

STATE OF MAHARASHTRA
v.
MANUBHAI PRAGAJI VASHI AND ORS.

AUGUST 16, 1995

[KULDIP SINGH AND K.S. PARIPOORNAN, JJ.]

Constitution of India, 1950 :

Article 14—State—Grants-in-aid—benefits under—Affording to non-Government professional colleges of Arts, Science, Commerce, Engineering and medicine faculties—Denial to non-Governmental Law Colleges—Held violative of Article 14—Paucity of funds held no ground for discrimination—Held burden to prove that there was no discrimination was on the State—On facts held that the State has not discharged such a proof—Directions issued to State to extend the grants-in-aid scheme to non-Government private law colleges.

Articles 21 and 39-A—Combined effect of—Legal education—Legal aid—Held State is obliged to afford grants-in-aid to recognised private law colleges—Need for continuing and well organised legal education emphasised—Standard of legal education should not suffer for want of funds.

Part IV—Directive Principles—State inaction—Held Court can issue directions to Executive to carry out the Directive Principles.

These appeals arise out of a common judgment of the Bombay High Court dated 19.8.1988 rendered in two writ petitions. the first writ petition was filed in public interest by a practising advocate and a member of the Bar Council of Maharashtra for a direction to the Government of Maharashtra to extend the grant-in-aid scheme to the non-Government Law Colleges in the State of Maharashtra as afforded to other faculties viz. Arts, Science, Commerce, Engineering and Medicine etc. In the other connected petition the prayer was that the benefit of pension-cum-gratuity scheme introduced by the Government for all teaching and non-teaching staff in colleges with faculties in Arts, Science, Commerce, Engineering and Medicines as per GR. No. NCC-1983 (865)-IN-4 dated 21.7.83 should be made applicable to the staff of non-Government Law Colleges.

A A Division Bench of the Bombay High Court rejected the State's plea that the petitioner has no right to seek a writ of Mandamus under Article 226 basing his relief on a Directive Principle contained in Part IV of the Constitution and held that (i) the action of the Government in non-extending the grants-in-aid to non-Government recognised Law Colleges was discriminatory; (ii) paucity of funds can be no reason for discrimination.

B Accordingly, it directed the Respondent-State to extend the grant-in-aid scheme to all Government recognised private law colleges on the same criteria as such grants were given to other faculties viz. Arts, Science, Commerce, Engineering and Medicine commencing from academic year June, 1988. The State was also directed to implement the pension-cum-gratuity scheme in favour of the staff of non-Government law colleges with effect from 1.10.1982 on such staff exercising their option in writing within four weeks from Government's declaration to implement Grants-in-aid scheme to non-Government law colleges.

D In appeals preferred by the State before this Court it was contended that (i) the High Court erred in assuming that other non-Government private professional colleges like Engineering Colleges, Medical Colleges etc. were given the benefit of grants-in-aid scheme and on this basis, it was discriminatory in not extending the benefit of the scheme to non-Government Law Colleges; and (ii) it is primarily for the Government to decide, taking into account the total financial commitments and constraints whether to extend the benefit of grants-in-aid scheme to all or any private professional colleges. The decision on the score was not justiciable.

Dismissing the appeals, this Court

F HELD : 1. The High Court was right in holding that recognised private law colleges have been singled out for hostile discriminatory treatment in withholding grant-in-aid and so interference in the nature of affirmative action or direction in the form of remedial measure was called for. [751-G]

G 2. The facts amply bring out the fact that recognised private law colleges alone were singled out for hostile discriminatory treatments. The State has not discharged the burden of proof cast on it to sustain the differential treatment meted out to one of the Government recognised professional colleges (private) law colleges. It is patent that likes have been treated unlike; without proper justification or reason and the private law

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colleges have been singled out for hostile discriminatory treatment. A

[747-E-F]

3. The disparity in the service conditions in not affording the benefit of pension-cum-gratuity scheme to the non-teaching staff in non-Government law colleges and at the same time affording the same benefit to non-teaching staff of colleges with faculties in Arts, Science, Commerce, Engineering and Medicine with effect from 1.10.1982 is discriminatory as correctly opined by the High Court and requires to be set right. [747-F-G] B

4. Paucity of funds can be no reason for discrimination. One facet of education cannot be selected for hostile discriminatory treatment, whatever may be the other laudable activities pursued by the Government in the matter of education or its discretion to assign the order of priorities in different spheres of education. [746-D] C

Municipal Council, Ratlam v. Vardhichand, AIR (1980) SC 1622; referred to. D

5. Records indisputably show that the Government of Maharashtra was affording grant-in-aid to the non-Government Engineering, Technical and Technological colleges and polytechnics and also to Government recognised private ayurvedic teaching institutions or hospitals and non-Government Arts, Science, Commerce Colleges. Thus, Engineering and Medical College (professional college) were given grant-in-aid. In the light of the above unassailable state of affairs, it is idle for the state to contend that the High Court was in error in assuming that non-Government private professional colleges like Engineering Colleges, Medical Colleges etc. were given the benefit of grants-in-aid scheme. [749-H; 750-A-B] E

6. When, *prima facie*, a plea of discrimination is made out, the burden of proof is on the State to show that it is not so; or that a valid and permissible classification exists for the differential treatment meted out to Government recognised private law colleges alone. The burden of proof cast on the State, that discrimination against recognised private colleges is based on a reasonable classification having nexus to the object sought to be achieved, has not been discharged. [745-H; 746-A; 751-A-B] F

Budhan Choudhary and Ors. v. State of Bihar, AIR (1955) SC 191; *Express Newspaper Ltd. v. Union of India*, AIR (1958) SC 578; *Mahant Moti Das v. S.P. Sabi*, AIR (1959) SC 942; *Babulal Amthlal Mehta v. Collector* G

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A of Customs, AIR (1957) SC 877; *D.S. Nakara v. Union of India*, AIR (1983) SC 130, relied on.

