged before the apex court in *Ashok Kumar Thakur.*[7] So now it is left open to the judiciary to interpret the whole issue of private sector reservations in a writ petition filed in *Ashok Kumar Thakur*'s case.

This being the major developments in this academic year, the other major decisions of the Supreme Court and the high courts, which are of constitutional and public importance, are analyzed under various heads, in this survey.

II ADMISSION

In the matter of admission to educational institutions, several issues came up before the court under various heads. The issues raised include fixation of fee, legality of conducting common entrance test, allotment of seats etc.

5 Act No.5 of 2007

6 S. 2(d) of the Act defines the term' Central Educational Institutions' as follows:
2(d) "Central Educational Institution" means-
(i) a university established or incorporated by or under a central Act;
(ii) an institution of national importance set up by an Act of Parliament;
(iii) an institution, declared as a deemed university under section 3 of the University Grants Commission Act,1956, and maintained by or receiving aid from the Central Government;
(iv) an institution maintained by or receiving aid from the Central Government, whether directly or indirectly, and affiliated to an institution referred to in clause (i) or clause(ii), or a constituent unit of an institution, referred to in clause(iii);
(v) an institution set up by the Central Government under the Society's Registration Act, 1860.

7 *Ashok Kumar Thakur* v. *Union of India*, (2007) 4 SCC 397. The petition came before a bench comprising of Arijit Pasayat and Lokeshwar Singh Panta, JJ and on 17.5.2007 the matter was referred to a larger bench after framing the issues.

Fixation of fee

There have been conflicting opinions between the state and the educational institutions regarding the fixation of fee structure by the authorities. The courts generally would not shut their eyes to the hard realities of commercialization of education and unhealthy practices being adopted by many institutions by charging huge amount of fees to meet their private ends. In *T.M.A. Pai Foundation* the Supreme Court overruled the separate fee structure for free and payment seats, in terms of *Unnikrishnan*[8] but cautioned that there should be no capitation fee or profiteering mechanism. In *Islamic Academy*[9] the apex court directed the respective state governments to constitute committees to supervise the fee-structure proposed by the educational institutions. In *Inamdar* the Constitution bench of the Supreme Court upheld the freedom of every unaided educational institution 'to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form'.[10] The doubts created by *Pai Foundation* were clarified in *Inamdar.* The law, as crystallized in all these cases states that the state government could impose regulatory measures to fix the fee-structure on the basis of materials produced by the colleges before them both for expenses incurred and for future development.

In *Abhishek Kodian* v. *State of Allahabad*[11] the stand taken by the private unaided institutions, to fix fee structure on their own was disapproved by the court. The basic issue involved in this writ petition was the competence of the medical college run by a charitable trust to charge higher amount of fees than the fees fixed by the state government. By relying on *Inamdar* the Allahabad High Court held that medical college cannot be allowed to fix fees for payment seats and to charge higher fees for meeting its expenses and development activities as charging of fees is regulated by the state government. In another case,[12] the Madhya Pradesh High Court held that the fees charged by the private unaided educational institutions was rational and there was no charging of capitation fees or profiteering even after decision of the Supreme Court in *T.M.A. Pai Foundation* case. The court further clarified that the fees payable by the students had to be determined in accordance with the scheme of *Unnikrishnan*'s case, as the *T.M.A. Pai* judgment cannot be given effect to in the year 2003-2004.

Common entrance test

Admission to P.G. dental course, which was made through conducting entrance examination, was challenged in *Dr. Jose Thomas* v. *State of*

8 AIR 1993 SC 2178.
9 AIR 2003 SC 3724.
10 *Id.* at 605.
11 AIR 2007 All 204.
12 *Priyanka* v. *State of Madhya Pradesh*, AIR 2007 MP 182.

Kerala.[13] Reiterating the decision in *Tirthani*[14] the court held that since the degree examination results were drawn from different universities, the academic standards at graduate level would not be the same for all. So in order to achieve uniform standard for selection, conducting a CET (common entrance test) was the only solution for it. The Madras High Court also took a similar view in *R. Nirmal Kumar* v. *The Registrar, Tamil Nadu Dr.Ambedkar Law University.*[15] In this case, the Tamil Nadu Act 3 of 2007 abolished the CET for admission to all professional colleges in the State of Tamil Nadu, which was challenged before the court by way of a writ petition. The court held that since the candidates who were eligible for joining the B.L.course were from various disciplines, holding of CET was mandatory to achieve a uniform evaluation for selecting the candidates for admission. The court by observing that abolishing the CET was arbitrary and violative of article 14 of the Constitution, directed the university to conduct the CET within a period of six months and complete the admission procedure within the stipulated time.

The Orissa High Court took a similar approach by nullifying the state Act which encroached upon the field of central laws as unconstitutional, as it totally prohibited admission procedure by dispensing with the CET.[16] In *Darus Salam Education Trust* v. *Government of Andhra Pradesh & Ors* [17] the issue was whether the government holding a CET followed by centralized counselling under the A.P. Unaided Non-Minority Professional Institutions (Regulation of Admissions into Undergraduate Professional Courses Through Common Entrance Test) Rules 2006, violated the rights guaranteed to minority institutions under articles 30 and 19(1) (g) of the Constitution. The court held that regulating the procedure for admission of students with a view to ensuring merit and transparency and preventing exploitation of the students could never be termed as interfering with the day-to-day administration of the institution and hence was not violative of articles 30 and 19(1)(g) of the Constitution.

