

## **Shahal H. Musaliar & Anr vs State Of Kerala & Ors on 18 August, 1993**

**Equivalent citations: AIRONLINE 1993 SC 54, 1993 (4) SCC 112, (1993) 2 CUR LJ (CIV&CRI) 448, (1993) 4 JT 584, (1993) 4 JT 584 (SC), (1993) 2 CURLJ(CCR) 448**

**Bench: S.R. Pandian, S.C. Agrawal, S. Mohan, B.P. Jeevan Reddy, S.P. Bharucha**

CASE NO.:

Writ Petition (civil) 598 of 1993

PETITIONER:

SHAHAL H. MUSALIAR & ANR.

RESPONDENT:

STATE OF KERALA & ORS.

DATE OF JUDGMENT: 18/08/1993

BENCH:

S.R. PANDIAN & S.C. AGRAWAL & S. MOHAN & B.P. JEEVAN REDDY & S.P. BHARUCHA

JUDGMENT:

JUDGMENT 1993(1)Suppl. SCR 649 = 1993(4) SCC 112 = 1993(4)JT 584 = 1993(3)SCALE The Order of the Court is as follows

1. Several writ petitions questioning the applicability of the scheme framed by this Court in Unni Krishnan, J.P. v. State of A.P. [ 1993 (1) SCC 645 ] as also the applicability of the rules and orders made by several State Governments in pursuance of and on the basis of the said decision are placed before us. In some of the writ petitions rule nisi has already been issued, while some others are fresh matters. We have taken each of the writ petitions placed before us in seriatum and heard the respective counsel

2. In Unni Krishnan [ 1993 (1) SCC 645 ] we did not make any order or direction about Minority Educational Institutions (MEIs). Indeed a few matters pertaining to MEIs were delinked from that batch to be heard separately. However, several State Governments have served notices upon the petitioners intimating them they have to follow the said decision and the rules and orders made pursuant thereto. Many of the petitioners- institutions raised an objection that since they are MEIs, the said decision or the rules and orders made pursuant thereto do not apply to them. The respective Governments ignored the said protest and called upon the petitioners to abide by the said decision and rules and orders made pursuant thereto. It is then that the petitioners have approached this Court by way of these writ petitions

3. Some of the writ petitions out of those placed before us had come up before a Bench comprising the Hon'ble the Chief Justice and one of us (B.P. Jeevan Reddy, J.) on May 14, 1993. Counsel for the petitioners in Writ Petition Nos. 350 and 355 of 1993 agreed to the following order being made and accordingly it was made "Writ Petition Nos. 350 and 355 of 1993 [Ed. : Cause title - Islamic Academy of Education, Mangalore and Others; S. Venkatesha Education Scy. and Another; and Sri Adichuchanagiri Maha-Sansthana Math and Others v. State of Karnataka and Others<sup>1</sup>. We have heard Shri Soli J. Sorabjee, learned senior counsel for the petitioners in these two writ petitions. Issue rule

2. There will be an interim order in the following terms

(i) Fifty per cent of the total intake in the petitioners' educational institutions shall be permitted to be filled up by candidates selected by the agencies of the State Government on the basis of a competitive examination/test. The candidates so selected and admitted shall pay scales of fee as applicable to this class of students as determined by the State Government from time to time

(ii) The remaining fifty per cent of the intake may be regulated by the petitioners to admit candidates belonging to the particular religious or linguistic minority. However, the selection shall be made strictly on the basis of merit among the candidates seeking admission to the institutions. Such merit shall be determined on the basis of the academic performance at the qualifying examination; or on the basis of any objective test that the institution might itself apply to determine such relative and competing merits; or on the basis of performance of the results of the selection tests that the State Government may itself hold for selecting candidates for admission to technical colleges in the State. It is optional for the petitioners to adopt any one of these three modes and apply it uniformly. Candidates so selected on the basis of merit amongst the minorities shall, however, abide by such condition in the matter of payment of tuition and other fee as may be permitted by the State Government

3. It is made clear that this order is made on the assumption that the petitioners are minority institutions. It is open to the respondents to question this status claimed by the petitioners

4. This order shall, however, not estop the petitioners from urging all other contentions raised in the writ petitions, as, indeed, this interim interlocutory order is made on the consent of the petitioners and without prejudice to all the contentions Delist this petition from this group of matters and list the same in the usual course."

