

(2014) 07 P&H CK 0296
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12135 of 2014

Adesh University	Vs	APPELLANT
State of Punjab		RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 142, 226
University Grants Commission Act, 1956 — Section 23

Citation : (2014) 07 P&H CK 0296

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : K.S. Sidhu, Sr. Advocate, A.S. Sandhu and Rajiv Kataria, Advocate for the Appellant; K.S. Sidhu, Sr. Advocate, Deepak Balyan, Addl. A.G., Punjab, Gautam Pathania, Paramjit Rajput and Arun Singhal, A.S. Sandhu, Advocate for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—This order shall dispose of three writ petitions bearing CWP Nos. 12135, 12299 & 12484 of 2014, involving common questions of law and facts. However, to dictate order, facts have been taken from CWP No. 12135 of 2014 titled Adesh University Vs. State of Punjab & others.

2. The petitioner-University is aggrieved against the order dated 16.06.2014 (Annexure P14), passed by the State, whereby the counselling for the purpose of admission to the MBBS & BDS courses for the session 2013-14, in the University, has been stopped. A further prayer has been made for a writ in the nature of prohibition directing the respondents not to interfere in the smooth functioning of the University since it has been functioning under the Adesh University Act, 2012 (for brevity, the "University Act").

3. The pleaded case of the petitioner is that it is a University established under the University Act and is constituted under the Private University Policy dated 14.06.2010. Prior to the constitution of the University, the Adesh University of

Medical Sciences & Research, Bhatinda and Adesh University of Dental Sciences, Bhatinda, which were being run by the Adesh Foundation, had applied for constitution of the University along with five other institutes, running the medical courses, after obtaining no objection certificate from the Baba Farid University of Health Sciences (its acronym, "BFUHS"), to which, they were earlier affiliated. The proposal to shift affiliation had been approved by the Medical Council of India, New Delhi, Dental Council of India as well as the University Grants Commission. An executive order dated 07.12.2002 (Annexure P13) had been passed whereby the powers of the University, which was a totally autonomous body, were sought to be curtailed. The said order was challenged by way of filing CWP No. 9215 of 2013, which was allowed on 01.05.2014 and is reported as Adesh University Vs. State of Punjab, The University had complied with all the terms and conditions imposed on it and submitted for providing the first statute as well as the first ordinance but the respondents had not raised any objection whatsoever till today. The petitioner-University was entitled to hold separate competitive examinations for the session 2014-15 but to instill confidence and for the purpose of transparency, the All India Pre-Medical Entrance Test (its acronym, "AIPMT"), conducted by the Central Board of Secondary Education for admission to all Government colleges for the session 2014-15, had been adopted. The prospectus giving every minor details for adopting the fair, transparent and non-exploitive procedure for selection, had been issued (Annexure P7). Admission notice had also been put in the website on 27.05.2014 and 01.06.2014.

4. A news item was published in the Hindustan Times on 11.06.2014, stating that the petitioner-University was charging Rs. 40 lacs each from MBBS students, which was 20-fold the tuition fee, fixed by the State and the news item was with ulterior motive. Clarification was issued in the same paper by the petitioner-University as to clarify all the wrong facts given in the news item. Another news item was published on 15.06.2014 and the petitioner-University sent a legal notice to the Editor-in-Chief of the said paper. Since counselling was slated for 17.06.2014 and 18.06.2014, then the impugned order was received at 9.30 a.m. and the University had stopped the counselling on the ground that admission had to be done by the Centralized Counselling by the BFUHS, as per notification No. 5/9/2009-3SS3/1472 dated 07.03.2014 (Annexure P15). An explanation was also asked as to how the fees was being charged at the said rate, as reported.