7. In a fit case, it is open to the court to direct the Executive to carry out the directive principles of the Constitution, when there is inaction or slow action by the State. [751-F]

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State of Himachal Pradesh v. Umed Ram Sharma, AIR (1986) SC 847, relied on.

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8. Even otherwise the conclusion arrived at by the High Court can be sustained independently on the basis of Article 21 read with Article 39-A of the Constitution of India. Article 21 read with Article 39-A of the Constitution mandates or casts a duty on the state to afford grant-in-aid to recognised private law colleges, similar to other faculties, which qualify for the receipt of the grant. The aforesaid duty cast on the State cannot be whittled down in any manner, either by pleading paucity of funds or otherwise. [755-E]

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Chandra Bhawan Boarding and Lodging, Bangalore v. State of Mysore, AIR (1970) SC 2042; *Unnikrishnan J.P. v. State of A.P.*, [1993] 1 SCC 645; *M.H. Hoskot v. State of Maharashtra*, [1978] 3 SCC 544; *Hussainara Khatoon v. Home Secretary, State of Bihar*, [1980] 1 SCC 98; *A.R. Antulay v. R.S. Nayak*, [1992] 1 SCC 225; referred to.

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9. The right to free legal aid and speedy trial are guaranteed fundamental rights under Article 21 of the Constitution. The principles contained in Article 39-A are fundamental and cast a duty on the state to secure that the operation of the legal system promotes justice, on the basis of equal opportunities and further mandates to provide free legal aid in any way - by legislation or otherwise, so that justice is not denied to any citizen by reason of economic or other disabilities. The words occurring in Article 39-A are of very wide import. In order to enable the State to afford free legal aid and guarantee speedy trial, a vast number of persons trained in law are essential. Legal aid has manifold facets. The explosion in population, the vast changes brought about by scientific, technological and other developments, and the all round enlarged field of human activity reflected in modern society, and the consequent increase in litigation in courts and other forum demand that the service of competent persons with expertise in law is required in many stages and at different forums or levels

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and should be made available. [753-E; G-H; 754-A-C]

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10. The need for a continuing and well organised legal education, is absolutely essential reckoning the new trades in the world order, to meet the ever growing challenges. The legal education should be able to meet the ever growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialisation in different branches of the law is necessary. The requirement is of such a great dimension, that sizeable or vast number of dedicated persons should be properly trained in different branches of law, every year by providing or rendering competent and proper legal education. This is possible only if adequate number of law colleges with proper infrastructure including expertise law teachers and staff are established to deal with the situation in an appropriate manner. [754-C-E]

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11. A sole Government law college cannot cater to the needs of legal education or requirement in a city like Bombay. Lack of sufficient colleges called for the establishment of private law colleges. If the State is unable to start colleges of its own, it is only appropriate that private law colleges which are duly recognised by the concerned University and/or the Bar Council of India and/or other appropriate authorities, as the case may be, should be afforded reasonable facilities to function effectively and in a meaningful manner. That requires substantial funds. Under the lable of self financing institutions the colleges should not be permitted to hike the fees to any extent in order to meet the expenses to provide the infrastructure and for appointing competent teachers and staff. The private law colleges, on their own may not afford to incur the huge cost required in that behalf. The 'standard' of legal education and discipline are bound to suffer. It should not so happen for want of funds. The 'quality' should on no account suffer in providing free legal aid and if it is not so, 'the free legal aid' will only be a farce or make believe or illusory or a meaningless ritual. That should not be. It is in that direction the grants- in-aid by the State will facilitate and ensure the recognised private law colleges to function effectively and in a meaningful manner and turn out sufficient number of well trained or properly equipped law graduates in all branches year after year. That will in turn enable the State and other authorities to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability.

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[754-G-H; 755-A-C]

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A 12. The ends of justice call for suitable and appropriate modification regarding the operative portion of the judgment. Accordingly, the State of Maharashtra is directed to the following effect: [756-B]

B (a) To extend the grant-in-aid scheme to all Government recognised private law colleges, on the same criteria as such grants are given to other faculties viz. Arts, Science, Commerce, Engineering and Medicine from the academic year 1995 within three months from the date of this Order.

[756-C]

C (b) Regarding non-Government law colleges which have closed down or are about to close down, the date will be collected by the Government of Maharashtra forthwith and sincere attempt must be made to re-start the colleges as they existed in the academic year 1985-86 for the purpose of extending grants-in- aid from the academic year 1995-96; [756-E]

D (c) The Government shall implement the pension cum-gratuity scheme in favour of the staff of non-Government law colleges with effect from April 1, 1995 on such staff exercising their option within three months from the government's declaration to implement grant-in-aid scheme to non-Government law colleges; [756-F]

E (d) Government shall ensure, by taking appropriate steps, that those private law colleges duly and properly recognised by Government and/or other competent authorities, including the Bar Council of India, and conforming to standards laid down by appropriate authorities and affiliated to an established University alone are afforded the grant-in-aid.

F Steps shall be taken to ensure that the aided institutions, abide by all the rules and regulations of the aforesaid authorities for recognition and affiliation including such of those rules and regulations in the mater of recruitment of teachers, staff, their conditions of service, syllabus, standard of teaching and discipline. [756-H, 757-A]

G (e) Government should further ensure that a high standard is maintained in legal education and in that behalf, Government of Maharashtra shall, with the concurrence of the concerned University, the Bar Council of India, Bar Council of Maharashtra and other competent bodies or persons, as the case may be, take all necessary steps, so that excellence in

H legal education is achieved. [757-C]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 7373- A
7374 of 1995.

From the Judgment and Order dated 19.8.88 of the Bombay High Court in W.P. Nos. 2303 & 4816 of 1987.