But a division bench of the Madras High Court has given an opposite view in *S. Aswin Kumar* v. *State of Tamil Nadu*,[18] wherein the court held that in the State of Tamil Nadu CET has been completely dispensed with and admissions to engineering colleges are made on the basis of the marks obtained in the qualifying examination. The ruling of the court was based on the fact that even though the purpose of conducting CET was to ensure equality it was not the only method of selection to ensure it. The court further

13 AIR 2007 Ker 217.

14 In *State of Madhya Pradesh* v. *Gopal D. Tirthani*, (2003) 7 SCC 83, the Supreme Court took the view that holding separate entrance test for in-service and open category candidates was not legal and there should be only one common entrance test for both categories.

15 (2007) 4 MLJ 406.

16 *Orissa Management Colleges Association* v. *State of Orissa*, AIR 2007 Ori 120.

17 AIR 2007 AP 624.

18 2007 (2) CTC 677.

added that if equality could be achieved by any other method, no objection could be sustained and the authorities could go for it. A similar view was adopted in *K.S.F.E.C.M. Association* v. *Admission Supervisory Committee*[19] where the court held that adding of marks obtained in qualifying examination along with that of CET was not unfair or unscientific for admission to unaided professional colleges and that failure to follow CET alone could not have the effect of lowering the standards. Similarly, in *Lisie Medical & Education Institution* v. *State of Kerala* [20] the division bench of the Kerala High Court struck down section 3 of Act 19 of 2006[21] on the ground that it was completely annihilating the right of minority institutions guaranteed under articles 19(1)(g) and 30(1) of the Constitution of India.

Eligibility criterion

In some cases, the eligibility criterion fixed for admission by the academic institutions was challenged. Generally, the approach of the court has been that, since the experts in the concerned educational fields prescribe the eligibility criterion, judicial interference is not required. Such a view was adopted in one case[22] wherein the court accepted the eligibility criterion prescribed by the academic authorities. In this case, as per section14 (I) of the Karnataka Selection of Candidates for Admission to Diploma in Education Course Rules, 2002 in order to get admission in D.Ed course, the eligibility criterion was that the candidate should have studied English as 'first language' or as 'second language' in SSLC. The court was reluctant to interfere with the criterion fixed on the ground that the rule was clear and unambiguous and any relaxation of the same would come within the purview of the rule making authority and the court could not do the same. The court further observed that the criterion prescribed was necessary for academic excellence as well as for proficiency in teaching.

But in exceptional cases, timely interference of the judiciary has protected the rights of the students. In *Pushpak Behara*[23] his admission to LL.M course got cancelled on the ground that the petitioner had obtained a P.G. degree earlier. The conditions for eligibility contained in the information bulletin stipulated that no admission should be given to a candidate for a P.G. course for the second time except for professional courses. So the real question here was whether LL.M was a professional course so as to come within exception for admission to P.G. course for the second time? The court held that LL.M course is a professional course requiring a purely intellectual skill as is required for other professional

19 AIR 2007 Ker 220.
20 2007 (1) KLT 409.
21 Which insisted on admissions only from the rank list prepared on the basis of the state entrance examination.
22 *St. Ann's D.E.D College* v. *State of Karnataka,* AIR 2007 Kar 439.
23 *Pushpak Behara* v. *Vice-Chancellor, Utkal University*, AIR 2007 Ori 58.

courses. Accordingly, the court issued directions to admit the student to LL.M course for which permission was refused by the authorities.

The question whether it was permissible to 'round off 'the marks so as to satisfy the eligibility criterion for admission to the P.G. medical course was challenged in *Dr.Rajive Mangal* v. *Rajasthan University of Health Sciences*.[24] Refusing to apply the rule in the present case, the court held that the rule of 'rounding off' could be applied only in exceptional situations i.e. when marks could not be expressed in fraction. Since the present case related to P.G. admission through entrance test for which the eligibility for admission was provided in the regulations framed by the Medical Council of India, the merit determined in the competitive examination for admission to the post-graduate medical services examination was solemn and could not be tinkered with by applying an equitable rule of 'rounding off'.

Postal delay

In admission matters the attitude of the court has not been consistent. In some cases admissions were given on the basis of humanitarian considerations and in some it refused to interfere.

In *Haobijon Rita Devi* v. *Sikkim Manipal University of Health, Medical and Technology Sciences & Ors*[25] the petitioner's admission to MBBS course was cancelled due to postal delay. The court by considering the fact that the petitioner was from a very remote area not having internet facility ordered that the candidate should be admitted at the earliest. For arriving at this decision the court relied on *Mohini Jain* v. *State of Karnataka*;[26] and *J.P.Unnikrishnan* v. *State of Andhra Pradesh*[27] which had held that the right to education is a fundamental right of every citizen which is implicit in the right to life guaranteed under article 21 of the Constitution of India.

But in *Vikram Dhillon* v. *State of Haryana*,[28] the court upheld the decision taken by the authorities, which cancelled the admission of the petitioner to BDS course on the ground that he was not present on the day of admission, and the same was granted to respondent although the latter was at lower serial number than the former.

