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MISS MOHINI JAIN

v.

STATE OF KARNATAKA AND ORS.

JULY 30, 1992

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[KULDIP SINGH AND R.M. SAHAI, JJ.]

Constitution of India, 1950—Articles 41, 45—Right to education—Whether a constitutional right—Capitation fee—Whether unconstitutional.

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Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984—Preamble—Object of.

Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984—Sections 3, 5(1)—Notification under—M.B.B.S. Course—Admission—Tuition fee—Different rates for the three categories of students—Legality

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of—Excess Tuition fee other than Rs.2,000 per annum—Whether Capitation fee—Whether permissible in law—Held, Notification ultra vires.

The respondent No.1 - State Government issued a notification dated June 5, 1989 under section 5(1) of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 fixing the tuition fee, other fees and deposits to be charged from the students by the Private Medical Colleges in the State. The tuition fee per year for the candidates admitted against "Government seats" was Rs.2,000, whereas for the Karnataka students (other than those admitted against "Government seats") the tution fee was not exceeding Rs.25,000 and for the students belonging to the category of "Indian students from outside Karnataka" were to pay the tuition fee not exceeding Rs.60,000 per annum.

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The petitioner, who came under the category of "Indian students from outside Karnataka", was informed by the respondent No.3 - Private Medical College, that she could be admitted to the MBBS Course in the session commencing February/March 1991, provided she would deposit Rs.60,000 as the tuition fee for the first year and furnish a bank guarantee in respect of the fees for the remaining years of the MBBS Course. When the father of the petitioner informed the respondent No.3 that he could not pay the exorbitant annual tution fee of Rs.60,000, the petitioner was denied admission.

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The petitioner has, under Article 32 of the Constitution of India, challenged the notification dated 5.6.1989 issued by the respondent No.1, permitting the Private Medical Colleges to charge exorbitant tuition fees from the students other than those admitted to the "Government seats". A

Respondent No.3 contended that the students from whom higher tuition fee was charged belong to a different class; that those who were admitted to the "Government seats" were meritorious and the remaining non-meritorious; that classification of candidates into those who possessed merit and those who did not possess merit was a valid classification and as such the college-management was within its right to charge more fee from those who did not possess merit; that the object sought to be achieved by the said classification was to collect money to meet the expenses incurred by the college in providing medical education to the students. B C

The intervener-Karnataka Private Medical Colleges Association argued that the Private Medical Colleges in the State of Karnataka did not receive any financial aid from either the Central or the State Government; that the Private Medical Colleges would incur about Rs.5 lakhs per student as expenditure for 5 year MBBS course; that 40% of the seats in the colleges were set apart as "Government seats" to be filled by the Government; that the students selected and admitted against Government seats would pay only Rs.2,000 per annum as such the rest of the burden was on those who were admitted against management quota; that the tuition fee was not excessive and as such there was no question of making any profit by the Private Medical Colleges in the State of Karnataka. D E

Respondent No.3 and the intervener submitted that in order to run the medical colleges the managements were justified in charging the capitation fee; that apart from the Act, there was not provision under the Constitution or under any other law which would forbid the charging of capitation fee. F

On the questions: (1) Was there a 'right to education' guaranteed to the people of India under the Constitution? If so, did the concept of 'capitation fee' infracts the same?; (2) Whether the charging of capitation fee in consideration of admissions to educational institutions was arbitrary, unfair, unjust and as such violated Article 14 of the Constitution?; (3) Whether the impugned notification permitted the Private Medical Colleges to charge capitation fee in the guise of regulating fees under the G H

A Act? and (4) Whether the notification was violative of the provisions of the the Act?, allowing the writ petition to the extent of striking down the capitation fee, this Court

HELD: 1.01. The dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primarily the education which brings-
B forth the dignity of a man. The framers of the Constitutions were aware that more than seventy per cent of the people, whom they were giving the Constitution of India, were illitrate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the Constitution.
C An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. [667F]

1.02. Article 41 in Chapter IV of the Constitution recognises an individual's right "to education". It says that "the State shall, within the limits of its economic capacity and development, make effective provision
D for the securing the right.....to education...." Although a citizen cannot enforce the directive principles contained in Chapter IV of the Constitution but these were not intended to be mere pious declarations. [667H]

1.03. Without making "right to education" under Article 41 of the
E Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate. [668E]

1.04. The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all
F levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society. [670A]

1.05. Every citizen has a 'right to education' under the Constitution. The State is under an obligation to establish educational institutions to
G enable the citizens to enjoy the said right. The State may discharge its obligation through state-owned or state-recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfil its obligation under the Constitution. The students are given admission to the educational institu-
H tions - whether state-owned or state-recognised in recognition of their

