

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 15TH DAY OF MARCH 2022

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PRESENT

THE HON'BLE MR.JUSTICE K. SOMASHEKAR

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO.200365/2022 (EDN-MED)

C/W

WRIT PETITION NO.200345/2022 (EDN-MED)

IN W.P.NO.200365/2022

BETWEEN:

NAVODAYA MEDICAL COLLEGE
NAVODAYA NAGAR,
RAICHUR - 584 103,
REPRESENTED BY ITS PRINCIPAL
DR B.VIJAYCHANDRA

... PETITIONER

(BY SRI MADHU SUDAN R.NAIK, SENIOR ADVOCATE FOR
SRI SURAJ NAIK, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,

2. DIRECTOR OF MEDICAL EDUCATION,

3. KARNATAKA EXAMINATION AUTHORITY,

REPRESENTED BY ITS EXECUTIVE DIRECTOR.

4. HYDERABAD KARNATAKA SPECIAL CELL,
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE
REFORMS,

5. ASSOCIATION OF MINORITY PROFESSIONAL COLLEGES
IN KARNATAKA,

... RESPONDENTS

(SRI SUBRAMANYA, AGA FOR
SRI VIRANGOUDA BIRADAR, AGA FOR R1, R2 & R4;
SRI N.K.RAMESH AND SRI BASAVARAJ R.MATH ADVOCATES
FOR R3
SRI S.S.MAMADAPUR ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO -

A) ISSUE A WRIT IN THE NATURE OF MANDAMUS, OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, DECLARING THE ACTION OF THE RESPONDENTS OF REVISING THE SEAT MATRIX FOR ADMISSION TO UNDERGRADUATE COURSES IN MEDICINE FOR THE PURPOSE OF CATEGORIZING CERTAIN SEATS AS 'MEH CATEGORY'/INCLUSION OF SEATS INTO THE SAID "MEH CATEGORY", IN THE REVISED SEAT MATRIX PUBLISHED ON 31.01.2022 (VIDE ANNEXURE L) ISSUED BY THE RESPONDENT NO.3 AS HIGHLY ARBITRARY, ILLEGAL AND VIOLATIVE OF THE PETITIONER'S CONSTITUTIONAL RIGHTS UNDER ARTICLE 30(1) OF THE CONSTITUTION.

B) ISSUE A WRIT IN THE NATURE OF CERTIORARI AND QUASH THE REVISED SEAT MATRIX PUBLISHED BY RESPONDENT NO. 3 DATED 31.01.2022 (VIDE ANNEXURE L1) INsofar AS IT FOR THE PURPOSE OF CATEGORIZING CERTAIN SEATS AS 'MEH CATEGORY' /INCLUSION OF SEATS INTO THE SAID "MEH CATEGORY" ETC.

IN W.P.NO.200345/2022

BETWEEN:

NAVODAYA MEDICAL COLLEGE

... PETITIONER

(BY SRI MADHU SUDAN R.NAIK, SENIOR ADVOCATE FOR
SRI SURAJ NAIK, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,

2. DIRECTOR OF MEDICAL EDUCATION,

3. KARNATAKA EXAMINATION AUTHORITY,

REPRESENTED BY ITS EXECUTIVE DIRECTOR.

4. HYDERABAD KARNATAKA SPECIAL CELL,
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE
REFORMS,

REPRESENTED BY ITS SECRETARY.

5. ASSOCIATION OF MINORITY PROFESSIONAL COLLEGES
IN KARNATAKA,

REPRESENTED BY ITS SECRETARY.

... RESPONDENTS

(SRI SUBRAMANYA, AGA FOR
SRI VIRANGOUDA BIRADAR, AGA FOR R1,R2 & R4;
SRI N.K.RAMESH AND SRI BASAVARAJ R.MATH
ADVOCATES FOR R3;
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B) ISSUE A WRIT IN THE NATURE OF CERTIORARI AND QUASH THE COMMUNICATION DATED 31.01.2022 ISSUED BY RESPONDENT NO.3 (VIDE ANNEXURE - L) INSOFAR AS IT IS FOR THE PURPOSE OF CATEGORIZING CERTAIN SEATS AS 'MEH CATEGORY'/INCLUSION OF SEATS INTO THE SAID "MEH CATEGORY".

C) ISSUE A WRIT IN THE NATURE OF CERTIORARI AND QUASH THE REVISED SEAT MATRIX PUBLISHED BY RESPONDENT NO.3 DATED 31.01.2022 (VIDE ANNEXURE L1) INSOFAR AS IT IS FOR THE PURPOSE OF CATEGORIZING CERTAIN SEATS AS 'MEH CATEGORY'/INCLUSION OF SEATS INTO THE SAID "MEH CATEGORY" ETC.

THE ABOVE WRIT PETITIONS HAVING BEEN HEARD ON 07.03.2022, 08.03.2022 AND 11.03.2022 AND RESERVED FOR ORDERS, COMING ON FOR "**PRONOUNCEMENT OF ORDERS**" THIS DAY, **ANANT RAMANATH HEDGE J.**, MADE THE FOLLOWING:

ORDER

Lack of consensus among the contracting parties to the consensual agreement dated 19.01.2022, in interpreting and implementing its terms has brought this *lis* before the court.

2. These two writ petitions are filed under Article 226 of the Constitution of India, by a linguistic minority educational institution seeking a writ of certiorari as well as a writ of mandamus. The petitioner is praying to quash the revised seat matrix for admission to postgraduate and undergraduate courses in medicine for the academic year 2021-2022. The petitioner also seeks a writ of mandamus against the third respondent – Karnataka Education Authority to direct the third respondent to hold counselling for admission to a postgraduate and undergraduate course in Medicine by allowing eligible Telugu linguistic minority students in the entire State of Karnataka to apply for postgraduate and

undergraduate seats in Medicine in the petitioner's institution.

