

T.M.A. PAI FOUNDATION AND ORS. ETC.

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v.

STATE OF KARNATAKA AND ORS. ETC.

MAY 10, 1995

[KULDIP SINGH, S.C. AGRAWAL AND B.P. JEEVAN REDDY, JJ.]

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Contempt of Court—Orders of court to be obeyed implicitly—They should not be trifled with—Admission to medical, dental and engineering courses—Reserving seats for NRIs/Foreign students—Deliberate violation and infraction of orders of this Court—unconditional apology tendered by five Senior Officers of State—Rejected—They were held guilty of contempt of court—Their conduct censured.

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The proceedings for contempt of this court were initiated suo motu when it was brought to its notice that the Government of Maharashtra had framed rules regarding admission to medical, dental and engineering courses reserving fifteen percent seats for NRIs/Foreign students contrary to the orders of this court dated 5.4.1994 and 13.5.1994. In response to the notice, an affidavit sworn to by the Under Secretary, Medical Education and Drugs Department, Government of Maharashtra was filed stating that the rules were framed after obtaining the opinion of the Law and Judiciary Department to the effect that the number of seats permitted to be filled by NRIs for the academic year 1994-95 under the orders of this court was fifteen percent. On the basis of this opinion, it was stated, the earlier orders fixing the quota at ten percent were revised to fifteen percent. Pursuant to a notice issued to the Secretary to the Government, Law and Judiciary Department, an affidavit was filed admitting that there was some confusion as a result of reading the orders of this Court dated 5.4.1994 and it was stated that it was a bonafide error on his part but there was no intention to over reach and flout the orders of this court or to give any wrong advice to the Department. The Principal Secretary to Law and Judiciary Department in his affidavit stated that the Government had issued orders fixing the NRI quota at 10 percent as per the orders of this court; that later, however, the Maharashtra Association of Professional Educational Institutions, a representative body of private colleges for medical and engineering courses, submitted a representation addressed to the Chief Minister of Maharashtra contending that the NRI quota, accord-

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A ing to the orders of this court, was fifteen percent and that on receipt of this representation, officers of the Medical Education Department also entertained a doubt regarding interpretation given to the orders of this court and hence addressed the Memo to the Law Department and on receipt of the opinion of the Law Department, revised orders were issued raising the NRI quota to fifteen percent. The Secretary in the Medical Education Department, Government of Maharashtra in her affidavit stated that it was with her knowledge and consent that this action of seeking the opinion of Law and Judiciary Department was taken and that the corrigendum was issued with her knowledge and consent.

C Disposing of the matter, this Court

HELD : 1.1. The order dated 5.4.94 made by a Seven-Judge Bench of this court was confined to Minority Educational Institutions. The order states so at more than one place. Under this order, it was directed that "in so far as non-resident Indians and foreign students are concerned, the permissible limit would be only 5 percent of the total intake for a given year as per the direction contained in paragraph 6 of the order dated May 14, 1993 as modified by order dated August 18, 1993...". The order dated May 13, 1994 deals with two aspects, viz. (a) fee structure in medical and dental colleges and (b) the NRI quota in these colleges. There was no question of any doubt arising as to its meaning nor did it call for any doubt arising as to its meaning nor did it call for any interpretation. The order clearly states these facts: for the previous year, the NRI quota was fixed at fifteen percent; for the minority institutions, it was five percent; though NRI quota should not normally exceed more than five percent but since this court has reduced the fee structure, the said quota is fixed "as 10 percent (of the total seats) for the year". Even if, this order is read with the direction in the order dated April 5, 1994 it does not lead to the conclusion that the said quota is fifteen percent. Firstly, the order dated April 5, 1994 was confined to Minority Educational Institutions and it permitted only five percent which fact was referred to specifically in the order dated May 13, 1994. Having further noted the fact that the NRI quota fixed for the previous year was fifteen percent (and for M.E.Is. only five percent) the order dated May 13, 1994 stated that though NRI quota should not normally be more than five percent, yet in view of the reduced fee structure provided in the order, the NRI quota is being fixed at ten percent. It is thus evident that a doubt was sought to be created where

there was no room for any doubt. The doubt was inspired by the Association of Private Medical and Dental Colleges. *The sequence of events speaks for itself.* [289-H, 290-A-B, E-H] A

