

(2015) 01 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : CWP No. 14 of 2015-B

Aarav Goswami

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 09-01-2015

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 19(6)

Citation : AIR 2015 HP 24

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Keshav Thakur and Arun Kumar, for the Appellant; Sharwan Dogra, Advocate General, Anup Rattan, Romesh Verma, Additional Advocate Generals and Kush Sharma, Deputy Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—Education occupies an important and sacred place in our Constitution and culture. It is a tool for betterment of civil institutions, protection of our civil liberties and path to an informed and questioning citizenry.

2. As far back as in the year 1954, Chief Justice Earl Warren of the U.S. Supreme Court stressed upon the importance of education in *Brown Vs. School Board of Topeka*, 34 U.S. 483 (1954):-

"Education is perhaps the most important function of State and local governments..... It is the very foundation of good citizenship. Today, it (education) is the principal instrument in awakening the child to cultural values, in preparing him for later professional training and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life, if he is denied the opportunity of education."

3. It is probably because of the quality education that respondent No. 2 is imparting, that the petitioner has approached this Court for the second time

claiming in this petition the same and similar relief, which had been sought by him in CWP No. 9035 of 2014, which was dismissed by this Court vide its decision dated 3.12.2014 in the following terms:-

"After hearing for a while, Mr. Arun Kumar, learned counsel for the petitioner prays for withdrawal of the writ petition along with all CMPs with liberty to seek appropriate remedy at appropriate stage. His statement is taken on record.

2. Accordingly, the writ petition is dismissed as withdrawn along with all pending applications, with liberty as prayed for."

4. The petitioner is a child who had sought admission in the St. Edward School (Simla Catholic Diocese) and underwent the usual screening procedure, but could not get admission. Vide letter dated 28th October, 2014, the father of the petitioner was informed that the petitioner could not be selected for admission to class Nursery, not because he was lacking anything, but because of limited seats. It is apt to reproduce the letter in its entirety, which reads thus:-

"Dear Mr. Anurag Goswami, I regret to inform you that your son Aarav Goswami bearing Reg. No. 237 has not been selected for Admission to CLASS NURSERY.

This does not mean that your child is lacking in anything, but we have very limited seats and the applicants were too many. Kindly do not approach anybody for recommendations for admission. Thanking you and God Bless."

5. The petitioner has assailed this action of respondent No. 2 on the ground that the school has arbitrarily rejected and denied admission to the petitioner because the petitioner did not lack in anything. It is further stated that the education institutions including private schools have to follow the merit alone and they are further required to ensure that the admissions are made in a fair and transparent manner. The respondent cannot be permitted to adopt pick and choose policy.

We have heard the learned counsel for the petitioner and gone through the records of the case.

6. Indisputably, respondent No. 2 is a minority unaided institution and, therefore, has a right to establish and administer its institution. Such institutions enjoy total freedom and even the State cannot interfere up to the level of undergraduate education as recognized by the Hon'ble Supreme Court in P.A. Inamdar and Others Vs. State of Maharashtra and Others, .

"133. So far as the minority unaided institutions are concerned to admit students being one of the components of "right to establish and administer an institution", the State cannot interfere therewith. Upto the level of undergraduate education, the minority unaided educational institutions enjoy total freedom."

7. Now in so far as the contention of the petitioner that the admissions to the Nursery class were required to be made on merit is concerned, we are afraid that it is not possible at the school level more particularly at the nursery level to grant admissions on the basis of merit because that would infringe upon the autonomy

of the school. This fact has been duly recognized by the Hon'ble Supreme Court in celebrated decision of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , wherein it was held as under:-

"61. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged. At the school level, it is not possible to grant admissions on the basis of merit. It is no secret that the examination results at all levels of unaided private schools, notwithstanding the stringent regulations of the governmental authorities, are far superior to the results of the government-maintained schools. There is no compulsion on students to attend private schools. The rush for admission is occasioned by the standards maintained in such schools, and recognition of the fact that state-run schools do not provide the same standards of education....."