5. Replies were sent to the State, placing reliance upon the decision of this Court in Adesh University (supra) and accordingly, the present writ petition was filed challenging the order and the case was listed before the Vacation Bench. Notice of motion was issued and vide interim order dated 23.06.2014, in view of the orders passed by the Supreme Court in WP (C) No. 737 of 2013 titled Lipika Gupta & another Vs. Union of India & others, the petitioner was permitted to conduct provisional counselling till 25.06.2014, subject to the final decision of the writ petition. Thereafter, application was filed by respondent No. 4 on the ground that he had been admitted on the basis of Centralized Counselling,

conducted by the BFUHS and he objected to the challenge laid to the stoppage of the counselling done by the petitioner-University.

6. The State, in its written statement, took the plea that the University was claiming its right to make admissions on the basis of the orders passed by this Court in Adesh University (supra) and the University was not quoting the relevant part of the judgment and the order of the Government was justified. No representation had been received, as per the judgment and therefore, the instructions issued in the notification dated 07.03.2014 for admissions to undergraduate courses was applicable. The University had issued advertisement in the newspapers that they would hold counselling on 17.06.2014 and therefore, the order dated 16.06.2014 was passed restraining the University from holding counselling, considering the exploitation of the general public in view of the judgment of the Apex Court in Priya Gupta Vs. State of Chhatisgarh and Others, that there will be Centralized Counselling. The statutes had been submitted by the University at a belated stage and the same were pending for approval with the competent authority and under the University Act, the University was not authorized to hold counselling and fee fixation, contrary to the policies of the State Government. The University representative had been asked to come present before the Principal Secretary, Higher Education on 24.07.2014 so that this case could be considered and deliberated upon in respect of the passing of the statutes submitted at the belated stage. In pursuance of the interim order dated 23.06.2014, provisional counselling had been allowed to be held and it was pointed out that candidates have also been provisionally selected for the Adesh Medical College, Bhatinda in the MBBS/BDS courses in the Centralized Counselling held from 21.06.2014 to 23.06.2014. Prayer for vacating the interim order dated 23.06.2014 was also made since the future of the aspiring meritorious students who had taken admission in Centralized Counselling, would be effected. It was pleaded that the University had never got the approval from the State Government on its policy of admissions and fee fixation and as it was not receiving any grant, there was no reason for the University to by-pass the mandatory requirements and fix the criterion against the spirit of the judgment of Supreme Court in Priya Gupta's case (supra) and also in view of the policies of the Government. This Court had never given any exemption to the petitioner to by-pass any provisions of law before initiating the process of counselling, admissions etc., for the present academic year and therefore, the order was justified.

7. In the written statement filed by the newly added respondent No. 4, who had taken admission, it was pleaded that he had got admission in the said institute through Centralized Counselling on 22.06.2014 and deposited the requisite course fee. The petitioner-University was guilty of mis-stating and misusing the orders passed by this Court and it is liable to be prosecuted for the offence of contempt as well as violation of other provisions. This Court had held that the University had not completed all legal formalities under the University policy and the University Act and they had illegally started the admission proceedings by

willfully violating the order and the notification dated 07.03.2014, apart from the violation of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee & Making of Reservation) Act, 2006 (hereinafter referred to as the "2006 Regulation Act"). The notification being in force, the University was not legally competent to conduct any admission and counselling and had violated the said notification and had, thus, not approached this Court with clean hands. It had not been mentioned that the Baba Farid University had already conducted the Centralized Counselling on 22.06.2014 and the interim order was passed on 23.06.2014, without these facts being brought to the notice of the Court. A reference was made to the provisions of 2006 Regulation Act to submit that the admission procedure followed was not fair and therefore, the admission made by the petitioner-University was legally not permissible.