3. In addition, the petitioner has also sought a declaration that respondent/State has no authority to classify the seats reserved for Telugu Linguistic minority students in the petitioner's institution, as the seats available for admission only to Telugu linguistic minority students from the Hyderabad-Karnataka region. However, the claim regarding this prayer is not considered as a similar question is pending consideration in W.P. no.20201/2014 and connected matters.

4. The 'consensual agreement' dated 19.01.2022 for the academic year 2021-22, entered into among the 1st respondent-State, 5th respondent the Association of Minority Professional Colleges in Karnataka (for short, 'AMPCK') and Rajiv Gandhi University of Health Sciences, which is intended to record the consensus, among the contracting parties, in

respect of seat-sharing arrangement in **minority professional educational institutions**, incidentally, is the cause for the present petition. This is the position at least between the petitioner institution and the State when it comes to the allotment of seats in medical colleges run by the petitioner institution vis-a-vis the Hyderabad Karnataka region.

5. During the course of the hearing, it was brought to the notice of the parties to the proceeding that Rajiv Gandhi University of Health Sciences which is a party to the consensual agreement is not made a party to the petitions. It was submitted by the learned Senior counsel appearing for the petitioner, that verdict of the court, either way, will not affect the rights and liabilities of said University. This submission is not opposed by the respondents. Hence Rajiv Gandhi University of Health Sciences is not insisted to be made a party.

6. The petitioner in this case, which is a Telugu linguistic minority institution, is before the court to enforce its rights under the consensual agreement referred above. The agreement has statutory flavour and support in terms of Section 4A of Karnataka Professional Educational Institutions (Regulations of Admission and Determination of Fee) Act, 2006 (hereinafter referred to as 'the Act of 2006').

7. Writ Petition No.200345/2022 is filed, questioning Annexure-L, by which the seat matrix pertaining to the postgraduate course in medicine for the year 2021-22, published earlier, is withdrawn and a new seat matrix, revised on 30.01.2022, is introduced. Relief is also sought to quash Annexure-L1, the revised seat matrix.

8. Writ Petition No.200365/2022 is filed questioning Annexure-L the revised seat matrix in the undergraduate course in medicine.

9. In both the petitions, in addition to above said reliefs, prayer is also made to issue necessary order and direction to conduct counselling for undergraduate as well as postgraduate courses in medicine as per the earlier seat matrix which was withdrawn. As a result of the revised seat matrix, only Telugu Linguistic minority students residing in Hyderabad-Karnataka region are allowed to apply for admission for the postgraduate course in medicine in a Linguistic minority institution located in Hyderabad-Karnataka region. Telugu Linguistic minority students residing outside Hyderabad Karnataka region are not allowed to seek admission under the Telugu Linguistic minority quota in the petitioner institution.

10. Petitioner institution feels aggrieved by the said revised seat matrix which according to the petitioner, takes away the rights of Telugu Linguistic minority students outside Hyderabad Karnataka region

in the State of Karnataka from seeking admission to postgraduate and undergraduate courses in medicine in the petitioner institution and the petitioner institution is deprived of its right to cater to the interest of Telugu Linguistic Minorities in the State of Karnataka. Hence the present petition is under Article 226 of the Constitution of India.

11. Facts matrix and Regime of Law.

a) Karnataka Professional Educational Institutions (Regulation of Admission and Determination of Fee) Act, 2006. (Act of 2006)

The above said Act of 2006, provides for regulation relating to admission and fee structure in professional educational institutions in the State of Karnataka. Section 4-A of the Act provides for an agreement relating to seat-sharing and fee fixation in un-aided educational institutions.

b) 98th Constitutional Amendment and Article 371J.

In terms of the 98th Constitutional Amendment, Article 317J is introduced in the Constitution of India. Said article confers powers on the President of India to provide for any special responsibility of the Governor in respect of Hyderabad-Karnataka region. The responsibilities are conferred on the Governor, by the Hon'ble President of India, in the exercise of power under Article 371J, vide notification dated 24.10.2013. Acting under the said notification, on 06.11.2013, pursuant to the order of the Governor, the State introduced The Karnataka Educational Institutions (Regulations of Admission in the Hyderabad/Karnataka Region) (Order-2013) (hereinafter referred to as the Order, 2013). This order among others provides for reservation in universities or educational institutions for the 'local persons' specified in the said order. The

constitutional validity of the said order is under challenge in Writ Petition No.20201/2014 and connected matters. Said petitions are pending hearing. Since the operation Order of 2013 is stayed, its provisions are not implemented.

c) The Karnataka Professional Educational Institutions (Recognition of Minority Educational Institutions Terms and Conditions) (Professional Education) Rules, 2016 (hereinafter referred to as 'the Rules, 2016').

The above-said Rules, 2016 among others provide for the minimum percentage of students to be admitted under the linguistic minority quota in the State. Rule 4 prescribes eligibility criteria for recognition. Rule 4(6) which mandates the minimum percentage of minority students reads as under:-

"Out of Institution quota in an Institution, not less than 66% of the students enrolled in the said

*Institutions shall belong to persons belonging to **the linguistic** or religious minority **of the State** to which applicant Institution belongs to."*

(emphasis supplied)

d) Consensual agreement dated 19.01.2022 for seat sharing.

It is stated that the Association of Minority Professional Colleges in Karnataka which is the representative body for the Minority professional educational institutions in Karnataka is entering into a seat-sharing agreement with the State, every year, and said the agreement provides for, among certain others, seat-sharing arrangement in the institutions run by the members of AMPCK. The State Government and the Association of unaided professional educational institutions are enabled under Section 4A of the Act of

2006 to enter into such agreement and such agreement is termed as 'Consensual Agreement'.

12. It is stated that based on the consensual agreement dated 19.01.2022 for the academic year 2021-22, the 3rd respondent published the seat matrix which provided reservations to Telugu linguistic minority students of the State of Karnataka and said category is classified as 'ME' category. According to the petitioner, this seat matrix providing reservations in petitioner institution to all eligible Telugu linguistic minority students in the State of Karnataka conforms to the terms of the consensual agreement. However, in terms of the impugned order, the said seat matrix is withdrawn and replaced by the revised seat matrix which provides reservation in institutions located in the Hyderabad-Karnataka region, only to eligible Telugu linguistic minority students from Hyderabad-Karnataka region to the exclusion of Telugu linguistic minority students from

other parts of Karnataka. The revised seat matrix is classified as 'MEH'.