Principles of natural justice

In admission matters, even though the court has been very strict in its approach it has always adhered to the principles of natural justice. In *Dr.Anshu Dubey* v. *State of Madhya Pradesh*[29] admission to D.G.O. course was denied to the appellant on the ground that cut-off date fixed for admission was over. The appellant was a wait listed candidate of unreserved

24 AIR 2007 Raj 186.
25 AIR 2007 Sikkim 6.
26 AIR 1992 SC 1858.
27 *Supra* note 8.
28 AIR 2007 SC 1067.
29 AIR 2007 MP 1205.

category and some seats, which were reserved for general category, were converted to reserved category and admission was refused to the appellant. The Madhya Pradesh High Court observing that it was a mistake committed by the authorities quashed the order. In another case[30] regarding the admission to nursing course, the petitioner failed to appear for admission on the concerned date, and it was held that she could not establish her right once the seat allotment was over.

In *Anoop Kumar Dhruv* v. *State of Chattisgarh & Anr*[31] regarding the admission to MBBS course it has been held that students who are offered admission under any category /college later on cannot claim that they should have been considered under some other category or some other college. This was to prevent unnecessary confusion in the process of admission.

Admission test

Conducting of admission test by schools for their own students was the issue in *Dr. Anandalakshmy*.[32] The Madras High Court reiterated the decision of the apex court in *Principal, Cambridge School* v. *Payal Gupta*[33] and ruled that the students who had studied in Xth standard in the school were entitled to continue their XIth standard studies in the same school without any selection process as their admission to the XIth standard should be treated as a continuation of the original admission done in the school. The court further directed that, no schools should conduct admission test for their own students, but it might do so for admitting students from other schools. In *P.Arunkumar* v. *State of Tamilnadu*[34] the court held that adopting a different method of selection i.e. 'stanine grade system' for admission to MBBS course was not discriminatory and the adoption of such system brings transparency in the whole selection process.

In *Dr. Arvind Bhatia* v. *State of Madhya Pradesh*[35] the validity of rules 10(2),[36] 10(3)[37] and 20(9) of the Madhya Pradesh Medical and Dental P.G. Course Entrance Examination Rules, 2007 was challenged. Holding rule 10(2) as reasonable, the Madhya Pradesh High Court observed that the rule making authority had considered it fit to give weightage of marks up to a maximum of 50 out of 200 after considering the peculiar circumstances in

30 *Pooja* v. *Guru Tej Bahadur Hospital*, AIR 2007 Del 224.
31 AIR 2007 Chh 78.
32 *Dr. S. Anandalakshmy* v. *Government of India*, (2007) 4 MLJ 689.
33 AIR 1996 SC 118.
34 AIR 2007 Mad 2676.
35 AIR 2007 MP 196.
36 In rule 10 (2) it is provided that interse merit of the selected in-service candidates shall be fixed up by adding marks of weightage for their services rendered in rural areas and the candidates serving in rural areas will get maximum of 50 marks allotted in the manner provided in cls. (a), (b), (c) and (d) of r.10 (2) of the Rules.
37 Rule 10(3) provides that a demonstrator will be given 10 marks for each year of service after 5 years of minimum regular service rendered and the maximum limit of such marks shall be 50 for 5 years.

the State of Madhya Pradesh where the doctors were not willing to serve in rural areas. As regards rule 10(3) giving weightage of marks to demonstrators on the reason that there were no career prospects for them, the court held was not reasonable and rational and was violative of article 14 of the Constitution. The court further observed that as rule 20(9) which provides that counselling of in-service candidates will be done on first category wise and the seats remaining vacant thereafter shall be made available to open category candidates, ensuring that percentage of reservation for reserved category candidates are maintained, was not violative of article 14 of the Constitution. Overall, this case raises the apprehension that if additional marks were given to candidates who serve in rural areas, then candidates of poor quality may get admission in P.G.courses. But the court by relying upon the decision in *Tirthani*'s case took care of this by providing that every in-service candidate has to secure the minimum qualifying marks in the common admission test.

NRI quota

In *Aseem Choudhary* v. *H.P. University*[38] the Himachal Pradesh High Court ruled that creating a 'NRI sponsored candidate' category for admissions is discriminatory against the ordinary resident Indians which may amount to selling of seats on commercial basis. The court ordered for the scrapping of such a category as it includes only such candidates who are residing in India but financially sponsored by non-resident Indians.

Right under article 21 A

In another case,[39] commenting upon the scope and ambit of article 21-A[40] of the Constitution, the Rajasthan High Court observed that even though article-21 A stands for the fundamental right to education to children it does not confer a right on petitioners to compel authorities to give admission to them in some courses. The court further clarified that right to education, as a fundamental right does not include the right to receive training under special correspondence course.

III AUTHORITIES AND THEIR POWERS

As in the previous years, considerable number of cases has been reported relating to the establishment of new educational institutions, recognition/ affiliation by the universities, management of educational institutions and the nature of power exercised by the authorities etc.

38 AIR 2007 HP 155.

39 *Surajmal Katara* v. *State*, AIR 2007 Raj 993.

40 The text of art 21-A runs thus; The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state shall, by law, determine'.