8. In the replication to the written statement of the State, filed by the petitioner-Institute, it was submitted that necessary approvals had been taken and the first statute was submitted on 10.10.2012 (Annexure P5) and thereafter, on 14.05.2014, had submitted the first ordinance to the State, immediately after passing of the judgment of this Court on 01.05.2014 in the case of Adesh University (*supra*) but the respondents had not approved the statute nor raised any objection and in view of this fact, the University was justified in holding the admissions. The Baba Farid University was holding the counselling from 21.06.2014 to 25.06.2014 and the petitioner-University had fixed counselling from 17.06.2014 and 18.06.2014, due to the schedule fixed by the Apex Court since the admissions had to be completed by 25.06.2014. The procedure of merit had been followed and no less meritorious students had been admitted. More than 400 students had applied for admission and only on the basis of merit, admission had been given and the same fees had been charged which was mentioned in the prospectus and which the State had fixed for admission to be made by the private medical institutions in the management quota. The University is recognized by the UGC and its affiliation had been approved and once the order dated 07.12.2012 was quashed, the University was justified and no complaint had been made for charging of capitation fee. Only four common students had taken admission in the counselling held by the BFUHS and 200 more seats had been sanctioned and the students could be adjusted in another institutions where 200 more seats had been sanctioned.

9. Similarly, replication was also filed to the written statement filed by respondent No. 4 and it was pleaded that respondent No. 4 had no reason to be aggrieved as he had taken admission in the management quota in the Centralized Counselling held by the BFUHS. The petitioner has to generate resources by charging the same fees which was fixed by the Government for management quota seats. There is no concealment of any fact and the University is a very prestigious self-financed private medical University of the State and it has been acting in accordance with the Adesh University Act, 2012 and respondent No. 4 had made wild allegations against it. The admission had been

made in a fair and transparent manner and on the basis of merit and it was acting according to the provisions of the Indian Medical Council Act, 1956. It was denied that there was any violation of the orders of this Court dated 01.05.2014 and that the said judgment had not been highlighted and the impugned orders had been wrongly passed.

10. Counsel for the petitioner has, accordingly, submitted that it had submitted the statutes on 10.10.2012 and in pursuance of the decision of this Court in the case of Adesh University (supra), the ordinances have been submitted for approval under the University Act, on 14.05.2014, immediately after the judgment for approval of the Government of Punjab. It is submitted that in pursuance to the directions of this Court, the Medical Council of India had recognized the University as Adesh Institute of Science & Research, Bathinda from BFUHS from 2012-13 batch onwards vide order dated 28.05.2014 (Annexure P15). Similarly, reference was made to the notification dated 03.04.2014 (Annexure P16) whereby the notification had been issued by the Central Government and the Adesh University, Bathinda had been recognized for the MBBS course from 2012-13. Reference was also made to the letter of the Government of India of April, 2014 (Annexure P17) whereby the Dental Council of India's recognition to treat the batch of 2012-13 in the BDS course with 100 seats, had been granted. Similarly, reference was also made to the letter dated 30.04.2013 (Annexure P18) whereby the hard copy and soft copy of detailed information about Adesh University, as per the format, was supplied to the University Grants Commission. Thus, it is submitted that the necessary compliance had been made and the impugned order was interfering in the administration of the University who had admitted 84 students on 25.06.2014, in pursuance of the interim order dated 23.06.2014. Reliance was also placed upon the observations of this Court in the case of Adesh University (supra) to submit that this Court had held that the University was placed at a higher level than other institutes and therefore, was entitled to grant admission on the basis of the University Act, especially u/s 25(3) & (9) which provides policy of admission including reservation of seats and Section 26 provided the power to make ordinances and sub-clause (3)(i) provided that admission could be made to the students of the Universities.

11. Counsel for the State, on the other hand, submitted that in pursuance of the notification having been issued on 07.03.2014, 102 students had been admitted by centralized counselling by BFUHS out of which, 72 students were against Government quota seats and 30 were of management quota seats. Reliance was placed upon sub-clause (7) of Section 25 of the University Act to submit that statutes had to be finally approved by the State Government and they were to be published in the official Gazette of the University and under sub-clause (8), could not be amended without the approval of the State Government. Similarly, the University Policy of 2010 was referred to show that under Clause 5.2, the University was to seek formal approval from the UGC or any other authority so constituted by the Government of India before starting academic operations of

the University such as admissions, commencement of programmes and teaching activities.