S.K. Dholakia S.B. Wad, B.A. Desai and V.N. Ganpule, S.M. Jadhav, B
A.S. Bhasme, Ms. J.S. Wad, Ms. Reema Bhandari, M.N. Shorff, H.a. Raichura, D.M. Nargolkar, Kailash Vasdev, Ms. Manik Karanjawala, S.K. Agnihotri, Promod Swarup, A. Chauhan and V.R. Joshi for the appearing parties.

The Judgment of the Court was delivered by C

PARIPOORNAN, J. Leave granted.

State of Maharashtra represented by the Education Department - the D
appellant in both the appeals - filed special leave petitions against the common Judgment and order of the High Court of Judicature of Bombay dated 19.8.1988 rendered in Writ Petition No. 2303 of 1987 and Writ Petition No. 4816 of 1987. The writ petitions are public interest litigations, wherein the State of Maharashtra was the first respondent. The petitioner, who filed Writ Petition No. 2303 of 1987, is the first respondent in the appeal filed in S.L.P. No. 14017 of 1988 and the writ petitioners in Writ Petition No. 4816 of 1987 are respondents Nos. 51, 52 and 53 in the appeals. E
The other respondents in the High Court and also in this Court are the University of Bombay, various Universities in the State of Maharashtra, various law colleges affiliated to the Bombay University and the University of Pune, Marathwada, Nagpur and Kolhapur, the Bar Council of Maharashtra and the Bar Council of India. The University Grants Commission is also a respondent. It should be stated at the outset that the common appellant in these civil appeals (state) (petitioner in the S.L.Ps. and the common first respondent in the writ petitions in the High Court) was the sole contesting party in the High Court. The other respondents in the High Court and still before us support the petitioners in the writ petitions - respondents in the civil appeals. F
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2. Writ Petition No. 2303 of 1987 is the main petition. The prayer therein was to direct the Government of Maharashtra to extend the grant-in-aid scheme to the non-Government Law Colleges in the state retrospec- H

- A tively from April, 1982 or from the date of filing of the writ petition. Respondents 51 to 53 in the civil appeals addressed a letter to the High Court raising certain grievances of retired employees of Law College, Pune. The said letter was treated by the High Court *suo motu* as Writ petition No. 4816 of 1987. The prayer therein was that the benefit of pension-cum-gratuity scheme introduced by the Government for all teaching and non-teaching staff in colleges with faculties in Arts, Science, Commerce, Engineering and Medicines as per GR No. NCC-1983(865)-IN-4 dated 21.7.1983 should be made applicable to the staff of the non-government Law Colleges. A Division Bench of the High Court of Bombay, consisting of Lentin and Agarwal, JJ. by judgment dated 19.8.1988, held that the action of the Government is not extending the grants-in-aid, afforded to faculties like Arts, Science, Commerce, Engineering and Medicine to non-Government recognised law colleges is discriminatory. It was held that withholding of facility of grants-in-aid to non-Government Law Colleges would be discrimination between such law colleges from whom grants-in-aid are withheld and other non-Government colleges with faculties viz., Arts, Science, Commerce, Engineering and Medicine, to whom grants-in-aid are given. After referring to the relevant facts, the Division Bench passed an order in paragraph 34 of the judgment dated 19.8.1988, to the following effect :
- E "A. Commencing from academic year June, 1988, Government is directed to extend the Grant-in-aid Scheme to all Government recognised private law colleges on the same criteria as such grants are given to other faculties viz. Arts, Science, Commerce, Engineering and Medicine.
- F B. The scheme shall be implemented within 12 weeks from today.
- G C. Regarding non-Government, law colleges which have closed down or are about to close down, their statistics shall be considered by Government as of academic year 1985-86 for the purpose of extending grants.
- H D. Government shall implement the pension-cum-gratuity scheme in favour of the staff of non-Government law colleges with effect from 1.10.1982 on such staff exercising their option in writing within four weeks from Government's declaration

to implement Grant-in-aid scheme to non-Government law colleges. A

E. No order as to costs of the petitions. Rule is made absolute in terms above."

3. A Division Bench of this Court, by order dated 9.12.1988, ordered issue of notice in the S.L.Ps. and passed the following order : B

"Issue notice returnable on 31.1.1989. The State of Maharashtra is directed to consider the question of implementation of the impugned judgment of the High Court in accordance with the grant-in-aid scheme framed by the Government for recognised private colleges. Such consideration shall be made within four weeks from date and the law colleges which will be considered by the State of Maharashtra as eligible for the grant-in-aid shall be paid the grant-in-aid within two weeks thereafter. Mr. S.K. Agnihotri, learned counsel appearing on behalf of Respondent No.1 is discharged as prayed for by him as the Respondent No. 1 has himself appeared in person before us and accepts notice. The State of Maharashtra shall supply copies of the grant-in-aid scheme to the appearing respondents within four weeks from today." C D

4. By Order dated 14.2.1989, a Bench of this Court passed interim order to the following effect : E

"List the matter on 28th March, 1989, subject to overnight part-heard for final disposal. There will be interim stay of the operation of the judgment of the High Court and also the hearing of the application for contempt which has been filed by the 1st Respondent in the High Court. Additional affidavits, if any, shall be filed in the meantime." F

Still later, on 23.10.1990, a Bench of this Court passed the following interim order : G

"After hearing the learned counsel Mr. S.K. Dholakia, Sr. Adv. for a considerable length of time, we think that for the ends of justice and fair play, the State of Maharashtra will file before us the Rules or Acts or administrative instructions on the basis of which sanction has been accorded to the instant law college and also other H

A 38 law colleges. The petitioner shall also produce before this Court the original sanction memos issued by the State not only in respect of the instant law college, but also of other law colleges established either before 1983 or after 1983. We also direct the State Government to produce before this Court the facts which were taken into account in determining that these colleges which are accorded sanction will be self sufficient in running their respective institutions without asking for or awaiting for the grant from the State Government. We also further clarify that if there is any undertaking given by any of the colleges, the said undertaking in its original form or a copy of the same with an affidavit by a responsible officer be filed before this Court. These documents be filed within a period of five weeks from this date positively with an advance copy of the affidavit filed, if any, to the counsel for the other side. The matter may be listed on 28.11.1990 subject to overnight part- heard. Liberty is also given to the counsel for the respondents to file affidavits in counter, if any, within that period."

