

# 'Capitation fee cannot be charged'

From Our Legal Correspondent

NEW DELHI, July 30.

The Supreme Court, in a significant judgment dealing with the right to education under a constitutional scheme ruled that "it is not permissible in law for any educational institution to charge capitation fee (by whatever name it is called) as a consideration for admission to the said institution."

Mr. Justice Kuldipsingh, who delivered the judgment of the Bench, quashed paras 1(d) and 1(c) of the Karnataka State Government notification dated June 5, 1989, — which provide respectively, that "Indian students from outside Karnataka" admitted by private medical colleges in the State shall be charged tuition fee not exceeding Rs. 60,000 each per annum and "Karnataka students" other than students admitted against Government seats shall be charged "tuition fee" not exceeding Rs. 25,000 each per annum.

The Bench, which included Mr. Justice R. M. Sahai, also held that "there is 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" (equality before law).

The Bench pointed out that "the capitation fee brings to the fore a clear class basis. It enables the rich to take admissions 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 unfit."

**Right to education:** The Bench also held that every citizen "has a right of education under the Constitution" and the State is under an obligation to establish educational institutions to enable

the citizens to enjoy the said rights.

"The students are given admission to the educational institutions — whether State-owned or State-recognised — in recognition of their "right to education under the Constitution," the Bench pointed out.

Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution, the Bench noted.

The Bench said as what was provided in paras 1(d) and 1(c) of the impugned notification was "capitation fee and not a tuition fee," the notification was "beyond the scope of the Act," namely Karnataka Educational Institutions (Prohibition of Capitation Fee) Act 1984.

"The object of the Act is to effectively curb the evil practice of collecting capitation fee for admitting students into educational institutions in Karnataka," the Bench pointed out.

The impugned notification was issued by the Karnataka Government under Section 5 of the Act which authorises the Government "to regulate tuition fees by way of a notification".

The Bench commented that whatever name one might give to this type of extraction of money in the name of medical education "it is nothing but capitation fee".

If the State Government fixed Rs. 2,000 per annum as tuition fee in "Government colleges" and for "Government seats" in private medical colleges then "it is the State's 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 from any student who may be a resident of any part of India".

The Bench was disposing of a writ petition from a woman student hailing from Meerut (near

Delhi) challenging the Karnataka Government notification as she was denied admission into a private medical college because of an exorbitant annual fee of Rs. 60,000.

The Bench in its judgment, however, made it clear that "nothing contained in this judgment shall be applicable to the cases of foreign students and students who are non-resident Indians".

The Bench also held that "this judgment shall be operative prospectively".

The Bench held that all those students who have already been admitted to the private medical colleges in the State of Karnataka in terms of the impugned notification "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".

**No relief to petitioner:** The Bench was not inclined to give any relief to the petitioner as she was "not admitted to the college on merit" and also the course commenced in March-April, 1991. As such, the Bench said, there was no justification to direct the private medical college concerned to admit the petitioner.

The Bench also held that "the right to education flows directly from right to life" under Article 21 of the Constitution, as "dignity" of an individual cannot be assumed unless it is accompanied by right to education.

The State is under an obligation, the Bench also held, to make an endeavour to provide educational facilities at all levels to its citizens.

Today's issue has 24 pages,  
with an 8 page section  
containing Friday features.