12. Counsel for the private respondent, on the other hand, submitted that there was concealment of the fact of centralized counselling held by the BFUHS and interim order dated 23.06.2014 was obtained by concealing the fact that the said counselling had already taken place on 21.06.2014 and therefore, on account of concealment alone, the writ was liable to be dismissed. It is submitted that the University was not made party purposely and the interim order was passed in its absence. In such circumstances, the petitioner-University was not entitled for any relief.

13. After hearing counsel for the parties, it is necessary to refer to the background of the case, especially keeping in view the earlier litigation in the case of Adesh University (supra). As noticed above, the earlier dispute was to an order dated 07.12.2012 (Annexure P3) whereby in a meeting held under the chairmanship of the Chief Secretary, it was held that admissions to Medical/Dental colleges, including the ones of the petitioner-Adesh University with other private Universities were to be done as per National Eligibility Entrance Test (its acronym, "NEET") and the fees was also to be fixed under the 2006 Regulation Act. In pursuance of the said decision, notification dated 01.02.2013 had also been issued whereby the procedure for admission to private, unaided and minority Health Science Education Institutes for the year 2013 and was issued, as per procedure of 2006 Regulation Act. A prayer had also been made to admit students through its own admission process for the academic session and to fix the fee structure for various courses from the academic session 2013-14. The defence of the State was that the 2006 Regulation Act had been upheld by the Full Bench and it gave power to fix and notify fee structure and make centralized admission for private colleges in Navdeep Kaur Gill and Others Vs. State of Punjab and Others and therefore, that decision was justified, which was subject matter of challenge. Two issues were framed by this Court regarding the autonomy which the University sought under the University Act and whether the decision was violative of the principles of natural justice. The said issues read as under:

(i) That on the notification of the Adesh University Act, 2012 whether the petitioners could seek autonomy for purposes of fee fixation and for admitting students to the 7 institutions affiliated to the University?

(ii) Whether the impugned decision was violative of the principles of natural justice and whether before taking a policy decision, it was imperative for the petitioners to be heard?

14. Accordingly, this Court held that the University Act came into force one year after the judgment of the Full Bench and respondent No. 1 had taken a decision without taking into consideration the fact of the setting up of the University by virtue of a State Act and the University being self-financed and not receiving any

grant-in-aid, could not be equated with the Universities which were founded by the State Government, which was the reasoning given in the impugned order in the said case. The right of the University to confer degrees u/s 23 of the University Grants Commission Act, 1956 was taken into consideration and accordingly, it was held that the State Government's order was not justified and it was directed that the said decision suffers from non-application of mind and required a fresh look. Relevant observation reads as under:

34. Accordingly keeping in view the above cumulative discussion and after a combined reading of the University Policy, the 2006 Act, 2012 Act and the UGC Act, it is apparent that the impugned order does not take into consideration all these aspects. The State seems to have put the cart before the horse. The University was only apprehensive of a policy decision. It is also, as noticed above, that it is at a fledging stage and had yet to get the necessary Statutes approved from the State Government on its policy of admissions and fee fixation which, it has not done. The approval from the UGC also had to be taken before starting the academic session of the university in accordance with the regulations under the UGC Act. Nothing has been brought on record whether any such procedure had been followed. Thus, the decision of the State Government to properly analyze the provisions of the 2012 University Act and the autonomy which has been granted to the petitioner suffers from non-application of mind and requires a fresh look. Keeping in view the observations made above the said order passed cannot be held to be justified.

15. On the second issue, it was held that principles of natural justice had also been violated and therefore, the order was quashed, leaving it open to the petitioner-University to apply afresh under the provisions of the University Act. As noticed above, in the said case, relief had also been sought, at that point of time, challenging the authority of the Baba Farid University to make admissions for the session 2013-14. No relief had been granted to the petitioner on that account and only liberty had been granted to apply afresh. Relevant portion of the judgment read as under:

37. Accordingly, on issue no. 2, it is held that the respondent no. 1 was not justified in passing the impugned order at the back of the petitioners. Accordingly, order dated 07.12.2012 (Annexure P-6) is quashed. It shall be open to the petitioner-university to apply afresh in accordance with the provisions of the 2012 University Act for seeking the necessary permissions which are required. The State Government then shall take into consideration the applications filed and may call for necessary material or record and take a decision on the right of the petitioner-university after hearing the representative of the petitioner-university/foundation and take a decision in accordance with law. It will be open for the State Government to call for all necessary material which is required as the petitioner-university is yet to comply with the statutory requirements of the 2012 University Act before taking necessary decision.

