
(1987) 01 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4200 of 1956

Ashu Gupta

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-01-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227, 29, 29(2)

Citation : AIR 1987 P&H 227

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Judgement

1. The petitioner has sought issuance of a writ, direction or order under Arts. 226/227 of the Constitution for directing the Principal, Sri Guru Gobind Singh College of Pharmacy respondent 3--to admit her to the Diploma Course in Pharmacy for the year 1986-87. Her claim is that she has better merit than respondents 5 to 26 who have been admitted to the course. She thus asserts that denial of admission to her by respondent, 3 violates the rule of equality enshrined in Art. 14 of the Constitution.

2. A preliminary objection is raised on behalf of respondent 3 and additional affidavit dt. 8-9-1986 in support of the same has been filed. It is contended that respondent 3 is an institution which is established and administered by a religious and linguistic minority and is, therefore, protected by the provisions of Art. 30 of the Constitution. It is also averred therein that the institution of respondent 3 is not getting any grant from the Government and as such it is not amenable to the writ jurisdiction of the court.

3. The petitioner with a view to establish that respondent 3 is getting grant from the Government placed on record an order dt. 31st Mar, 1986 passed by the Director, Public Instructions, Chandigarh Administration (Annex. P3), wherein it is mentioned that Rs. 1 lac and Rs. 0.50 lac have been given as grant to Sri Guru Gobind Singh College for Men and Sri Guru Gobind Singh College for Women, respectively, on account of 95% of the revenue deficit. It is without doubt clear

that the institution of respondent 3 has an entity separate from these two institutions. It has its separate building with independent staff with altogether different course of instructions. There is, therefore, nothing to rebut the averment of " respondent No. 3 that it is not getting any grant from the Government.

4. It is authoritatively held by a Full Bench of this Court in Gurpreet Singh Sidhu and Others Vs. Punjab University, Chandigarh and Others, that no general fundamental right of equality of admission on merits can be invoked under any constitutional provision against an educational institution established and maintained by a minority. Explaining the fundamental rights of minorities enshrined in Art. 29 of the Constitution the Full Bench observed:

"Now apart from the above clause (2) of Art. 29 is undoubtedly connected with clause (1) thereof to which it succeeds. Indeed it has been sometimes said that it is in the nature of a proviso to clause (1). The later provision guarantees a right to every section of the citizens of India who have a distinct language, script or culture of its own to preserve the same. There is no dispute that this right includes within it the consequential right of such a minority to establish and maintain educational institution of its own in order to conserve such language, script or culture. An educational institution of its kind run by such a minority community, which receives no aid from the State fund, is thus clearly out of ambit of clause (2) of Art. 29. Indeed apart from minority schools and colleges educational institutions not run by the State itself are divisible into three classes:--

- (i) those which do not seek either aid or recognition from the State;
- (ii) those which seek recognition by the State or University authorities but no aid; and
- (iii) those which seek and secure financial,

It seems to be plain on principle and is otherwise settled beyond cavil that private educational institutions falling in categories (i) and (ii) above in whose case no strings of State aid are attached are free to establish and administer these educational institutions with a modicum of internal freedom of management. As against these institutions no general fundamental right of equality of admission on merits can even be invoked under any constitutional provision. So far as minority institutions of this nature are concerned their freedom of management is constitutionally guaranteed and cannot be even impinged upon by Parliamentary or State laws: It would seem to follow that if a minority institution which receives no aid of the State funds chooses to bar its door against citizens not belonging to the same community it would well be within its rights to do so: Similarly, privately owned and privately managed, educational institutions not receiving State aid.(even though not falling within the category of minority institution) would equally have a freedom of internal management subject, of course, to any State laws made to the contrary. It is

thus evident that with regard to the aforesaid classes of educational institutions no fundamental right generally of all citizen students to claim admission can possibly arise. Therefore, the premise that Art. 29(2) confers a fundamental right of equality of admission to all educational institutions is plainly untenable. In other words all private educational institutions not receiving aid out of State funds are wholly out of the ambit of Art. 29(2)."

5. Learned Counsel for the petitioner brought to my notice the instructions dt. 4-7-1986 Annex. R1 issued by the Director, Technical and Industrial Education, Punjab, which are also addressed to respondent 3 and contended that it had to follow the policy and procedure laid down by the directorate in the matter of making admission to its courses. I think respondent 3 is not bound to follow this procedure.

6. It has been recently held by a Division Bench of this Court in the case Managing Committee of Kanya Mahavidyalaya, Jalandhar v. State of Punjab, decided on 27th May, 1986* that the management of such an institution cannot be interfered with by an outside authority as it would amount to negation of fundamental rights under Art. 30(1) of the Constitution. It is thus clear that respondent 3 is not amenable to writ jurisdiction of this Court.

7. The present writ petition is clearly not maintainable, which is hereby dismissed leaving the parties to bear their own costs.

8. Petition dismissed.