13. This Court on 02.02.2022 has passed a stay order staying all further proceedings under Annexures 'L' and 'L1' the impugned seat matrix. Subsequently, on an application filed by the respondents, vide order dated 24.02.2022, the earlier interim order was partially modified.

14. In response to the notice issued by the court in this petition, the State has entered appearance and filed a statement of objection to the interim application. The Karnataka Education Authority which is respondent No.2 in this matter has also entered appearance through its counsel Sri N.K.Ramesh.

15. **The preliminary objection of the State to hear the matter.**

16. Learned Additional Advocate General appearing for the respondent/State raised the preliminary objection to hear the matter on the premise that challenge to the Order, 2013 is pending before Coordinate Bench of this Court in Writ Petition No.20201/2014 and connected matters. A submission was made on behalf of the State to tag this matter along with the above-mentioned writ petitions and to hear the petitions simultaneously along with the aforementioned writ petition and connected matters. This submission on behalf of the State is made on the premise that the finding of the court in this petition will have bearing on the outcome of the above-mentioned writ petition where larger question relating to the validity of Order, 2013 which applies to Hyderabad Karnataka Region is pending consideration. This request of the State is not accepted as this court is of the opinion that the verdict, in this case, will not decide any questions raised relating to the

constitutional validity of the order of 2013. This court, in this case, is examining the rights and liabilities of the parties emerging from the consensual agreement dated 19.01.2022 marked at Annexure-G. Subsequently, the learned Additional Advocate General Sri Subramanya appearing for the State would submit that the statement of objections filed by the State to the interim prayer should be treated as statement objection to the main petition.

17. This matter was listed on 07.03.2022 for orders, awaiting service of notice on 5th respondent/AMPCK which according to the petitioner is a formal party and no relief is claimed against it. Considering the fact that the 2nd round counselling results are slated to be announced on 8TH March 2022, and also considering the fact that the issue is concerning to the students who are seeking admission to undergraduate and postgraduate courses in medicine

under linguistic minority quota, priority hearing is accorded and the parties are heard on merits, with the consent of learned counsel appearing for the parties.

18. **Submissions of the petitioner.**

The learned Senior Counsel Sri Madhusudhan Nayak appearing for the petitioner canvassed the following points:

- a) The petitioner institution is admittedly a linguistic minority institution and is having certain protection under Article 15(6) and 30 of the Constitution of India and the impugned seat matrix violates the rights guaranteed under the aforementioned articles.
- b) The institution is established in Karnataka for the benefit of Telugu linguistic minorities in the entire State of Karnataka. In terms of Rule 2016 referred above, the institution is under obligation to reserve a certain specified percentage of seats (66% of the 55% seats allotted to the institution) for Telugu speaking

students in Karnataka as such the revised seat matrix which restricts the reservation only to Telugu minority students from Hyderabad Karnataka is illegal and contrary to Rule 4 (6) of Rules 2016.

- c) The State is acting contrary to the terms of the consensual agreement wherein it has agreed that institutions have no obligation to reserve seats under Article 371J quota out of 55% of seats available at the disposal of the institution. And State having agreed to fulfil its obligation under Article 371J, in the seats surrendered by the institution in favour of the State (20% and 25% for postgraduate and undergraduate courses respectively) has unilaterally modified the seat matrix contrary to the terms of the agreement.
- d) Vires of the Order of 2013 passed under Article 371J of the Constitution of India is called in question in a batch of writ petitions and those cases, this court has passed an interim order staying the operation of the Order of 2013. Thus there is no law/ policy of the State qua article

371J, in force that would enable the State to implement its reservation policy as required under Article 371J.

- e) The revised seat matrix seeks to ignore all meritorious Telugu minority students in the State of Karnataka who are eligible for admission to the petition institution which is a violation of the terms of the consensual agreement.

19. In support of his contentions the learned counsel would place reliance on the following judgments:

1. *(2005) 6 SCC 537 – P.A.Inamadar v. the State of Maharashtra;*
2. *(2012) 6 SCC 1 – Society for Unaided Private Schools of Rajasthan v. Union of India;*
3. *(2014) 8 SCC 1 – Pramati Educational and Cultural Trust v. Union of India;*
4. *(2010) 8 SCC 49 – Sindi Education Society v. Chief Secretary;*
5. *1974 SC 1397 – Ahamambad Sait Xavier v. the State of Gujarat.*

20. Elaborating on the above said contentions, he would submit that institution is established to cater to the needs of the Telugu linguistic minority throughout the State of Karnataka and its right to admit Telugu linguistic minority students from the entire state of Karnataka is protected under the Constitution and that cannot be meddled by the State. The petitioner institution being a Telugu linguistic minority institution enjoys certain protections guaranteed under Articles 15(5) and (6) and 30 of the Constitution of India. It is submitted that Article 371J is inserted in the Constitution by way of an amendment to the constitution. In terms of the mandate of the said article, the governor of the State has passed an order in the year 2013 which among others provides for certain reservations in educational institutions in Hyderabad Karnataka Region. However, admittedly the operation

of the said order is stayed by the co-ordinate bench of this court. Thus according to the petitioner, there is no reservation policy in place, pursuant to the mandate of Article 371J, for implementation. Under these circumstances, it is his submission that the right of the petitioner institution to admit Telugu linguistic minority students who seek admission from other region of the State of Karnataka cannot be meddled or interfered with by the State.

21. The learned counsel referred to Clauses in paragraph 3, in the consensual agreement :

"c) (i) 20% "**Government Seats (G)**" of the total intake will be filled up by the Government as per its admission policy, including reservation of seats for the Scheduled Castes /Scheduled Tribe and other backward classes and under Article 371J of the Constitution of India.