4. Counsel for some other petitioners, however, did not agree to the above order whereupon they were adjourned for being heard by an appropriate Bench. Later it was ordered that all such writ petitions should be heard by the same Bench which decided Unni Krishnan [ 1993 (1) SCC 645 ]

5. The writ petitions placed before us can be categorised into five categories as per the averments in the writ petitions viz., (1) Unaided Minority Educational Institutions, (2) Minority Educational Institutions which are in receipt of State funds by way of aid, (3) MEIs in respect of which it is not clear from the averments in the writ petitions whether they are aided or unaided institutions, (4)

writ petitions challenging the correctness and applicability of Unni Krishnan [ 1993 (1) SCC 645 ] filed by educational institutions which do not claim to be MEIs, (5) writ petitions which do not fall in any of the above categories

6. In the first category fall Writ Petition Nos. 284 of 1993 (Catholic Bishops Conference of India Society for Medical Education, Bangalore v. State of Karnataka), 317 of 1993 (Dr T.M.A. Pai Foundation v. State of Karnataka), 327 of 1993 (Madarsa-E-Madeenathul-Uloom Trust v. State of Karnataka), 350 of 1993 (Islamic Academy of Education, Mangalore v. State of Karnataka), 482 of 1993 (Christian Medical Assn., Vellore v. State of T.N.), 613 of 1993 (Somaiya Vidya Vihar v. State of Maharashtra) and 627 of 1993 [Hyderabad (Sind) National Collegiate Board v. State of Maharashtra]

7. The second category comprises two writ petitions namely : (1) W.P. No. 536 of 1993 (Marathanasius College v. State of Kerala) and (2) W.P. No. 598 of 1993 (Shahal H. Musaliar v. State of Kerala)

8. The third category comprises Writ Petition Nos. 444 of 1993 [Vijayanagar Education Trust (Regd.) v. State of Karnataka], 417 of 1993 (Fr. Muller's Charitable Institutions v. State of Karnataka), 523 of 1993 (Sri Nanak Thira Saheb v. State of Karnataka), 474 of 1993 (All India Islamic Foundation v. Director of Technical Education), 485 of 1993 (Al-Badar Education Charitable Trust v. State of Karnataka), 484 of 1993 (Khaja Education Society v. State of Karnataka), 355 of 1993 (S. Venkatesha Education Society v. State of Karnataka), 429 of 1993 (Raja Rajeshwari Dental College v. State of Karnataka), 479 of 1993 (T.N. Technical Educational Foundation v. State of T.N.), 597 of 1993 (Muslim Educational Assn. of Southern India v. State of T.N.), 442 of 1993 [Shri Sidhartha Education Society (Regd.) v. State of Karnataka], 525 of 1993 (DAV College Management Committee v. State of Haryana), 469 of 1993 (Jeppiaar Educational Trust v. State of T.N.) and 392 of 1993 (Federation of Linguistic and Religious Minorities Education Institution, Pune v. State of Maharashtra). (However, as we shall presently point out some of the petitioner-institutions do not prima facie appear to be MEIs wherein we have adjourned the matters. We shall specify them a little while later)

9. The fourth category comprises W.P. Nos. 407 of 1993 (Marathwada Mitra Mandal v. State of Maharashtra), 399 of 1993 (Kolhapur Institute of Technology v. State of Maharashtra), 571 of 1993 (Kumaraguru College of Technology v. Union of India) and 626 of 1993 [Hyderabad (Sind) National Collegiate Board v. State of Maharashtra]. The petitioners in these writ petitions do not claim to be MEIs. Since we are not considering their cases today, the matters are simply adjourned to be posted in usual course

10. The fifth category comprises SLP (C) 12898 of 1993 (Dr B.M. Thippeswamy Memorial Educational Assn. v. State of Karnataka) and W.P. 463 of 1993 (T.M.T. Kannammal Education Trust v. State of T.N.)