'right to education' under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution. [672C-E]

1.06. Capitation fee is nothing but a price for selling education. The concept of "teaching shops" is contrary to the constitutional scheme and is wholly abhorrent to the Indian culture and heritage. [670C]

1.07. "Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens. [669 F-G]

1.08. Capitation fee makes the availability of education beyond the reach of the poor. The State action in permitting capitation fee to be charged by State-recognised educational institutions is wholly arbitrary and as such violative of Article 14 of the Constitution of India. [672G]

1.09 The capitation fee brings to the fore a clear class bias. It enable the rich to take admission whereas the poor has to withdraw due to financial inability. A poor student with better merit cannot get admission because he has no money whereas the rich can purchase the admission. Such a treatment is patently unreasonably, unfair and unjust. There is, therefore, no escape from the conclusion that charging of capitation fee in consideration of admissions to educational institutions is wholly arbitrary and as such infracts Article 14 of the Constitution. [673 F-G]

Francis Coralie Mullin v. *The Administrator, Union Territory of Delhi,* [1981] 2 SCR 516; *Bandhua Mukti Morcha* v. *Union of India and Ors.,* [1984] 2 SCR 67; *E.P. Royappa* v. *State of Tamil Nadu and Anr.,* [1974] 2 SCR 348; *Maneka Gandhi* v. *Union of India,* [1978] 2 SCR 621; *Ramana Dayaram Shetty* v. *The International Airport Authority of India and Ors.,* [1979] 3 SCR 1014; *Ajay Hasia etc.* v. *Khalid Mujib Sehravardi and Ors. etc.,* [1981] 2 SCR 79 and *Dr. Pradeep Jain etc.* v. *Union of India and Ors. etc.,* [1984] 3 SCR 942, referred to.

A *D.P. Joshi* v. *The State of Madhya Bharat and another,* **[1955] SCR 1215, distinguished.**

Dr. Ambedkar - C.A.D. Vol. VIII **P.476;** *IMA Resolutions of India Medical Conference held at Cuttak on December 28-30, 1980; Presidential Address of Dr. K.S. Chugh, Chairman, Department of Medicine and Head* B *Department of Nephrology Postgraduate Institute of Medical Education and Research, Chandigarh delivered on 17.1.1992 at the 47th Annual Conference of the Association of Physicians in India, held at Patna,* **referred to.**

2. The Karnataka Educational Institutions (Prohibition of Capita- C **tion Fee) Act, 1984 has been brought into existence by the Karnataka State Legislature with the object of effectively curbing the evil practice of collecting capitation fee for admitting students into the educational institutions in the State of Karnataka. The preamble to the Act which makes the object clear. [679F]**

D **3.01. The State Government in fulfilling its obligation under the Constitution to provide medical education to the citizens has fixed Rs.2,000 per annum as tuition fee for the students selected on merit for admission to the medical colleges and also against "Government seats" in private medical colleges. Therefore, the tuition fee by a student admitted** E **to the private medical college is only Rs.2,000 per annum. The seats other than the "Government seats" which are to be filled from outside Karnataka the management has been given free hand where the criteria of merit is not applicable and those who can afford to pay Rs.60,000 per annum are considered at the discretion of the management. [680 F-H]**

F **3.02. If the State Government fixes Rs.2,000 per annum as the tuition fee in government colleges and for "Government seats" in private medical colleges then it is the State-responsibility to see that any private college which has been set up with Government permission and is being run with Government recognition is prohibited from charging more than Rs.2,000** G **from any student who may be resident of any part of India. When the State Government permits a private medical college to be set-up and recognises its curriculum and degrees, then the said college is performing a function which under the Constitution has been assigned to the State Government. [681A]**

3.03. Capitation fee in any form cannot be sustained in the eyes of H **law. The only method of admission to the medical colleges in consonance**

with fair play and equity is by ways of merit and merit alone. Charging of capitation fee by the private educational institutions as a consideration for admission is wholly illegal and cannot be permitted. [674 B-C]

3.04. Rs.60,000 per annum permitted to be charged from Indian students from outside Karnataka in Para 1(d) of the notification is not tuition fee but in fact a capitation fee and as such cannot be sustained and is liable to be struck down. [681C]

3.05. What is provided is paras 1(d) and 1(c) of the impugned notification dated June 5, 1989 is capitation fee and not a tuition fee. It has to be held that the notification is beyond the scope of the Act rather goes contrary to Section 3 of the Act and as such has to be set aside. It is not permissible in law for any educational institution to charge capitation fee as a consideration for admission to the said institution. [681E]

ORIGINAL JURISDICTION : Writ Petition (Civil) No.456 of 1991.