(ii) 55% "**Private Seats (P)**" of the total intake of any institution shall be filled by General Merit candidates on basis of NEET ranking through

counselling conducted by KEA, provided that in this 5% intake of the institution, 66% seats shall be filled up from the respective minority students as formulated in the Karnataka Professional Education Institutions (Recognition of Minority Educational Institutions Terms and Conditions) Professional Education) Rules, 2016 and in case of non-availability of respective minority students remaining seats shall be filled by General Merit candidates on basis of NEET ranking. Out of the remaining 34% seats, not less than 50% of these seats shall be filled by the Karnataka students and if a sufficient number of Karnataka students are not available, such seats may be filled by others."

xxx

xxx

"c. *In view of the making over of 20% of its total available seats in PG Courses, the Government of Karnataka, hereby exempts the members of the AMPCK from the obligation, if any of providing for reservation for either SCs, STs or other backwards classes separately, since the Government of Karnataka itself is providing for requisite 'reservations', in seats now available to*

the Government out of aforesaid 20% of seats, in PG Course in the institutions/colleges of Private Managements. The AMPCK need not make a separate reservation under 15(5) or Article 471(J) of the Constitution of India.

(Emphasis supplied)."

22. Referring to these clauses, it is submitted that no right is conferred under the consensual agreement enabling the State to restrict the reservation to Telugu linguistic minority students from Hyderabad-Karnataka region only. Referring to these clauses it is submitted that the reservation to Telugu speaking linguistic minority students from Hyderabad-Karnataka region can be provided by the State only in 20% of the seats in postgraduate course and 25% seats in undergraduate course surrendered to the State and not in 55% of the seats which is available at the disposal of the petitioner institution.

23. The learned counsel for the petitioner would refer to the last sentence in the preamble to the agreement which reads as under.

"In so far as colleges from Hyderabad Karnataka Region including private medical institution the provision under Article 371J shall be implemented".

24. Referring to the said sentence he would contend that this clause cannot be read in isolation and is to be read along with other clauses of the agreement and if so read, it does not enable the State to impose its intended reservation policy which seeks to encroach on the rights of linguistic minority students. He would submit that at three places in the agreement it is specified that the State can implement its reservation policy only in 20% or 25% of the seats as the case may be, available to the State and reference to Article 371J in 20% seats allotted to the State would demonstrate

that at the time of entering into an agreement the State intended to provide reservation to the Hyderabad Karnataka Region in 20% or 25% seats available at the disposal of the State.

25. Referring to clause 3(c)(ii), it is submitted that 66% of the total 55% of the seats shall be filled up from the respective minority students as formulated in The Karnataka Professional Educational Institutions (Recognition of Minority Educational Institutions Terms and Conditions (Professional Education) Rules, 2016 and the learned counsel would submit that in terms of Rule 4(6) of Rule, 2016 referred to supra, the entire State of Karnataka is to be taken as one unit to provide reservation under linguistic minority quota.

26. Learned Additional Advocate General Sri Subramanya appearing for respondents Nos.1 and 2 countering the submissions of the petitioner urged the following contentions:-

- i. *The petitioner institution is a Member of the Association of Minority Professional Colleges in Karnataka (AMPCK.) and the Association has entered a consensual agreement with the State relating to seat matrix for undergraduate and postgraduate courses in medicine for the academic year 2020-2022. The State has revised the seat matrix in tune with the requirement of the agreement and the Petitioner institution is claiming rights contrary to the terms of the consensual agreement.*
- ii. *This consensual agreement in spirit is nothing but a step towards implementing the State's obligation under Article 371J of the Constitution of India and the same is binding on the petitioner.*
- iii. *Since the source of power to enter into a consensual agreement is traceable to S.4A of Act of 2006, it is to be construed similar to an order to meet the obligations under Article 371J.*
- iv. *In terms of the agreement, the petitioner is bound to provide reservations to Telugu linguistic minority students from Hyderabad*

Region and not to the Telugu minority students who are outside Hyderabad Karnataka though they are residing in Karnataka.

- v. *The petition under Article 226 of the Constitution of India is not maintainable as the petitioner is challenging the consensual agreement.*
- vi. *The petitioner cannot approbate and reprobate and having entered into consensual agreement agreeing to provide reservations to Telugu speaking minority from Hyderabad Karnataka Region now it is not open to the petitioner to contend that reservation in petitioner institution is open to all Telugu speaking students in the State of Karnataka.*
- vii. *The petitioner has agreed to a pattern of seat matrix from 2017 onwards. The same seat matrix is introduced in the form of a revised seat matrix. It is not open for the petitioner to turn around and refuse the performance of the obligation under the agreement.*

- viii. *Article 371J introduced in the Constitution in terms of the 98th amendment has a specific object of uplifting the Hyderabad Karnataka Region and this article overrides Articles 15(5) and Article 30 of the Constitution of India. As such State is justified in restricting the reservations to the Telugu minority students to the petitioner institution to those who are falling within Hyderabad Karnataka Region.*
- ix. *The power of the State to enforce its reservation policy under Article 15(4) is not taken away by Article 15(5) of the Constitution of India. The right conferred under Article 30 of the Constitution of India in favour of minority institutions is not absolute and it is subjected to reasonable restrictions to be imposed by the Parliament or State.*
- x. *Accepting the contention of the petitioner that the reservation in postgraduate and undergraduate medical seats in petitioner institution to Telugu linguistic minority students is applicable for Telugu linguistic minority throughout the State would defeat the very*

object of Article 371J of Constitution of India and it is in the teeth of Article 371J of Constitution of India. Hence, the same cannot be accepted.