D The office report, available at pages 515 D and E of the paper book, shows that the parties did not comply with aforesaid directions issued by this Court.

E 5. On 30.8.1991, a Bench of this Court passed the following order :

F "Shri M.P. Vashi states that the Government of Maharashtra has already put some amount being allocated for law colleges in the Budget in the Maharashtra Assembly for the years 1988 and onwards. He would file documents in support of this contention and give a copy in advance to the counsel for the State of Maharashtra."

6. Still later, on 3.10.1991 a Bench of this Court has passed the following order :

G "The respondents have furnished Budget estimates for the years 1990-91 and 1991-92 showing that the State Government has allocated some grant for law colleges. Learned counsel for the petitioner/State wants time to seek further instructions from the State in this regard. He prays for one month's adjournment. The prayer for adjournment is contested from the side of the respon-

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dents. We consider it proper in the interest of justice to grant a last opportunity of one month to the petitioner to file an affidavit stating all the details with regard to the allocation of Budget for the law colleges in the State of Maharashtra. We also award a cost of Rs. 1,000 for adjournment. Put up on 22nd November, 1991 at the top of the hearing cases subject to overnight part-heard. The amount of Rs. 1,000 will be paid within two weeks to the respondents."

Along with the additional submission filed by the first respondent in the civil appeal, papers evidencing 'technical education in Maharashtra State 1989-90 and 1990-91', the statement showing grants-in-aid given to aided Engineering Colleges, Polytechnics and other technical institutions have been annexed as Ext. P1. In Ext. P2, filed along with the additional submission Civil budget estimates of expenditure for the year 1992-93 for Education and Employment Department of Government of Maharashtra it is seen at Sl. No. 104 on page E48 under the head 104(1)(I), 'grants to non-Government Arts, Science, Law and Commerce Colleges'.

7. We heard counsel on both sides. The appellant's counsel stressed the following aspects :

(A) The High Court was in error in assuming that other non-Government private professional colleges like Engineering Colleges, Medical Colleges, etc. were given the benefit of grants-in-aid scheme and on this basis, it was discriminatory in not extending the grants- in-aid scheme to non-government Law Colleges. It was this erroneous factual assumption which resulted in the High Court holding that there is discrimination between the professional colleges - non-Government law colleges on the one hand and other non-Government professional colleges like Engineering Colleges, Medical Colleges on the other.

(B) It is primarily for the Government to decide, taking into account the total financial commitments and constraints whether it is possible to extend the benefit of grants-in-aid scheme to all or any private professional colleges. Various non-Government professional colleges were given recognition only on the condition that none of the colleges would seek

A grant-in-aid scheme to be made applicable. It is the policy decision of the Government whether it should extend the benefit of grant-in-aid scheme to non-Government law colleges. The decision on that score is not justiciable.

B 8. On the other hand, counsel for the respondents submitted that in the High Court, the plea that the professional colleges other than law colleges were given grants-in-aid was not disputed and in fact, there was sufficient material before the High Court to show that professional colleges like Engineering Colleges, Ayurvedic non-Government colleges and B.Ed. colleges were given the benefit of grants-in-aid scheme. Even the affidavit
C filed by a responsible senior official of the State of Maharashtra would go to show that private professional colleges other than law colleges were extended the benefit of grants-in-aid scheme. The plea of discrimination found by the High Court is based on substantial material and no error has been committed on that score. Even the committee appointed by the
D Government under the Chairmanship of the then Education Minister and other members recommended that the existing grant-in-aid formula should be made applicable to the non-Government law colleges with effect from 1985-86 and a Division Bench of the High Court directed the State Government to take appropriate steps in that behalf. The State Government was directed to file affidavits giving full particulars in pursuance of the earlier
E order dated 27th August, 1987. Even so, no steps were taken in that behalf and no statement was filed regarding the steps taken in pursuance of the recommendations of the committee. What is more, in the interim order passed by this Court, the State was directed to prepare the grant-in-aid scheme in accordance with the judgment of the High Court and specify the
F law colleges which were found to be eligible to be paid the grant-in-aid. Various law colleges submitted the relevant documents to enable the Government to prepare the scheme. Though the State Government prayed for extension of time to frame the scheme, no orders were obtained there nor was the scheme prepared. Apart from the discriminatory treatment metted out to one facet of education, viz., private law colleges, the Division
G Bench also stressed the point that in the context of the obligation of the State under the directive principle of the State policy to provide free legal aid, legal education to a good number of students is essential and in its absence hardship and detriment to the general public will ensure and the public will be deprived of the legal assistance. The inaction of the executive
H should be set right by appropriate directions by the Court. By reckoning

this factor also, the High Court gave the directions as it did in para 34 of the judgment. A