Establishment of new educational institutions

The courts have a limited role to play in the establishment of new educational institutions since it has been considered as the policy matter of the government.[41] The Madras High Court in *Madras Presidency Homeopathic Association* v. *The Registrar, Tamil Nadu Homeopathic Medical Council*,[42] observed that, prior permission from the central government is a *sine-qua-non* to start a professional college. The court here directed the petitioner to stop conducting the unlawful course. In this era of mushrooming of professional colleges, this decision shows the strict attitude of the court to keep up the standard of education and to retain state control over it. Again in *S.T.Krishnamoorthy* v. *Union of India*[43] the court took a similar view. The respondent started a medical institution without the prior permission of the central government and also without being affiliated to any of the universities established as per the UGC Act. The court held that respondent had no legal right to run an institution by merely giving an advertisement in the newspaper and such an action was clearly illegal which might invite penal action.

In *State Public Interest Protection Council* v. *Union of India*[44] the court held that the establishment of educational institutions is the policy matter of Union of India and even the UGC has no power to establish an institution without the approval of the central government. The court also added that this unfettered power of the Union of India cannot be judicially reviewed and the court cannot direct the Union of India to establish an institution at a particular place. But the court in *State of Kerala* v. *SC/ST Welfare Society*[45] held that educational needs of the society are to be ascertained and determined by the state. It directed the state government to reconsider the application for granting permission to start the school which was denied by the state itself. In this case, the government on the one hand admitted the educational needs in a locality and on the other, took a policy decision to refuse sanction to start a school. The court observed that the government cannot refuse to give permission under the guise of want of policy decision in that regard as it would amount to defeating the constitutional mandates contained in articles 21-A, 41, 45 and 46.

Distance education

Establishment of study centers for distance education programme became a contentious issue in two cases. In *Kurumanchal Institute of*

41 The apex court in two cases ruled that the courts would have no occasion to interfere, in matter of the establishment of new educational institutions as it has been considered as the policy decision of the government, *Asif Hammed* v. *State of Jammu &Kashmir*, AIR 1989 SC 1899.

42 AIR 2007 Mad 1545.

43 AIR 2007 Mad 1573.

44 AIR 2007 Ori 159.

45 AIR 2007 Ker 158.

Degree and Diploma v. *Chancellor, M.J.P. Rohilkhand University*,[46] the university refused to give permission for the establishment of a study center for distance education programme on the ground that they should be operated within the territorial jurisdiction of the university. Again in *Uttaranchal Education Trade &Technology Pvt. Ltd*. v. *State of M.P. & Ors*[47] the Madhya Pradesh High Court observed that even though the mode of distance education may be practised by way of telecast, broadcast and correspondence the study center should be established within the territorial jurisdiction of the concerned state.

Upgradation

In *State of Kerala and Ors* v. *K Prasad and Another*[48] the respondents gave applications for the upgradation of their school from primary to secondary level, which was declined by the state authorities because of lack of funds. Rules 2 and 2-A of the Kerala Education Rules, 1959 lay down a comprehensive procedure for opening up of new schools in particular areas; their recognition and upgradation in the State of Kerala. As per the rule the decision for such upgradation should be taken by the government on an application made under rule 2-A. The claim of the petitioner was that they had been discriminated against as the government had given permission to similarly situated schools without following rules. A division bench of the high court ordered the state authorities to grant upgradation to the respondent schools. Reversing this decision the Supreme Court held that rule 2-A (2) puts a complete embargo on consideration of an application, which is submitted otherwise than in response to notification under rule 2-A (1). Since the applications for upgrading the existing school had not been invited by the director as stipulated under rule 2-A (2), the representation of the respondents for upgradation could not be considered by the government unless it was shown that the state government was not finalizing the list in terms of rule 2-A for some extraneous consideration. The court further held that the theory of discrimination could not be invoked here on the ground that a claim based on equality clause had to be just and legal.

Administration of educational institutions

The issue of the administration of educational institutions by the state/ universities continues to be a major issue generating lot of litigation. In *Rural Educational and Social Trust* v. *University of Calicut and Another*[49] the petitioners obtained recognition from NCTE and anticipating affiliation from the university they admitted students and commenced classes. The university refused to grant affiliation due to non-fulfilment of all the conditions by the management, which has been framed by the university.

46 AIR 2007 SC 2253.
47 AIR 2007 MP 2604.
48 (2007) 9 SCALE 154.
49 AIR 2007 Ker 187.

Relying on *State of Maharashtra* v. *Sant Dhyaneswar Shikshan Shatra Mahavidyalaya*[50] the court held that affiliation from the university was not an empty formality and the stand taken by the university was fully justifiable because both the University Act and the NCTE Act mandate the requirement of getting affiliation from the university.

In *Abhijay* v. *AICTE* [51] the Delhi High Court while deciding on the issue of admission to engineering course observed that the direction of AICTE permitting the lateral entry in admission matters was not binding upon the universities. Thus, it revealed that the universities would have upper hand in the case of admission to various courses in their respective institutions.

Recognition by NCTE

The powers of the state government *vis-à-vis* NCTE in granting recognition for the establishment of teachers training educational institutions were involved in two cases. In *Mange Ram Educational & Charitable Trust* v. *State of Haryana*[52] the court observed that even though the state government was authorized to raise an objection to grant recognition, in case objection was not accepted by NCTE and recognition was granted, then state government had no further role to play. Here, the court observed that no discretion was left with the affiliating body/state government in granting the recognition when the same had been granted by the council. An almost identical view was taken by the Himachal Pradesh High Court in *Krishna Educational Centre* v. *H.P. Board of School Education*[53] wherein it was observed that in granting of recognition to an institution offering teacher education course, the final authority lay with the NCTE and neither the state nor the university nor the board could act contrary to the decision of NCTE.