16. The petitioner-University, however, apparently seems to have twisted the

decision in its favour to issue an advertisement by holding out to the general public as if this Court had granted permission to it to hold counselling on its own and make admissions for the MBBS/BDS courses for the academic session 2013-14, on the basis of the AIPMT. The advertisement given in the English version of "The Tribune" dated 27.05.2014 reads as under:

Adesh University Barnala Road, Bathinda 151101 Pb.

Notice for admission to MBBS & BDS Courses All concerned are hereby informed that pursuance to the pronouncement of the judgment by the Hon"ble High Court of Punjab & Haryana in respect of CWP No. 9215 of 2013 (O & M), Adesh University, Bathinda will hold counseling and conduct admissions for 1st Prof. MBBS and BDS Courses for Academic Session 2014-15 on the basis of the merit of All India Pre-Medical/Pre-Dental Test (AIPMT) 2014.

Details of admissions and availability of prescribed Application Form and Prospectus can be obtained from University website www.adeshuniversity.ac.in.

17. In pursuance of the said advertisement, counselling was fixed for 17.06.2014 and 18.06.2014, as noticed above. There is no anvil of doubt that the State had already issued notification dated 07.03.2014 (Annexure P15) for admission to MBBS/BDS courses for the Medical/Dental institutes, for the said session, including the Medical/Dental institutes affiliated to private Universities and authorization was given to Baba Farid University. Clauses 1 & 2 of the said notification reads as under:

1. The Governor of Punjab is pleased to notify the admissions to Under-graduate Degree courses i.e. MBBS/BDS for the year 2014 in the Medical/Dental institutes in the State of Punjab including Medical/Dental Institutes affiliated to Private Universities.

2. The Governor of Punjab is further pleased to authorize Baba Farid University of Health Sciences, Faridkot to conduct centralized counselling for admissions on the basis of marks obtained in All India Pre Medical/Pre Dental Entrance Test-2014 (AIPMT) to be conducted by the Central Board of Secondary Education, New Delhi.

18. The said notification was already in place when this Court decided the matter on 10.05.2014 and was never a subject matter of adjudication at any point of time. Thus, it is apparent that the respondent-University has misrepresented to the general public that any such permission had been granted by this Court and unnecessarily created a situation adverse to the interest of the students seeking admission in the said courses. The notification dated 07.03.2014 was never subject matter of challenge by the petitioner-University in any separate proceedings and the Principals of the Adesh Institute of Medical Science and Research, Bathinda and Adesh Institute of Dental Science, Bathinda were to be the members of the committees constituted for holding the centralized counselling, as per Clause 19 of the terms of the notification. The said clause

reads as under:

19. Selection Committees

The following committees are constituted for holding counselling and finalizing the admissions.

A. For Government and Private Institutes

For MBBS Course:

For BDS Courses:

19. Thus, the institutes of the University had been included in the notification for the year 2014 and without successfully challenging the notification, the petitioner-University had no authority as this Court had only remanded the issue for fresh decision to the respondent-State, keeping in view the provisions of the University Act. This Court had not recorded any finding to that effect that the University was entitled to make admissions on its own.

20. In T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, it was held that excellence in professional education is to be seen in respect of making admission by unaided institutions in cases of professional colleges, on the basis of common entrance test, conducted by the Government agencies. It was held that even unaided professional institutions are entitled to autonomy in their decision but the principle of merit cannot be discarded and a certain percentage of seats can be reserved for admission by the Management out of the students who have passed the common entrance test, held by it or by the State and the rest of the seats has to be filled up by way of counselling by the State agency. Relevant paras of the judgment read as under:

58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies.

