

A POLYTECHNIC BY NAME LARSON AND TOUBRO
INSTITUTE OF TECHNOLOGY AND ANR.

v.

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION
AND ORS.

MARCH 10, 1995

[B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

Education :

Polytechnic institute run by a Public Limited Company exclusively for children of its employees—No fees charged—Admission on merit basis—Reservation policy followed—Not covered by scheme prepared in pursuance of Unnikrishnan—Allowed to function subject to conditions as it fulfilled the underlying purpose and object of Unnikrishnan—Constitution of India—Article 32.

Larson and Toubro Ltd., a Public Limited Company, established a polytechnic institute to be run by a trust constituted by them. As the amount paid by the company into the said trust was not being allowed as a deduction in the assessment of the company under the Income Tax Act, the trust was dispensed with. The admission to the institute was open only to the children of those employees of Larson and Toubro group who had been confirmed in service for atleast five years. Admissions were made purely on merit and no fees was charged. The Government rules regarding reservations were followed. Certain conditions laid down by the Government while granting permission for starting the Institute were followed by the Institute.

After the judgment of this court in *Unnikrishnan, J.P. v. State of Andhra Pradesh*, [1993] 1 SCC 645. Regulations were framed by the All India Council for Technical Education (A.I.C.T.E.) which were consistent with and in furtherance of the scheme and directions contained in *Unnikrishnan*. The idea behind the scheme framed in *Unnikrishnan* was to put an end to financial and other irregularities in admission to professional colleges including colleges imparting technical education and to regulate admissions to such colleges.

A The petitioner-institute could not fit itself in the scheme framed by All India Council for Technical Education and therefore, applied for exemption to the Government which was not granted. Hence, this writ petition.

B Disposing of the writ petition, this Court

C HELD : 1. The idea of the appellant is to train the students keeping the requirements of the company in mind and to absorb them ultimately in company service to the extent feasible. It is thus obvious that the purpose for which this institute has been started and run are in no way inconsistent with the underlying purpose and object sought to be achieved by the scheme enunciated in *Unnikrishnan* and the regulations framed by the A.I.C.T.E. [745-F]

D 2. In the instant case, therefore, the institute may be allowed to function as at present, i.e. subject to several conditions imposed by the Government of Maharashtra, viz., (1) no fee shall be charged from any student; (2) the parents of the students must be in service of the company for atleast five years; (4) the government rules regarding reservation are followed and (5) only where no candidates are available in the backward class category, those seats will be filled up by open category candidates. In all other respects, the regulations framed by All-India Council for Technical Education shall apply as also the relevant rules and regulations, if any, made by the Education and Employment Department (including the office of Director of Technical Education, Bombay), Government of Maharashtra. It shall be open to the Government of Maharashtra and All India Council for Technical Education to inspect, call for records, and information and take all other steps to ensure that the institution is adhering to the above conditions. [744-B-C, 745-G-H, 746-A-B]

G 3. The condition that the institute is run by a Public/charitable trust as required by one of the clauses of the scheme in *Unnikrishnan* was dispensed with in the case of this institute alone subject to the following further conditions, viz. (1) the company shall open, if not already opened, a separate account concerning the petitioner institute, (2) all the expenditure incurred on the institute and any other receipts by the said institute shall be entered therein as also the particulars of the application of the H said amounts. [746-D, H, 747-A]

Unnikrishnan J.P. v. State of Andhra Pradesh, [1993] 1 SCC 645, relied on. A

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 738 of 1994.

(Under Article 32 of the Constitution of India.) B

K.K. Venugopal, K.V. Vishwanathan, Vikram B. Trivedi and Bharat Sangal for the Petitioners.

J.P. Verghese and S.P. Sharma for the Respondent. C

J. Rama Murthy, S.M. Jadhav and Bhasme for the State.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Larson and Toubro Limited, a public limited company, is a leading engineering concern in this country. It has got a large work force required for its various projects. In the year 1983, it set up Larson and Toubro Institute of Technology. For establishing and running the institute, a trust called 'Larson and Toubro Staff and Welfare Trust' was constituted. Because of certain legal complications, it is stated, the institute is being run directly by the company, dispensing with the trust. The institute imparts instruction in four-year diploma course-sixty seats in diploma in mechanical engineering and sixty seats in diploma in electrical engineering. According to the copy of the prospectus filed in this writ petition, the admission is open only to children of the employees of Larson and Toubro group of companies. It is further required that the employee should have put in a minimum period of five years of service as confirmed employee on July 1st of the year of admission to enable his child to claim the eligibility. The admission is made purely on the basis of merit determined on the basis of marks obtained in the Secondary School Certificate Examination of the Maharashtra State Board of Secondary Education or an equivalent examination. The minimum marks are fifty per cent in the case of general candidates and forty five per cent in the case of backward class students. Thirty four per cent of the seats are stated to be reserved in favour of backward classes. It is further stated before us by Sri K.K. Venugopal, learned counsel for the petitioners that no fee whatsoever is D
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- A charged or collected from the students or from their parents for admission and/or instruction in the said institute. It is stated that as a matter of fact, the Government of Maharashtra had granted permission for starting this institute in the year 1983 subject to the specific conditions that (1) no fee shall be charged from any student of the said institution; (2) the parents of the students must be Indian nationals; (3) the father/mother must be in service of the company for atleast five years; (4) that government rules regarding reservation of thirty four per cent of seats for backward classes are followed and (5) that only where no candidates are available in the backward class category, that those seats will be filled up by open category candidates. It is stated that these conditions are being implicitly and faithfully followed by the Institute.