Permanent recognition

In *St.Xavier's College of Education* v. *State of Bihar*[54] a claim for permanent recognition by a minority institution was refused by the state, but it was given provisional recognition even though the institute had complied with all conditions for grant of permanent recognition. The Patna High Court was of the view that the state government could not refuse recognition to an institution when it fulfilled all the requirements. The court further held that the state should either grant permanent recognition or it should refuse the same. The unhealthy practice of granting limited recognition would adversely affect the future of the students.

Withdrawal of recognition

The Karnataka High Court upheld the decision taken by the government of Karnataka to withdraw the recognition given to a private school, on the

50 (2006) 9 SCC 1.
51 AIR 2007 Del 2388.
52 AIR 2007 P&H 324.
53 AIR 2007 HP 616.
54 AIR 2007 Pat 187.

ground that the school had violated the conditions of recognition.[55] The court observed that, the institutions were bound to run school only in the medium of instruction for which recognition was sought and obtained and any violation of the conditions of recognition was bound to invite action for withdrawal of recognition.

In *Nirwan Charitable Trust* v. *State of Rajasthan*[56] the question was whether the norms laid down by the Indian Nursing Council in matter of determination of intake capacity of students were binding or not. The Indian Nursing Council had fixed the intake of students in GNM course as 60 and the course was to impart skill-based training. Holding that if the strength was more than 60 in a batch it would be difficult to ensure such a skill based training, the Rajasthan High Court held that the norms adopted by the central council for the intake capacity in nursing institutes were binding.

Internal administration

It is a settled position that the universities can take *suo motu* decision in its internal administrative matters. This view was reflected in a decision[57] by the Rajasthan High Court wherein it terminated the membership of a syndicate member due to his failure to attend the meetings. The court held that the decision taken by the university was not arbitrary and it was in the proper interest of the university even though no prior opportunity of hearing was given to the member. In another case,[58] the court upheld the decision taken by the university, which suspended the petitioner from the position of head of the department for alleged misappropriation of funds of the trust and acted against the interest of the university.

Grant-in-aid

In *Maria Grace Rural Middle School* v. *Government of Tamil Nadu*[59] the claim for grant-in-aid from the state by a private school was not allowed by the court on the ground that the private school management cannot claim grant-in-aid as a matter of right as it is neither a fundamental right nor a statutory right of educational institutions. The court observed that the fact that the school management voluntarily came forward to start schools on the ground that they would not claim aid and later on claiming the same on the pretext of helping the state in fulfilling the constitutional mandate of providing free education to all children under article 45 of the Constitution cannot be justified. It was held that right of minorities to establish and administer educational institutions does not include right to receive grant-in-aid. The court made it clear that grant-in-aid is an economic concept and

55 *Karnataka (Ref) U.S.Management's Association* v. *State of Karnataka*, AIR 2007 Kar 157.
56 AIR 2007 Raj 60.
57 *S.P Ratawal* v. *University of Rajasthan*, AIR 2007 Raj 355.
58 *Centre for Entrepreneurship Development* v. *Madurai Kamaraj University*, AIR 2007 Mad 2207.
59 AIR 2007 Mad 52.

that granting or not granting it would always depend upon the subjective satisfaction, financial stability, resources and the discretion of the state government.[60] It is a policy matter of the state within the domain of the executive and not a matter of principle to be laid down by the legislature.

IV EXAMINATIONS

The current year's survey reveals cases relating to valuation, revaluation, award of grace-marks, criteria for appearing in examinations, leakage of question papers, regulation by authorities etc.

Criteria for appearing in examinations

The Orissa High Court confirmed the decision taken by the CBSE, which allowed 17 candidates to appear in examinations even though the enquiry committee made them ineligible on the ground that their names were not on the roll of the school.[61] Refusal to allow by the authorities to appear in the examinations on the ground of poor attendance was not approved by the court in *Rajat Suvra Bala* v. *West Bengal Council of Higher Secondary Education.*[62] They were directed to allow the candidates to appear in the examination. But in *Kandarpa Kumar Das* v. *Union of India*[63] the Gauhati High Court did not interfere with the decision of the school authorities which denied permission to the students from appearing in the examination on the ground of shortage of attendance.[64]

The question in *Aneesh Haridas* v. *University of Kerala, Trivandrum*[65] was whether a candidate who had passed the SAY (Save An Year) examination, but failed in XIIth standard examination in the State of Tamilnadu was eligible for admission to engineering course in Kerala in the same academic year. As per clause XX of the Kerala Universities Rules for admission to affiliated colleges, the candidates who have passed SAY Examination of other state boards are not eligible for admission during the same year. However, it was conceded that students from Kerala who have failed in the XIIth standard examination and passed in SAY Examination conducted in the same year are eligible for admission to engineering course during the same year itself .The real question was whether this amounted to discrimination, and violated article 14 of the Constitution. The Kerala High Court held that it was a case of clear discrimination. Students from other state boards who were qualified

60 In the above case, the court reiterated the position taken in *Mohini Jain*, AIR 1992 SC 1858 as well as *Unnikrishnan's* case, AIR 1993 SC 2178.

61 *Sidartha Mishra* v. *C.B.S.E*, AIR 2007 Ori 777.