1.2. On a consideration of all the relevant facts and circumstances, there is no room for a bonafide error on the part of the officers concerned, viz., Under Secretary, Deputy Secretary and Secretary to Medical Education Department and Secretary and Principal Secretary respectively of Law Department. The Government, which means the Medical Education Department in this case, had issued orders on June 2, 1994 correctly stating that the quota for NRIs in the medical and dental colleges is ten percent. But when the Association of Private Medical Colleges made a representation on June 6, 1994, the very officers who had issued orders only four days ago (June 2, 1994) fixing NRI quota at ten percent on the basis of the orders of this court dated May 13, 1994, now read that very order as providing for fifteen percent. They wrote to Law Department for their opinion as to the correctness of their revised reading of this court's orders and it was promptly affirmed by the Law Department. In the course of three days, the earlier decision was revised on an ex-facie faulty and deliberately distorted interpretation of the orders of this court and a corrigendum issued as desired by the Association of Private Medical Colleges. Principal Secretary and Secretary of Legal Affairs of the State had decades of judicial experience behind them. It is difficult to believe that they could make any mistake in understanding the orders of this court which are worded in simple and unambiguous language. The least they could have done was to advise the government to move this Court for a clarification. These two officers of the law Department lent themselves as willing tools for achieving the illegitimate design of the Association of Private Colleges actively abetted by the Medical Education Department. If the said two judicial officers of such long standing could not properly understand the short and clear order made by this court on May 13, 1994, it is difficult to believe how they had been understanding the judgment of this court and of the High Courts while performing their judicial duties all these years. Their explanations were, therefore, liable to be rejected as also the explanations offered by the Under Secretary, Deputy Secretary and Secretary in the Medical Education Department. So far as the Secretary is concerned, this Court was informed that a copy of the representation of the Association was filed before her and that she had sent it down to the Under Secretary. She had herself admitted that whatever the Under Secretary and Deputy Secretary did was done with B
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A her knowledge and consent. She had also offered an explanation for the unusual speed with which the representation of the Association was processed. She had stated that as the printing of admission forms was in progress and the admission had to be started, the matter was considered urgent. This reason for urgency was not mentioned earlier by any other officer. The Law Department was requested to give its opinion on this issue

B *at the earliest*' - an expression that did not convey the extra-ordinary urgency which was indeed exhibited in processing it. She being the Head of the Department and a senior and experienced officer, ought to have scotched the exercise at the very inception. Instead of doing that she, on her own statement, was party to the revised opinion and distorted reading and

C understanding of this Court's order and also responsible for issuing the corrigendum. It was herself and the Deputy and Under Secretaries of her Department that entertained the "impression" that the N.R.I. quota has been continued at fifteen percent (as against their earlier *presumption* that it was ten percent) and asked for the opinion of the Law Department.

D [291-G-H, 292-A-G, 293-A-C]

1.3. All the five officers, viz. Under Secretary, Deputy Secretary and Secretary of Medical Education Department and Principal Secretary and Secretary of Law Department of the State, had tendered unqualified apology to this Court but in facts and circumstances, it would be a travesty of justice to accept the same. They being senior and experienced officers must be presumed to know that under the constitutional scheme obtaining in this country, orders of this Court have to be obeyed implicitly and that orders of the Apex Court - for that matter, any Court - should not be trifled with. They had acted deliberately to subvert the orders of this Court, evidently at the instance of the Association of Private Medical Colleges. It is equally necessary to erase an impression which appears to be gaining ground that 'the mantra' of unconditional apology is a complete answer to violations and infractions of the orders of this Court. [293-D-F]

G 1.4. The 'unconditional apology' tendered by the five officers, were rejected and they were held guilty of contempt of court and their conduct were censured. A copy of this order shall form part of the Annual Confidential Reports/record of service of each of the said officers. [293-G]

H CIVIL ORIGINAL JURISDICTION : *Suo Motu* Contempt Petition in I.A.No. 18 of 1994.

IN

Writ Petition (C) No. 317 of 1993.

(Under Article 32 of the Constitution of India.)

A.S. Bhasme for the State of Maharashtra

Arun K. Sharma, B.K. Prasad, Mrs. Indra Sahney and Ms. Anil Katiyar for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. The present proceedings for contempt of this court were initiated suo motu when it was brought to our notice that the Government of Maharashtra has framed rules regarding admission to medical, dental and engineering courses reserving fifteen percent seats for NRIs/Foreign students contrary to the orders of this Court dated April 5, 1994 and May 13, 1994. In response to the notice, an affidavit sworn-to by Sri Arvind Choudhari, Under Secretary, Medical Education and Drugs Department, Government of Maharashtra was filed stating that the said rules were framed after obtaining the opinion of the Law and Judiciary Department to the effect that the number of seats permitted to be filled by NRIs. for the academic year 1994-95 under the orders of this Court is fifteen percent. On the basis of the said opinion, it was stated, the earlier orders fixing the said quota at ten percent were revised to fifteen percent. After perusing the said affidavit, this Court expressed a tentative view that there has been "an obvious attempt at over-reaching the orders of this Court" and accordingly, issued notice to the Secretary/Officer concerned in the Law and Judiciary Department who has tendered the said opinion to show cause why contempt proceedings be not initiated against him. The Principal Law Secretary to the Government of Maharashtra was directed to identify the officer/Secretary with reference to records - *vide* orders dated 24th October, 1994.