(Under Article 32 of the Constitution of India).

Vijay Pandia and R. Satish for the Petitioner.

Santosh Hegde, R. Jagannatha Gouley, M.K. Dua, K.H. Nobin Singh, Manoj Sarup, C.S. Vaidyanathan, K.V. Mohan, Ms. Anita Lalit and M. Veerappa for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. The Karnataka State Legislature, with the object of eliminating the practice of collecting capitation fee for admitting students into educational institutions, enacted the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (the Act). The Act which replaces the Karnataka Ordinance No.14 of 1983 came into force with effect from July 11, 1983. Purporting to regulate the tuition fee to be charged by the Private Medical Colleges in the State, the Karnataka Government issued a notification dated June 5, 1989 under Section 5(1) of the Act thereby fixing the tuition fee, other fees and deposits to be charged from the students by the Private Medical Colleges in the State. Under the notification the candidates admitted against "Government seats" are to pay Rs.2,000 per year as tuition fee. The Karnataka students (other than those admitted against "Government seats") are to be charged tuition fee not

A exceeding Rs.25,000 per annum. The third category is of "Indian students from outside Karnataka", from whom tuition fee not exceeding Rs.60,000 per annum is permitted to be charged.

Miss Mohini Jain a resident of Meerut was informed by the Management of Sri Siddharatha Medical College, Agalokote, Tumkur in the State B of Karnataka that she could be admitted to the MBBS course in the session commencing February/March 1991. According to the management she was asked to deposit Rs.60,000 as the tuition fee for the first year and furnish a bank guarantee in respect of the fee for the remaining years of the MBBS course. The petitioner's father informed the management that it was C beyond his means to pay the exorbitant annual fee of Rs.60,000 and as a consequence she was denied admission to the medical college. Mohini Jain has alleged that the management demanded a further capitation fee of rupees four and a half lakhs but the management has vehemently denied the same.

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In this petition under Article 32 of the Constitution of India Miss Mohini Jain has challenged the notification of the Karnataka Government permitting the Private Medical Colleges in the State of Karnataka to charge exorbitant tuition fees from the students other than those admitted to the "Government seats".

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Mr. Santosh Hedge learned counsel appearing for the medical college respondent No.3 has contended that the students from whom higher tuition fee is charged belong to a different class. According to him those who are admitted to the "Government seats" are meritorious and the F remaining non-meritorious. He states that classification of candidates into those who possess merit and those who do not possess merit is a valid classification and as such the college-management is within its right to charge more fee from those who do not possess merit. He further states that the object sought to be achieved by the said classification is to collect money to meet the expenses incurred by the college in providing medical G education to the students. Mr. C.S. Vaidyanathan, learned counsel appearing for the intervener Karnataka Private Medical Colleges Association has argued that the Private Medical Colleges in the State of Karnataka do not receive any financial aid from either the Central or the State Government. According to him the Private Medical Colleges incur about Rs.5 lakhs per H student as expenditure for a 5 year MBBS course. 40% of the seats in these

colleges are set part as "Government seats" to be filled by the Government. The students selected and admitted against Government seats pay only Rs.2,000 per annum as such the rest of the burden falls on those who are admitted against management quota. He, therefore, contended that the tuition fee is not excessive and as such there is no question of making any profit by the Private Medical Colleges in the State of Karnataka. Mr. Hegde and Mr. Vaidyanathan have vehemently contended that in order to run the medical colleges the managements are justified in charging the capitation fee. According to them, apart from the act, there is no provision under the Constitution or under any other law which forbids the charging of capitation fee. Finally they have relied upon the judgment of this Court in *D.P. Joshi* v. *The State of Madhya Bharat, and another,* [1955] SCR 1215.

A B C

After hearing learned counsel for the parties and also perusing the written arguments submitted by them the following points arise for our consideration in this writ petition:

(1) Is there a 'right to education' guaranteed to the people of India under the Constitution? If so, does the concept of 'capitation fee' infracts the same?

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(2) Whether the charging of capitation fee in consideration of admissions to educational institutions is arbitrary, unfair, unjust and as such violates the equality clause contained in Article 14 of the Constitution?

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(3) Whether the impugned notification permits the Private Medical Colleges to charge capitation fee in the guise of regulating fees under the Act?

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(4) Whether the notification is violative of the provisions of the Act which in specific terms prohibit the charging of capitation fee by any educational institution in the State of Karnataka?