62 AIR 2007 Cal 1171.

63 AIR 2007 Gau 1940.

64 Also see in *Master B.K.Raghu* v. *Karnataka Secondary Education Board,* AIR 2007 Kar 186 in which the Karnataka High Court upheld the decision of the college authorities which refused to admit a student in the examination due to lack of attendance.

65 AIR 2007 Ker 191.

for admission based on the result of SAY examination should be entitled to get admission in engineering and other graduate courses in Kerala in the same way as students from Kerala who wrote SAY examination and became eligible for admission in the same year. The court directed the university to publish the withheld results of the students and allow them to continue the course. The court's approach was strict when mistake/ negligence was on the part of educational authorities.

Award of grace marks

A student cannot claim grace marks as a matter of right. The Calcutta High Court adopted such a stand in *Rajorshi De* v. *University of Calcutta*[66] where the petitioner's claim for the grace mark was refused by the university. The court observed that it is not for the court to find out whether the university has committed any irregularity or not.

Malpractices in examinations

This year, the number of cases involving malpractices in examination was comparatively less. In the *Governing Body, Palsama College and Anr.* v. *The Council of Higher Secondary Education, Orissa*[67] where an examination was cancelled on the ground of mass copying, the court refused to interfere and did not give an opportunity of being heard to examinees on the ground that it was neither provided in the statute nor in the mandate of any law.

Evaluation

In *Suman Saha* v. *University of Calcutta*[68] the university had issued a pass certificate to the candidate although he had not taken that examination. The court observed that the petitioner could not take advantage of an inadvertent mistake committed by the university. In another case[69] the marks awarded to the respondent in one paper was wrongly shown as 35 instead of 65. To obviate these blunders from happening again, the court ordered the board authorities to constitute a body of experts to interview the persons who intends to be appointed as examiners.[70] The court further observed that the court's interference with the decision of the experts is very limited and is called for only when compelling reasons and apparent infirmity in evaluation exist. The court also directed the authorities to pay compensation to the respondent.

66 AIR 2007 Cal 1441.
67 AIR 2007 Ori 1306.
68 AIR 2007 Cal 1977.
69 *President, Board of Secondary Education Orissa* v. *D.Suvankar* , 2007 (1) SCC 603.
70 Reliance was placed on *Bismaya Mohanty* v. *Board of Secondary Education*, (1996) 1 OLR 134. In this case, a direction has been given by the apex court that the answer sheets of the students who had secured more than particular marks were to be re-examined by a committee.

Revaluation

In *Priyanka Pandey* v. *Secretary, Board of Secondary Education*[71] through a writ petition filed under article 226 the petitioner sought an order for revaluation of answer scripts because she was awarded wrong marks due to the carelessness of the evaluator. In this case, even in the absence of specific rules regarding revaluation, the court, considering the right of the student ordered for revaluation and to award proper marks to the student. It also directed the authorities to issue a direction to suspend the teacher who had valued the paper from the responsibility of an evaluator for a period of five years.

In *Tarak Nath Mistri* v. *University of Calcutta,*[72] the court gave wider interpretation to the term 'ordinarily' so as to protect the interest of the student. As per the university regulations for revaluation the time limit prescribed by the authorities was 'ordinarily within one month' from the date of receipt of mark sheet. The court by considering the special circumstances extended the time limit and issued direction to the university to accept his application form for revaluation. In *Kiran Kumar* v. *Dr.N.T.R. University of Health Sciences*[73] the Andhra Pradesh High Court opined that it was improper to discontinue the revaluation system when it was already being done by the university even though there was no provision for the same.

Leakage of question papers

Question paper-related controversies, especially leakage of question papers have been instrumental in making the public to lose faith in the examination system prevailing in the country. Credibility of examinations are, thus, at stake and even conscientious students resort to malpractices. In *Raj Kumar Gupta* v. *Union of India* [74] a PIL was filed to caution the authorities to take adequate measures to prevent the frequent leakage of question papers of various examinations. The Supreme Court expressed satisfaction on the security measures taken by the Central Board of Secondary Education (CBSE) to prevent frequent question paper leakage ahead of major competitive examinations.

V TEACHERS

Certain issues related to the teachers have been reported during the year under survey in which the selection and appointment of teachers dominated the arena.

Selection and appointment of teachers

The eligibility qualification for the appointment of the principal of the law college was in question in *Bar Council of India* v. *Board of*

71 AIR 2007 MP 235.
72 AIR 2007 Cal 1705.
73 AIR 2007 AP 1933.
74 (2007) 2 SCC 214.

Management, Dayanand College of Law.[75] The apex court held that regarding the appointment of principal of law college the state government should adhere to the requirements of the Advocate's Act and the rules of the Bar Council of India. The court further observed that such coordination would ensure a harmonious working of the universities and the Bar Council of India in respect of legal education. The Supreme Court in *S.Sethuraman* v. *R.Venkataraman*[76] setting aside the decision of the Madras High Court upheld the decision taken by the managing committee regarding the appointment of a headmaster in an aided college. In this case, the appellant and respondent were both claimants for promotion as headmaster. Even though the respondent was senior to the appellant by 13 days the managing committee selected the appellant for the post of headmaster by taking into consideration the other merits.[77] When the matter came before the Supreme Court it was categorically held that in the case of an appointment, if two views are possible, ordinarily the view of the appointing authority should be given priority over the other considerations since they are managing the day-to-day affairs of the concerned schools.