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Private Unaided Professional Colleges

67. We now come to the regulations that can be framed relating to private unaided professional institutions.

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentage can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz., graduation and post-graduation non-professional colleges or institutes.

21. Similarly, the Apex Court in *P.A. Inamdar and Others Vs. State of Maharashtra and Others*, held that till regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty and the State could provide a procedure of holding a common entrance test to ensure fair and merit-based admissions preventing mal-administration. It was held that the agency conducting the common entrance test must be one enjoying utmost credibility and expertise in the matter to ensure the fulfillment of twin objects of transparency and merit and save the student community from harassment and exploitation by holding Centralized Counselling and a single window system, regulating admissions would not cause any dent in the right of the minority unaided educational institutions to admit students of their choice. The same principle was also applicable to non-minority unaided institutions. It was further observed that the said observations would remain in force till the Central Government or the State Government comes out with a suitable legislation or regulation on the subject. Relevant observations read as under:

136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on same or different dates and there may be a clash of dates. If the same

candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting Common Entrance Test (CET, for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfillment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralized counseling or, in other words, single window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of list of successful candidates prepared at the CET without altering the order of merit inter se of the students so chosen.

137. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admissions and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit-based admissions and preventing mal-administration. The admission procedure so adopted by private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly.

138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb mal-practices, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure, to a large extent, can secure grant of merit based admissions on a transparent basis. Till regulations are framed, the admission committees can oversee admissions so as to ensure that merit is not the casualty.

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146. Non-minority unaided institutions can also be subjected to similar

restrictions which are found reasonable and in the interest of student community. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on an uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and on a reasonable fee-structure.

147. In our considered view, on the basis of judgment in *Pai Foundation* and various previous judgments of this Court which have been taken into consideration in that case, the scheme evolved of setting up the two Committees for regulating admissions and determining fee structure by the judgment in *Islamic Academy* cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities.

148. A fortiori, we do not see any impediment to the constitution of the Committees as a stopgap or ad hoc arrangement made in exercise of the power conferred on this Court by Article 142 of the Constitution until a suitable legislation or regulation framed by the State steps in. Such Committees cannot be equated with Unni Krishnan Committees which were supposed to be permanent in nature.

22. The State, in pursuance of the said observations, admittedly, has framed the 2006 Regulation Act whereby it has made provision for common entrance test and in pursuance of the same, under Clause 10 of the notification dated 07.03.2014, provided that admission to private institutions will be under the 2006 Regulation Act. The said Clause read as under:

10. Admission to private institutions shall be made as per provisions of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee & Making of Reservations) Act, 2006.

23. This Court, earlier in *Adesh University* (supra) has already distinguished the applicability of the Act to the *Adesh University* since the argument to this extent was accepted that the University set up under the State Legislation would be placed at a higher pedestal than the Institutions. It was, in such circumstances, the matter had been remanded for fresh consideration to the State. It is also admitted inter se the parties that the said judgment has not been appealed against. Thus, the State has to take a fresh decision in view of the observations made in the said judgment. The petitioner-University has, however, jumped the gun and resorted to making admissions on its own, without any authority of law, which cannot be but frowned upon.

24. In the present case, counsel for the State has rightly submitted that it was wrong for counsel for the petitioner to submit that the statute had been

submitted on 10.10.2012. He has pointed out that it was only a draft and an inter se communication of the University and the ordinance had only been submitted on 14.05.2014, for approval. A perusal of opening page of Annexure P5 would also show that counsel for the State is well justified in saying so since it was a mere draft and an inter se communication of the University. The same reads as under:

Adesh University

Ref. No.: AU/RO/10/2k12/16

Date:-10.10.2012

Office Note

Reference: 1st Statutes of Adesh University, Barnala Road, Bathinda.