- xi. The decisions relied upon by the petitioner are rendered before the introduction of Article 371J, as such those decisions do not have any consequence.*
- xii. Clause -5 of the consensual agreement which provides for modalities of admission imposed an obligation on the petitioner institution to provide reservations in terms of Article 371J. Thus the petitioner cannot turn around and say the agreement is not binding.*

27. In support of his contention, the learned Additional Advocate General has relied upon the following judgments:-

- 1. 2019 SCC Online Karnataka 1243 - A.S.Vimalakshi and another V. State of Karnataka;*

2. (2020) 6 SCC 689 – *S.K.Mohd.Rafique v. Managing Committee*;
3. 2017 SCC Online Madras 26347 – *Director of Elementary Education v. Correspondent Saint Josephs Elementary School*;
4. (2018) 8 SCC 501 – *State v. Union of India and another*;
5. (2008) 6 SCC 1- *Ashok Kumar Takhur v. Union of India and others*.
6. (2021) 3 SCC 241 – *Ireo Grace Realtech Private Limited v. Abhishek Khanna and others*;
7. (2013) 5 SCC 470 – *Rajasthan State Industrial Development and Investment Corporation v. Diamond and Gem Development Corporation and another*.

28. Elaborating his contentions, the learned Additional Advocate General would submit that the State has obligations to fulfil the mandate of Article 371J and Hyderabad Karnataka region being a backward region is

given a special status under Article 371J. The AMPCK being conscious of this position has entered into this agreement and agreed to provide reservations as required under Article 371J.

29. It is also submitted that notwithstanding the restrictions found in Article 15(5) and (6) of the Constitution of India, on meaningful reading and construction of Article 15(4) and Article 371J of the constitution of India the State is justified in insisting on reservations only for Telugu linguistic minorities from Hyderabad Karnataka region.

30. It is also urged by the learned Additional Advocate General that Article 371J being a special provision has an overriding effect over all other articles of the constitution of India. It is urged that State is implementing the constitutional obligation under Article 371J through the consensual agreement and association of colleges having agreed to provide reservations as

required under Article 371J. It is urged that in terms of clause 5 of the agreement the institutions located in the Hyderabad Karnataka region shall provide reservations only to the students from the said region.

31. It is also urged that having followed the seat matrix pattern in a particular way since 2017, the petitioner cannot be permitted to turn around to say that they will not provide reservations as per the revised seat matrix which is similar to the seat matrix followed since 2017.

32. It is also submitted that the State is providing reservations to Telugu linguistic minority students from Hyderabad-Karnataka region as such the interest of Telugu Minority Students is protected and the petitioner cannot raise a grievance.

33. And based on the above-said submissions have urged to dismiss the petition.

34. Learned counsel Sri N.K.Ramesh appearing for respondent No.3 - Karnataka Educational Authority adopting the submission of Additional Advocate General has also raised the following additional grounds:-

- i. The ambiguity if any in the consensual agreement concerning postgraduate students is clarified in the consensual agreement relating to undergraduate students.*
- ii. The terms and conditions of the agreement would demonstrate that the petitioner institution has consented to provide reservation as mandated under Article 371J. Thus Telugu speaking linguistic minority students cannot claim reservation in an institution located in Hyderabad-Karnataka region if the students are not from Hyderabad-Karnataka region.*
- iii. The petitioner is not a party to the consensual agreement and the consensual agreement is between the State and the fifth respondent Association in which the petitioner is only a member. Since the Association has not questioned the action of the State, the*

petitioner cannot be permitted to question the action of the State.

35. Learned counsel Sri N.K.Ramesh elaborating his contentions would invite the attention of the court to paragraph 5(b) of the consensual agreement pertaining to the undergraduate course in medicine. The last sentence in the said paragraphs reads as under

*"the AMPCK also need not make separate reservations under Article 371J of the Constitution of India which provides for people from Hyderabad-Karnataka region, **except in respect of institutions located in the said region**".*

(Emphasis supplied)

36. Referring to the above-said sentence it is urged that institutions located in Hyderabad-Karnataka region have to adhere to the requirement of reservation under Article 371J.

37. Learned counsel Sri S.S.Mamadpur appearing for respondent No.5 has supported the contention of the petitioner and also placed a memo in this behalf.

38. Reply submission by the petitioner.

- i. *The consensual agreement entered into between the first respondent and the fifth respondent Association cannot be treated as an order under Article 371J and the consensual agreement is only an ad hoc agreement for seat sharing.*
- ii. *In view of the fact that stay order is granted to the order of 2013 passed under Article 371J of the Constitution there is no policy of the State under Article 371J in place. Thus, the agreement cannot be construed as an order to implement the obligations of the State under Article 371J.*

39. In this case the parties to the proceedings are relying on the consensual agreement dated 19.01.2022, in support of their respective stand. Both

the parties are contending that the other party is acting contrary to the consensual agreement. Referring to para 3(a), 3(c)(i), (ii) and para (c) and para 5(a), it is contended that the agreement enables the petitioner institution to provide reservation to all Telugu linguistic minority students in the State of Karnataka and the petitioner institution cannot be compelled to restrict the linguistic minority reservation only to the Telugu linguistic minority students from Hyderabad Karnataka region.

40. Learned Senior counsel for the petitioner would submit referring to the last sentence in para 3.c. of the agreement extracted above in paragraph 16 of this judgment, contends that there is no obligation to provide separate reservations under Article 371J of the Constitution of India. The last sentence in the said paragraph reads as under.

The AMPCK need not make a separate reservation under 15(5) or Article 471(J) of the Constitution of India.“(Emphasis supplied)

Based on this clause, it is contended that the petitioner institution cannot be compelled to restrict the reservation only to Telugu linguistic minority students in Hyderabad Karnataka Region.

41. It is submitted that the document has to be construed as a whole and this is to be construed in the light of Rule 4(6) of 2016 Rules which mandates 66% reservation to the students for the linguistic minority of the State. In an institution, not less than 66% of the students enrolled in the institution shall belong **to the persons belonging to the linguistic** or religious **minority of the State** to which the educational institution belongs.

(Emphasis supplied)

42. It is contended that the seat-sharing agreement is entered into keeping in mind the requirement of the above-said Rule and the contention of the State if accepted would defeat the object of Rule 2016. On this premise, it is urged that the reservation based on the linguistic minorities' seats cannot be restricted to Hyderabad-Karnataka region and it should be extended to the whole of the State of Karnataka.