In *Valsala Kumari Devi* v. *Director, Higher Secondary Education*[78] the apex court criticized the decision of the high court and ruled that regarding the selection of a candidate for the post of a teacher in a higher secondary school once the requirement for the prescribed qualification was satisfied, the selection must be made on the basis of 'seniority & suitability' and there was no scope for making comparison of qualifications of suitability. The court further explained the expression 'suitability' to mean that a person to be appointed should be legally eligible and the term eligibility should be taken to mean 'fit to be chosen'. In this case, the selection committee selected the respondent for the post of a teacher in a higher secondary school by ignoring the appellant who has been working as HSA in the same school even though the appellant was fully qualified and senior to the respondent. The court further ordered the authorities to issue appropriate order in favour of the appellant within a period of four months.

VI RESERVATION IN EDUCATIONAL MATTERS

During the year under survey a number of cases dealing with different aspects of reservation has been reported.

The question whether females should be equated with SC/ST and OBC in the matter of reservation in admission to P.G.medical courses was raised in

75 AIR 2007 SC 1342.

76 (2007) 6 SCC 382.

77 Rule 15(4) of the Tamil Nadu Private (Aided) Colleges rules provides that promotion shall be made on the grounds of merit & ability and seniority being considered only when merit and ability are approximately equal.

78 (2007) 8 SCC 533.

Dr. Nirupama Chauhan v. *The Rajasthan University of Health Sciences.*[79] In this case regulation 9 of the P.G.Medical Education Regulations which provided a relaxation in the minimum qualifying marks to SC/ST &OBC candidates were challenged on the ground that it was discriminatory. The court held that the relaxation as to minimum qualifying marks in favour of SC/ST by excluding female candidates was not discriminatory and directed the MCI to decide the same as it comes within the exclusive jurisdiction of the body.

Reservation in admission

The Delhi High Court in *Miss. Renu Vashist* v. *National Capital Territory of Delhi*[80] considered the issue of reservation in admission. The court declared that if reserved category candidates qualified on merit in the general category, then they should be admitted in the open category without exhausting seats from reserved quota. The court further observed that, for the purpose of exercising choice of institution such a candidate would be offered choices as per *inter se* ranking of only reserved category candidates. This decision ensures that even if a reserved category candidate is placed in general category he will not lose his opportunity in comparison to those candidates who got admission on the basis of reservation.

In *Madan Prakash* v. *State of Jharkhand*[81] reservation in admission to MBBS course was challenged on the ground that the petitioners belonged to reserved category in another state. The court held that a person belonging to reserved category in one state was not entitled to the benefit of reservation in another state. However, by reiterating the decision in *U.P.Public Service Commission, Allahabad* v. *Sanjay Kumar Singh*[82] the court observed that if a candidate belongs to any of the reserved category declared for that state and has validly secured a caste certificate from the said state, then he cannot be deprived of the benefit of reservation. However, in the present case the court held that, so long as the caste certificate issued by the competent authorities has neither been challenged nor been cancelled by any competent authority the petitioners have a valid right of admission to professional courses for which they have been declared successful.

In *Sindhu* v. *Commissioner of Entrance Examination*[83] the Kerala High Court ruled that the children of inter-caste married couples could not claim reservation benefits even if one of the parents belonged to SC/ST or OBC. It was further observed that they could claim educational and monetary

79 AIR 2007 Raj 2052.
80 AIR 2007 Del 1415.
81 AIR 2007 Jhar 63.
82 AIR 2003 SC 3626, (2003) 7 SCC 657. In this case the apex court held that if a person certified as SC/ST in relation to one state, migrates to another state he would not be entitled to the benefits available to SC/ST of the state in which he so migrates, unless he belongs to SC/ ST in that state also.
83 2007 (1) KLT 173.

benefits, as the caste status would normally depend on the status of the father only. Again in *H.U. Prasanth* v. *Government of Tamil Nadu*[84] the Madras High Court held that for admission to MBBS course the grand children of freedom fighters would never get in the quota meant for children of freedom fighters since the quota for the special categories have to be construed in strict manner as it is an exception to article 15 of the Constitution and it can only be horizontal reservation and not vertical reservation.

VII MINORITY RIGHTS

State regulation over administration of educational institutions

One important question raised in *T.M.A. Pai Foundation*[85] was about the state regulation and control over the administration of educational institutions. This issue again came up for the consideration of the apex court in *Secretary, Malankara Syrian Catholic College* v. *T.Jose & Ors*.[86] Here the issue before the court was whether the right to choose a principal was part of the right to administer even if the institution was an aided one. The Kerala High Court relying on section 57(3) of the Kerala University Act which provides that appointment of principal should be on the basis of seniority-cum-fitness held that receipt of aid by a minority institution took away the protection under article 30(1), to claim immunity from interference and therefore the state, could impose measures regarding the appointments, removal and the conditions of service of principals and lecturers as per the university Act.

The Supreme Court while setting aside the order of the Kerala High Court, observed that the interpretation of minority rights by the eleven-judge bench in *T.M.A. Pa*i has not changed the prerogative right of the minority management to appoint a principal of their choice even in an aided educational institution. The court clarified that management was entitled to appoint a suitable person of their choice provided he was having prescribed qualification to hold the post.[87] While ruling so the Supreme Court also examined the additional control exercisable by the government in view of the grant-in-aid to a minority institution.