In order to appreciate the first point posed by us it is necessary to refer to various provisions of the Constitution of India. The preamble promises to secure to all citizens of India "justice, social, economic and political" "liberty of thought, expression, belief, faith and worship". It further provides "equality of status and of opportunity" and assures dignity of the individual. Articles 21, 38, 39(a) and (f), 41 and 45 of the Constitution are reproduced hereunder:

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A "21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law."

"38. State to secure a social order for the promotion of welfare of the people.—(1) The State shall strive to promote the Wel-
B fare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the ine-
C qualities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

"39. Certain principles of policy to be followed by the State.—
D The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adquate means to livelihood;

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(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

F "41. Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and
G in other cases of undeserved want."

"45. Provision for free and compulsory education for children.—The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until
H they complete the age of fourteen years."

It is no doubt correct that "right to education" as such has not been guaranteed as fundamental right under Part III of the Constitution but reading the above quoted provisions comulatively it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens.

The preamble promises to secure justice "social, economic and political" for the citizens. A peculiar feature of the Indian Constitution is that it combines social and economic rights along with political and justiciable legal rights. The preamble embodies the goal which the State has to achieve in order to establish social justice and to make the masses free in the positive sense. The securing of social justice has been specifically enjoined an object of the State under Article 38 of the Constitution. Can the objective which has been so prominently pronounced in the preamble and Article 38 of the Constitution be achieved without providing education to the large majority of citizens who are illiterate. The objectives flowing from the preamble cannot be achieved and shall remain on paper unless the people in this country are educated. The three pronged justice promised by the preamble is only an illusion to the teaming-million who are illiterate. It is only the education which equips a citizen to participate in achieving the objectives enshrined in the preamble. The preamble further assures the dignity of the individual. The Constitution seeks to achieve this object by guaranteeing fundamental rights to each individual which he can enforce through court of law if necessary. The directive principles in Part IV of the Constitution are also with the same objective. The dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primarily the education which brings-forth the dignity of a man. The framers of the Constitution were aware that more than seventy per cent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. This is why the Universal Declaration of Human Rights, 1948 emphasises "Education shall be directed to the full development of the human personality...." Article 41 in Chapter IV of the Constitution recognises an individual's right "to education". It says that "the State shall, within the limits of its economic capacity and development, make effective provision for securing the right.....to

A education". Although a citizen cannot enforce the directive principles contained in Chapter IV of the Constitution but these were not intended to be mere pious declarations. We may quote the words of Dr. Ambedkar in that respect:

> B "In enacting this Part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislature and the executive power they will have. Surely it is not the intention to introduce in this Part these principles as mere pious declarations. It is the intention of the Assembly that in C future both the legislature and the executive should not merely pay lipservice to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country" (C.A.D. Vol.VII p.476.)

D The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights E guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Article 41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate.

This Court has interpreted Article 21 of the Constitution of India to F include the right to live with human dignity and all that goes along with it. In *Francis Coralie Mullin* v. *The Administrator, Union Territory of Delhi,* [1981] 2 SCR 516, this Court elaborating the right guaranteed under Article 21 of the Constitution of the India held as under:

> G "But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for read- H ing, writing and expression oneself in diverse forms, freely

> moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self."

In *Bandhua Mukti Morcha* v. *Union of India and Ors.,* [1984] 2 SCR 67, this Court held as under:-

> "This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State - neither the Central Government nor any State Government - has the right to take any action which will deprive a person of the enjoyment of these basic essential."

"Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.

The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

A The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society. Increasing demand for medical education has led to the opening of large number of medical colleges by private persons, groups and trusts with the permission and recognition of State Governments. The Karnataka State has permitted the opening of several new medical colleges under various private bodies and organisations. These institutions are charging capitation fee as a consideration for admission. Capitation fee is nothing but a price for selling education. The concept of "teaching shops" is contrary to the constitutional scheme and is wholly abhorrent to the Indian culture and heritage. As back as December 1980 the Indian Medical Association in its 56th All India Medical Conference held at Cuttack on December 28-30, 1980 passed the following resolutions:

> "The 56th All India Medical Conference views with great concern the attitude of State Governments particularly the State Government of Karnataka in permitting the opening of new Medical Colleges under various bodies and organisations in utter disregard to the recommendations of Medical Council of India and urges upon the authorities and the Government of Karnataka not to permit the opening of any new medical college, by private bodies.
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> It further condemns the policy of admission on the basis of capitation fees. This commercialisation of medical education endangers the lowering of standards of medical education and encourages bad practice."