Please find attached herewith a draft Copy of the First Statutes of the Adesh University, Bathinda, for your kind perusal. We may need to discuss the draft, before finalizing for sending it to Punjab Government for approval, at your convenience.

The draft for First Ordinance and the First Regulations is under preparation.

Submitted please.

Sd/- (Registrar)

Submitted to:-

1. PA to Hon"ble Chancellor
2. Vice-Chancellor.

25. Similarly, Clause 6 of the Ordinances submitted on 14.05.2014 (Annexure P6) provided that admission procedure and the schedule of the admission including a notice which was to be published in the month of May, 2014 was to be given in leading newspapers, giving the details of the counselling criteria for admission, reservation policy etc. Relevant portion read as under:

6. Admission of Students and Admission Prospectus:

1. The Schedule of admission shall be given in the Admission Notice to be published in the month of May of each year for the session commencing in July/ August of that year and published in leading newspapers (English as well as Vernacular) and other media.
2. The admission procedure, details of admission test to be conducted by the University (if any), courses offered (along with their duration and eligibility criteria) by its Faculty/Constituent Colleges/Institutions/Department/Centres, details of counseling, criteria for admission, reservation policy, fee structure, application form for admission and other relevant details will be included in the

admission prospectus. The admission Prospectus should be available to the students by end of May of the year for the session commencing in July/August of that year from the office of the Registrar, Adesh University or from any other place/source as indicated in the Prospectus by paying prescribed fee as notified through Admission notice or it may be downloaded from the university website and application fee submitted along with the application form duly completed.

3. Admission shall be made as per relevant University rules and regulations by an Admission Committee which shall be constituted by the Vice-Chancellor.

4. An application Committee shall be constituted by the Vice Chancellor which shall hear the grievances of the candidates regarding admission and recommend action to be taken in the case.

5. A candidate shall be admitted to the course only if he is eligible. If a candidate is likely to fulfill the eligibility criteria before the last date of admission he/she is given provisional admission. However, if he/she fails to fulfill the eligibility criteria by the last date of admission, his/her candidature shall be cancelled, (except in MBBS and BDS courses where this provision is not available).

6. A candidate shall not be given admission if his/her conduct has been found to be unsatisfactory. Such a candidate shall have the right to appeal to the Appellant Committee whose recommendations shall be placed before the Vice-Chancellor and his decision thereof shall be final.

7. The candidate shall pay prescribed fees and security deposit for library, hostel, etc., as applicable and as per details given in the Prospectus, at the time of admission for first semester/year and before the date of commencement of semester for all subsequent semesters/years as per details given in the Prospectus/Notice.

8. Reservation policy for admissions will be used as applicable.

26. This ordinance was also submitted only on 14.05.2014, as noticed above and counsel for the petitioner was not justified to argue that State was sitting on the said ordinances and interfering in the admission process. The Medical Council of India, vide its notification dated 03.04.2014, has only noticed that the MBBS Degree can be granted by the Adesh University of Bathinda, Punjab, in respect of its students being trained at Adesh University of Science & Research, Punjab from the batch 2012-13. Nowhere any permission has been granted to hold independent counselling and therefore, the submission of counsel for the petitioner-University is not justified that necessary permission was taken. Same is the position whereby the Government of India has given its approval to recognize the batch for the session 2012-13, for the BDS course.

27. The matter had only been remanded by this Court to decide afresh and the counsel for respondent No. 4 is well justified in submitting that the advertisement amounted to contempt as the University has misrepresented the order and projected it in a different light to take shelter under it and made

admissions on the pretext that the permission was granted by this Court. It is also well justified by counsel for BFUHS to submit that while approaching this Court, the petitioner-University did not, in its petition, aver that the centralized counselling had already been held from 21.06.2014 to 23.06.2014 and has wrongly admitted students under the interim orders of this Court by concealing the said facts. It also chose not to make the BFUHS a party so that the complete picture was not projected and in such circumstances, this Court is of the opinion that the observations of the Apex Court in *Prestige Lights Ltd. Vs. State Bank of India*, would come into play. It has been time and again held that a writ Court has to see the conduct of the party and if a party approaches the Court with soiled hands, he cannot claim any right of equity. The submission of counsel for the petitioner-University that it is making admissions on merit and therefore, the admissions made by it should be preserved, thus, cannot be accepted. The Apex Court in the abovesaid case has held as under:

