

(2014) 05 DEL CK 0224

In the Delhi High Court

Case No : WP(C) 3262/2013, CM Appl. 6172-6173/2013 & 7011/2013

Association of Self Financing Institutions and Another	APPELLANT
Vs	
Guru Govind Singh Indraprastha University and Another	RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19, 19(1), 19(1)(6)
Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee Regulation of Admission Fixation of Non-Exploitative Fee and other Measures to Ensures Equity and Excellence) Act, 2007 — Section 11, 12(1)(c), 13, 14, 15
Right of Children to Free and Compulsory Education Act, 2009 — Section 12(2)

Citation : (2014) 05 DEL CK 0224

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Bina Madhavan, Advocate for the Appellant

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The present writ petition questions the Constitutionality of two sets of actions. The petitioners firstly challenge the validity of Section 13 of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation on Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 ("the Act") as violating their rights under Articles 14 and Article 19(1)(g) of the Constitution, and secondly, various actions of the Guru Govind Singh Indraprastha University (hereinafter "GGSIP University"), the Respondent, a University created by statute enacted by the Delhi Legislative Assembly, prescribing the rules for admission to the various sub-colleges are questioned against those constitutional provisions. This case essentially revolves around the authority of the State, whether through an act of the legislature or through Article 12 authorities such as the GGSIP University, to regulate admissions in private unaided colleges.

2. It is useful at the outset, to present a picture the various legislative and regulatory actions that are the subject-matter of the present proceedings, and

how they relate to the GGSIP University and its affiliated institutions. The actions of the Respondent which have led to this constitutional challenge can be divided into two parts. The first is Section 13 of the Act that reads:

An institution shall, subject to the provisions of the Act, make admission through a common entrance test to be conducted by the designated agency, in such manner, as may be prescribed: Provided that the management seats may be advertised and filled up, from the candidates who have qualified the common entrance test, by the institution in a transparent manner based on the merit at the qualifying examination.

The "common entrance test" ("the CET") is further defined in Section 3(d) of the Act as

the entrance test conducted for determination of merit of the candidates followed by centralized counselling for the purpose of merit based admission to an institution through a single window procedure by the designated agency.

A "designated agency" is defined in Section 3(g) as "an agency, designated by the Government, for conducting the common entrance test and counselling for admissions in the institutions." This statutory policy of a CET is also reflected in Clause 21 of the Delhi Government's notification No. DHE-4(61)/2010-11/304 dated 6.5.2011 issued by the Directorate of Higher Education.

3. The Government of NCT of Delhi-acting u/s 4 of the Act-accordingly appointed GGSIP University as the designated agency for conducting the CET and allotting the students to the various colleges/institutions through Open House Counselling. The members of petitioner association (hereafter called "the Association" -an association of self financing institutions affiliated; to associated with the GGSIP University)-are accordingly mandatorily required to admit students from the merit list prepared by the University after conducting the CET. In this, the association complains that seats are falling vacant in the BBA programme for want to CET qualified students, and a statutory injunction operates against them from employing independent standards for admission of students in such cases. The Association thus claims that its members are not being permitted to-contrary to their constitutional rights under Articles 14 and 19(1)(g)-fill vacant seats by adopting any other fair, transparent and merit based method, in the event the CET does not provide a sufficient number of candidates.

4. The second set of regulations challenged in these proceedings relate to admissions guidelines and procedures of the GGSIP University. The Association seeks directions aimed at ensuring that the seats for the BBA programme in its member colleges do not go empty through the academic year. For this, the Association first challenges a notification of the Directorate of Higher Education, No. DHE 4(15)/2006-07/909-965 dated 11.6.2007, which allowed institutions to establish a second shift of classes on permanent campuses, subject to an approval process. This, the Association argues, results in a situation where though some institutions are running two concurrent shifts, some others-such as

those aggrieved in this case-are unable to enroll students even for one shift. Thus, it is claimed that the notification above must be amended-through the writ jurisdiction of this Court-to provide that second shifts shall be permitted only when all institutions have reached a minimum enrolment for their first shift classes. Further, the Association seeks a direction to the GGSIP University to amend its Admission Brochure to provide that once a student participates in the 1st Counselling session, she/he shall be barred from appearing for the 2nd Counselling and further, than the 2nd Counselling shall start from where the 1st Counselling has ended, and finally, that the GGSIP University should amend the admission schedule whereby the 2nd Counselling would be completed by 31st July (i.e. it would start on 1st July, and be finished by 31st July, so that the term may start on 1st August, as opposed to the present schedule whereby the 2nd counselling starts on 1st August). These claims-all taken together-reflect the need of the members of the petitioner association to fill up the sanctioned seats in the first shift.

5. The first petitioner Association consists of Self Financing Institutions registered under the Societies Registration Act. Its aims and objectives, inter alia, include work to promote and foster coordination with the GGSIP University, the Government and its designated departments etc. The Association has fifty five members, all of which are self financing institutions and are affiliated to or are associated with the GGSIP University, and running various courses including undergraduate courses. The second petitioner is the Secretary of the first petitioner.

6. Learned counsel for the petitioners argues that under the provisions of Guru Gobind Singh Indraprastha University Act, 1998, ("the Act") read with its amendment in 1999, all institutions affiliated to the GGSIP are mandatorily required to take students from the merit list prepared by the University after conducting the CET. However, it is argued, over the years, due to this restriction on admitting students only through the merit list prepared consequent to the CET, seats are fall vacant in the programme for want to CET qualified students. It is submitted that the members of the Association cannot admit students either on their own or through any other agencies in view of the norms and guidelines laid down by the University and the Policy Guidelines bearing No. DHE 4(61)/2010-11/304 dated 06.05.2011 issued by the Government of NCT of Delhi, Directorate of Higher Education.

7. Learned counsel relied on the decisions of the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , P.A. Inamdar and Others Vs. State of Maharashtra and Others, , Dr. T. Varghese George Vs. Kora K. George and Others, , Society for Un-aided Private Schools of Rajasthan Vs. Union of India (UOI) and Another, and Rajan Purohit and Others Vs. Rajasthan University of Health Science and Others, to argue that "the right of a citizen to run educations institutions can be read into "occupation" falling in

sub-clause (g) of Clause (1) of Article 19 which would be subject to the discipline of clause (6) thereof (paragraph 239, TMA Pai Foundation). Learned counsel further urged that the right to admit students is guaranteed under Article 19(1) (g) of the Constitution so far as private self financed unaided institutions are concerned, and the restrictions imposed by the Government of NCT and the GGSIP University interfere with this freedom, given that despite empty seats, these institutions are unable to admit students. It is argued that in TMA Pai Foundation, the Supreme Court recognized that the "right to establish and administer" broadly comprises the right to admit students, the right to set up a reasonable fee structure etc., and that the present regulations violate this freedom by mandating a prescribed means of admission, thereby interfering with the institutions' right to decide upon their own policies. Learned counsel submits that the freedom of occupation includes guarantees that the petitioner association's member institutes are able to determine their own admissions policies, and accordingly, carry out their businesses in any manner they deem fit, so long as the educational objectives of the institution are not compromised. By mandating admissions through the CET, learned counsel submits, this freedom is being violated, and that such a violation is particularly egregious since the net result is not only that the institutions cannot choose their admissions policy, but also that seats are running vacant.

8. It is also argued that Section 13 of the Act violates Article 14 of the Constitution, since it is unreasonable and arbitrary. Learned counsel argues that since seats are falling vacant because of the CET mechanism, the very purpose of the CET is vitiated. This self-defeating effect of Section 13, it is argued, renders it arbitrary, and demonstrates that no rational nexus appears between the regulation and its intended target, as the intended target cannot be that seats fall vacant in these institutions. It is argued instead, that the rationale for prescribing the CET ought to be based on the number of seats filled in each academic year and not the number of applications received for the BBA course, which is the manner in which the present system is structured. Moreover, it is argued that Section 13 violates Article 14 on the ground that it discriminates between institutes that are situated in rural pockets, where seats are remaining vacant in the BBA programme in successive years, as opposed to institutes located in urban Delhi, which are able to cater to not only a first but also a second shift. It is moreover, argued that the CET is to be considered in a situation where the numbers of students are more and seats are limited, and in such a scenario, a CET is adopted to select the most qualified and meritorious students to such limited number of seats. In cases such as the present one, it is submitted, where the number of students is fewer than the number of seats, and leading to greater chances of vacancies, the conduct of a CET bears no rational nexus to the purpose it is supposed to serve. It tends towards illogical results which is arbitrary. It is also submitted that conducting a CET in such a case also negates the purpose of the creation of such institutes, because without students, they remain defunct and thus unable to perform any teaching activities. A CET, it

is argued, is a process of elimination, and not a process of selection of students, and the latter ought to be the motivating factor behind any legislative process to admit students. To cure such arbitrariness, it is submitted that there ought to be some provision allowing the colleges to admit students based upon any other method, including a method based on the percentage of marks obtained by a student in a prescribed qualifying examination. Learned counsel submits that as long as such a method is transparent, fair and merit based, the dictum of the Supreme Court in the TMA Pai Foundation case(supra) grants the institutes the freedom to draft admissions policies themselves, without any interference. It is submitted that various other methods, such as admitting students on the basis of their "10 + 2" marks, or any other reasonable method, cannot be precluded by a legislative fiat, given the freedom to run an institution that is embodied in Article 19(1)(g) of the Constitution. Such restrictions, it is argued, amount to policy restriction on the manner in which the institutions conduct their business, which equally violates the freedom guaranteed by Article 19(1)(g).