Dr. K.S. Chugh, Chairman, Department of Medicine and Head Department of Nephrology Postgraduate Institute of Medical Education and Research Chandigarh, recipient of Dr. B.C. Rai National Award as 'eminent medical man for 1991', in his Presidential Address delivered on January 17, 1992 at the 47th Annual Conference of the Association of Physicians in India held at Patna observed as under:

> "In the recent past, there has been a mushroom growth of

medical colleges in our country. At the time of independence we had 25 medical colleges which turned out less than 2000 graduates every year. At the present time, there are 172 (150 already functioning and 22 are being established) medical colleges with an annual turn over of over 20,000 graduates. The Mudaliar Commission had recommended a doctor-population ratio of 1 : 3500. We have already achieved a ratio of 1 : 2500. If we take into account the practitioners of other systems of medicine who enjoy pay scales and privileges comparable to those of allopathic doctors, India will soon have a doctor-population ratio of 1 : 500. Such over production of technical man-power from our medical colleges is bound to lead to unemployment and frustration. Indeed the unabated exodus of our professional collegues to other countries is a direct consequence of these lop-sided policies.

According to some estimates, India has exported human capital worth over 51 billion dollars to USA alone during 1966-88. Currently about 8000 skilled young men and women are leaving the country every year. It is high time a blanket ban is imposed on any further expansion of medical colleges in our country and a well thought out plan to reduce the intake into existing institutions is prepared. This will help to improve the standard of medical education and health care in our country.

It is common knowledge that many of the newly started medical colleges charge huge capitation fees. Besides, most of these are poorly equipped and provide scanty facilities for training of students. At best such institutions can be termed as "Teaching Shops". Experience has shown that these colleges admit students who have been unable to gain admission in recognised medical colleges. The result is a back door entry into medical training obtained solely by the ability to pay one's way through. Even the advice of the Medical Council of India is sidelined in many such cases. The Government must resist all pressures to allow this practice to continue. Admission to medical colleges bought by paying capitation fees must be stopped forthwith and all such existing institutions required to strictly adhere to the Medical Council of India rules.

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> In the words of my predecessor Dr. V. Parameshvara, "The need of the hour is better doctors than more doctors, better health education than more education, better health care than more health care delivery."

B The Indian Medical Association, the Association of Physicians of India and various other bodies and organisations representing the medical profession in this country have unanimously condemned the practice of charging capitation fee as a consideration for admission to the medical college.

C We hold that every citizen has a 'right to education' under the Constitution. The State is under an obligation to established educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through state-owned or state-recognised educational institutions. When the State Government grants recognition to the D private educational institutions it creates an agency to fulfil its obligation under the Constitution. The students are given admission to the educational institutions – whether state-owned or state- recongnised – in recognition of their 'right to education' under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution.

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Indian civilisation recognises education as one of the pious obligations of the human society. To establish and administer educational institutions is considered a religious and charitable object. Education in India has never been a commodity for sale. Looking at the economic-front, even forty F five years after achieving independence, thirty per cent of the population is living below poverty-line and the bulk of the remaining population is struggling for existence under poverty-conditions. The preamble promises and the directive principles are a mandate to the state to eradicate poverty so that the poor of this country can enjoy the right to life guaranteed under the Constitution. The state action or inaction which defeats the constitu- G tional-mandate is *per se* arbitrary and cannot be sustained. Capitation fee makes the availability of education beyond the reach of the poor. The state action in permitting capitation fee to be charged by state-recognised educational institutions is wholly arbitrary and as such violative of Article 14 of the Constitution of India. During the last two decades the horizon of H equality clause has been widened as a result of this Court's judgments.

Earlier the violation of Article 14 was judged on the twin tests of classification and nexus. This Court in *E.P. Royappa* v. *State of Tamil Nadu and Anr.*,[1974] 2 SCR 348 gave new dimension to Article 14 in the following words:

> "Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14."

This Court in *Maneka Gandhi* v. *Union of India,* [1978] 2 SCR 621, *Ramana Dayaram Shetty* v. *The International Airport Authority of India and Ors.,* [1979] 3 SCR 1014 and *Ajay Hasia etc.* v. *Khalid Mujib Sehravardi and Ors. etc.,* [1981] 2 SCR 79 following *E.P. Royappa* authoritatively held that equality is directly opposed to arbitrariness. In *Ajay Hasis* this Court observed as under :

> "Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification... In *Royappa* v. *State of Tamil Nadu* this Court laid bare a new dimension of Article 14 and pointed out that that Article has highly activist magnitude and it embodies a guarantee against arbitrariness....."