11. Writ Petition No. 626 of 1993 filed by Hyderabad (Sind) National Collegiate Board which has been shown in category (4) (i.e. writ petitions challenging the correctness and applicability of Unni

Krishnan [ 1993 (1) SCC 645 ] filed by educational institutions which do not claim to be MEIs) is placed in category (2) relating to Minority Educational Institutions which are in receipt of State Funds by way of aid

12. Writ Petition No. 597 of 1993 filed by Muslim Educational Association of Southern India which has been placed in category (3) (i.e. MEIs in respect of which it is not clear from the averments in the writ petitions whether they are aided or unaided institutions is categorised an Unaided Minority Educational Institutions and accordingly placed in category (1)

13. So far as W.P. Nos. 350 of 1993 and 355 of 1993 are concerned, this Court has already passed orders on May 14, 1993 [Ed. : Quoted fully in para 3 above] with the consent of the petitioners. We see no reason to modify the said order in their cases. However, the said order (dated May 14, 1993) shall be subject to the modifications hereinafter mentioned

14. We shall now take up Writ Petition Nos. 284 of 1993 and 350 (sic 482) of 1993 which appear to stand on a different footing altogether. The petitioner in W.P. No. 284 of 1993 claims to be a MEI established by the Catholic Community, a religious minority community in Karnataka. It is averred by the petitioner that it runs medical, engineering, dental, pharmacy and nursing colleges in the State of Karnataka, that they do not charge any capitation fee from any student, that the fees charged by them in these institutions is not more than (and in some cases less than) the fees charged in the government colleges and that the admission to their institutions is made on the basis of an All-India Common Entrance Test separately conducted by the petitioner. It is submitted that the admissions are made on the basis of merit as determined in the said test. It is also stated that the petitioners' institutions are well-established institutions and in view of their reputation, thousands of students apply for and appear in the entrance test every year. The learned Advocate General of the State of Karnataka does not dispute the above facts though, we must record, no counter has as yet been filed in the matter. He did not also dispute that at no point of time was any complaint of irregularity received against any of the colleges run by the petitioner-institution. It is further submitted by the learned counsel for the petitioner that in pursuance of the order dated May 24, 1993, the petitioner has conducted an All-India entrance test and the process of selection is complete. What remains to be done is to admit the students which was not done in view of the aforesaid order. Shri Kapil Sibal, learned counsel for the petitioner also advanced certain legal submissions which it is not necessary to deal with at this stage

15. The petitioner in W.P. No. 482 of 1993 runs a medical college at Vellore in the State of Tamil Nadu. According to the petitioner, it is a well-reputed institution, admission to which is made on the basis of an All-India entrance test conducted by the petitioner. It is stated that admissions are made on the basis of merit. It is submitted further that the college does not charge any capitation fee, that the fees charged by it is not more than the fees chargeable in similar governmental institutions and that there has never been any complaint about the working of the petitioner-institution. Shri Sitaraman, learned counsel for the State of Tamil Nadu does not dispute the above averments though we may record again that no counter has as yet been filed in the matter. It is submitted by Shri Salve for the petitioner that during the vacations, a learned Single Judge has made an interim order in this writ petition directing the State of Tamil Nadu not to allot any seats to the

petitioner-institution for admission of candidates not selected by the petitioner. Shri Salve, learned counsel for the petitioner submitted further that the process of admission is complete though admissions as such have not been made in view of the aforesaid orders of this Court

16. Having regard to the above circumstances, we permit the petitioners in the above two writ petitions to admit students to their colleges on the basis of entrance test conducted by them and on the same basis on which admissions were made by them in the said colleges in the previous academic year. After completing the admissions, the petitioners shall furnish full particulars of the students admitted, the categories, if any, whereunder they were admitted and all other particulars relating to their admission. This information should be furnished to the competent authority, to the University to which the said colleges are affiliated and to the Secretary, Education Department, Government of Karnataka/Tamil Nadu. The said authorities shall verify whether the admissions have been made by the petitioners in accordance with the directions given herein. In case of irregularity, any of the said authorities shall be entitled to call upon the petitioner to rectify the said irregularity. It shall also be open to the competent authority, University and the Government of Karnataka/Tamil Nadu to bring any such irregularity to the notice of this Court by way of an interlocutory application for appropriate orders in that behalf. It is made clear that any violation of the directions given herein by the petitioners shall entail serious consequences inasmuch as the above orders are made based upon their representations and even before a counter- affidavit has been filed by the respective respondents in view of the urgency expressed by them