8. The private educational institutions have a personality of their own and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their schools. No doubt, when these institutions reject students, the rejection should not be whimsical or for extraneous reasons. Here it is apt to quote para 65 of the judgment in T.M.A. Pai Foundation's case (supra), which reads thus:

65. The reputation of an educational institution is established by the quality of its faculty and students, and the educational and other facilities that the college has to offer. The private educational institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies. It is for this reason that in the St. Stephen's College case, this Court upheld the scheme whereby a cut-off percentage was fixed for admission, after which the students were interviewed and thereafter selected. While an educational institution cannot grant admission on its whims and fancies, and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons."

9. In view of the aforesaid exposition of law, it can safely be concluded that the private unaided schools run by minorities have a right under Article 19(1)(g) of the Constitution of India to establish, run and administer the schools including the right to admit students. Even the scope of reasonable restriction imposed by

Article 19(6) of the Constitution viz-a-viz such a right is conferred only to ensure the proper academic standards, atmosphere and infrastructure and the prevention of maladministration by those in-charge of the management, but the same does not take away the right of respondent No. 2 in making admissions to the school provided that the same are made in a fair, transparent and non-exploitative manner.

10. No material whatsoever has been placed on record by the petitioner so as to suggest or indicate that the process of admission was in any manner arbitrary or capricious. The mere fact that the petitioner could not get admission in itself would not be sufficient to infer that the procedure as followed by the respondent was not fair, transparent or non-exploitative. Moreover, the petitioner has not even alleged any malafides. Above all, the petitioner has failed to array the students who have been granted admission, which affects the very maintainability of this petition and is, therefore, fatal to the case of the petitioner.

11. Restrictive measures, if any, to govern the mode and manner of admissions in private unaided schools run by minorities can only be through legislation and this Court can only enforce the law, but cannot create a law and then seek its enforcement. This is an area which is out of bounds for the Courts as held by the Hon"ble Supreme Court in Divisional Manager, Aravali Golf Club and Another Vs. Chander Hass and Another, , wherein the Hon"ble Supreme Court took serious note of High Courts issuing directions on subjects ranging from age and other criteria for nursery admissions etc. and observed as follows:-

"26. Recently, the Courts have apparently, if not clearly, strayed into the executive domain or in matters of policy. For instance, the orders passed by the High Court of Delhi in recent times dealt with subjects ranging from age and other criteria for nursery admissions, unauthorised schools, criteria for free seats in schools, supply of drinking water in schools, number of free beds in hospitals on public land, use and misuse of ambulances, requirements for establishing a world class burns ward in the hospital, the kind of air Delhiites breathe, begging in public, the use of sub-ways, the nature of buses we board, the legality of constructions in Delhi, identifying the buildings to be demolished, the size of speed-breakers on Delhi roads, auto-rickshaw over-charging, growing frequency of road accidents and enhancing of road fines etc. In our opinion these were matters pertaining exclusively to the executive or legislative domain. If there is a law, Judges can certainly enforce it, but Judges cannot create a law and seek to enforce it.

27. For instance, the Delhi High Court directed that there can be no interview of children for admissions in nursery schools. There is no statute or statutory rule which prohibits such interviews. Hence the Delhi High Court has by a judicial order first created a law (which was wholly beyond its jurisdiction) and has then sought to enforce it. This is clearly illegal, for Judges cannot legislate vide Union of India and another Vs. Deoki Nandan Aggarwal, . In Vemareddy Kumaraswamy Reddy and Another Vs. State of A.P., this Court observed: "the

Judges should not proclaim that they are playing the role of law maker merely for an exhibition of judicial valour". Similarly, the Court cannot direct the legislature to make a particular law vide Suresh Seth Vs. Commissioner, Indore Municipal Corporation and Others, , Bal Ram Bali and Another Vs. Union of India (UOI), , but this settled principle is also often breached by Courts."

12. For all the reasons aforesaid, we find no merit in this petition and the same is accordingly dismissed in limine, leaving the parties to bear their costs. All the pending application(s), if any shall stand disposed of.