The capitation fee brings to the fore a clear class bias. It enable the rich to take admission whereas the poor has to withdraw due to financial inability. A poor student with better merit cannot get admission because he has no money whereas the rich can purchase the admission. Such a treatment is patently unreasonable, unfair and unjust. There is, therefore, no escape from the conclusion that charging of capitation fee in consideration of admissions to educational institutions is wholly arbitrary and as such infracts Article 14 of the Constitution.

We do not agree with Mr. Hegde that the management has a right to admit non-meritorious candidates by charging capitation fee as a con-

A sideration. This practice strikes at the very root of the constitutional scheme and our educational system. Restricting admission to non-meritorious candidates belonging to the richer section of society and denying the same to poor meritorious is wholly arbitrary against the constitutional scheme and as such cannot be legally permitted. Capitation fee
B in any form cannot be sustained in the eyes of law. The only method of admission to the medical colleges in consonance with the fair play and equity is by ways of merit and merit alone.

We, therefore, hold and declare that charging of capitation fee by the private educational institutions as a consideration for admission is
C wholly illegal and cannot be permitted.

Mr. Santosh Hegde and Mr. Vaidyanathan learned counsel for respondent 3 and the intervener have relied upon *D.P. Joshi* v. *The State of Madhya Bharat and Anr.,* (supra) for the proposition that classification
D of candidates for admission to medical colleges on the basis of residence is permissible. In *D.P. Joshi's* case a resident of Delhi was admitted as a student of Mahatma Gandhi Memorial Medical College Indore which was run by the State of Madhya Bharat. His complaint was that the rules in force in the said institution discriminated in the matter of fees between
E students who were residents of Madhya Bharat and those who were not, and that the latter had to pay in addition to the tuition fee and charges payable by all the students a sum of Rs.1500 per annum as capitation fee and that the charging of such a fee from the students coming out of Madhya Bharat was in contravention of Articles 14 and 15(1) of the Constitution of
F India. In *D.P. Joshi's* case the only point for decision before this Court was whether the classification on the ground of residence was justified. This court while dealing with the question observed as under:

> "The impugned rule divides, as already stated, self-nominees into two groups, those who are *bona fide* residents of Madhya
G Bharat and those who are not, and while it imposes a capitation fee on the latter, it exempts the former from the payment thereof. If thus proceeds on a classification based on residence within the State, and the only point for decision is whether the ground of classification has a fair and substantial relation to
H the purpose of the law, or whether it is purely arbitrary and

fanciful.

The object of the classification underlying the impugned rule was clearly to help to some extent students who are residents of Madhya Bharat in the prosecution of their studies, and it cannot be disputed that it is quite a legitimate and laudable objective for a State to encourage education within its borders. Education is a State subject, and one of the directive principles declared in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy. (Vide article 41). The State has to contribute for the upkeep and the running of its educational institutions. We are in this petition concerned with a Medical College, and it is well-known that it requires considerable finance to maintain such an institution. If the State has to spend money on it, is it unreasonable that it should so order the educational system that the advantage of it would to some extent at least enure for the benefit of the State? A concession given to the residents of the State in the matter of fees is obviously calculated to serve that end, as presumably some of them might, after passing out of the College, settle down as doctors and serve the needs of the locality. The classification is thus based on a ground which has a reasonable relation to the subject-matter of the legislation, and is in consequence not open to attack. It has been held in the *State of Punjab* v. *Ajaib Singh and Anr.*, that a classification might validly be made on a geographical basis. Such a classification would be eminently just and reasonable, where it relates to education which is the concern primarily of the State. The contention, therefore, that the rule imposing capitation fee is in contravention of article 14 must be rejected."

D.P. Joshi's case is an authority for the proposition that classification on the ground of residence is a justifiable classification under Articles 14 and 15(1) of the Constitution of India. The question that capitation fee as a consideration for admission is not permissible under the scheme of the constitution, was neither raised nor adverted to by this Court. The imposition of capitation fee was also not questioned on the ground of arbitrariness. The only question raised before the Court was that the Madhya

A Bharat students could not be exempted from the payment of the capitation fee. It is settled by this Court that classification on the ground of residence is a valid classification. Subsequently this Court in *Dr. Pradeep Jain etc.* v. *Union of India and Ors. etc.,* [1984] 3 SCR 942 reiterated the legal position on this point. We are, therefore, of the view that *D.P. Joshi's* case does not
B give us ary guidance on the points before us.

