

PROFESSIONAL EDUCATION - - SOME LEGAL ASPECTS.

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Last year a Division Bench of the Supreme Court of India decided the case of Miss. Mohini Jain Vs. State of Karnataka and others and the decision had caused upheaval in the educational field. The Court held that Right, to Education is included in Right to Life. Though there is no Article declaring education to be within fundamental rights, yet Article 21 of the Constitution of India guarantees Right to Life as fundamental Right and if by life we do not mean mere animate living and do mean life with human dignities, then certainly education is covered by Article 21 of the Constitution. The Court further held that State was duty bound to provide education to all at all levels and if the State were to allow any private Institutions to run schools and colleges such Institutions must be deemed to be the agencies of the State and none of the Institutions can charge a fee in excess or what is charged in a Govt. Institution. The Court further declared that any fee charged by an Institution in excess of fee charged in a Govt. Institution would amount to Capitation and would infringe the provisions of article 21 of the Constitution. This case was with reference to the admission to a non-aided private Medical College. But the rationale was so generic and far reaching that it would cover educational Institutions right from Kinder Garten to higher education as none of the non-aided schools and colleges would manage to run at a fee charged in aided-colleges.

Immediately after the decision, there were a number of appeals and writ petitions filed by various Institutes from different States challenging the said decision. All these petitions were referred to a Constitution Bench of the Supreme Court

and were heard by a Constitutional Bench of Five Judges of the Supreme Court of India. The Court gave its decision on 4th of February, 1993. The Court held that the rationale of Mohini Jain's case was not wholly correct.

The rationale of Mohini Jains case to the effect that right to education flows directly from right to life is correct but the further finding that citizen can call upon the State to provide colleges to satisfy all their educational needs is not correct. Right to education, understood in the context of Articles 45 and 41, means : (a) every child / citizen of this country has a right to free education until he completes the age of 14 years and (b) after a child/citizen completes 14 years, his right of education is circumscribed by the limits of the economic capacity of the state and its development. More money has been spent and more attention is directed to higher education than to and at the cost of-primary education. Unaided private schools have a role to play and can continue. But the Court is concerned only with professional colleges. And then the Supreme Court laid down a scheme to regulate the admissions in the professional colleges. The broad features of the scheme are : A professional college can be run only by a society registered under the Societies Registration Act, 1860 or religious or charitable Public Trust. At least 50 % of the seats in every professional college shall be filled by the "free seats", The remaining 50 % seats called the payment seats shall be filled by those candidates who are prepared to pay the fee prescribed for these seats, and if there be vacancy after the date prescribed by the Competent Authority, the same can be filled by the management.

Following the decision, the State Government had taken steps to implement the Scheme and the new rules have been laid down. Under these rules, in the case of Engineering education, the students admitted to Free Seats shall pay a fee of Rs. 4,000- while those admitted against Payment Seats shall pay a fee Rs. 32,000 and in case of medical education the fee payable by Payment Student is fixed at Rs. 1,71,000. At the top of this the payment student has to pay the fee for the first year and to give a Bank Guarantee for the payment of the fees of the subsequent years.

This scheme is going to affect the educational system adversely. Now in the same college there would be two types of students, one who pay Rs. 4,000 and two who pay the much higher amount. This certainly militates against the idea of the court to do away the class bias. The scheme does gross injustice to the student admitted in the payment seat. Such student has to pay the cost of his/her own education and also to pay the deficit that arises because of the lesser payment by the free student. The question would be why the free student should not pay the cost of his education ? Why the payment student should be forced to pay the cost of education of the free student ? The free student may not be poor and the payment student may not be rich. Then what is the justification for this liability and would it not be improper discrimination violating the right to equality guaranteed by Article 14 of the Constitution of India ? There being no provision of sustained merit a student admitted in free seat would continue to enjoy that facility in subsequent years though then he scores less or even fails while the payment student will have to go on paying the higher amount though he scores better marks than the free students. Does it not amount to a penalty not justified by any reason? The amount of fees payable by payment seats is so high that only the very rich can afford to pay it and all the

payment seats would necessarily go to the rich people. Earlier the seats in management quota alone were going to the rich and they were providing educational facility to the 80 % students of merit. Now the rich would get 50 % seats and the merit is given only 50 % seats. The scheme would cause great injustice to the rural students because such students would not be in a position to pay so heavy amounts of fees. It is also unfair to pay the same fee to the colleges in the urban and the rural areas because the cost of education must differ as per the area and the investment made by particular colleges.

The Scheme would put the payment seats beyond the reach of most of the Govt. servants and salaried people. On the whole it would tend to monopolise the professional education.

It is a matter of record that the per student expenditure in Govt. Colleges had been more than that in the Private colleges and this it self would establish that there is greater waste or corruption in Govt. Colleges than the Private Colleges and now the same Govt. machinery is supposed to get the matters right, which itself is falacious. The students seeking admission in payment seats would face a great hardship. They would be required to go to Bombay to attend the interviews. They have to run the risk of carrying the money. Giving of the Bank guarantee would impose a great burden and hardship on such students. Thus on the whole there would be great waste of public resources.

The decision also interferes with the rights of the minorities guaranteed by Article 30 of the Constitution of India.

The Government machinery is to finalise admissions and taking into account the unmanageable large number, it would not be in a position to do so. As a result, there would be a chaos. There would be many colleges without students and many students without a college. The payment

made to the state may not reach the colleges in time and this would give rise to number of disputes and inconveniences. The centralised control would expose the process to corrupt practices. At this high fee, colleges may not get payment seats and in that case, they would not be in a position to educate the free students. If the authorities do not assign the requisite number of students to a college by the last date the management of such colleges would be at liberty to fill in the vacancies directly. In such cases the under hand dealing would go unchecked and those colleges who, for want of quality, do not get sufficient number of students, would get greater number of students to be filled up by the management. While filling up these

seats the old vice would continue on a greater scale.

Thus the scheme is unworkable and would produce the effects exactly opposite of the intended ones. This would certainly affect the very large number of students and their careers.

This decision has been challenged by many colleges and students and these writ petitions would come up for hearing before the Supreme Court in near future and I feel certain that this decision would be set aside by the Supreme Court. The only concern is the time it may take to do so and effects there of on the educational system of the country.