9. It is argued that such institutions involve massive influx of investment and infrastructure, which is required to be kept up irrespective of the number of students, and that the CET and various policies of the GGSIP University, are preventing from such investment being utilized and indeed any recovery being made against that investment. Neither can such actions be justified, it is argued, on the basis of reasonable restrictions under Article 19(6), as letting seats run vacant in educational institutions can never be "in the interest of the general public." The interest of the general public, to the contrary, it is argued, lie in such seats being filled up by students, which benefits both the institutions as also the aspirants, who would otherwise be unable to receive an education.

10. As regards the counseling policies of the GGSIP University, learned counsel also relied upon the decision of the Supreme Court in Arvind Kumar Kankane. Vs. State of U.P. and Others, , to argue that once a candidate opts for admission under the 1st counseling, he should not be permitted to participate in second counseling, as that would lead to an infinite loop of counseling. Rather, it is argued that once an option is exercised by a candidate on the basis of which she is allotted the subject and thereafter that candidate is allowed to participate in subsequent counseling and his seat becomes vacant, such a process would be endless. Furthermore, learned counsel submitted that students ought not to be permitted to change from one shift to another, and this results in a vacancy, which cannot be filled up at a later stage. Under the present admissions policy of the GGSIP University, it is argued, which delays admission by this fashion, the process is completed only by 30th September by which time students join colleges outside Delhi and the number of CET qualified students falls short of the number of seats available. An illogical and arbitrary situation results because of the cumulative effect of these policies. Accordingly, it is argued that this Court should issue a writ of mandamus that counseling must come to an end by 31st July each year, and students ought not to be permitted to participate in subsequent counseling or change the subject/course in subsequent counseling.

Moreover, it is argued that under the current system, the second counseling does not start from the merit rank where the first counseling comes to an end, but instead starts from the beginning of the CET merit list itself. This is arbitrary, since it results in students who have done well in the CET getting an opportunity to be counseled twice and have the choice of changing programs, whereas students who have lower ranks do not receive even one opportunity to be counseled. Moreover, permitted such multiple steps of the counseling process results in many institutes remaining without students, and being forced to have their seats remain vacant for the entire academic year. Learned counsel also relied upon Notification No. DHE 4 (15)/2006-07/909-965 dated 11.6.2007 Notification No. DHE 4 (65)/2007-08/6655-6732 dated 19.3.2008 and Notification DHE-4(65)/2007-08/1450-1476 dated 4.8.2008 with regard to granting permission to run 2nd shift without laying down any criteria/guideline to the effect that second shift admission would only be permitted after admission in the first shift is complete and in view of the notice dated 25.9.2010, and 27.9.2011 and Admission Boucher I issued by the G.G.S.I.P. University for professional courses for the academic year 2013-2014. In view of the above mentioned notifications/policy guidelines, issued by the Government, notices and admission brochure issued by the GGSIP University, learned counsel submits that seats are remaining unfilled for no fault of the members of the petitioner association and their the right to admit students, which forms the part of the fundamental right to establish and administer educational institution is getting frustrated and has further led to under-utilization of the potential of the institution and as such is neither in the interest of the petitioner nor in the interest of the public in general.

11. It was further submitted that for the BBA course for the academic sessions 2010-11, 2009-10, 2008-09, information obtained from the GGSIP University clearly showed that in the academic year 2010-11, while the intake was 4920, only 3685 seats were filled and 1235 seats remained vacant. Likewise, in the academic year 2009-10, out of the intake of 4350, 3417 was filled and 933 remained unfilled, in the academic year 2008-09 out of a total intake of 2690, 2483 were filled and 207 seats were vacant. In view of these statistics, it is argued that that the increase in the number of unfilled seats has resulted primarily due to the policy of the GGSIP University to start second shifts in the colleges. It is accordingly argued that the various policies of the GGSIP University impede the administration of these institutions, and positively prevent seats from being filled up. Moreover, the manner in which the admissions take place is especially prejudicial to the interest of some institutions, which are relegated to the back and are not able to fill their seats either through the CET or any other mechanism of their choosing, because vacant seats impacts their economics adversely and in the long run, renders the institution unviable.

12. After hearing the parties, this matter was reserved on 14.5.2013. Subsequently, in light of the decision of the Supreme Court in Medical Council of India Vs. Christian Med. College Vellore and Others, , on a related aspect, the

matter was listed again and the parties advanced submissions as regards that judgment and its bearing on the present case.

Relevant provisions

13. This case concerns the breadth of the State's regulatory powers over professional educational institutions, and conversely, the institutions' freedoms under Article 19(1)(g) of the Constitution. Before addressing this question, it is useful to understand the applicability of the Act in question, as also the various regulations sought to be impugned, in so far as they are relevant to the present case. The Act applies, as per Section 2, to "unaided institutions affiliated to a University imparting education in degree, diploma and certificate courses". u/s 4(1), the Act constitutes an Admission Regulatory Committee ("ARC), in the following terms:

For the purposes of conducting a common entrance test by the association of the institutions ...the Government shall, by notification in the official Gazette, constitute an Admission Regulatory Committee to regulate the procedure of admission to institutions.

An institution is previously defined in Section 2(1) as:

a college or institution, aided or unaided, affiliated to a University, imparting education in the following disciplines, namely:-(a) Engineering or Technology; (b) Medicine, Dentistry, Pharmacy, Ayurveda , Homeopathy, Siddha, Nursing, Para-medical and the like; (c) Law and Legal Affairs; (d) Management; (e) Teachers Education; (f) Any other discipline as may be notified by the Government.

The function of the ARC, as Section 4(12) provides, is that it

shall regulate the procedure of admission in institutions and suggest guidelines to the Government, to ensure a fair, transparent, merit-based and non-exploitative procedure to be adopted by the Government under the provisions of the Act.

14. The Act vests certain powers in the ARC to determine violation of admissions guidelines by institutions, and recommend sanctions against those institutions to the Government, including, crucially, withdrawal of affiliation by the concerned university. This function is prescribed in Section 4(13)-(16) in the following terms:

(13) The Admission Regulatory Committee may hear complaints against the institutions, with regard to contravention of guidelines suggested by the said Committee and adopted by the Government, during the admission. (14) The Admission Regulatory Committee, after conducting reasonable inquiry, if in its opinion, the admission has been made in violation of any provision of this Act or the guidelines suggested by it and adopted by the Government, it may recommended cancellation of such admission to the concerned University. (15) On the receipt of recommendation under sub-section (14), the University shall

cancel the admission of such candidates from appearing for any further examination and withhold the result of examination already appeared for by such candidate. (16) The Admission Regulatory Committee may, after providing an opportunity of being heard, if it has reasons to believe that any institution has violated any of the provisions of this Act, rules or guidelines suggested by it and adopted by the Government, recommend to the University for withdrawal of the affiliation and the statutory body for withdrawal of recognition of such institution or any other course of action as it may deem appropriate.

Section 11 of the Act further provides that "the Government shall notify the qualifying examination for admission to an institution", and in Section 13 prescribes the manner of admission in institutions governed by the Act in the following terms:

An institution shall, subject to the provisions of this Act, make admission through a common entrance test to be conducted by the designated agency, in such manner, as may be prescribed: Provided that the management seats may be advertised and filled up, from the candidates who have qualified the common entrance test, by the institution in a transparent manner based on the merit at the qualifying examination.

Section 14 adds teeth to Section 13, by stating in no uncertain terms that "any admission made in contravention of the provisions of this Act or rules made thereunder, shall be void" In view of these provisions, the long title of the Act acquires significance, in stating that this is an

Act to provide for prohibition of capitation fee, regulation of admission, fixation of non-exploitative fee, allotment of seats to Scheduled Castes, Scheduled Tribes and other socially and economically backward classes and other measures to ensure equity and excellence in professional education in the National Capital Territory of Delhi and for matters connected therewith or incidental thereto.

15. The petitioners seek directions to quash Section 13 of the Act, and Clause 21 of the Delhi Government's notification No. DHE-4(61)/2010-11/304 dated 6.5.2011 issued by the Directorate of Higher Education, which, too, mandates a CET. The latter states:

(21) Common Entrance Test:-The GGSI University is designated as "designating agency" to conduct a Common Entrance Test and counseling for impartial & merit based selection of the students on behalf of the Government as has been done in previous years. No institutions would be allowed to make admissions without CET and counseling as per procedure prescribed.