43. The contention of the State is based on one sentence in the last paragraph of the preamble in the consensual agreement. The said paragraph reads as under:-

"And whereas the Surrender of the seats by AMPCK to the State Government would take care of the implementation of policies of the State Government namely reservation of seats under Article 15(5) and Article 371J of the Constitution of India. The State Government shall implement the above-said policy from the seats surrendered by

*the members of the APPCK to the State Government. **In so far as colleges from Hyderabad – Karnataka Region including the Private Medical Institution the provision under Article 371J shall be implemented.***

44. Based on this last sentence the State contends that the agreement provides for an exception to a seat-sharing arrangement based on linguistic minority criteria and according to the State the institutions located in Hyderabad-Karnataka region shall provide the reservation based on linguistic minority criteria only to the students from Hyderabad-Karnataka region.

45. It is the stand of the State Government that the State Government is implementing the obligation of the State on Article 371J of the Constitution of India through consensual agreement. According to the State in view of the stay order in W.P.20201/2014 passed in

the year 2013, to the orders of 2013, passed by the Governor of the State, there is a hurdle to implement the constitutional mandate as required under Article 371J of the Constitution of India. Thus it has necessitated the State to enter into a consensual agreement with the stakeholders and through such agreement, the State is implementing the constitutional obligation as required under Article 371J of the Constitution of India. Rule 4A of the Act of 2006 which provides for seat-sharing agreement is pressed into service to urge that the seat-sharing agreement has a statutory force and same reflects the policy of the State under Article 371J of the constitution of India.

46. Thus, the question is whether the State can enforce its obligations under Article 371J of the constitution of India through an agreement with institutions?

47. Article 371J of the Constitution of India reads as under:-

"371J President is empowered to provide that the Governor of Karnataka would have special responsibility for:

- The establishment of a separate development board for the Hyderabad-Karnataka region.*
- Making a provision that a report on the working of the board would be placed every year before the State Legislative Assembly.*
- The equitable allocation of funds for developmental expenditure over the region.*
- The reservation of seats in educational and vocational training institutions in the region for students who belong to the region.*
- The reservation in state government posts in the region for persons who belong to the region.*

48. From the reading of Article 371J of the Constitution of India, it is apparent that the policy of the State under Article 371J of the Constitution of India can be formulated and implemented only through the

mechanism provided under Article 371J. Said mechanism contemplates an order by the Hon'ble President of India, conferring the responsibility on the Governor, who in turn, has to pass necessary order in conformity with the requirement of Article 371J of the Constitution of India spelt out in the said article. Of course, an exercise is carried out by the Governor in terms of order of 2013. However, the operation of the 2013 order is stayed vide interim stay granted by the Co-ordinate Bench of this Court in Writ Petition No.20201/2014.

49. This being the position, the contention of respondent/State that consensual agreement entered under S.4A of the Act of 2006 should be treated on par or similar to an order under Article 371J of the Constitution of India cannot be accepted for the simple reason an order under Article 371J of the Constitution of India has to be promulgated only in the manner

prescribed under Article 371J of the Constitution of India. When the law requires something to be done in a particular manner, it should be done in that manner only. It is even more so, in the case of constitutional mandate. No deviation is permissible to the constitutional mandate when it comes to formulating the policy through an order or enactment under Article 371J of the Constitution of India. Such order is to be passed by the Governor of the State and none other. Thus the consensual agreement dated 19.01.2022, cannot be treated as a 'law' or an 'order' to implement the obligation under Article 371J of the Constitution of India. The consensual agreement under scrutiny is only an ad hoc arrangement between the parties to balance the conflicting claims in the matter of seat arrangements and other incidental matters relating to the admission of students to the professional course and it cannot have a status of an order under Article 371J.

50. Referring to the last paragraph of the preamble referred to above, which seeks to implement the obligation under Article 371J of the Constitution of India, it is urged that said clause is enforceable. The order passed by the Governor under Article 371J of the Constitution of India is not in place for implementation in view of the stay order granted to the said order. Thus, there is no policy of the State for implementation as on the date of the agreement. Even the contours of the purported policy of the State under Article 371J of the State is not forthcoming in the agreement. Thus, the State cannot interpret the document i.e., consensual agreement dated 19.01.2022 in a vacuum to assert that they are entitled to impose reservation policy as contemplated under Article 371J of the Constitution of India through an agreement.

51. From the reading of the clauses extracted supra from the agreement dated 19.01.2022, it is

apparent that the State Government was the conscious fact that the reservation policy of the State shall be implemented from 20% / 25% (for postgraduate and undergraduate courses respectively) of the seats surrendered to the Government. Para 3(c)(i) referred to above makes it very clear that 20% / 25% of the Government intake will be filled by the Government as per its admission policy including reservation of seats for scheduled castes and scheduled tribes and other backward classes and under Article 371J of the Constitution of India.

52. Clause 3(c)(ii) enables the private institution to fill up 66% of the seats in terms of the Rules 2016. The Rules 2016 provides for filling up of seats by taking into consideration the entire **State as one unit** as noticed in Rule 4(6) of 2016 Rules.

53. In addition to this, para 3 c stipulates that the Members of AMPCK are exempted from making any

separate reservation under Article 15(5) or Article 371J of the Constitutions of India. From a combined reading of these clauses, there is no difficulty in holding that the consensual agreement doesn't restrict the institution from filling up 66% of the seats out of 55% of the total seats available to it by treating the entire State of Karnataka as one unit.

54. Referring to judgments relating to the interpretation of a contract, the learned Additional Advocate General Sri. Subramanya would submit that the agreement is to be construed to ascertain and give effect to the real intention of the parties to the contract. The learned counsel would place reliance on the judgments in the case of ***Rajasthan Industrial Development Corporation and IREO Grace Realtech***, referred supra.