9. The main facts highlighted and found by the High Court which were not successfully assailed before us may be stated. The State of Maharashtra has a reputation of being the premier state in India. Educationwise, it has several faculties, viz., Arts, Science, Engineering, Medicine and Law. Except law, all other faculties run by the recognised non-Government colleges are given grant-in-aid by the Government. The Government recognised non-government law colleges in Maharashtra is the only faculty which is denied the above grant-in-aid. In the State of Maharashtra, there is only one Government law college at Bombay. There has been an increase in demand for legal education. During the academic year 1985-86, the total number of law students in Maharashtra was about 25,700. The Government counsel himself stated before the High Court during the time when the writ petitions were heard, that then the number of such students would be in the vicinity of 27,000 to 28,000. The heavy demand for legal education could not be met by the solitary law college run by the Government in Bombay. It resulted in private or non-Government law colleges coming up in Bombay and other parts of Maharashtra. All such colleges are recognised by the Government. There are 38 law colleges. The strength of the teaching staff is 544, comprising about 91 full-timers and the remaining part-time staff. The full time non-teaching staff is about 400. The Government recognised private law colleges applied for aid as early as 1975. It was reiterated by the Chairman of the Bar Council of India on 1.12.1982. Resolutions were passed. Discussions took place and meetings were held. Information was invited and received by the Government from the various Principals and data was collected and the matter went on in like manner. But no final decision was taken nor was grants-in-aid afforded to the Government recognised private law colleges. It was challenging this enacting or hostile discriminatory attitude towards legal education in general and the Government recognised private law colleges in particular, a public interest litigation was started by Mr. M.P. Vashi, a practising advocate and a member of the Bar Council for Maharashtra. The main plea of the State was lack of funds and also the general or vague unsubstantiated statement that other private professional educational institutions were not receiving grants-in-aid. When, *prima facie*, a plea of discrimination is made out., the burden of proof is on the state to show that it is not so; or that a valid and permissible classification exists B
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- A for the differential treatment meted out to Government recognised private law colleges alone. There should be nexus between the basis of classification and the object of the Act under consideration. On the above crucial aspects, on an evaluation of Government's affidavits, they are found to be wanting, repleted as they are with generalisations, good intention and achievements in other fields of education which are irrelevant. The charge of discrimination stands unproved. It was further stated by the State that the maximum effort is taken by it to provide primary and secondary education to every child and that the weaker section of the society is taken care of within available financial resources and private professional colleges were given recognition only on condition that they will be self-supporting and will not insist for affording grant-in-aid. These pleas urged by the State are no answer to the charge of discrimination pleaded in the writ petitions. Paucity of funds can be no reason for discrimination. One facet of education cannot be selected for hostile discriminatory treatment, whatever may be the other laudable activities pursued by the Government
- D in the matter of education or its discretion to assign the order of priorities in different spheres of education. In a fit case, it is open to the court to direct the executive to carry out the directive principles of the Constitution, when there is inaction or slow action by the State. In the report submitted by Prof. Mogh in August, 1986, he recommended that grant-in-aid should be extended to non-Government law colleges and a sum of Rs. 89.92 lakhs is required for this purpose with an increase every year depending on the number of colleges, etc. The total budget for the State in the year 1987-88 was Rs. 5,351 crores, out of which Rs. 791 crores had been earmarked for expenditure for education. Out of 659 colleges in the entire State, 198 colleges do not receive grant-in-aid. 38 non-Government law colleges form part of this 198 colleges. If the remaining 160 colleges which do not receive grant-in-aid (other than non-Government law colleges) insist for the grant-in-aid, it was stated that the expenses will amount to only Rs. 2 crores. If the grant-in-aid is given to private law colleges, the requirement will be less than 0.1% of the total budgetary allocation for education which is not high
- G apiece for legal education. The staff of Government law college and other Government run colleges having faculties of Arts, Science, Commerce, Engineering and Medicine draw a much higher scale of emoluments and enjoy greater benefits than what the private law colleges with their depleted resources can possibly afford to pay by way of salaries or other benefits to their staff. Out of eight law colleges in Marathwada, seven are not in a
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position to pay salaries according to the scale fixed by the UGC. A Dean of Faculty of Law in Marathwada University and the principal in Dayanand College, Latur, with a teaching experience of 29 long years, draw salary of Rs. 400 per month. As against this, Principals and staff of aided colleges get as much as Rs. 4,000 to Rs. 5,000 per month with allowances and other benefits. Slowly private law colleges, one by one, face the prospect of closure. The Dayanand College of Law at Latur had closed the first and second year of LL.B classes. Law College at Usmanabad had closed the first year LL.B classes. Similar is the case of Jalna Law College. This is an increasing epidemic and the student will be starved of legal education and will be deprived of practising law as a profession which will cause hardship and determent to the general public who will be deprived of legal assistance. C

10. On hearing counsel, we are of the view that no dispute seems to have been raised in the High Court regarding the grant-in-aid made available to recognised private professional colleges other than law. Nor was any material placed before the court on this score. The conclusion of the High Court to the effect that not extending the grant-in-aid to non-Government law colleges and at the same time extending such benefit to non-Government colleges with faculties viz., Arts, Science, Commerce, Engineering and Medicine (other professional non-Government colleges) is patently discriminatory, and based on material and sustainable. The State has not discharged the burden of proof cast on it to sustain the differential treatment meted out to one of the Government recognised professional colleges (private law colleges). It is patent that likes have been treated unlike; without proper justification or reason and the private law colleges have been singled out for hostile discriminatory treatment. The disparity in the service conditions in not affording the benefit of pension-cum-gratuity scheme to the non-teaching staff in non-Government law colleges and at the same time affording the same benefit to non-teaching staff of colleges with faculties in Arts, Science, Commerce, Engineering and Medicine with effect from 1.10.82 is discriminatory as correctly opined by the High Court and requires to be set right. G

11. We hold that there is sufficient material on record to show that the Division Bench of the High Court was justified in stating that several non-Government professional colleges, like Engineering Colleges, Medical Colleges, etc. are receiving grant- in-aid from the Government. Smt. H

A Kumud Bansal, Secretary, Education and Employment Department, Government of Maharashtra, in her additional affidavit filed on 24.1.1989, available at pages 155 to 161, has referred to the fact that out of the total budget for the year 1988-89, a sum of Rs. 1,033.74 crores was earmarked for educational purposes. The break-up is as follows:

B	Total budget 1988-89	Rs. 1,044.74 crores
	Primary Education	Rs. 469.37 crores
	Secondary Education	Rs. 390.59 crores
C	Higher Education	Rs. 99.29 crores
	Technical Education	Rs. 65.89 crores
	Other Education	Rs. 8.58 crores.