To appreciate the third point it is necessary to notice the relevant provisions of the Act and the notification. Sections 2(b), (e), 3, 4, and 5 of the Act are as under:

C "2(b). "Capitation fee" means any amount, by whatever name called, paid or collected directly or indirectly in excess of the fee prescribed under section 5, but does not include the deposit specified under the proviso to section 3.

D (e) "Government Seats" means such number of seats in such educational institution or class or classes of such institutions in the state as the Government may, from time to time, specify for being filled up by it in such manner as may be specified by it by general or special order on the basis of merit and reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and such other categories, as may be specified, by the
E Government from time to time, without the requirement of payment of capitation fee or cash deposit.

3. Collection of capitation fee prohibited. – Notwithstanding anything contained in any law for the time being in force, no
F capitation fee shall be collected by or on behalf of any educational institution or by any person who is incharge of or is responsible for the management of such institution:

Provided.....

G 4. Regulation of Admission to educational institutions etc. – Subject to such rules, or general or special orders, as may be made by the Government in this behalf and any other law for the time being in force.

(1) (a) the minimum qualification for admission to any
H course of study in an educational institution shall be such as

may be specified by -

(i) the University, in the case of any course study in an educational institution maintained by or affiliated to such University:

Provided that the Government may, in the interest of excellence of education, fix any higher minimum qualification for any course of study.

(ii) the Government in the case of other courses of study in any other educational institution;

(b) the maximum number of students that could be admitted to a course of study in an educational institution shall be such as may be fixed by the Government from time to time;

(2)in order to regulate the capitation fee charged or collected during the period specified under the proviso to section 3, the Government may, from time to time, by general or special order, specify in respect of each private educational institution or class or classes of such institutions.

(a) the number of seats set apart as Government seats:

(b) the number of seats that may be filled up by the management of such institution.

(i) from among Karnataka students on the basis of merit, on payment of such cash deposits refundable after such number of years, with or without interest as may be specified therein, but without the payment of capitation fee; or

(ii) at the discretion:

Provided that such number of seats as may be specified by the Government but not less than fifty per cent of the total number of seats referred to in clauses (a) and (b) shall be filled from among Karnataka students.

Explanation. – For the purpose of this section Karnataka students means persons who have studied in such educational institutions in the State of Karnataka run or recognised by the

A Government and for such number of years as the Government may specify;

(3) an educational institution required to fill seats in accordance with item (i) of sub-clause (b) of clause (2) shall form a committee to select candidates for such seats. A nominee each
B of the Government and the University to which such educational institution is affiliated shall be included as members in such committee.

5. Regulation of fees, etc. – (1) It shall be competent for the
C Government, by notification, to regulate the tuition fee or any other fee or deposit or other amount that may be received or collected by any educational institution or class of such institutions in respect of any or all class or classes of students.

(2) No educational institution shall collect any fees or amount
D or accept deposits in excess of the amounts notified under sub-section (1) or permitted under the proviso to section 3.

(3) Every educational institution shall issue an official receipt for the fee or capitation fee or deposits or other amount collected by it.

E

(4) All monies received by any educational institution by way of fee or capitation fee or deposits or other amount shall be deposited in the account of the institution, in any Scheduled Bank and shall be applied and expended for the improvement of the institution and the development of the educational
F facilities and for such other related purpose and to such extent and in such manner as may be specified by order by the Government.

(5) In order to carry out the purposes of sub-section (4), the
G Government may require any educational institution to submit their programmes or plans of improvement and development of the institution for the approval of the Government.

The relevant part of the notification dated June 5, 1989 issued by the Karnataka Government under Section 5 of the Act is reproduced
H hereunder:

"In exercise of the powers conferred by sub-section (1) of Section 5 of the Karnataka educational Institutions (Prohibition of Capitation Fee) Act, 1984, the Government of Karnataka hereby fix the Tuition Fee and other fees and deposits that may be collected by the Private Medical Colleges in the State with effect from the academic year 1989-90 and until further orders as follows:

(a) Candidates admitted to seats in Government Medical Colleges shall be charged a tuition fee of Rs.2,000 each per annum (Rupees two thousand only);

(b) Candidates admitted against Government seats in Private Medical Colleges shall be charged a tuition fee of Rs.2,000 each per annum (Rupees two thousand only). For this purpose "Government seats" shall mean Government seats as defined by section 2 (e) of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984;

(c) Karnataka Students (other than students admitted against Government seats as at (b) above) admitted by Private Medical Colleges shall be charged tuition fee not exceeding Rs.25,000 each per annum (Rupees Twenty-five thousand only);