55. As far as the principles relating to the interpretation of the document is concerned, there is no

dispute that in case of ambiguity, the document is to be interpreted to give effect to the intention of the contracting parties. However, the consensual agreement under scrutiny is the agreement that is entered under Section 4A of the Act of 2006. As stated earlier it has a statutory flavour. The agreement is to be understood in the backdrop of obligations of the institutions under the applicable Acts/Rules/Regulations. The agreement is entered into to make an arrangement relating to the seat matrix in educational institutions run by parties to the agreement. Act of 2006 is the enactment to regulate admissions to professional colleges. Subsequently, in the year 2016, Rules 2016 referred supra is enacted and the said Rules prescribe eligibility criteria for recognition of minority educational institutions. There is no dispute that both the enactments referred to above apply to the contracting association of institutions which is a contracting party to the agreement. This being the

position, the agreement is to be construed in such a way that the construction does not violate the provision of law applicable to the parties. If two interpretations are permissible and if one interpretation violates a provision of law and another interpretation gets with the requirement of law, then the interpretation that gets with the requirement of the law is to be adopted. In case of conflict between law and the clause in the agreement, the law prevails. The interpretation that under the agreement, the institutions have to provide for exclusive reservations to the Hyderabad-Karnataka region runs contrary to the requirement of Rules 2016. Hence such interpretation is not acceptable. The clause in the agreement which is inconsistent with law, cannot be enforced. Under the circumstances, the contentions of respondents No.1 to 3 that reservation is restricted to Telugu Linguistic Minority Students in the Hyderabad-

Karnataka region to implement the policy under Article 371J cannot be accepted.

56. Placing reliance on the judgment of the Coordinate Bench of this Court in the matter of ***A.S.Vimalakshi and another V. State of Karnataka*** reported in ***2019 SCC Online Karnataka Page 1423*** the learned Additional Advocate General would submit that the contention raised by the petitioner is unsustainable in view of the law declared in the aforementioned judgment. In the said judgment the Court was examining the question raised in interpreting the Karnataka Public Employment "Reservation in an appointment for Hyderabad-Karnataka Region" order 2013. In the aforesaid petition, the challenge was made to clause-B of Para No.13 of the said order. The learned Single Judge of this Court *inter alia* has held that the words "For the people of Hyderabad-Karnataka region" will have to be read to mean for the benefit of people of

the said region. The ratio laid down in the aforementioned judgment cannot be applied to the present case for the simple reason, the provisions of Karnataka Public Employment "Reservation in an appointment for Hyderabad-Karnataka Region" order 2013 are not sought to be applied in this case. This case is all about rights and liabilities under the consensual agreement dated 19.01.2022 and the interpretation of consensual agreement concerning rights and obligations flowing from the Act of 2006 and Rules 2016 referred supra.

57. **Regarding maintainability of the writ petition to enforce contractual obligations :**

The learned Additional Advocate General placing reliance on **Rajasthan State Industrial Development and Investment Corporation and another**, a case referred supra, would contend that the petitioner's petition seeking to enforce a contractual obligation, is

not maintainable. The State contends that in view of the stay order granted to the Order of 2103, it has the power and discretion to implement reservation policy under Article 371J through an agreement under S.4A of the 2006 Act. Indeed, it is true that the Court would be extremely slow in exercising jurisdiction under Article 226 when it comes to contractual obligations. However, there is no absolute bar to deal with petitions relating to contractual obligations. If the contract is styled as an instrument to implement the State policy or if the contract is contrary to the binding provision of law and where such contract entered by the State is likely to affect persons (students in this case) who are not parties to the contract, or if the contract has an element of public law, (touching the reservation policy in this case) then the writ court can entertain the petition under Article 226 of Constitution of India. Although in a different context, the Supreme court in the matter of

Election Commission of India vs. Union of India**(1995 SCC Sup (3) 643)** has held that -

"....., we must also indicate that there are no unreviewable discretions under the constitutional dispensation. The overall constitutional function to ensure that constitutional authorities function within the sphere of their respective constitutional authority is that of the courts....."

Since the Order of 2013 is stayed, the State is asserting that it has the power and discretion to implement the policy under Article 317J, through an agreement. Thus, such an agreement is susceptible to judicial review under Article 226 of the Constitution of India.

58. In this case the petitioner though claiming right under the consensual agreement dated 19.01.2022, in substance is asserting its seat-sharing rights under rule 4(6) of the rules 2016. Moreover, the petition is to enforce a statutory right that is incidentally recorded in the agreement. In such a situation there is

no difficulty in holding that a writ petition is maintainable.

59. The standoff between the parties to the petition will also affect the students who seek admission to professional colleges in Hyderabad-Karnataka region. Such being the position, asking the parties to the contract of this nature, to seek remedy under civil law in a form of a suit for any other remedy if at all available, will not serve any purpose. Hence objection relating to maintainability of the writ petition on the ground of alternative remedy to enforce contractual obligation is overruled.

60. **Contention relating to estoppel/delay and latches:-**

The State would contend that the impugned seat arrangement is followed since 2017. The petitioner has not objected to the earlier seat matrix providing

reservation on linguistic minority quota to the students coming only from the Hyderabad-Karnataka region all these years. Based on this premise, it is urged that the petitioner institution is estopped from contending that the seat matrix is contrary to law. It is also contended that the petition is hit by delay and laches as the petitioner has not questioned the seat-sharing arrangement which is followed since 2017. The contention of the State in this regard has to be rejected for the following reasons:-

- a. Though the petitioner has not questioned the seat matrix arrangement since 2017 up to 2021, it is to be noticed that the agreements executed since 2017 are agreements for each academic year and agreements last only for a year. Thus, each agreement gives a different cause of action.
- b. This year the seat matrix which is published and later withdrawn and revised, has given a fresh

cause of action in favour of the petitioner, as the impugned notification is published on 31.01.2022. Thus, the cause of action arose only on 30.01.2022 and there is no delay on the part of the petitioner institution in filing the writ petition.