16. The petitioners, also seek a writ or direction in the nature of mandamus to allow the institutions to admit students on the basis of a prescribed percentage of marks in the qualifying examination in case seats remain vacant even after the second and open house counselling. Quite apart from the provisions of the Act, specifically, the mandate of a common entrance test for admission to the

institutions governed by the Act, the second set of impugned actions relate to notifications of the Directorate of Higher Education concerning the manner in which admissions are to be made after the common entrance test. These can, in turn, be divided broadly into three heads: (1) regulations concerning admissions date deadlines; (2) the procedure of counseling to be undertaken; (3) permission to run a second shift of classes on permanent campuses. The following section broadly outlines the content of the various notifications and regulations concerning the present proceedings.

17. Notification No. DHE 4(15)/2006-07/909-965 dated 11.6.2007, and the Directorate of Higher Education's Policy Guidelines dated 4.5.2007, concern the starting of a second shift on permanent campuses, after the necessary approval from the University in question if the guidelines are met. Crucially, these guidelines ensure that a minimum standard of excellence is maintained by these institutions in the preceding years to qualify for holding second shifts. Not only must the institutions have obtained more than 70% marks for the past two years in succession in the annual review conducted by the Joint Inspection Committee (subsequently reduced to 60% by Notification DHE 4(65)/2007-08/6655-6732, dated 19.3.2008), but further, the institutions must have at least 80% faculty in position continuously for the last two years and at least 90% in position for the programmes in which they want to start a second shift. Crucially, standards of excellence apart, the second shift may be permitted, under the above notification, as per clause 3, "only for those programmes for which there is a heavy demand from the students. Programmes which received applications that are 3 times the total number of morning seats would be deemed to be Programmes with heavy demand" Thus, permission to begin second shifts is subject to various criterion and requirements, and moreover, only in demand to student applications. Subsequently, after a Letter of Intent is issued, in terms of Clause 8 of the above notification, for the start of the second shift of the programme in the particular institution by the university, the institution is expected to comply with various guidelines to ensure that the same standard of education and excellence is maintained as in the morning shifts. These guidelines include, for example:

(a) Submit to the University a proposed routine of the classes for both the shifts in that programme. (b) The evening shift students might have to study six days, which might include Saturday/Sunday In full, to complete the hours of study as per the scheme of the course. There would be no relaxation on academic content for the second shift. (c) The commencement of the class 5 in the second shift and the examinations in the second shift will be held concurrently with the morning shift students in the same programme to keep the same standard of examinations. (d) The Institution may then recruit teachers for the second shift and have them in position two weeks before the commencement of actual Classes. (e) The Institution will have to procure more text books for the evening shift students, as maybe required by the GGSIP University.

Importantly, the rationale (or alternatively the benefit) of having second shifts, as it emanates from the above-mentioned notification and the Directorate's Policy Guidelines themselves, is not only to cater to student demand, as is clear from clause 3 above, but also because, under clause 10, institutions "availing of 2nd shift facilities will have deposit in the Higher Education Fund/technical scholarship fund at least 25% of the fees collected from students in the evening shift, so that needy students in a higher/technical education institution could be granted fee waivers/exemptions ..." This fund is envisaged u/s 15 of the Act, which states:

15. The Government may by notification in the official Gazette, constitute a Fund to be called "the Higher Education Scholarship Fund", for providing scholarship to the socially and economically backward students admitted in the institution, on merit cum means basis.

18. Notification DHE 4(65)/2007-08/6655-6732, dated 19.3.2008 (reiterated and continued subsequently by Notification DHE-4(610)/2010-11/304, dated 6.5.2011), of the Directorate of Higher Education, concerns the policy guidelines of the Government for issuance/revalidation of the NOC (and related matters) of privately managed self-financed institutions for the academic year 2008-09 onwards. Amongst the various guidelines, clause 2 states:

No fresh admission might be allowed in a programme of an affiliated institution where admission has been less than 50% of the sanctioned seats for the last 2 years and where faculty position is unsatisfactory. Consequently, the programme shall be placed in "No Admission" Category. The Government may revalidate a No Objection Certificate granted to an affiliated institution running in a permanent campus for running existing programmes after careful consideration of the following parameters i) That programmes are being run smoothly and the quality of education imparted is of acceptable standard. (ii) That all terms and conditions given in the NOC are being complied with. (iii) All terms and conditions for affiliation prescribed by the GGSIP University and other statutory Bodies are being observed.

(emphasis supplied)

19. Further, with regard to the CET, clause H of notification states:

The GGSIP University will conduct a Common Entrance Test on behalf of the Government as has been done in previous years. No institution would be allowed to make admissions without counseling, as per the procedure established.

20. Heeding to the present petitioners' grievance that seats were lying vacant, the GGSIP University, by notification F. No. IPU-7/JR(Acad)/2010/5971, dated 25.9.2010 (the provisions of which are subsequently/reiterated in notification No. No. IPU-7/JR(Acad)/2011/7232, dated 13.9.2011, as also notification F. No. IPU-7/JR(Acad)/2011/7420, dated 27.9.2011), issued the following notice for affiliated institutions:

It has been seen that after end of 2nd counselling which was followed by Open House, some seats remained vacant in affiliated institutes/colleges in programmes like BCA, BJMC, BBA, BPO, B.Sc(MLT), BASLP and BHMS. The University has decided to permit the affiliated institute to make effort for getting such vacant seats filled as per following process: a. The list of vacant seats will be obtained by the affiliated institutes/colleges from the University Academic Branch. b. The affiliated institutions/colleges may publish advertisements in news papers or through our own website(s) or any kind of publicity for the particular programmes in which students have qualified the CET but have not been able to take admission through University Counselling process for that particular programme; c. The admitted student list prepared by the affiliated institute will be sent to Academic Branch within 5 days after 30th September, 2010, i.e. The list will contain Name of the Student, CET Roll No., CET Rank, Percentage of marks, qualifying eligibility as per the University Admission Brochure along with copy of marks sheet/certificate of the qualifying exam. This special provision of admission is only for programmes mention in this notice. Any violation of process of Admission or Admission of candidates who are not qualified in the CET or have qualified in CET but not eligible otherwise shall attract punitive action by the University.

Analysis & Findings

21. The question of regulatory intervention in the administration of colleges, and specially, professional courses, has been considered by the courts in various instances. The present case concerns a limited aspect of administration, i.e. regulation of admission processes. Nonetheless, some basic propositions merit attention, as they inform any analysis on the question involved in this case.

22. It is established, as the Supreme Court conclusively held in TMA Pai Foundation, that the "right to establish and administer an educational institution" is protected as part of the freedom of occupation under Article 19(1)(g). Equally, this right is not a business or a trade, given the profit motives attached with those activities, since the establishment of educational institutions bears a clear charitable purpose. This proposition is undoubted, and has been accepted subsequently in Islamic Foundation and PA Inamdar without demur. However, as TMA Pai Foundation also noted, "the question of whether there is a fundamental right or not cannot be dependent upon whether it can be made the subject matter of controls." (emphasis supplied) The issue before the Supreme Court in TMA Pai Foundation and all subsequent cases, thus, has been to identify the breadth and depth of controls, i.e. regulatory controls that may be imposed by the state without violating the freedom to establish and administer educational institutions themselves.

23. Crucially, this freedom to establish and administer educational institutions is unique-in that private actors' freedom to establish institutions of learning bears a direct relation with the public interest in creating such institutions. This is important, as a matter of principle, because this relationship between the public

interest and private freedom determines the nature of public controls that are permissible.

24. This relationship is clear from the various rulings of the Supreme Court. The ubiquitous emphasis of the Supreme Court in its various decisions on maintaining "excellence of education" (ref, TMA Pai Foundation), or more generally, ensuring good quality education is crucially important. Private actors' freedom to establish educational institutions is not an absolute right in itself, but rather, tempered by the principle that such institutions must provide good quality education, which is in the public interest. Thus, "under the guise of exclusive right to management", even minority institutions, subject to greater protection under Article 30 of the Constitution, "cannot be permitted to fall below the standards of excellence expected of educational institutions." (ref. In re Kerala Education Bill). Similarly, in TMA Pai Foundation, the Court noted that "it is in the interest of the general public that more good quality schools are established"; in Islamic Foundation, in explaining the decision in TMA Pai Foundation, the Court noted "the principle of merit cannot be sacrificed, as excellence in profession is in national interest"; in PA Inamdar, again while discussing TMA Pai Foundation, the Court noted that "regulatory measures for ensuring educational standards and maintaining excellence thereof are no anathema to the protection conferred by Article 30(1)"; in Mohan Bir Singh Chawla Vs. Punjab University, Chandigarh and another, , the Court noted that "in the larger interest of the nation, it is dangerous to depreciate merit and excellence in any field." Indeed, this dictum is well-accepted in the jurisprudence of the Supreme Court. Crucially, the important point that the link between private freedom and public interest determines the nature of permissible controls was made explicit by the Court in PA Inamdar, noting that "[excellence in education and maintenance of high standards at this level are a must. To fulfill these objectives, the State can and rather must, in national interest, step in" (emphasis supplied), and in Islamic Foundation in the following terms:

So far as institutions imparting professional education, are concerned, having regard to the public interest, they are bound to maintain excellence in standard of education. To that extent, there cannot be any compromise and the State would be entitled to impose restrictions ... The width of the rights and limitations thereof of unaided institutions whether run by a majority or a minority must conform to the maintenance of excellence. With a view to achieve the said goal indisputably the regulations can be made by the State.