Pursuant to the orders dated October 24, 1994, Sri Prabhakar Shivaji Mane, Secretary to the Government, Law and Judiciary Department filed an affidavit stating the following facts : he was appointed as a Civil Judge in the year 1978 and promoted as a District Judge in 1988. For two years, he worked as Additional Registrar, Bombay High Court. In May, 1992, he

- A was deputed to the Government of Maharashtra and appointed as Secretary in the Law and Judiciary Department. By the time of the said posting, he had "very little experience of dealing opinion work". On June 7, 1994, he received a Memo from the Under Secretary, M.W. & D.D. raising doubts as to the quota of NRI for the academic year 1994-95. He examined the matter with reference to the orders passed by this Court and came to the conclusion that the permitted quota for NRI is fifteen percent for the academic year 1994-95. Sri Mane stated, "I admit that there was some confusion in my mind as a result of reading the order of 13th May, 1994 with the previous orders of this Hon'ble Court dated 5th April, 1994. I respectfully submit that this was a bonafide error on my part...I now realise that I should have been more careful in this matter but there was no intention on my part to over reach and flout the orders of this Hon'ble Court or to give any wrong advice to the Department". Sri Mane enclosed to his affidavit the Memo received by him from the Medical Education Department. The Memo states that reading the orders of this court dated 5th April, 1994 with the order dated 13th May, 1994 "it gives an impression that the NRI quota has been continued to be fifteen per cent". The Law and Judiciary Department was asked to give its opinion on the issue. The memo is dated June 7, 1994. It is signed by Sri Arvind Choudhari, Under Secretary and Capt. Shaikh, Deputy Secretary. On the very next day, i.e., June 8, 1994, Sri Mane expressed his opinion in the following words : "In view of above interpretation, it is clear that the view of ME & DD that the NRI quota is 15% in respect of institutions other than minority institutions and in cases of minority institutions it is raised to 10% is correct". The reasoning in support of the said opinion is not only involved and confusing but is now admitted to be erroneous. We, therefore, think it unnecessary to refer to or set out the said reasoning.

- After perusing the affidavit of Sri Mane, this court issued notices to Sri Arvind Choudhari, Capt. Shaikh and Sri B.G.More (Principal Secretary to Law and Judiciary Department) to show cause why contempt proceedings be not initiated against them. Capt. Shaikh stated in his affidavit that on June 2, 1994 the Government had issued orders fixing the NRI quota at ten percent as per the orders of this Court dated April 5, 1994 and May 13, 1994. Later, however, the Maharashtra Association of Professional Educational Institutions, said to be a representative body of private colleges for medical and engineering courses, submitted a representation on June 6, 1994 (addressed to the Chief Minister of Maharashtra) contending

that the NRI quota, according to the orders of this court, is fifteen percent. A
 On receipt of the said representation, officers of the Medical Education
 Department also entertained a doubt regarding the interpretation given to
 the orders of this this Court and hence addressed the Memo dated June
 7, 1994 (Signed by Sri Arvind Choudhari and himself) to the Law Depart-
 ment. On receipt of the opinion of the Law Department, revised orders B
 were issued on June 9, 1994 raising the NRI quota to fifteen percent.

Sri Bhimrao Ganpatrao More, Principal Secretary and Remembran-
 cer of Legal Affairs to the Government of Maharashtra, Law and Judiciary
 Department has also filed a separate affidavit stating that since the creation
 of the post of Secretary and Senior Legal Advisor to Government, the C
 opinion work is being looked after mainly by the said officer and that at
 the relevant time Sri Mane was holding the said post. He stated that after
 recording his opinion Sri Mane referred the file to him for confirmation of
 his opinion and that he perused the file including the said opinion and
 agreed with the same. Accordingly, he endorsed "I agree" on the said D
 opinion. He submitted that he now realises that his understanding of this
 court's orders was wrong but, he says, the error was bonafide. Sri Arvind
 Choudhari has filed an additional affidavit practically on the same lines as
 his previous affidavit.