The implications of the order passed by the Supreme Court in *P.A. Inamdar* v. *State of Maharashtra* on the right of minority to establish and

84 2007 4 MLJ 494.

85 *Supra* note 2.

86 AIR 2007 SC 570.

87 In this case the court observed
"It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has been, in any way, diluted or altered by *TMAPai.* Having regard to the key role played by the principal in the management and administration of the educational institution, there can be no doubt that the right to choose the principal is an important part o the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the principal/ headmaster is also covered by state aid will make no difference." *Id*. at 580.

administer unaided institutions as recommended by the Ganguly Committee for the academic year 2007-2008 were examined in *Kriti Sisodia* v. *Directorate of Education & Anr.*[88] In this case, the Delhi High Court held that unaided minority schools were not covered by the Ganguly Committee recommendations as the law declared by the Supreme Court in *Inamdar* made it clear that the unaided minority institutions have complete freedom as regards the procedure to be adopted for admissions in their institutions. The court observed:[89]

> The position in law is, therefore, absolutely clear that the unaided minority institutions have the complete freedom in so far as the procedure to be adopted for admissions are concerned. This is, of course, subject to the larger interest of public safety, national security and national integrity, which have been referred to in the Supreme Court decision. It is, therefore clear that the Ganguly Committee was alive to the situation and specifically provided in paragraph 5,8 that the rights of minority schools established under Article 30(1) of the Constitution to have the freedom to administer and admit children remain safeguarded. The committee, therefore, consciously, in view of the constitutional mandate, did not interfere with the admission procedure to be adopted by such schools.

In *Nelson & Anr* v. *Kallayam Pastorate*[90] the Supreme Court by reiterating the position in *Islamic Academy* observed that even though the minorities have a right to establish and administer an institution, this right was not absolute and unfettered. The court further added that it could oversee the functions in case of mismanagement. This decision reiterates the state control over the activities of the minority educational institutions.

In *Kanya Junior High School Bala Vidya Mandir, Etah U.P* v. *U.P Basic Shiksha Parishad, Allahabad & Ors*[91] the question was regarding the dismissal and removal of teachers in minority educational institutions. It indirectly raised the extent of autonomy available to minority institutions. The court held that the minority institutions are not immune from operation of measures necessary to regulate their functions and that to what extent regulations would operate, was a matter, which would be governed by statute. The court while reiterating the position taken in *Inamdar* held that "minority communities do not have any higher rights than the majority. They have merely been conferred additional protection".

Almost a similar view was taken by the Andhra Pradesh High Court in *Darus Salam Educational Trust* v. *Government of Andhra Pradesh*[92]

88 AIR 2007 Del 179.
89 *Id*. at 183.
90 AIR 2007 SC 1331.
91 (2006) 11 SCC 92
92 *Supra* note 17.

wherein it was held that holding of common entrance test for regulating the admission does not cause any dent in the right of minority unaided institutions to admit students of their own choice. Reiterating the position in *Inamdar* the court clarified that such regulation does not violate the right under article 30(1) of the minorities or under article 19(1) (g) of minorities or non-minorities and hence they are reasonable restrictions.

Determination of minority status

The delay occurred from the part of authorities in communicating the determination of minority status was the issue in *Muslim Vidhyaarthi Prakrati Trust* v. *State of Gujarat*.[93] Here an institution applied for the minority status to the competent authority and it failed to communicate the same within the stipulated time.[94] The court observed that the competent authority would be deemed to have granted the minority status to the institution because of its failure to communicate its decision within the stipulated time.

VIII MISCELLANEOUS

In *Udai Singh Dagar* v. *Union of India*[95] the issue was whether the central Act, which has expressly taken away the right of the petitioners to practise in the field of veterinary services was a reasonable restriction violative of article 19(1) (g) of the Constitution. The court held that the central Act recognizing such right only to degree holders of veterinary profession and not to the diploma/certificate holders on the ground that their names did not find place in the register mentioned by the central or state council, was justified.

In *S.C. Chandra & Ors* v. *State of Jharkhand & Ors*,[96] a government corporation, namely, HCL was extending financial aid to a particular school. Under the provisions of the Bihar Non-Government Secondary School (Taking Over of Management and Control) Act, 1981 though the school was recognized by the state it was not taken over by the newly formed State of Jharkhand. Teachers approached the court seeking a direction to be issued to the state to take over the management of the school, but it refused to do so.

93 AIR 2007 Guj 221.

94 S. 10 of the National Commission for Minority Educational Institution (Amendment) Act, 2006 provides that in a case where either the application is not processed and dealt with, or in a case where either the application is rejected but rejection is not communicated, both within a period of ninety days from the date of receipt of application, the provisions create a deeming fiction where under the application is deemed to have been allowed.

95 AIR 2007 SC 2599.

96 AIR 2007 SC 3021.

IX CONCLUSION

Comparatively, this year the legislature has played a more active role than the judiciary in bringing changes in the educational sector by enacting the 93rd Amendment Act and the Central Educational Institutions (Reservations in Admissions) Act, 2006. Also no substantial issues were raised before the court when compared to the previous year. The judicial intervention has not brought about any consistency in judicial precedents on several issues like conducting common entrance tests, admission matters, and regulation by the authorities, etc. However, in matters of administration of minority educational institutions the courts have, by and large, reiterated the law laid down in earlier decisions.