(emphasis supplied)

25. The above discussion removes any doubt from the proposition that the State may exercise its authority to maintain the standard of excellence in professional institutions. The freedom of occupation under Article 19(1)(g) cannot exclude such regulation, which goes to the very core of the public purpose that educational institutions serve. If such institutions, in their functioning, and specifically in this case, in their manner of admission of students, adopt a

procedure that deviates from the standards of excellence, the State may determine by its own assessment whether such a lacuna arises, and if so, take the necessary steps to fill it. Any exercise to determine the regulatory power of the State under Article 19(1)(g) must ensure that sufficient authority is recognized to conduct this activity fully. Any interpretation that the educational institutions have-and the State thereby does not have-the authority take any action (choosing the manner of admission of students, the curriculum etc.), which has a bearing on the standard of excellence in an institution, would thus be unmerited.

26. The right to administration of a private unaided educational institution assumes the right to admit students, to set up a reasonable fee structure, to constitute a governing body, to appoint staff and take disciplinary action. There is no quarrel with this proposition. Equally, the right to admit students-which is in issue presently-is not and cannot escape any regulation. This is because the merit of students entering educational institutions-and accordingly, the admissions procedure in place-is intrinsically linked to the maintenance of academic standards in that institution. Just as the quality of instruction within the classroom is an important aspect that has a bearing upon the standard of excellence expected of an institution, the merit of students admitted to that institution is equally important. This point was stated in no uncertain terms by the Supreme Court in TMA Pai Foundation:

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.

27. Thus, ensuring that admissions policies judge merit of prospective students reliably is an aspect that is crucial to the maintenance of excellence in academic institutions. This is not to say that the right to admit students does not form part of the freedom under Article 19(1)(g). The autonomy granted to educational institutions in the admission of students-i.e. the private right to administer-must be seen in the context of the public purpose, i.e. to ensure that admissions policies judge merit of the students fairly.

28. Here, it is important to state that any instance of State regulation-whether permissible or impermissible-involves a fettering of the autonomy of private unaided institutions. This by itself does not mean that the freedom under Article 19(1)(g) is violated. The freedom under Article 19(1)(g) does not imply that the State cannot regulate educational institutions in the public interest. Nor does it

imply that the autonomy recognized under Article 19(1)(g) leaves only trivial matters to be regulated by the State. Rather, State regulation that conforms to a clear public interest (as determined by the State itself, rather than a blind assessment conducted by the Courts) can—as explained above—restrict the private freedom embodied in Article 19(1)(g). In other words, as the Supreme Court noted in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , "the distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration." Having a right does not entitle one to claim that it cannot be regulated.

29. To place this into the context of the right to admit students, at one extreme, measures

surrendering the total process of selection to the state [are] unreasonable" (*TMA Pai Foundation*, paragraph 41). Indeed, this was sought to be done by the Supreme Court in *Unni Krishnan*, by prescribing a strict scheme for admissions whereby the Central Government nominated students for admissions, rather than leaving the decision to the institution itself. The question of whether regulatory control violates the freedom under Article 19(1)(g) is thus best answered contextually, by viewing these measures as a range. While "the state has the right to prescribe qualifications necessary for admission", "nominating students for admissions would be unacceptable" and violate the right of these institutions" to admit students of their choice. (*TMA Pai Foundation*, paragraphs 53-54). Such fetters on the right of administration obliterate the right itself. They impermissibly impose complete public control by substituting the institution's freedom with the State's discretion, rather than regulating private behaviour to meet a public purpose. For this reason, they are unreasonable. However, public controls that prescribe the manner in which the merit of students is to be judged by private institutions (to ensure fairness and excellence, in the opinion of the State), and do not choose the students themselves directly, do not violate this freedom. Rather, the State is duty bound to study the prevailing situation, and suitably regulate, such academic matters to ensure that the standards of education are maintained. In fact, the Supreme Court has categorically stated in *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.*, , that "the State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made.

(emphasis supplied)

30. This Court has no doubt that the alternate conclusion would create an impermissible difference between institutions that accept grants and those that do not in terms of State's power to regulate the standards of excellence/merit of students in such institutions. However, this aspect of State regulation is crucially important to the undisputed public purpose of ensuring good quality education, divorced from the issue of whether financial assistance is granted to the

institution or not. These regulatory powers extend to all private, non-minority institutions, independent of whether they receive monetary help from the Central Government or not. To hold that monetary assistance transcends the stands of excellence would amount to be irrational, because if so institutions that can afford to run independently can avoid academic regulations. In other words, "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." (TMA Pai Foundation, paragraph 68).

31. The proposition that thus emerges is that the autonomy granted to private unaided institutions does not-and cannot-restrict the State's authority and duty to regulate academic standards. Conversely, the State's authority cannot obliterate or unduly compromise these institutions' autonomy. In matters of ensuring academic standards, the balance necessarily tilts in favour of the State, given the intensely public nature of the activity in question and the State's duty to maintain standards. In fact, the Supreme Court in TMA Pai Foundation recognized this scheme of matters, in stating that "the right to administer, not being an absolute one, there could be regulatory measures for ensuring educational standards and maintain excellence thereof and it is more so, in the matter of admission to undergraduate Colleges and professional institutions."

32. Applying these tests specifically to the question at hand, the Court must consider whether the CET in this case violates the freedom of the institutions' under Article 19(1)(g), or whether such regulatory control is permissible. The CET, prescribed u/s 13 of the Act, visualizes a common entrance test to be held by the notified authority, the GGSIP in this case, for all colleges regulated by the Act. The examination paper for the CET, the marking and evaluation system are conducted by this common authority. Scores from the CET are then considered by individual colleges-through various counselling sessions-to admit students. Students are not chosen or nominated by the GGSIP, nor are students allocated to seats in the various colleges. Particular students are not placed in particular colleges-rather, the CET only provides a common testing mechanism that creates uniformity in record for students from different academic backgrounds. This common testing mechanism allows for prospective students to be judged inter se and for merit to be judged in the admissions process. The ultimate decision to admit students, in terms of which student to admit, how many students to admit, is made by the colleges, who use the CET scores as the substrate for their final decision.

33. The State is-in its wisdom, and after assessment of the prevailing conditions-entitled to take regulatory measures to ensure academic excellence. Section 13 of the impugned Act in this case is one such measure. The measure prescribes a neutral standard for judging the merit of students, without intruding upon the ultimate right of the college to choose students. It does not, as was the case in Unni Krishnan, prescribe for Government nomination of students such that the institutions have no say in which students they ultimately accept. These

institutions still have, in the phraseology adopted by the Supreme Court in TMA Pai Foundation, the right of rational selection of students "subject to the minimum qualification that may be prescribed and to some system of computing the equivalence between different kinds of qualifications, like a common entrance test." (paragraph 40) Although-in terms of the policy of the impugned Act in this case-students are to be admitted on the basis of merit, and the CET allows for such merit to be judged competitively and fairly-nonetheless the institutions make the final choice after considering the scores in the CET.

34. The crucial question in this case concerns a review of the State's decision to regulate admissions procedures in Delhi by a CET, through an enacted legislation. This policy decision depends on a host of factors, the prevailing situation, the deficiencies of the system, the loopholes, prevalence of mal-administration and ignorance of merit etc., which this Court cannot review. The Court cannot consider whether a CET is prudent or wise in the present circumstances. Instead, the Court must determine whether the CET-introduced by the legislature in its wisdom-affects the freedoms of the private institutions in this case under Article 19(1)(g). This freedom, however, is circumscribed by the public purpose for which it exists, and the State's overarching right and duty to prescribe conditions for ensuring the maintenance of merit in admission. Infact, on the question of a CET, the Supreme Court has specifically considered the question of its impact upon the freedom under Article 19(1)(g), deciding the balance in favour of the State's regulatory powers, rather than narrow private interests, in matters of education policy. In PA Inamdar, the Supreme Court held as follows:

133 ...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.

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135. 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

35. This balance was also considered by the Supreme Court in TMA Pai Foundation, where the Court held, in paragraph 68, as follows:

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 counseling by the state agency.