With a view to acquaint ourselves with all the relevant facts, we called E
 upon the learned counsel for the State of Maharashtra to produce the files
 relevant to the Order dated June 9, 1994. The files were accordingly
 produced, on perusing which a notice was issued to Mrs. Joyce Sankaran,
 Secretary in the Medical Education Department, Government of
 Maharashtra to show cause why she should not be punished for contempt F
 of this Court for violating the Order dated May 13, 1994. Pursuant thereto,
 Smt. Joyce Sankaran has filed an affidavit, which we have perused. We also
 heard Sri Andhyarujina afresh on her behalf. In her affidavit, she has stated
 inter alia, "it was with my knowledge and consent that this action of seeking
 the opinion of Law and Judiciary Department in this matter was taken". G
 She has also stated - and the file shows - that the corrigendum was issued
 on 9th June with her knowledge and consent.

The order dated April 5, 1994 made by a Seven-Judge Bench of this
 Court was confined to Minority Educational Institutions. The order states
 so at more than one place. Under this order, it was directed that "in so far H

A as non-resident Indians and foreign students are concerned, the permissible limit would be only 5 percent of the total intake for a given year as per the direction contained in paragraph 6 of the order dated May 14, 1993 as modified by order dated August 18, 1993....".

B The order dated May 13, 1994 deals with two aspects, viz., (a) fee structure in medical and dental colleges and (b) the NRI quota in these colleges. So far as NRI quota is concerned, the relevant paragraph reads as follows :

C "So far as the NRI quota is concerned, we fixed the same as 15 per cent last year. We fixed the NRI quota in respect of minorities institutions as 5 per cent. Although the NRI quota should not, normally, be more than 5 per cent, but keeping in view the reduction in the fee structure, we fix the same as 10 per cent (of the total seats) for this year. We further make it clear that in case
D any seat in the NRI quota remains unfilled, the same can be filled by the management at its discretion."

One fails to understand how the said direction in the order dated May 13, 1994 could be misunderstood by anyone. There was no question of any doubt arising as to its meaning nor did it call for any interpretation.
E The order clearly states these facts: for the previous year, the NRI quota was fixed at fifteen percent; for the minority institutions, it was five percent though NRI quota should not normally exceed more than five percent but since this court has reduced the fee structure, the said quota is fixed "as 10 per cent (of the total seats) for the year". Even if, this order is read with
F the direction (extracted hereinabove) in the order dated April 5, 1994, it is difficult to see how it leads to the conclusion that the said quota is fifteen percent. Firstly, as stated above, the order dated April 5, 1994 was confined to Minority Educational Institutions and it permitted only five percent which fact was referred to specifically in the order dated May 13, 1994. Having further noted the fact that the N.R.I. quota fixed for the previous
G year was fifteen percent (and for M.E.Is. only five percent) the order dated May 13, 1994 stated that though N.R.I. quota should not normally be more than five percent, yet in view of the reduced fee structure provided in the order, the N.R.I. quota is being fixed at ten percent. It is thus evident that a doubt was sought to be created where there was no room for any doubt.
H It is equally clear that the doubt was inspired by the Association of Private

Medical and Dental Colleges. *The sequence of events speaks for itself.* On June 2, 1994, the government had issued orders, correctly fixing the N.R.I. quota at ten percent on the basis of the order of this Court dated May 13, 1994; on June 6, 1994, however, the Association of Private Medical Colleges makes a representation that according to the orders of this Court, it should be fifteen percent; immediately, the Medical Education Department changes its opinion; now it says "(H)owever, after reading the Supreme Court judgment dated April 5, 1994 with judgment dated May 13, 1994, it gives an impression that the N.R.I. quota has been continued to be fifteen percent. But in case of Minority Educational Institutions, it is raised to ten percent; on the very next day, i.e. June 7, 1994, the Medical Education Department sends a Memo to the Law Department seeking its opinion on the issue; on the immediately following day, i.e., June 8, 1994 both Sri Mane and Sri More express their opinion and on the following day, i.e., June 9, 1994 a corrigendum is issued by the Government of Maharashtra to the earlier orders dated June 2, 1994 raising the quota from ten percent to fifteen percent. The extra-ordinary speed with which the representation of the Association of Private Medical Colleges was processed should stand as a shining example of the speed with which the government works. How one wishes, representations of ordinary mortals are also dealt with with equal despatch. Be that as it may, by the time the matter was brought to the notice of this Court, admissions were made and completed in accordance with the said revised quota and we were confronted with a fait accompli. The students so admitted in excess of ten percent also came before us (pursuant to the notices issued by us) pleading that they are innocent parties in the entire transaction and that they have bonafide obtained admission after paying substantial amounts by way of consideration for obtaining admission. It is common knowledge that each seat under this quota is sold for huge sums, not all accounted for and not all in Indian currency.

