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DR. ASHOK SINHA

v.

THE STATE OF TRIPURA & ORS.

(Civil Appeal No.5708 of 2019)

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JULY 19, 2019

**[DR. DHANANJAYA Y. CHANDRACHUD AND
INDIRA BANERJEE, JJ.]**

- Administrative Law: Policy decision – Judicial review –*
- C *Medical college – Pursuant to the direction by the High Court, reconstitution of Society for the Tripura Medical College by the State Government – Society having its own recruitment rules and a pay structure – Writ petition by the appellant challenging the admission procedure and fees charged from the students contending that these to be at par with other government medical colleges –*
 - D *Dismissed by the High Court – On appeal, held: Whether the State government should run the College as a department of the government depends upon numerous circumstances, including the availability of resources and the expertise to run a medical college in the State – High Court held that if the State government were not to administer the Tripura Medical College as an adjunct of the State, it should constitute an independent society – State government acting pursuant to those directions constituted a society with its own Memorandum and Bye-laws – It is a matter of policy for the State government to determine the manner in which it should retain administrative oversight so as to ensure that its interest in the proper functioning of the Tripura Medical College is duly observed – If the government has chosen a hybrid model in which a society has been constituted for the purpose of running the Medical College while, at the same time, allowing the government some voice in important policy decisions, this is not an arrangement which can be questioned in the exercise of judicial review – Thus, the correctness of a policy decision taken by the State government cannot be determined – Also, the Court cannot arrive at an a priori view on the reasonableness of the fees.*
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CIVIL APPELLATE JURISDICTION: Civil Appeal no. 5708 of A
2019

From the Judgment and Order dated 24.06.2016 of the High Court
of Tripura in W.P.(C) (PIL) No. 7 of 2016

Mrs. Rachana Joshi Issar, Ms. K. Viaijayanthi, Ms. Prerna
Chaturvedi, Advs. for the Appellant. B

Shuvodeep Roy, Kabir Shankar Bose, Ms. Varsha Poddar, Vikram
Aditya Nath, Chandan Kumar, Rituraj Biswas, Ms. Sujaya Bardhan,
Rituraj Chaudhary, Satyendra Kumar Srivastav, Advs. for the
Respondents. C

The Order of the Court was passed by

DR DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. In an earlier public interest litigation initiated by the appellant, a Division Bench of the High Court of Tripura, by its judgment dated 30 April 2015, directed the State government to take an administrative decision within a period of three months with respect to the Tripura Medical College and Dr. B.R. Ambedkar Memorial Teaching Hospital.¹ D The High Court directed the State government to either reconstitute the managing committee of the Tripura Medical College to ensure that the actual administrative control lies in the hands of the Society and not the government, or alternatively, retain control “with all consequences”. E

3. The State, pursuant to the judgment of the High Court, reconstituted the Society for the Tripura Medical College. The Society has its own recruitment rules and has formulated a pay structure. F

4. A fresh writ petition was filed before the High Court in public interest by the same petitioner who had moved the earlier proceedings. The grievance of the petitioner was that despite the earlier directions nothing had changed. In consequence, he sought to challenge the admission procedure and the fees charged from the students, contending that these should be at par with other government medical colleges in the North East. The writ petition was dismissed by a Division Bench of the High Court on 24 June 2016, which has given rise to the present appeal. G

¹“Tripura Medical College” H

- A 5. In response to the proceedings, a counter affidavit has been filed on behalf of the second and the fifth respondents, namely, the Society and the Principal of the Tripura Medical College. The affidavit records that pursuant to the directions of the High Court, the constitution of the Society was recast. Though there are government nominees, it has been stated that the affairs of the Society are also run by non-governmental nominees and the representation of the government is to ensure that the finances which are made available are duly channelized. Moreover, it has been submitted that:
- (i) Societies formed or promoted by the Central or the State government are not necessarily government undertakings;
 - C (ii) The objective of the State government is to ensure transparent management of the medical colleges with a view to provide medical education and medical facilities to the people of Tripura;
 - D (iii) The colleges are run on a self-sustaining model and depend on the revenue generated from tuition fees and the fees collected against medical services; and
 - E (iv) The government has taken a policy decision not to transform the Tripura Medical College into a State-run medical college. Finances released by the government from time to time have been treated as an interest free loan which will be re-paid over a period of fifteen years.
- F 6. Initially, the affairs of the Tripura Medical College were being looked after by an NGO called “Global Educational Net” pursuant to an agreement dated 7 October 2004. Tripura Medical College secured permission from the Union Ministry of Health and Family Welfare to admit its first batch of 100 students in 2006-07. While permission was granted for the second batch, no permission was granted during 2008-09 due to a deficiency in infrastructure. In April 2009, the NGO which was entrusted with the running of the Tripura Medical College expressed its inability to do so. In order to safeguard the interest of the 200 students G who were pursuing their education, the State government constituted a society chaired by the Principal Secretary in the Health and Family Welfare Department on 22 May 2009.
- H 7. The first writ petition was instituted in the form of a PIL by the appellant which resulted in the order of the High Court dated 30 April

2015. It needs to be emphasized that the High Court did not issue a mandamus to the State government to run the Tripura Medical College as a government institution. Such a direction was correctly not issued by the High Court as it pertains to the realm of policy. Whether the State government should run the College as a department of the government depends upon numerous circumstances, including the availability of resources and the expertise to run a medical college in the State. In fact, the High Court observed that if the State government were not to administer the Tripura Medical College as an adjunct of the State, it should constitute an independent society. The State government acting pursuant to those directions has constituted a society with its own Memorandum and Bye-laws. The Society has formulated recruitment rules and conducts the affairs of the Tripura Medical College. The Society has its own governing body. Of the eleven members of the Society, the Secretaries in the Department of Finance, Health and Family Welfare, Law and the Directors of Medical Education and Medical Services are officers of the State. However, the members of the newly constituted Society also include six other representatives who are not employees of the State.

8. In our view, it is a matter of policy for the State government to determine the manner in which it should retain administrative oversight so as to ensure that its interest in the proper functioning of the Tripura Medical College is duly observed. Essentially, the appellant raised an issue of policy and it would not have been appropriate or proper for the High Court in the exercise of its jurisdiction under Article 226 of the Constitution either to direct the State government to take over running of the Medical College as a government college or, for that matter, to hand it over entirely to the private sector. If the government has chosen a hybrid model in which a society has been constituted for the purpose of running the Tripura Medical College while, at the same time, allowing the government some voice in important policy decisions, this is not an arrangement which can be questioned in the exercise of judicial review.

9. The grievance that has been urged on behalf of the appellant by Mrs Rachana Joshi Issar, learned counsel, in regard to the fees which are charged from the students can, if any student were to make a grievance before the regulatory committee which has been constituted in the State, be considered by the committee. Bereft of underlying

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A material, it would not be possible for this Court to arrive at an *a priori* view on the reasonableness of the fees which are charged from the students.

B 10. For the above reasons, having considered the impugned judgment, the earlier judgement of the High Court and the grievance of the appellant, we are of the view that it would not be appropriate for this Court to embark upon determining the correctness of a policy decision which has been taken by the State government.

11. For the above reasons, we find no merit in the appeal which is dismissed. No costs.

C

Nidhi Jain

Appeal dismissed.