D For technical education (Polytechnics and Engineering Colleges), a sum of Rs. 65.81 crores was set apart and for 'other education', Rs. 8.58 crores has been spent. What faculty represents the head 'other education' is anybody's guess. One thing is clear, that the said amount is not for 'legal education; and should be for subjects other than one previously dealt with in the narrative. The matter is not made clear by the State. It is also stated therein that in view of paucity of funds, the Government do not think it possible to afford grant-in-aid to law colleges. Denying that there was any discriminatory attitude against the law colleges in particular, it is stated that out of sixty-one private engineering colleges, *only six of them started earlier have been granted the facility of grant-in-aid* (pages 157 and 158 of the paper book). The further averment to the effect that private professional colléges were allowed to start only on condition that they would not get grant-in-aid stands belied, in view of the grant to six private engineering colleges. On what basis six private engineering colleges were admittedly given grant-in-aid, is not evident. It does not stand to reason. The affidavit filed by Sri Madhusudan Balakrishnan Karmarkar (Respondent No. 45) dated 17.3.1989, available at pages 244 to 253 of the paper book, discloses the following facts:

H "On the contrary medical, engineering and ayurvedic colleges which were started before 1983 were either fully financed by the Government or were run by the Government itself. *Government of*

Maharashtra has approved grant-in-aid scheme for the non-Government engineering colleges on 18th May, 1978 (hereto annexed and marked Ext. 'A' is a copy of the said scheme) to the Ayurvedic non-Government colleges on 4th September, 1978 and thereafter on 2nd May, 1980 (hereto annexed and marked Ext. 'B' and 'C' are the copies of the said scheme). So far as medical colleges are concerned, they are either being run by the Government itself or by the Municipal Corporation. It is only after 1983 that two medical colleges were allowed to be started by private management, one Krishan Institute of Medical Science at Karad and another Prawara Medical College at Prawanagar, Dist. Ahmednagar. However, these colleges are allowed to charge tuition fees of Rs. 30,000 per year. There are 62 B.Ed. Colleges in the State of Maharashtra at present. Out of these, 40 colleges were started prior to 1983 and out of these 40 colleges, 28 are being run by the private managements and 12 by the State Government itself. They give straining to the students to qualify them as professional teachers. In other words, it is a professional course and all, 28 non-Government B.Ed. Colleges started before 1983 are getting grants from the State Government. All these B.Ed. colleges are treated at par with Arts, Science and Commerce colleges. The Government of Maharashtra has approved grant-in-aid scheme for all such colleges on 3rd October 1979 (hereto annexed and marked Ext. 'D' is the copy of the said scheme). Therefore, the argument of petitioner that the law course is professional course and hence they are not eligible for grants has no basis. The same is falsified by the above facts supported by the respective exhibits."

Annexure A dated 18.5.1978, the order of the Government of Maharashtra, shows that grant-in-aid is afforded to non-Government Engineering, Technical and Technological colleges and polytechnics in the State (page 254 of the order book). Annexure B to the said affidavit is the order of the Government dated 4th September, 1978 (page 270 of the paper book). Annexure C is the order of the Government dated 2nd May, 1980 (page 278 of the paper book) and Annexure D (page 288) is an order of the Government dated 3.10.1979. Annexure A dated 18.5.1978, Annexure B dated 4.9.1978, Annexure C dated 2.5.1980 and annexure D dated 3.10.1979 indisputably should that the Government of Maharashtra was affording grant-in-aid to the non-Government Engineering, Technical and Tech-

A nological colleges and Polytechnics also also to Government recognised private ayurvedic teaching institutions or hospital and non-Government Arts, Science, Commerce Colleges. Thus, Engineering and Medical College (professional college) were given grant-in-aid. In the light of the above unassailable state of affairs, it is idle for the State to contend that the High Court was in error in assuming that not-Government private professional colleges like Engineering Colleges, Medical colleges, etc. were given the benefit of grant-in-aid scheme. It is perhaps, due to this undoubted state of affairs, there was no dispute before the High Court on this count. Our attention was invited to the fact that the working group constituted by the Government of Maharashtra, by order G.R. No. NCC/2086/(7) INI-2A dated 24th April, 1986 under the Chairmanship of Prof. D.R. Meghe, Principal of University College of Law, Nagpur, submitted a report for non-government Law Colleges in the State of Maharashtra (available at pages 208 to 218 of the paper book). The working group has recommended that the revised unified and integrated grant-in-aid formula laid down to colleges of Arts, Commerce, Science and Education, as reflected in Resolution No. NCC 1279/157796-XXV dated 2.10.1979 (page 162 of the paper book) should be made applicable to the non-Government law colleges with effect from 1985-86. It was also brought to our notice that Government of Maharashtra passed a resolution [No. USG 1177/135330/XXII (Cell)] dated 25th September, 1978 accepting the recommendation of the Central Government incorporating the recommendation of the UGC that the benefit of the revised scales recommended by the UGC should be given to the full-time teachers in law colleges and that the additional burden on this count will be subsidised by the Central Government to the extent of 80% during the Fifth Plan Period and the remaining 20% being borne either by the management or the State Government. The implementation of the scheme of the revision of pay scales for full-time teacher in law colleges in Maharashtra was sanctioned with retrospective effect from 1.1.1973, as could be seen from Annexure I - pages 86 to 108 of the paper book. But, even so the UGC scale was not implemented so far as full-time teachers in private law colleges are concerned.