(d) Indian Students from outside Karnataka admitted by Private Medical Colleges shall be charged tuition fee not exceeding Rs.60,000 each per annum (Rupees Sixty thousand only);"

The Act has been brought into existence by the Karnataka State Legislature with the object of effectively curbing the evil practice of collecting capitation fee for admitting students into the educational institutions in the State of Karnataka. The preamble to the Act which makes the object clear is reproduced hereunder:

"An Act to prohibit the collection of capitation fee for admission to educational institutions in the State of Karnataka and matters relating thereto;

Whereas the practice of collecting capitation fee for admit-

A ting students into educational institutions is widespread in the State;

And whereas this undesirable practice beside contributing to large scale commercialisation of education has not been conducive to the maintenance of educational standards;

B

And whereas it is considered necessary to effectively curb this evil practice in public interest by providing for prohibition of collection of capitation fee and matters relating thereto;

C Be it enacted by the Karnataka State Legislature in the Thirty-fourth Year of the Republic of India as follows:"

Section 3 of the Act prohibits the collection of capitation fee by any educational institution or by any person who is in charge of or is responsible for the management of such institutions. Contravention of the D provisions of the Act has been made punishable under Section 7 of the Act with imprisonment for a term which shall not be less than three years but shall not exceed seven years and with fine which may extend to five thousand rupees. Section 5 of the Act authorises the Government to regulate the tuition fees by way of a notification. The Karnataka Government have issued a notification under Section 5(1) of the Act wherein the E fee charged from Indian students from outside Karnataka has been fixed not exceeding Rs.60,000 per annum. Whether Rs.60,000 per annum can be considered a tuition fee or it is a capitation fee is the question for our determination.

The notification fixes Rs.2000 per annum as the tuition fee for F candidates admitted to the seats in Government medical colleges and for the candidates admitted against "Government seats" in private medical colleges. All these seats are filled purely on the merit of the candidates. It is thus obvious that the State Government in fulfilling its obligation under the Constitution to provide medical education to the citizens has fixed G Rs.2000 per annum as tuition fee for the students selected on merit for admission to the medical colleges and also against "Government seats" in private medical colleges. Therefore, the tuition fee by a student admitted to the private medical college is only Rs. 2000 per annum. The seats other than the "Government seats" which are to be filled from outside Karnataka the management has been given free hand where the criteria of merit is H not applicable and those who can afford to pay Rs. 60,000 per annum are

considered at the discretion of the management. Whatever name one may give to this type of extraction of money in the name of medical education it is nothing but the capitation fee. If the State Government fixes Rs.2000 per annum as the tuition fee in government colleges and for "Government seats" in private medical colleges than it is the state-responsibility to see that any private college which has been set up with Government permission and is being run with Government recognition is prohibited from charging more than Rs.2000 from any student who may be resident of any part of India. When the State Government permits a private medical college to be set-up and recognises its curriculum and degrees than the said college is performing a function which under the constitution has been assigned to the State Government. We are therefore of the view that Rs.60,000 per annum permitted to be charged from Indian students from outside Karnataka in Para 1(d) of the notification is not tuition fee but in fact a capitation fee and as such cannot be sustained and is liable to be struck down. Whatever we have said about para 1(d) is also applicable to Para 1(c) of the notification.

Since we have held that what is provided in para 1(d) and 1(c) of the impugned notification dated June 5, 1989 is capitaion fee and not a tuition fee it has to be held that the notification is beyond the scope of the Act rather goes contrary to section 3 of the Act and as such has to be set aside. We therefore hold and declare that it is not permissible in law for any educational institution to charge capitation fee as a consideration for admission to the said institution.

For the reasons given above we allow this writ petition and quashed para 1(d) and 1(c) of the Karnataka State Government notification dated June 5, 1989. As a consequence paragraph 5 of the said notification automatically becomes redundant. We make it clear that nothing contained in this judgment shall be applicable to the case of foreign students and students who are non-resident Indians. We further hold that this judgment shall be operative prospectively. All those students who have already been admitted to the private medical colleges in the State of Karnataka in terms of the Karnataka State Notification dated June 5, 1989 shall not be entitled to the advantage of this judgment and they shall continue their studies on the same terms and conditions on which they were admitted to the consolidated MBBS course.

A Although we have struck down the capitation fee and allowed the writ petition to that extent, we are not inclined to grant any relief regarding admission to the petitioner. She was not admitted to the college on merit and secondly the course commenced in March-April, 1991 and we see no justification to direct respondent 3 the medical college to admit the B petitioner. The writ petition is allowed in the above terms with no order as to costs.

V.P.R. Petition allowed.