On a consideration of all the relevant facts and circumstances, we find no room for a bonafide error on the part of the officers concerned, viz., Sri Arvind Choudhari, Under Secretary, Capt. Shaikh, Deputy Secretary, Medical Education Department, Smt Joyce Sankaran, Secretary to the Medical Education Department and Sri Mane and Sri More, Secretary and Principal Secretary respectively of Law Department. The Government, which means the Medical Education Department in this case, had issued orders on June 2, 1994 correctly stating that the quota for

A N.R.Is. in the medical and dental colleges is ten percent. But when the Association of Private Medical Colleges made a representation on June 6, 1994, things started moving. The very officers who had issued orders only four days ago (June 2, 1994) fixing N.R.I. quota at ten percent on the basis of the orders of this Court dated May 13, 1994, now read that very order

B - in particular, the paragraph quoted hereinabove - as providing for fifteen percent. They write to Law Department for their opinion as to the correctness of their revised reading of this Court's orders and it is promptly affirmed by the Law Department. In the course of three days, the earlier decision was revised on an ex-facie faulty - and we are inclined to say, deliberately distorted - interpretation of the orders of this Court and a

C corrigendum issued as desired by the Association of Private Medical Colleges. We are particularly pained by the role played by Sri Mane and Sri More in this matter. They are judicial officers of long standing. They have decades of judicial experience behind them. It is difficult to believe that they could make any mistake in understanding the orders of this court

D which are worded in simple unambiguous language. The least they could have done was to advise the government to move this Court for a clarification. It is clear that these two officers of the law Department lent themselves as willing tools for achieving the illegitimate design of the Association of Private Colleges actively abetted by the Medical Education Department. If the said two judicial officers of such long standing cannot properly

E understand the short and clear order made by this Court on May 13, 1994, it is difficult to believe how they had been understanding the judgments of this Court and of the High Courts while performing their judicial duties all these years. We are, therefore, inclined to reject their explanations as also the explanations offered by Sri Arvind Choudhari, Capt. Shaikh and Smt.

F Joyce Shankaran. So far as Smt. Joyce Sankaran is concerned, we were told by Sri Andhyarujina that a copy of the representation of the Association was filed before her and that she had sent it down to Sri Arvind Choudhari. She has herself admitted that whatever Sri Choudhari and Capt. Shaikh did was done with her knowledge and consent. Interestingly, Smt. Joyce Sankaran has also offered an explanation for the unusual speed with which

G the representation of the Association was processed. She has stated : "(A)s the printing of admission forms was in progress and the admission had to be stated, the matter was considered urgent and on 8th June, 1994, Sri P.S. Mane.... was requested to give his opinion on this issue early." This reason for urgency is not mentioned in the letter dated 7/8th June, 1994 nor has

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it been mentioned earlier by any other officer. The letter addressed to Law Department merely stated at the end: "Law and Judiciary Department is 'requested to give its opinion on this issue *at the earliest*' - an expression that did not convey the extra- ordinary urgency which was indeed exhibited in processing it. Be that as it may, we are of the opinion that Smt. Joyce Sankaran, being the Head of the Department and a senior and experienced officer, ought to have scotched the exercise at the very inception. Instead of doing that she, on her own statement, was party to the revised - and in our opinion, distorted - reading and understanding of this Court's order and also responsible for issuing the corrigendum. It cannot be forgotten that it was herself and the Deputy and Under Secretaries of her Department that entertained the "impression" that the N.R.I. quota has been continued at fifteen percent (as against their earlier *presumption* that it was ten percent) and asked for the opinion of the Law Department.

All the five officers, viz., Sri Arvind Choudhari, Capt. Shaikh, Smt. Joyce Sankaran, Sri P.S. Mane and Sri B.G. More, have no doubt tendered unqualified apology to this Court but in the facts and circumstances stated above, it would be a travesty of justice to accept the same. They are senior and experienced officers and must be presumed to know that under the constitutional scheme obtaining in this country, orders of this Court have to be obeyed implicitly and that orders of the Apex Court - for that matter, any Court - should not be trifled with. We have found hereinabove that they have acted deliberately to subvert the orders of this Court, evidently at the instance of the Association of Private Medical Colleges. It is equally necessary to erase an impression which appears to be gaining ground that the 'mantra' of unconditional apology is a complete answer to violations and infractions of the orders of this Court.

Accordingly, we reject the 'unconditional apology' tendered by the five officers, hold them guilty of contempt of court and do hereby censure their conduct. A copy of this Order shall form part of the Annual Confidential Reports/record of service of each of the said officers.

The contempt matter is disposed of accordingly.

R.A.

Petition disposed of.