12. The facts stated above amply bring out the fact that recognised private law colleges alone were single out for hostile discriminatory treatment. The recommendations of the Committee (page 198-208) to apply the new formula for the grant to private law colleges and the resolution adopted by the Government to extend the UGC scales to teachers of law colleges

(pages 86-87) remained only in 'paper' and no concrete steps were taken to implement them. It is not explained as to why recognised private law colleges alone are disentitled to received grant-in-aid from the Government. The burden of proof cast on the State, that discrimination against recognised private law college's is based on a reasonable classification having nexus to the object should to be achieved, has not been discharged. The High Court has held so, placing reliance on the decisions of this Court reported in *Budhan Choudhary and Others v. State of Bihar*, AIR (1955) SC 191, *Express Newspaper Ltd. v. Union of India*, AIR (1958) SC 578, *Mahant Moti Das, v. S.P. Sahi*, AIR (1959) SC 942), *Babulal Amthalal Mehta, v. Collector of Customs*, AIR (1957) SC 877 and *D.S. Nakara v. Union of India*, AIR (1983) SC 130. We hold that the aforesaid reasoning and conclusion of the High Court is fully justified and no exception can be taken to the decision so arrived at by the High Court. The High Court has further referred to the plea of paucity of funds pleaded by the State and has held that paucity of funds can be no reason for discrimination, placing reliance on the decision of this Court in *Municipal Council, Ra'lam v. Vardhichand*, AIR (1980) SC 1622. This reasoning of the High Court is also fully justified and no exception can be taken to the said proposition as well. We hold so.

13. A plea was taken in the High Court that the petitioner has no right to seek a writ of mandamus under Article 226 of the Constitution basing his relief on a directive principle contained in the Constitution. The High Court, rightly in our opinion, repelled this plea relying on the decision of this Court in *State of Himachal Pradesh v. Umed Ram Sharma*, AIR 1986 SC 847. The High Court referred to the dictum laid down in the aforesaid decision to the effect (a) the Court can in a fit case direct the executive to carry out the directive principles of the Constitution, and (b) when there is inaction or slow action by the executive the judiciary must intervene. We have no doubt that the above conclusion of the Court below is also justified.

14. On an analysis of the various aspects discussed above, it is evident that the High Court was right in holding that recognised private law colleges have been singled out for hostile discriminatory treatment in withholding grant-in-aid and so interference in the nature of affirmative active or direction in the form of remedial measure was called for. Except to the extent of modifications contained hereinafter, the directions given in para 34 of the judgment in that behalf are justified and proper in all the circumstances of the case.

A 15. Quite apart from the above, we are also inclined to hold that the conclusion arrived at by the High Court can be sustained independently on the basis of Article 21 read with Article 39A of the Constitution of India. Articles 21 and 39A are as follows :

B "21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law.

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C 39-A. Equal justice and free legal aid. - The State shall secure that the operation of the legal system promotes justice, on a basis, of equal opportunity, and *shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way*, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic *or other disabilities.*"

D (Emphasis supplied)

E Article 21 is a fundamental right conferred under Part III in the Constitution, whereas Article 39A is one of the directive principles of the State Policy under part IV of the Constitution. As held by the Constitution Bench of this Court in *Chandra Bhawan Boarding and Lodging, Bangalore v. State of Mysore*, AIR (1970) SC 2042 at page 2050, para 13:

F "While rights conferred under part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other."

G In *Unnikrishnan J.P. v. State of A.P.*, which again is a Constitution Bench decision [1993] 1 SCC 645 at page 730, B.P. Jeevan Reddy, J. stated the law thus :

H "It is thus well established by the decisions of this Court that the provisions of Part II and IV are supplementary and complementary to each other and that fundamental rights are but a means to achieve the goal indicated in Part IV. *It is also held that the fundamental rights must be construed in the light of the directive*

principles."

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(Emphasis supplied)

A page 732, the learned Judge has further declared thus :

"The right to education which is implicit in the right to life and personal liberty *guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution.*"

B

(Emphasis supplied)

Article 21 of the Constitution dealing with personal liberty has many dimensions as held by the series of decisions of this Court. A few of them have been catalogued in the judgment of Mohan, J. in *Unnikrishnan's* case [1993] 1 SCC 645 at pages 669 and 670. It is now fairly settled that the right to legal aid and speedy trial are part of the guarantee of human rights envisaged by Article 21 of the Constitution of India see : *M.H. Hoskot v. State of Maharashtra*, [1978] 3 SCC 544, *Hussainara Khatoon v. Home Secretary, State of Bihar*, [1980] 1 SCC 98, and *A.R. Antulay v. R.S. Nayak*, [1992] 1 SCC 225.

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16. In the light of the above, we have to consider the combined effect of Article 21 and Article 39A of the Constitution of India. The right to free legal aid and speedy trial are guaranteed fundamental rights under Article 21 of the Constitution. The preamble to the Constitution of India assures 'justice, social, economic and political'. Article 39A of the Constitution provides 'equal justice' and 'free legal aid'. The State shall secure that the operation of the legal system promotes justice. It means justice according to law. In a democratic polity, governed by rule of law, it should be the main concern of the State, to have a proper legal system. Article 39 A mandates that the State shall provide free legal aid *by suitable legislation or schemes or in any other way* to ensure that opportunities for securing justice are not denied to any citizen *by reason of economic or other disabilities*. The principles contained in Article 39A are fundamental and cast a duty on the State to secure that the operation of the legal system promotes justice, on the basis of equal opportunities and further mandates to provide free legal aid in any way-by legislation or otherwise, so that justice is not denied to any citizen by reason of economic or other disabilities. The crucial words are (the obligation of the State) *to provide free*