The above observations were repeated in Islamic Foundation at paragraph 12 of the judgment. Subsequently, in considering this observation, the Supreme Court in PA Inamdar at paragraph 113 of its decision noted that the second part of paragraph 68 of the decision in TMA Pai-concerning a CET-was only illustrative of the manner in which the balance between autonomy and regulation could be made, rather than exhaustive. This indeed reinforces the point that the manner in which such a balance can be struck, and the various regulatory measures that may be taken by the State in pursuing academic excellence, must be left to the State itself, as long as the freedom is not "surrendered". Far from this extreme, the institutions in this case-as explained above-are given "sufficient discretion in admitting students". If such regulation is considered to violate the freedom under Article 19(1)(g), what would remain of the State's authority (and duty) to ensure excellence in education, the one shining principle through TMA Pai Foundation, Islamic Society and PA Inamdar, is a sad commentary in and of itself. Such an interpretation does not appear from the precedents cited, or the underlying philosophy of the freedom to run educational institutions under Article 19(1)(g).

36. It may be argued that such unaided private institutions should be permitted to devise merit-based procedures themselves, rather than permitting the State to impose its determination of merit. This, it is argued, constitutes an

unreasonable interference in itself. A plausible claim can be made in this respect by a reading of certain paragraphs of the decisions in TMA Pai Foundation and PA Inamdar. Specifically, the Court in PA Inamdar, at paragraph 134, noted that "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 therefore subject to its being fair, transparent and non-exploitative" It is argued that if institutions conform to this triple-test, i.e. they ensure that their admissions process is fair, transparent and non-exploitative, in such cases, no state intervention is mandated and is per force unreasonable. This-it is argued-conforms to the principle of merit in admissions policies, but leaves the entire decision to the educational institutions themselves.

37. This line of argumentation, however, cannot be countenanced for three crucial reasons. First, the approval for the triple-test by the Supreme Court in TMA Pai Foundation and PA Inamdar must be viewed in the context of the questions before the Supreme Court, rather than as blanket tests for all institutions in all cases. In TMA Pai Foundation, the question before the Court concerned the rights of minority institutions under Article 30 of the Constitution, and their right to draft admissions policies. Specifically, the Court was asked:

Q5(a) Whether the minority's rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

In answering this question in the affirmative, the Court held that minority institutions

may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit.

Therefore, while the principle of merit operates irrespective of the minority status, minority institutions may prescribe their own admissions policies, subject to the triple-test. This right to admit students was considered "an essential facet of right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution", and so, regulatory controls imposed by the State were excluded. The triple-test, thus, was contemplated by the Court in the context of minority institutions operating under the umbrella of Article 30, rather than the comparatively limited right under Article 19. While minority institutions may-because of the protective net of Article 30-create their own admissions policies, such a freedom cannot be read into Article 19(1)(g), lest the two different regimes under the Constitution are wrongly conflated. Indeed, this distinction between Article 30 minority rights and the freedom under Article 19(1)(g) must be kept in mind while considering the decision in TMA Pai Foundation, where the Court was concerned primarily with Article 30. In PA Inamdar, the observations concerning the triple-test-in paragraphs 122-123, 132-134- are

again in the context of minority unaided institutions, rather than as a blanket test under Article 19. Indeed, some common legal standards are drawn between non-minority and minority educational institutions-both must respect merit in admissions of students, and as discussed above, in neither case may the State enforce the "nationalization of seats" which would "compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions." These extremes are impermissible under both Article 19(1)(g) and naturally, Article 30. But the converse does not hold. Even the Court in *PA Inamdar* recognized this distinction:

To some extent, what may be permissible by way of restriction under Article 19(6) may fall foul of Article 30. This is the additional protection which Article 30(1) grants to the minorities.

The recent judgment of the Constitution Bench of the Supreme Court in *Prmati Educational and Cultural Trust and Ors. v. Union of India and Ors.*, WP (C) No. 416 2012 (decision dated 6th May, 2014), concerning the constitutional validity of provisions of the Right of Children to Free and Compulsory Education Act, 2009 ("RTE Act") too spells out this conceptual distinction between Article 19(1)(g) and Article 30. There, the Court held that the RTE Act did not violate Article 19(1)(g) as regards non-minority unaided private schools, but did violate the enhanced protection accorded to minority institutions under Article 30. The discussion in paragraphs 44 to 46 makes it clear that the animating factor is the conceptual distinction between minority and non-minority schools. Unaided (and naturally, aided) private schools cannot thwart public regulation by the State in order to further a recognized constitutional objective. Specifically, the Supreme Court noted:

44. When we examine the 2009 Act, we find that u/s 12(1)(c) read with Section 2(n)(iv) of the Act, an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority is required to admit in class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. We further find that u/s 12(2) of the 2009 Act such a school shall be reimbursed expenditure so incurred by it to the extent of per-child expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed. Thus, ultimately it is the State which is funding the expenses of free and compulsory education of the children belonging to weaker sections and several groups in the neighbourhood, which are admitted to a private unaided school. These provisions of the 2009 Act, in our view, are for the purpose of providing free and compulsory education to children between the age group of 6 to 14 years and are consistent with the right under Article 19(1)(g) of the Constitution, as interpreted by this Court in *T.M.A. Pal Foundation* *supra* and are meant to

achieve the constitutional goals of equality of opportunity in elementary education to children of weaker sections and disadvantaged groups in our society. We, therefore, do not find any merit in the submissions made on behalf of the non-minority private schools that Article 21A of the Constitution and the 2009 Act violate their right under Article 19(1)(g) of the Constitution.

The RTE Act imposed a 25% admission requirement for children from economically weaker sections of society on private unaided schools. These schools' right to admit students of their own choice was thus restricted vis-à-vis those 25% completely. This requirement, however, did not violate the freedom under Article 19(1)(6), but rather, was considered as valid regulation by the State for a public purpose. Just as the RTE Act furthered the goal of access to education for all, likewise, in this case, the Act furthers the goal of maintaining excellence in education through a fair, transparent and non-exploitative mechanism to judge the merit of applicants by a single window that eliminates multiple exams and causes least hardship to applicants. It does not even go to the extent of restricting the colleges' right to admit students, or take away a percentage of seats for admission to a particular section of applicant, as under the RTE Act. If the more substantial and "intrusive" restrictions under the RTE Act were upheld by the Constitution Bench in *Prmati Educational and Cultural Trust* (supra), the CET in the present case too must fall within the realm of legitimate regulation which does not interfere with the petitioner's Article 19(1)(g) rights.

38. There is no constitutional mandate to transplant these freedoms under Article 30, created for a limited and specific purpose of protection of minorities, into Article 19(1)(g). Article 30 may therefore be availed without qualification. In *PA Inamdar* itself this distinction was noticed:

As an occupation, right to impart education is a fundamental right under Article 19(1)(g) and, therefore, subject to control by clause (6) of Article 19. This right is available to all citizens without drawing a distinction between minority and non-minority. Such a right is, generally speaking, subject to laws imposing reasonable restrictions in the interest of the general public. In particular, laws may be enacted on the following subjects: (i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business; (ii) the carrying on by the State, or by a corporation owned or controlled by the State of any trade, business, industry or service whether to the exclusion, complete or partial of citizens or otherwise. Care is taken of minorities, religious or linguistic, by protecting their right to establish and administer educational institutions of their choice under Article 30.

30. To some extent, what may be permissible by way of restriction under Article 19(6) may fall foul of Article 30. This is the additional protection which Article 30(1) grants to the minorities....

The argument that the institutions in this case must themselves be allowed to

create their merit-based admissions policies seeks to do precisely this. In this background, importantly, the Court notes that the decisions in TMA Pai Foundation, PA Inamdar and St. Stephens (which again concerned the prescription of a particular-merit-based-method of admissions by the Delhi University to a unaided minority institution) all consider the triple-test in the context of minority institution which are granted greater freedoms and protection under Article 30, in order to protect and preserve their minority status.