32. It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

33. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R v. Kensington Income Tax Commissioners*, [(1917) 1 KB 486: 86 LJ KB 257: 116 LT 136], in the following words:

(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts, not law. He must not misstate the law if he can help it the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement.

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the

writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

35. In the case on hand, several facts had been suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondent-Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under Article 226 of the Constitution from the High Court as also equitable remedy from this Court under Article 136 of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company.

36. For the foregoing reasons, we hold that by dismissing the petition in limine, the High Court has neither committed an error of law nor of jurisdiction. The appellant-Company is not entitled to any relief. Though the respondent-Bank is right in submitting that the appellant has suppressed material facts from this Court as also that it has not complied with interim order passed by the Court and it has, therefore, no right to claim hearing on merits, we have considered the merits of the matter also and we are of the considered view that no case has been made out for interference with the action taken by the respondent-Bank or the order passed by the High Court.

28. The Apex Court in Priya Gupta's case (supra), while laying down a strict time frame, has held that admissions to all Government colleges have to be on the basis of merit and the counselling has to be conducted by the nominated authority and admissions had to be effected after due publicity, in consonance with the directions issued by the Apex Court. It was further held that admissions to private colleges have to be on the basis of merit obtained in the entrance examination, conducted by the nominated authority and colleges had to choose their option by 30th April of the relevant year as to whether they wish to grant admissions on the basis of the said merit. Right was given to follow the merit-list/rank obtained by the candidates in the competitive examinations collectively held by the nominated agencies for the private colleges. The option was to be exercised by 30th April of the relevant year and the test was to be held in the month of May. It was noticed that Appendix E of the Graduate Medical Education (Amendment) Regulation Act, 2004, provided that the entrance test has to be held in the month of May and the declaration of the result has to be made by the 5th of June and accordingly, a time schedule was laid down and the cut-off date

for admission was fixed for 30th of September. It was also observed that in default of the compliance of the order, shall invite penal action apart from initiation of contempt proceedings in the High Court having jurisdiction over such institutions. The Apex Court in *Lipika Gupta* (supra) has already issued directions whereby the examination was to be conducted in May and the result was to be declared by 5th of June. The petitioner-University, now, cannot seek relief and submit that it is also making admissions on the basis of the AIPMT and their admissions are likely to be saved. The right to make admission on their own on the basis of the statute is yet to be decided by the State and therefore, they could not have admitted candidates by issuing a prospectus on their own. In the present case, as already noticed, the State had already given the authority to CBSE to hold the test on 04.05.2014 and the medical institutes of the petitioner-University were also part of the centralized counselling and therefore, it was not justified for them to conduct a separate counselling on its own.

29. Accordingly, the order dated 23.06.2014, by which, the petitioner-University was directed to hold provisional counselling till 25.06.2014, subject to the outcome of the writ petition, is vacated and admissions will be made on the basis of the centralized counselling and the interim order dated 23.07.2014 is, accordingly, confirmed vide which, the BFUHS had been authorized to conduct counselling and the application of the petitioner-University for restraining it from holding the second counselling, was rejected. In view of the observations made by the Apex Court in *Priya Gupta* (supra), it is also further directed that the petitioner-University shall refund the fees to the 84 students, so admitted, along with an additional cost of Rs. 20,000/- each, due to its illegal actions. As this Court is of the opinion that the University has acted in undue haste while disturbing the transparent, fair and centralized counselling, which was being held as per the notification dated 07.03.2014 and tried to over-reach this Court and thus, invited the penal consequences for its unauthorized conduct.

30. Accordingly, the present writ petition, is hereby dismissed.