- On February 4, 1993, this Court delivered judgment in *Unnikrishnan, J.P. v. State of Andhra Pradesh*, [1993] 1 SCC 645 inter alia framing a scheme governing admission to professional colleges, which expression includes colleges imparting technical education. The idea behind the scheme was to put an end to the financial and other irregularities which had become rampant in these institutions, converting most of these institutions into teaching shops. The idea was to regulate admission to these colleges. Fifty per cent of seats are to be filled purely on the basis of merit (who shall pay only a nominal fee) and other fifty per cent being treated as 'payment seats', the admission to which seats also was to be on the basis of merit. On review petitions being filed by several persons, they were entertained only to the limited extent of providing a certain percentage of seats for non-resident Indians. It was directed that five per cent of the seats shall be reserved for non-resident Indian students. It appears that the petitioner was one of the review petitioners therein though it was not one of the writ petitioners in the batch of writ petitions disposed of on February 4, 1993.

- In pursuance of the judgment in *Unnikrishnan*, the All- India Council for Technical Education framed two sets of regulations under All-India Council of Technical Education Act, 1987, viz., A.I.C.T.E. (Norms and Guidelines for Fees and Guidelines for Admissions in Professional Colleges) Regulations, 1994 dated May 20, 1994 and A.I.C.T.E. (Grant of Approval for starting new Technical Institutions, Introduction of Courses or Programmes and Approval of intake capacity of seats for the Courses

or Programmes) Regulations 1994 dated October 31, 1994. These regulations have been framed consistent with and in furtherance of the scheme and directions contained in the judgment aforesaid.

Since the petitioner-institute could not fit itself into the said scheme, it applied for exemption and for appropriate orders both from the Government of Maharashtra and from the A.I.C.T.E. The request was to permit it to continue according to its present scheme and, at the same time, not to refuse or withdraw the recognition and affiliation granted by the government and the council. Since the council expressed its inability to accede to the said request, the present writ petition was filed.

It would be seen from the facts stated above that this institute is not an engineering college but only a polytechnic, which means that primarily it will cater to the children of comparatively lower echelons of the employees of the company. It is confined to the children of the employees alone and that too employees who have put in a minimum of five years of confirmed service on 1st July of the relevant year of admission. No fee is charged either for admission or for imparting instruction. (The admission to hostel is, of course, a different matter and for which charges are levied, to which no objection can be taken.) Admissions are being made exclusively on the basis of merit with reference to the marks in the qualifying examination, viz., the marks obtained in S.S.C. Examination conducted by the Maharashtra State Board or Secondary Education or any other equivalent examination. No outside student is being admitted. The idea is to train the students keeping the requirements of the company in mind and to absorb them ultimately in company service to the extent feasible. It is thus obvious that the purpose for which this institute has been started and is being maintained and run are in no way inconsistent with the underlying purpose and object sought to be achieved by the scheme enunciated in *Unnikrishnan* and the regulations framed by the A.I.C.T.E. We are, therefore, inclined to allow the institute to function as at present, i.e., *subject to the several conditions* mentioned hereinbefore. In all other respects, the regulations framed by All-India Council for Technical Education shall apply as also the relevant rules and regulations, if any, made by the Education and Employment Department (including the office of Director of Technical Education, Bombay), Government of Maharashtra. It is made clear that the conditions imposed by the Maharashtra government while

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- A permitting the institute to be started, referred to above, shall continue to be observed. It shall be open to the Government of Maharashtra and All-India Council for Technical Education to inspect, call for records and information and take all other steps to ensure that the institute is adhering to the above conditions. For this purpose, the institute shall send each year, to both the government and the council, a statement of particulars of students who had applied for admission and those who had been granted admission. The statement shall contain the full particulars of the students alongwith the particulars of their parents (in service of the company), their service particulars, the marks obtained by each applicant and an integrated merit list and a separate merit list of the students belonging to backward classes.

- At the same time, we wanted to ensure that the institute is run by a public/charitable trust as required by one of the clauses of the scheme in *Unnikrishnan*. It was, however, explained to us by Sri Venugopal that initially the company had established a trust for the purpose of running the said institute but it had to dispense with the said trust because the amount paid by the company into the said trust was not being allowed as a deduction in the assessment of the company under the Income Tax Act. It is explained that by virtue of insertion of sub-section (9) in Section 40A of the Income Tax Act by Finance Act, 1984 (with retrospective effect from April 1, 1980) the amounts paid by the company into the trust were held not deductible as permissible expenditure by the Income Tax Department and for this reason the trust had to be dispensed with. With a view to satisfy ourself as to the position of law obtaining in this behalf, we requested Sri J. Ramamurthy, Senior Advocate, to assist us and tell us whether it would be possible for the company to claim full deduction for the amounts paid into the trust established, or to be established, for running the said institute. Sri Ramamurthy and Sri Venugopal have taken us through the relevant provisions of the Income Tax Act. We find that by virtue of sub-section (9) of Section 40A, it may not be possible for the company to claim such full deduction. Even if the said trust is recognised for the purpose of Section 80G, the deduction can be only to the extent of fifty per cent of the amount paid into the trust. In the circumstances, we dispense with the said condition in the case of this institute *alone* subject to the following further conditions, viz., the company shall open, if not already opened, a separate account concerning the petitioner-institute. All the expenditure incurred

on the institute and any other receipts by the said institute shall be entered therein as also the particulars of the application of the said amounts. If there is any change in law relevant in this behalf, it shall be open to the Government of Maharashtra, A.I.C.T.E. or any other interested person to apply to this court for appropriate modification. A

We are grateful to Sri J. Ramamurthy for gladly assisting us in the matter. B

The writ petition is disposed of with the above directions. No costs.

B.K.M.

Petition disposed of.