39. Secondly, if such an argument is followed, the State's ability to regulate academic excellence in terms of student admissions in all institutions except aided institutions would be reduced to naught. In all such institutions, the State would be barred from prescribing merit-based admissions processes, from creating a uniform admissions process through a CET when the prospective students have differing academic backgrounds, from removing the burden of applying to multiple institutes instead of one centralized window etc., if the State in its policy making powers-considered it necessary to do so. In all such cases, the State's policy decisions, and wisdom in deciding the best course of academic matters, would be replaced by every private institution's own assessment of the matter. Indeed, in such cases, if the State were to substitute the institutions' procedure for its own procedure on the ground that the former is unfair or not based on merit, the fairness of each institutions' policies would have to be judged and proven to be unfair, exploitative or non-transparent for such substitution to take place. While such a burden is justified for State intervention into minority institutions under the sui generis threshold of Article 30, excluding State regulation for regulating academic excellence in matters of admissions matters under Article 19(1)(g) would limit the State's regulatory role only to trivial matters and render it incapable of pursuing public regulation in a crucially important public activity at the altar of private rights. The issue in this case is not to judge the adequacy of the policy, but to determine whether, once in place, what is left of the autonomy of the educational institutions tends to such an extreme that the right is said to be violated, or if such a policy "would completely destroy the autonomous administration of the educational institution" (Islamic Foundation, paragraph 104, emphasis supplied). Here, the Court is also cognizant of another important concern for the candidate, the seeker of the course, for whom the institution is established and for whose admission the CET has been devised. Apart from minimizing the trauma of having to apply to a multitude of educational institutions and go through multiple admission procedures on different dates, with different entrance examination standards, the candidate would also be expected to pay admission fee and examination fee. Often, professional colleges charge large sums of money for the right to apply and participate in the examination itself. If a student is expected to apply in several institutions, she or he (most likely her or his parents) would be put out of pocket considerably. The public interest in putting in place a uniform admission mechanism in such case cannot be overemphasized. The same aspect can be looked at from another perspective. The holding of a CET which affords an

excellent common platform to judge students from diverse backgrounds with differing levels of attainments and knowledge is a facet of the equality principle. Different academic backgrounds, graduation from State and National Boards at the 10+2 stage of schooling can result in asymmetric treatment, where educational institutions might use and adopt discriminatory practices, of either favouring or disfavouring students from some class of institutions or regions. Left untouched without a CET, these students in all probability would be denied admission, due to such biases, sometimes even unintended. The CET affords the best of students from all backgrounds, based on performance in the same admission process the same chance of admission. The state here is merely the facilitator, and does not become the arbiter which decides how admissions are to be made. The choice of admission is that of the student, depending upon her or his merit. Once admission is given, he is subject to the discipline and academic control of the concerned institution, which has the right to charge the appropriate fee.

40. Lastly, the Court now turns to the rationale for subsuming the right to run an educational institution within Article 19(1)(g), and creating competing interests between public regulation and private rights for an issue of such public importance as education. The answer to this question is found in the decision in TMA Pai Foundation itself, where the Court noted that "exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies." (emphasis supplied) Accordingly, the autonomy granted to private unaided institutions is to resist "governmental domination of educational process" or "state control over academic policies and practices". The autonomy under Article 19(1)(g), thus, must be read in the larger context as to why it exists, so as to prevent Government dominance of education, and allow for the dissemination of neutral and quality education. Instead of reading the freedom in an isolated manner to exclude legitimate state regulation over academics, the freedom protects against excessive Government interference. Far from portending such consequences, Section 13 of the impugned Act in this case provides, and over this fact, no dispute is raised, for a neutral manner of selection of students that ensures the preeminence of merit.

41. At the end of the day, the various standards indicated by the Supreme Court decide whether the legislative control is a reasonable restriction "in the interests of the general public" under Article 19(6) of the Constitution. The Court must therefore relate its reasoning back to Article 19(6) every stage. The questions that arise presently are whether Section 13 of the impugned Act is "in the interests of the general public" and if it is a reasonable restriction. Section 13 restricts the private institutions' freedom to admit students of their choice. The unambiguous purpose of the CET is three-fold: to maintain a standard of excellence in education by ensuring that students are judged on the basis of a common merit criteria, to ensure that a common test removes any difference in the previous educational qualifications, and to ease the burden of applying to several institutions individually. Significantly, when the state or the concerned

specialized professional body prescribes essential qualifications which every candidate has to fulfil, to apply to these recognized (whether aided or unaided) institutions, that too, is a part of the admission process. The State has a duty to ensure excellence in education and to improve access to higher education, both of which are matters "in the interest of the general public". At this point, it is apt to/recount the observations of the Supreme Court in *Virendra Vs. The State of Punjab and Another*, that

the expression "in the interest of" makes the ambit of the protection very wide, for a law may not have been designed to directly maintain the public order or to directly protect the general public against any particular evil and yet it may have been enacted "in the interest of" the public order or the general public as the case may be.

The CET directly relates to the salient purposes discussed above, and thus, howsoever broad the right under Article 19(1)(g) may be, Article 19(6) itself permits such restrictions to be imposed.

42. At this stage, the Court proposes to deal with the petitioner's submission that in view of the decision in *Christian Medical College (supra)*, a CET is an impermissible or unreasonable restriction of the right guaranteed under Article 19(1)(g).

43. In *Christian Medical College*, the Supreme Court was dealing with the validity of regulations framed by the Medical Council of India, which mandated a CET for all medical colleges, i.e. aided as well as unaided. The Court was primarily concerned with a situation where the parent enactment did not provide for or enable such regulation to be framed. The Court held that such regulations were not permissible, and that any regulation which had the effect of take-over of seats, or reserving some part of unaided college's intake, would be an impermissible nationalization. The following extract of that judgment place its ratio in proper perspective:

... As per our understanding neither in the judgment of *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, nor in the Constitution Bench decision in *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, which was approved by *Pai Foundation*, is there anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalisation of seats which has been specifically disapproved in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, . Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory

measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution of India. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidates. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

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145. The rights of private individuals to establish and administer educational institutions under Article 19(1)(g) of the Constitution are now well-established and do not require further elucidation. The rights of unaided and aided religious and linguistic minorities to establish and administer educational institutions of their choice under Article 19(1)(g), read with Article 30 of the Constitution, have come to be crystalised in the various decisions of this Court referred to hereinabove, which have settled the law that the right to admit students in the different educational and medical institutions is an integral part of the right to administer and cannot be interfered with except in cases of maladministration or lack of transparency. The impugned Regulations, which are in the nature of delegated legislation, will have to make way for the Constitutional provisions. The freedom and rights guaranteed under Articles 19(1)(g), 25, 26 and 30 of the Constitution to all citizens to practise any trade or profession and to religious minorities to freedom of conscience and the right freely to profess, practise and propagate religion, subject to public order, morality and health and to the other provisions of Part III of the Constitution, and further to maintain institutions for religious and charitable purposes as guaranteed under Articles 25 and 26 of the Constitution, read with the rights guaranteed under Article 30 of the Constitution, are also well-established by various pronouncements of this Court. Over and above the aforesaid freedoms and rights is the right of citizens having a distinct language, script or culture of their own, to conserve the same under Article 29(1) of the Constitution.

146. Nowhere in the 1956 Act nor in the MCI Regulations, has the Council been vested with any authority to either conduct examinations or to direct that all admissions into different medical colleges and institutions in India would have to be on the basis of one common National Eligibility-cum-Entrance Test, thereby effectively taking away the right of the different medical colleges and institutions, including those run by religious and linguistic minorities, to make admissions on the basis of their own rules and procedures. Although, Mr. Gupta has contended that Section 33(1) of the 1956 Act entitles the MCI to make Regulations regarding the conduct of professional examinations, the same, in our view, does not empower the MCI to actually hold the entrance examination, as has been purported to be done by the holding of the NEET. The power to frame Regulations for the conduct of professional examinations is afar cry from actually holding the

examinations and the two cannot be equated, as suggested by Mr. Gupta.

147. Although, the controversy has been extended to include the amendments made to the Entries in the Second and Third Lists of the Seventh Schedule to the Constitution and the deletion of Entry 11 from the State List and the introduction of Entry 25 in the Concurrent List, on behalf of the MCI it has been reiterated that the impugned Notifications and amended Regulations had been made under Entry 66 of List I by the MCI acting on its delegated authority and would, therefore, have an overriding effect over any State law on the subject.

As already indicated hereinbefore, the right of the MCI to frame Regulations under Entry 66, List I, does not take us anywhere, since the freedoms and rights sought to be enforced by the Petitioners flow from Articles 19(1)(g), 25, 26, 29(1) and 30 of the Constitution which cannot be superseded by Regulations framed by a Statutory authority by way of delegated legislation. The fact that such power was exercised by the MCI and the DCI with the previous approval of the Central Government, as contemplated u/s 33 of the 1956 Act and u/s 20 of the 1948 Act, would not bestow upon the Regulations framed by the MCI and DCI, which are in the nature of subordinate legislation, primacy over the Constitutional provisions indicated above. A feeble attempt has been made by Mr. Gupta to suggest that admission into institutions run by the Christian Church depended on selection of students by the Diocese. This procedure, according to Mr. Gupta, was against the concept of recognition of merit.