- c. It is also to be noted that the petitioner is claiming to enforce its right protected in terms of 2016 Rules. If the petitioner has not challenged the seat matrix from 2017 to 2021 which according to the petitioner are contrary to the Rules 2016, such inaction cannot be a ground to say that the petitioner has to follow the same seat matrix which is contrary to Rules 2016. If the seat matrix is contrary to Rules 2016 and even if the petitioner has followed the erroneous seat matrix for four years, the petitioner's right to question the erroneous seat matrix is not lost.

There cannot be any estoppel against the statute. This principle is well settled and needs no further elaboration. When the seat matrix proposed by the State is contrary to the consensual agreement and seeks to violate Rules 2016, the petitioner cannot be compelled to perpetuate the mistake by following the seat matrix which is contrary to the agreement.

- d. It is also to be noted that the petitioner is claiming protection for violation of his fundamental rights and the rights guaranteed under part III of the constitution cannot be waived. On this ground also the contention of the State that the writ petition is not maintainable for having acquiesced a particular pattern of seat matrix from 2017 has no substance.

61. It is urged on behalf of the State that the impugned seat matrix does not affect the interest of Telugu linguistic minority students in the State of Karnataka since the Telugu Minority Students in Hyderabad Karnataka will have a reservation in Institutions located in Hyderabad Karnataka. However, it is to be noticed that the 2016 Rules provide for reservation to the linguistic minority students for the entire state where the minority institution is located. When the Rules 2016, enacted by the State itself provides for such representation, in the absence of any policy or order under Article 371J, it is not open to the State to hold that linguistic minority students are not affected by the impugned seat matrix.

62. **Contention regarding locus standi :**

Sri N.K.Ramesh the learned counsel appearing for third respondent/KEA would submit that the petitioner is not a party to the consensual agreement and the

consensual agreement is entered into between the State and AMPCK. The AMPCK is the fifth respondent in this case. AMPCK has not questioned the revised seat matrix on the ground of violation of the consensual agreement and it is not open to the petitioner to raise an issue relating to violation of the agreement since it is not the party to the agreement.

63. This court is of the opinion that above said contention is not acceptable for the following reasons:-

- a. There is no dispute over the fact that the petitioner is the Member of AMPCK and both the State as well as the third respondent/KEA would contend that the agreement is binding on the petitioner. If the agreement is binding on the petitioner, the petitioner has the right to question the violation of the agreement. The contention that the agreement is binding on a person and said person cannot question the violation of

rights flowing from the said agreement defies logic.

b. The petitioner is not questioning the validity of the agreement and is not seeking to set aside the agreement. The petitioner is only complaining violation of the terms of the agreement which is entered into by the Association which is formed for the benefit of the petitioner and other members who were part of the Association. The petitioner is seeking to enforce the terms of the agreements.

c. It is forthcoming from the records i.e., Annexure-H letter dated 08.06.2021, that respondent No.5 – association acting on behalf of the petitioner has submitted a representation to do away with cross reservation under Hyderabad-Karnataka Quota. Thus, the association has taken a stand relating to Telugu Minority Students outside

Hyderabad-Karnataka region in the State of Karnataka and is of the view that the Telugu Linguistic Minority Students outside of the Hyderabad - Karnataka region in the State of Karnataka are also eligible to apply under Linguistic Minority Quota in the petitioner's institution. Though the Association is not questioning the seat matrix on the premise that the seat matrix is contrary to the terms of the agreement, nevertheless being a party to this proceeding, respondent No.5 has supported the stand of the petitioner. Since the deviation from the agreement is affecting the right of the petitioner, the petitioner is entitled to complain about the violation of the terms of the agreement.

64. When the case was heard on 8th March 2022, this court passed an interim direction to the 3rd

respondent not to declare the results of 2nd round counselling in so far as petitioner institution. The results were announced for admission to all other medical colleges on 8th March 2022 except the petitioner's college. The judgment was reserved after the conclusion of the hearing on 8th March 2022

65. On 11th March 2022, the case was listed as the court felt clarifications are required in respect of the interim order passed on 24.02.2022 based on a concession made by the petitioner on 24.02.2022. Explaining the concession recorded on 24.02.2022, the memo is filed by the petitioner, that the petitioner institution would honour the admissions granted to the students in the first round of counselling in a postgraduate and undergraduate courses in medicine. The relief claimed in the petition will be restricted to the second round and following rounds of counselling if any. Said submission was placed on record on 11.02.2022. In

view of the above-said submission, which is said to have been made taking into consideration the interest of students who are admitted pursuant to first-round counselling results, the petitioner is not entitled to all the relief claimed in the petition.

66. It is made clear that, the decision is rendered in these petitions, adjudicating the rights and liabilities of the parties under the consensual agreement dated 19.01.2022. The questions relating to the reservation in Educational Institutions located in Hyderabad-Karnataka region, under The Karnataka Educational Institutions (Regulations of Admission in the Hyderabad-Karnataka Region) (Order - 2013) is not adjudicated in this order as the said questions are to be adjudicated in W.P.No.20201/2014 and connected matters.

Hence, the following :

ORDER

- i) Writ Petitions 200345/2022 and 200365/2022 are allowed in part.
- ii) The impugned communication dated 31.01.2022 marked at Annexure-L and revised seat matrix at Annexure L1 in Writ Petition No.200345/2022 are quashed in so far as it is applicable to the petitioner's institution.
- iii) The impugned revised seat matrix at Annexure-L in Writ Petition No.200365/2022 is quashed in so far as it is applicable to the petitioner's institution.

- iv) Consequently the 3rd respondent Karnataka Education Authority is directed to conduct the second round of counselling afresh, permitting eligible Telugu linguistic minority students in the State of Karnataka to apply for admission to undergraduate and postgraduate courses in medicine, in the petitioner's institution.
- v) In terms of the interim order dated 24.02.2022, passed on the concession made by the petitioner, the admissions made in the petitioner's institution based on the results declared in 1st round of counselling are valid.
- vi) No order as to cost.

**SD/-
JUDGE**

**SD/-
JUDGE**

sn/KJJ