17. In all other cases, except those mentioned specifically hereinafter, the order made by this Court on May 14, 1993 in W.P. Nos. 355 of 1993 and 350 of 1993 [Ed. : Quoted fully in para 3 above] shall be the order, - though not necessarily with their consent - with the following modifications (which modifications shall apply even in the cases of W.P. Nos. 350 and 355 of 1993.) The modifications are the following, numbered as paragraphs 5, 6 and 7 in continuation of the said order "(5) In continuation of para (3) it is made further clear that whether any of the petitioner-institutions is a MEI or not is a matter for the Government to verify and determine. We do not - more particularly at this stage - make any pronouncement in that behalf. This order shall be applicable only to those institutions which are found to be MEIs on verification by the Government and not to those who are not found to be MEIs on such verification (6) The 50% seats to be filled up by candidates selected by the agencies of the State Government on the basis of a competitive examination/test as well as the remaining 50% seats to be filled in accordance with clause (ii) of para (2) of the said order shall be equally distributed between free seats and payment seats. In other words, out of the 50% seats to be filled up by government, half will be payment seats and half will be free seats. Similarly, out of the 50% of the seats to be filled up by the Management in accordance with para 2(ii) of the said order, half shall be payment seats and the other half free seats. The NRIs, if any admitted to an extent not exceeding 5% of the total seats shall be out of the payment seats to be filled under para 2(ii) (7) After completing the admissions each of the colleges shall submit to the competent authority, to the University to which it is affiliated and to the Government concerned statements containing full particulars of the students admitted under clause (ii) of para (2) of this order. Such statements shall contain as full a particulars as possible. The authorities to which the statements are submitted shall verify the correctness of the statements and, if they find any irregularity, they shall call upon the college concerned to rectify the same. They shall also bring any such violation to the notice of this

Court by way of an interlocutory application. Any such irregularity if proved may entail serious consequences."

18. The order dated May 14, 1993 shall not apply to the institutions concerned in writ petitions W.P. No. 479 of 1993 (T.N. Technical Education Foundation), W.P. No. 597 of 1993 (Muslim Educational Assn. of Southern India), W.P. No. 442 of 1993 (Shri Sidhartha Educational Society v. State of Karnataka), W.P. No. 525 of 1993 (DAV College Management Committee v. State of Haryana) and W.P. No. 392 of 1993 (Federation of Linguistic and Religious Minorities Education Institution, Pune v. State of Maharashtra) since we are not prima facie satisfied that they can be characterised as MEIs. These writ petitions are adjourned to September 22, 1993. The order dated May 14, 1993 shall not also apply to the writ petitions mentioned in and as fourth and fifth categories

19. We may mention that in W.P. No. 598 of 1993, Shri F.S. Nariman invited our attention to a certain agreement entered into between the institution and the Government of Kerala according to which while 85% of the seats were to be filled by the Government, the remaining 15% of the seats were left for the management of fill up in its discretion. It is submitted that the said agreement may be allowed to be implemented for the current academic year also. Since the basic principle in Unni Krishnan [ 1993 (1) SCC 645 ] as well as the orders made herein is that merit shall be the guiding principle in the matter of admission, we cannot countenance a plea for discretionary quota. The said writ petitions shall also be governed by the order dated May 14, 1993 with the aforesaid modifications

20. So far as SLP (C) No. 12898 of 1993 is concerned, we decline to pass any order and leave it to the High Court to deal with the matter (orders already passed separately). It may be mentioned that the said SLP is directed against an interlocutory order made pending a writ petition. In W.P. No. 463 of 1993 the petitioner claims to be a religious minority educational institution but does not specify how and in what manner it is so. It is not stated which particular religious minority has established the said institution and is administering it. The writ petition is accordingly adjourned to September 22, 1993

21. So far as Writ Petition No. 317 of 1993 is concerned, no orders are passed at the present juncture. The implead application I.A. No. 3 of 1993 filed by the Union of India is allowed. Post on September 22, 1993

22. We are of the opinion that a larger Bench should hear the question arising in these batch of cases. We shall, of course, indicate which are to be heard by the larger Bench on September 22, 1993

23. We may make it clear that the above orders are passed without prejudice to the rights and contentions of the parties in the writ petitions and the further interlocutory orders as may be passed hereinafter

24. Within the next date of hearing the Governments of Karnataka and Tamil Nadu (through committees appointed by them in that behalf) shall re- consider the fee structure notified by them. It shall be open to the petitioners to place such material as they think appropriate in that behalf before

the Governments. The Governments may take a decision in view of such material or such other material as they may have in their possession.