148. In our judgment, such a stand is contrary to the very essence of Articles 25, 26, 29(1) and 30 of the Constitution. In view of the rights guaranteed under Article 19(1)(g) of the Constitution, the provisions of Article 30 should have been redundant, but for the definite object that the framers of the Constitution had in mind that religious and linguistic minorities should have the fundamental right to preserve their traditions and religious beliefs by establishing and administering educational institutions of their choice. There is no material on record to even suggest that the Christian Medical College, Vellore, or its counter-part in Ludhiana, St. John's College, Bangalore, or the linguistic minority institutions and other privately-run institutions, aided and unaided, have indulged in any malpractice in matters of admission of students or that they had failed the triple test referred to in P.A. Inamdar's case (supra). On the other hand, according to surveys held by independent entities, CMC, Vellore and St. John's Medical College, Bangalore, have been placed among the top Medical Colleges in the country and have produced some of the most brilliant and dedicated doctors in the country believing in the philosophy of the institutions based on Christ's ministry of healing and caring for the sick and maimed.

44. Importantly, the challenge was primarily on account of the lack of sanction to a CET in the parental statute. The Court accepted it, and held the regulations to be beyond the authority of the MCI. The decision does concern the breadth of the right under Articles 19(1)(g) and 30 as well, but those findings must be read in context. As discussed in the previous portions of this judgment, the larger Bench

decisions in T.M.A. Pai, Islamic Academy and P.A. Inamdar recognized the State's power to direct a CET, so long as it did not nationalize the intake, and result in imposition of a reservation policy. The concern-as Inamdar noted-in the case of minority communities is greater, because of the unconditional nature of the right guaranteed to them under Article 30. The Court noticed these previous rulings, and proceeded in accordance with them. That is as far as that decision can be taken. This Court holds that the seemingly wide nature of observations in Christian Medical College have to be placed in the context of the claims made by the petitioners there and the judgments cited. The decision could not be possibly said to have diluted the ratio in the previous larger Bench (11 Judge and 7 Judge) decisions in TMA Pai and Inamdar, which is the result of the petitioners argument when they state that the regulatory power of the state does not extend to statutorily enacting a CET. Far from finding support in Christian Medical College, that decision refers directly the previous and larger benches of the Court that have contemplated, and validated, such a scenario.

45. This however leaves the second question unanswered still: are these restrictions reasonable. The answer to this question is necessarily contextual. No single bright-line standard is available. The decision of the Supreme Court in State of Madras Vs. V.G. Row, guides us in this exercise with the following observations:

It is important in this context to bear in mind that the test of reasonableness, where ever prescribed, should be applied to each, individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.

46. The Court notices that the stated purpose the impugned Act is to ensure "equity and excellence" in academic institutions. This underlying purpose is woven into the texture of the entire enactment, and specifically, the CET, for ensuring that in terms of the access to education (equity) and merit of students (excellence), the CET allows a common platform for admissions into professional colleges in Delhi. Since this issue presented itself before the legislature, the CET is neither inappropriate nor an excessive measure, undermining the freedom itself. The colleges retain their right to establish and run educational institutions, including the right to set up a reasonable fee structure, to constitute a governing body, to appoint staff and take disciplinary action. These rights remain unaffected by the impugned Act, but a partial restriction is placed upon the manner in which students are to be admitted. Even here, far from being absolute, such that the seats are in effect nationalized or that the Government nominates students, the right to admit students ultimately is retained by the colleges. Thus, in the overall scheme of the right to run and manage educational institutions, the impugned Act only makes a small, but crucial, "inroad" into the

freedom. Indeed, the nature of the right in this case-the freedom to run educational institutions, and not just any other commercial establishment-must also inform the Court's analysis in judging whether such a restriction is reasonable. In the prevailing situation where private educational institutions are mushrooming across the state, it is imperative that a standard of excellence is maintained. This triggers the need for regulation, as in this case, and thus, the background of the impugned Act plays a crucial role in justifying its reasonableness. Whilst each individual education may pit its freedoms against the regulatory control of the State, the Court notices the decision in *Pathumma and Others Vs. State of Kerala and Others*, :

The restriction has to be viewed not only from the point of view of the citizen but the problem before the legislature and the object which is sought to be achieved by the statute. In other words, the Court must see whether the social control envisaged by Article 19(1) is being effectuated by the restrictions imposed on the fundamental right. However important the right of a citizen or an individual may be it has to yield to the larger interests of the country or the community.

These factors point to the reasonableness of the restriction imposed by Section 13. Equally, this Court must be conscious that the ultimate judgment as to policy lies with the legislature. In the words of *VG Row (supra)*-there is a "limit to ... interference with legislative judgment". This point was made with greater force in *Virendra (supra)*, in the context of regulation of the press:

The court is wholly unsuited to gauge the seriousness of the situation, for it cannot be in possession of materials which are available only to the executive Government. Therefore, the determination of the time when and the extent to which restrictions should be imposed on the Press must of necessity be left to the judgment and discretion of the State Government and that is exactly what the Legislature did by passing the statute.

47. This Court is mindful that both *TMA Pai* and *Inamdar* visualized the State regulating admissions through a common entrance test in the case of non-minority unaided institutions. The argument of the petitioners that state regulations are permissible only if the existing or prevailing situation, i.e. admission by each institution on application of its own criteria, is found deleterious is unappealing. On this issue, *Inamdar* had this to say:

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.

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 malpractices, 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.

48. The wisdom of intervention based on the State's legitimate concerns, in the opinion of this Court, cannot be controlled or pigeonholed into evolving norms only after a negative situation is realized or the existing state of affairs deteriorates. Curbing undeniable policy making and legitimate legislative powers only to intervene by stepping in to stem the rot, as it were, is to fetter the discretion in a manner unwarranted by the Constitution. Here, one is reminded of what the Privy Council said in *City of Winnipeg v. Barrett*, 1892 AC 445 (although in a different context):

With the policy of the Act of 1890 their Lordships are not concerned. But they cannot help observing that, if the views of the respondents were to prevail, it would be extremely difficult for the provincial legislature, which has been entrusted with the exclusive power of making laws relating to education to provide for the educational wants of the more sparsely inhabited districts of a country almost as large as Great Britain, and that the powers of the legislature, which on the face of the Act appear so large, would be limited to the useful but somewhat humble office of making regulations for the sanitary conditions of schoolhouses, imposing rates for the support, of denominational schools, enforcing the compulsory attendance of scholars, and matters of that sort.

49. Although the merits of the view taken in *Barrett* (i.e. unfettered authority of the legislature, as was exercised then) was disagreed with in later cases, the point which requires emphasis is that State power-executive or legislative-is not only remedial; it can be regulatory, preventive and facilitative. In this case, it is undeniably the latter because the CET was put in place to avoid hardship and also to ensure that merit is judged from one uniform standpoint for admission purposes by colleges affiliated to the GGSIP. The petitioner's argument quite simply seeks to unduly restrict, or even suffocate, the State's authority to carry out its legislative functions.

50. At this point, this Court also recollects the decision reported as *Union of India (UOI) and Another Vs. International Trading Co. and Another*, , in the context of a claim for enforcement of Article 19(1)(g). Discussing the concept of reasonableness and the Court's ability to intervene, the matter was pithily described by the Supreme Court: "basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness." It has been recognized that depending upon the nature of the trade or commercial right sought to be regulated, stringent conditions can be imposed, even to the extent of prohibiting the activity altogether. (see, *Narendra Kumar and Others Vs. The*

Union of India (UOI) and Others, , The State of Maharashtra Vs. Himmatbhai Narbheram Rao and Others and Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, . Therefore, the State's ban on collection of capitation fee, and society's resolve to ensure that merit finds a place in the admission process, must inform the judgment in this case. The Court has to be alive to the needs of those who seek admission in institutions, which in turn seek enforcement of their Article 19(1)(g) rights. Indeed, they-the students-are the crucial cog in the system whose interests must be taken into. Whilst examining the challenge to an executive measure or legislative policy, the Courts have to be alive to these realities and not merely guided by the assertion of those who are aggrieved. To quote the Supreme Court, in *Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another*, :

20. The tests of reasonableness have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and in judging their validity, courts must approach the problem from the point of view of furthering the social interest which it is the purpose of the legislation to promote. They are not in these matters functioning in vacuo but as part of society which is trying, by the enacted law, to solve its problems and furthering the moral and material progress of the community as a whole. (See *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, If the expression "in the interest of general public" is of wide import comprising public order, public security and public morals, it cannot be said that the standing orders closing the slaughter houses on seven days is not in the interest of general public.

Accordingly, a limited view of the prejudice caused to the institutions, ignorant of the positive ramifications elsewhere, does not inspire confidence. Thus, the CET is, on the basis of the above discussion, a reasonable restriction on the freedom under Article 19(1)(g).

51. In the light of the above discussion, it is held that the impugned measures are reasonable and pass the test under Article 19(6) of the Constitution of India.

