

## **2020 (3) Mh.L.J. 772-Yash Pramesh Rana and others Vs State of Maharashtra and others, A.A. Saed, Dama Seshadri Naidu and P.D. Naik J.J.**

In the aforesaid judgment, Hon'ble Bombay High Court has succinctly analysed the landmark judgments of Apex Court relating to the education sector. In the beginning, the High Court has observed:

1. A boy began the battle. It was in 1856. Branded by birth as a Dalit, he wanted to join a school in Bombay Presidency. It raised a storm, a storm of indignation and disbelief. And that boy's battle for admission has changed the course of Indian educational history. But the battle has not ceased, it seems. It continues in one form or another in the arena of courts, though.
2. It was in June 1856 that boy applied for admission into a government school in Dharwar, Bombay Presidency. The incident had created a furore in the administration; that ultimately attracted the attention of the rulers. The East India Company was forced to formulate an educational policy. That policy mandated that if the schools were maintained by the government, the 'classes of its subjects were to be given admission without any distinction of caste, religion, and race. But that policy did not translate into action. Until 1872, education remained the privilege of the few. That year, Mahatma Phule contested the discrimination in access to education before the Hunter Commission. Then came the Caste Disabilities Act of 1872, the first enactment in that direction.
3. From then on, we have travelled far, but not far enough. Still, access to education depends, among other things, on the student's economic strength. Socially and economically speaking, the weaker the student is, the farther he is from quality education. Here is a case that concerns the right of, again, a few down-trodden students for recompense on their educational expenditure”.

In the said judgment the High Court has analysed following landmark judgments of the Apex Court relating to the education sector.

[I] T.M.A. Pai Foundation Vs State of Karnataka - (2002) 8 SCC 481 (11 Judge Judgment)

The Apex Court through a bench of 11 judges held that the right to open, administer, manage and conduct an educational institution is a fundamental right. It has also been held that the Govt un-aided and aided educational institutions may take a reasonable surplus.

[II] Islamic Academy of Education Vs State of Karnataka - 2004 (6) Scale 573-

A Constitution bench explained T.M.A. Pai Foundation. It is held that though the right to establish and manage an educational institution is a fundamental right the process and administration must be transparent. For this, the students should appear for a CET/CAP

The CET/CAP can be conducted either by the State Govt concerned or Association of Private aided and unaided educational institution in that particular State.

By explaining the Pai Foundation, Islamic Academy held as under:

1. In professional institutions, as they are unaided there will be full autonomy in their administration but the principle of merit cannot be sacrificed, as excellence in profession is in the national interest.
2. Without interfering with the autonomy of unaided institutions the Govt can secure the object of merit-based admissions by insisting on the recognition of merit by the management.
3. The management can have a quota for admitting students at its discretion but subject to satisfying the test of merit-based admissions. For this, the management can pick students of its own choice from out of those who have passed the common entrance test conducted by a centralised mechanism.
4. The State can provide reservation in favour of financially or socially backward sections of the society.
5. The allotment of different quotas, such as management seats and States quota for reserved categories, has to be done by the State as per the 'local needs' and the needs of that minority committee in the State' both deserving paramount consideration.

[III] P.A. Inamdar Vs State of Maharashtra ( 7 Judges Constitution Bench) - 2005 (6) SCC 537

The Court required the states to establish committees to be presided over by the retired judges of High Court -

1. Admission Regulation Committee.
  2. Fee Fixation Committee
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1. Holding of such CET followed by centralised counselling and single window system and regulating admission does not affect the rights of minority unaided education institution in the admitting students of their choice.
  2. Such choice can be exercised as R.A. Inamdar explained from out of the list of successful candidates prepared after CET and without altering the order of merit inter-se of the students so chosen.
  3. Establishment of committees for monitoring admission procedure and fee fixation does not violate the right of minorities u/ Art. 30 (1) and the right of minorities and non-minorities under Article 19 (1) (g). These are reasonable restrictions in the interest of minority institutions under Article 30 (1) of the constitution and in the interest of the general public under Article 19 (6) of the constitution.
  4. Nonminority unaided institutions can also be subject to similar restrictions.

[IV] The State of Maharashtra enacted Maharashtra Educational Institution Regulation of Fees Act, 2011 besides taking quasi legislation measures.