

Court scheme on professional college admissions

From Our Legal Correspondent

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A Constitution Bench of the Supreme Court has ruled that every child/citizen of this country has a right to free education until he completes the age of 14 years after which it is subject to economic capacity and development of the State.

The fundamental right of citizens to education flows from Article 21 of the Constitution (fundamental right to life and personal liberty) and the parameters of this right — which is, however, not absolute — have to be determined in the light of Articles 45 and 41 (in the "Directive Principles" chapter of the Constitution), the Bench said.

(Article 41 deals with the right to work and public assistances in certain cases while Article 45 deals with the provision for free and compulsory education for all children until they complete the age of 14 years).

Obligations: Mr. Justice B. P. Jeevan Reddy, who delivered the main judgment of the Bench in what are known as "capitation fee cases," ruled that under the Constitutional scheme, "commercialisation of education cannot and should not be permitted." However, he said the obligations created by Article 41 and 45 and 46 of the Constitu-

tion could be discharged by the State either by establishing institutions of its own or by aiding, recognising and/or granting affiliations to private educational institutions (Article 46 of the Constitution deals with promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections).

The main judgment, while denouncing the levy of capitation fee by certain professional colleges, however, said unaided private educational institutions "have to and are entitled to charge a higher fee, not exceeding the ceiling fixed."

The admission of students and charging of fee in these private educational institutions shall be governed by "the scheme" evolved in this judgment.

Where "recognition" or "affiliation" is granted but not aid it may not be insisted that such private institutions shall charge only as much fee as is charged in similar courses in Governmental institutions, the main judgment pointed out.

Supplemental activity: The Bench also said educational activity of private institutions was supplemental to the main effort by the State and what applied to the main activity applied equally to the supplemental activity, as well.

The main judgment also noted that if Article 14

of the Constitution (equality before law) applied as it did, without a doubt, to the State institutions and compels them to admit students on the basis of merit and merit alone (subject, of course, to any permissible reservations — wherein too, merit *inter se* has to be followed) "the applicability of Article 14 cannot be excluded from the supplemental effort/activity."

The main judgment was delivered by Mr. Justice B. P. Jeevan Reddy, speaking for himself, and Mr. Justice S. Ratnavel Pandian. Mr. Justice S. Mohan, who agreed with the conclusion of the main judgment, however, delivered a separate judgment.

Two issues: The Chief Justice, Mr. Justice L. M. Sharma, in his separate judgment, speaking for himself, and Mr. Justice S. P. Bharucha agreed with the conclusions in the main judgment except on two issues. The Chief Justice, in his judgment, noted that the question whether the right to primary education as mentioned in Article 45 (directive principle) was a fundamental right — had not squarely arisen in the cases. The Chief Justice also said "for the purposes of the cases there is no fundamental right to education for professional degrees that flows from Article 21... (Right to life and personal liberty).

Details of scheme: The scheme evolved by the main judgment — with which all the Judges agreed — is in the nature of guidelines which the appropriate Governments and affiliating authorities shall impose and implement in addition to such other conditions and stipulations that they may think appropriate "for grant of permission, recognition or affiliation, as the case may be." For the present, the Bench was confining the "scheme" only to "professional colleges" (namely, private medical colleges, dental colleges and institutions imparting nursing, pharmacy and other courses allied to medicine, private engineering colleges, including those imparting technical education in electronic and computer sciences etc).

This "scheme" shall apply to and govern the admissions to "professional colleges" commencing from the academic year 1993-94.

HC verdict affirmed: The five-Judge Bench unanimously affirmed a full Bench judgment of the Andhra Pradesh High Court delivered in September last in "capitation fee cases" striking down as unconstitutional Section 3-A of the A. P. Educational Institutions (Regulation of admission and prohibition of capitation fees) Act, 1983, as being violative of Article 14 of the Constitution (equality before law).