52. The petitioner also argues that the CET violates Article 14. It is argued that the CET is to be considered as a means of selection of students where the number of students is more than the number of seats. In cases where seats are running vacant, however, it is argued that a CET is arbitrary. This argument, however, misses the point. The rationale for a CET, and generally, all academic regulation at the university level, is to ensure a minimum standard of excellence and merit. The purpose is not to ensure that seats are filled up, or to sacrifice merit at the instance of business interests of private institutions. The classification sought to be created by the petitioner is two-fold, i.e. cases where seats are running vacant, and cases where students are competing for limited seats. In this argument, a CET bears a rational nexus only to the latter category. However, the state purpose of a CET-academic excellence-bears a rational nexus with both instances, i.e. merit must be protected independent of the number of students and seats available. Merely because some seats are vacant does not

allow the institutions to forgo the principle of merit, or more specifically, the manner in which merit is judged generally. If anything, doing so would tend towards arbitrary conduct. In fact, this issue was considered by the Supreme Court in *Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others*, . The question before the Court was:

whether the eligibility criteria for admission to the Engineering courses stipulated under the Statutory Rules and Regulations of the State Government/University could be relaxed or ignored, and candidates who do not meet with such eligibility criteria can be given admission, on the ground that a large number of seats have remained unfilled in professional colleges

53. The Court answered with a categorical "no", holding that:

The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained

Accordingly, on this issue as well, Section 13 of the impugned Act does not violate Article 19(1)(g) or Article 14, and is constitutional.

54. The second set of issues that arise before the Court concern grievances regarding the counselling curriculum and permission to run second-shifts in some affiliated colleges. In essence, the petitioner wants to ensure that seats for the BBA programme in its member colleges do not go empty through the academic year. First, it is argued that second shifts ought not to be permitted, when some colleges are not able to fill their first shifts; and secondly, that the counselling schedule should be such that admissions processes are pre-poned and streamlined to ensure maximum enrolment in these colleges.

55. The present petitioner organization represents various colleges affiliated to the GGSIP University. Each college operates with different faculty, staff and infrastructure, and thus each has acquired a standing for the quality of education provided. As in any other occupation, those who approach such institutions conduct inquiries into the institution's past-record, quality of education provided and other factors to determine its overall standing. Through the counselling process, students are given the opportunity to assess the opportunities and decide on a particular college. The colleges, too, are able to set minimum scores within the CET for admission, and thus, "compete" for students. As the number of students is less than the number of seats available cumulatively in the various colleges, students are provided an opportunity to decide between colleges and in this process certain colleges are naturally left with empty seats. Importantly, in this counselling process, students who have been allotted a college in the first

counselling are nonetheless permitted to sit for the second counselling in order to change their preference, based on the other students' choices in the first counselling. This allows some students a chance to study at a college higher up in their preference list, or even pick a different course that was unavailable as per their earlier rank. The petitioner argues that students should not be given this second chance, as it means that students migrate to other colleges, leaving seats empty. Further, as per the GGSIP Admissions Brochure, the second counselling begins on 1st August. The petitioner argues that this should be pre-poned to 1st July, so that the academic session may begin by 1st August. It is argued that this is necessary because the current schedule allows for students who have been allocated seats in the first counselling to leave and study in other universities, where the academic session starts, and counselling schedule ends, earlier. All these measures, the petitioner argues, violate Article 19(1)(g) as they, in essence, render the colleges' freedom to run such institutions hollow by making the costs of running and maintaining the college prohibitive.

56. In considering this argument, the Court must be conscious of what Article 19(1)(g) protects. Clearly, clause (g) protects the freedom of occupation, i.e. the freedom to establish and operate educational institutions. The question is whether this also includes the right to achieve a particular object-to operate profitably, or to have sufficient enrolment of students. The counselling mechanism in place may factually mean that some seats run vacant. The legal question before the Court is whether this counselling mechanism restricts the freedom to run or operate the educational institution itself. In other words, does the freedom to run a college imply that the college must have a full batch of students (to the detriment of other colleges) and thus, run successfully? It does not. The freedom to practice an occupation under Article 19 does not guarantee the right to succeed in that occupation. One may not fare well, but that does not give rise to an Article 19 action. If-due to the standard of services provided by others-a particular college is unable to attract students, such that students choose to go elsewhere (even in a second shift), the conclusion is not that the right of the college to run and establish an educational institution itself is restricted by the State. The college may still operate, if it is willing. This point was put across by the Supreme Court in *All India Bank Employees' Association Vs. National Industrial Tribunal and Others*, :

It is one thing to interpret each of the freedoms guaranteed by the several Articles in Part III in a fair and liberal sense, it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to under lie the grant of each of those rights, for that construction would, by a series of ever expanding concentric circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result.

57. The petitioner today, in reality, asks for protection disguised as a claim to freedom. Colleges that are running with vacant seats will, no doubt, run into

troubled waters in terms of income. Indeed, no issue can be had with State action to ensure that their infrastructure, faculty etc. are improved so as to attract more students. However, these colleges do not have a right to ask for such treatment, or mandate the State to introduce policies that level the playing field between equals. The view in *All India Bank Employees' Association* (supra) was affirmed by the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, , where the Court held:

Even if a right is not specifically, named in Article 19(1), it may still be a fundamental right covered by some clause of that Article if it is an integral part of a named fundamental right or partakes of the same basic nature and character as that fundamental right. It is not enough that a right claimed by the petitioner flows or emanates from a named fundamental right or that its existence is necessary in order to make the exercise of the named fundamental right meaningful and effective. Every activity which facilitates the exercise of a named fundamental right is not necessarily comprehended in that fundamental right nor can it be regarded as such merely because it may, not be possible otherwise to effectively exercise that fundamental right. What is necessary to be seen is, and that is the test which must be applied is, whether the right claimed by the petitioner is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right.

58. The right to operate profitably, or to have a completely subscribed course, does not flow from the freedom to operate an educational institution, far from being integral to that freedom. Indeed, this may be necessary to "make the exercise of the named fundamental right meaningful and effective", for without students, a college has no meaning. But that-as the decision in *Maneka Gandhi* (supra) demonstrates-is of no consequence. Any other conclusion would dangerously skew the careful balance in Article 19(1)(g), and stagnate the advance of educational institutions which are attracting students by improving the standard of instruction, infrastructure and so on. Such an exercise would also require the Court to (dangerously) enter a policy debate as to the proper regulation of each such concomitant right if it is included under Article 19, as opposed to determining whether the limited, but substantial, freedoms are violated with the assistance of clear legal tests. Relying on *Maneka Gandhi* (supra), the Supreme Court in *Dharam Dutt and Others Vs. Union of India (UOI)* and *Others*, , has warned of the implications of such reasoning, that militates against the text and context of Article 19. This is not to say that that counseling processes cannot be questioned under any circumstance; an arbitrary counseling mechanism would vitiate the reasonableness of the restriction. This was the case, for example, in *Maharaja Agrasen Institute of Technology Vs. Guru Goving Singh Indraprastha University*, , where the rules prescribed a third counseling session even after the academic term of the colleges began. Short of such arbitrariness, engaging in a review of the counseling mechanism in the garb of

an Article 19 challenge has no basis in law. In this case, Notification No. DHE 4(15)/2006-07/909-965 dated 11.6.2007, and the Directorate of Higher Education's Policy Guidelines dated 4.5.2007 ensure that the second shifts conform to the same academic rigour as first shifts; that a minimum standard of excellence is maintained by these institutions in the preceding years to qualify for holding second shifts. Thus, permission to begin second shifts is subject to various criterion and requirements, and moreover, only in demand to student applications. If students indicate a preference to apply to a particular college over others, the petitioner's argument today invites the Court to negate the students' wishes and substitute them with its own.

59. Likewise, the argument that allowing students who had earlier opted in one college to participate in the later round of counseling affects the individual colleges' rights cannot merit acceptance. Once it is demonstrated that the CET and the related mechanism of counseling furthers the public interest, a determination in which the Court accords respect to the judgment of other branches of the State, in enabling merited students to secure admissions to colleges of their choice, the liberty given to those who admitted in one institution to participate in the later round of counseling to seek admission in another institution cannot be viewed as unfair. Whilst the first institution may feel deprived, the fact remains that after the completion of the earlier round of counseling, several students might and do drop out. This leads to vacancies, which other students may benefit from. This Court fails to see how affording another chance to that student, to opt for a college which he or she prefers, would be unfair. Ultimately, it is the excellence of the institution which dictates the choice of the student or candidate. All that the Court can ensure while considering the reasonableness of the restriction impugned is to see that it does not sniff out or deprive meaningful exercise of the power; it cannot ensure that the reason why it is exercised is fulfilled. Thus, restrictions which a trader or man of commerce might legitimately impugn are those that deny him the right to trade or commerce in a commodity. That right does not extend to ensuring that the goods or services which the businessman offers to his customers are purchased by them. Therefore, the complaint that the counseling mechanism does not restrict the choice of the student and is designed to allow him to participate in further sessions, after having opted for admission in one institution, resulting in violation of the right under Article 19(1)(g) is without merit.

In view of the above discussion, it is held that the challenge to the CET mechanism, the introduction of evening shift colleges, and second counseling procedure, adopted by the GGSIP University has to fail. Accordingly, this writ petition is dismissed, without order as to costs.