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A *legal aid 'by suitable legislation or by schemes' of 'in any other way'*, so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. (Emphasis supplied) The above words occurring in Article 39A are of very wide import. In order to enable the state to afford free legal aid an guarantee speedy trial, a vast number of person trained in law are essential. Legal aid is required in many form and at various stages, for obtaining guidance, for resolving disputes in courts, tribunals or other authorities. It has manifold facets. The explosion in population, the vast changes brought about by scientific, technological and other developments, and the all round enlarged field of human activity reflected in modern society, and the consequent increase in litigation in courts and other forums demand that the service of competent persons with expertise in law is required in many stages and at different forums or levels and should be made available. The need for a *continuing and well organised legal education*, is absolutely essential reckoning the new trends in the world order, to meet the ever growing challenges. The legal education should be to meet the ever growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialisation in different branches of the law is necessary. The requirement is of such a great dimension, that sizeable or vast number of dedicated persons should be properly trained in different branches of law, every year by providing or rendering competent and proper legal education. This is possible only if adequate number of law colleges with proper infrastructure including expertise law teachers and staff are established to deal with the situation in an appropriate manner. It cannot admit of doubt that, of late there is a fall in the standard of legal education. The area of "deficiency" should be located and correctives should be effected with the co-operation of competent persons before the matter gets beyond control. Needless to say that reputed and competent academics should be taken into confidence and their services availed of, to set right matters. As in this case, a sole Government law college cannot cater to the needs of legal education or requirement in a city like Bombay. Lack of sufficient colleges called for the establishment of private law colleges. If the State is unable to start colleges of its own, it is only appropriate that private law colleges, which are duly recognised by the concerned University and/or that Bar Council of India and/or other appropriate authorities, as the case may be, should be afforded reasonable facilities to function effectively and in a meaningful manner. That requires substantial funds. Under the label of self

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financing institutions, the colleges should not be permitted to hike the fees to any extent in order meet the expenses to provide the infrastructure and for appointing competent teachers and staff. The private law colleges, on their own, may not afford to incur the huge cost required in that behalf. The 'standard' of legal education and discipline is bound to suffer. It should not so happen for want of funds. The 'quality' should on no account suffer in providing free legal aid and if it is not so, 'the free legal aid' will only be a farce or make believe or illusory or a meaningless ritual. That should not be. It is in that direction the grant-in-aid by the State will facilitate and ensure that recognised private law colleges to function effectively and in a meaningful manner and turn out sufficient number of well trained or properly equipped law graduates in all branches year after year. That will in turn enable the state and other authorities to provide free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability. These aspects necessarily flowing from Articles 21 and 39A of the Constitution were totally lost sight of by the Government when it denied the grant-in-aid to the recognised private law colleges as was afforded to other faculties. We would add that the State has abdicated the duty enjoined on it by the relevant provisions of the Constitution aforesaid. In this perspective, we hold that Article 21 read with Article 39A of the Constitution mandates or casts a duty on the State to afford grant-in-aid to recognised private law colleges, similar to other faculties, which qualify for the receipt of the grant. The aforesaid duty cast on the State cannot be whittled down in any manner, either by pleading paucity of funds or otherwise. We make this position clear.

17. Before closing, we may observe that the content of Article 21 read with Article 39A did not (in terms) arise for consideration in this court on any previous occasion. Even in the recent Constitution Bench decision reported in *Unnikrishnan's* case (supra), Article 21 read with Articles 41, 45 and 46 alone came up for consideration. The scope of Article 21 in the light of Article 39A never arose for consideration nor was it considered in the said decision.

18. For the above reasons, we uphold the judgment and order of the High Court of Bombay under appeal as detailed herein below and dismiss the civil appeals.

19. In view of the fact that the decision of the High Court was

A rendered nearly seven years ago and the operation of the judgment was stayed by this court as early as 14.2.1989, we are of the view that taking into account the subsequent events, the ends of justice call for suitable and appropriate modification regarding the operative portion of the judgment contained in paragraph 34. We, therefore, pass the following order or directions in substitution of paragraph 34 of the judgment of the court below.

We direct the State of Maharashtra to the following effect :

- C A. Government is directed to extend the grant-in-aid scheme to all Government recognised private law colleges, *on the same criteria as such grants are given to other faculties viz. Arts, Science, Commerce, Engineering and Medicine from the academic year 1995;*
- D B. The scheme shall be implemented within three months from today;
- E C. Regarding non-Government law colleges which have closed down or are about to close down, the data will be collected by the Government of Maharashtra forthwith and sincere attempt must be made to re-start the colleges as they existed in the academic year 1985-86 for the purpose of extending grant-in-aid from the academic year 1995-96;
- F D. As stated by the High Court, Government shall implement the pension-cum-gratuity scheme in favour of the staff of non-government law colleges with effect from April 1, 1995 on such staff exercising their option, on notice being served on them individually or by public notice, within three months from the Government's declaration to implement grant-in-aid scheme to non-Government law colleges;
- G E. Government shall ensure, by taking appropriate steps, that those private law colleges duly and properly recognised by Government and/or other competent authorities, including the Bar Council of India, and conforming to standards laid down by appropriate authorities and affiliated to an established University *alone* are afforded the grant-in-aid. Steps
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shall be taken to ensure that the aided institutions, abide by all the rules and regulations of the aforesaid authorities for recognition and affiliation including such of those rules and regulations in the matter of recruitment of teachers, staff, their conditions of service, syllabus, standard of teaching and discipline. In this context, the Bar Council of India Rules, Part IV, standards, of legal education and recognition of degree in law or admission as Advocates, should be the guiding factor;

F. Government should further ensure that a high standard is maintained in legal education and in that behalf, Government of Maharashtra shall, with the *concurrence* of the concerned University, the Bar Council of India, Bar Council of Maharashtra and other competent bodies or persons, as the case may be, take all necessary steps, so that excellence in legal education is achieved. This shall be done expeditiously; and

G. There shall be no order as to costs in these appeals,

The appeals are disposed of, as above.

T.N.A.

Appeals disposed of.