
(2000) 12 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12255 of 1999

D.A.V. College

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Citation : AIR 2001 P&H 153 : (2001) 2 ILR (P&H) 33 : (2001) 1 RCR(Civil) 810

Hon'ble Judges : N.K. Sud, J;K.S. Kumaran, J

Bench : Division Bench

Advocate : Mr. Nirmaljit Jaur, for the Appellant; Mrs. S.K. Bhatia, DAG, for the Respondent

Judgement

N.K. Sud, J.—The petitioner No. 1 is an unaided educational institution created by D.A.V. College Trust and Management Society which is duly registered under the Societies Registration Act, 1860. It is running an institute in the name of Mehar Chand Art & Craft Institute (petitioner No. 2) for the Art & Craft and Teacher Training Course. The petitioner No. 2 is also an unaided institution and is affiliated to Punjab State Board of Technical Education and Training. The petitioners are aggrieved by the order dated 27.6.2000 (Annexure P-6) issued by the Director, Technical Education and Industrial Training, Punjab, vide which the course being run by the petitioner No. 2 has been disaffiliated with effect from August, 2000. The petitioners have also prayed for quashing the appointment of Sh. Vinod Kumar, Coordinator (Technical Education Wing) as a Supervisor for admission to the Diploma course in petitioner No. 2 from the stage of receiving applications up to finalisation of admissions including receiving fee etc. However, the said order is already under challenge before this Court in Civil Writ Petition No. 12259 of 1999 which is pending disposal. The petitioners, therefore, during the course of arguments, restricted their challenge only to the order of disaffiliation dated 27.6.2000 (Annexure P-6).

2. Notice of motion was issued and written statement on behalf of the

respondents has been filed. Ms. Nirmaljit Kaur, Advocate, appearing on behalf of the petitioners pointed out the facts leading to the passing of the order of disaffiliation. According to her, the entire process had started from a complaint filed by the Principal of the petitioner institutes to S.P. City Jalandhar to the effect that one Joginder Singh alias Jaggi resident of Preet Nagar, Jalandhar, was harassing a girl student Bandna and on her resistance to his advances he was trying to forcibly enter the institution and create indiscipline. This complaint had been made on 16.5.1997, It is alleged that said Joginder Singh, who is the General Secretary of All India Sikh Students Federation, in retaliation filed a complaint on behalf of the Federation against petitioner No. 2 to respondent No. 2 pointing out some irregularities in admissions conducted in July, 1997. On receipt of this report, Mr. H.S. Sagar, Principal of B.R. Ambedkar Regional Engineering College, Jalandhar, was asked to conduct an inquiry into the allegations made in the complaint. Sh. H.S. Sagar submitted his interim report on 2.7.1998 in which he stated that he had visited the petitioner institutions twice and obtained the information from the Principal on various questions raised by him. He also stated that he had recorded the statements of some of the students. The Inquiry Officer further mentioned in this report that despite best efforts the complainant had not appeared before him. Letters sent to him on the address mentioned in the complaint had been received back undelivered and there had been no reply on the telephone numbers mentioned in the complaint. However, in this interim report he made certain recommendations. According to him, from the records of five years he had noticed that the majority of the seats had gone to the outside students which may not be in accordance with the policy of the Government. Another point mentioned by him was that the institution had not got the approval for the fee structure. He also observed that the prospectus issued by the respondents did not indicate distribution of seats viz : payment or fee, whereas this information should have been given in the prospectus. He, therefore, recommended that some senior level officer of the Directorate of Technical Education and Industrial Training, Punjab be put as an observer or a Member of Admission Committee so as to ensure non-violation of the policies of the Government of Punjab. He, however, made it clear that he would be submitting the final report after hearing the case from the complainant. The learned counsel for the petitioners has pointed out that no final report has been submitted by him up to this date as the complainant has not come forward to substantiate the complaint.

3. On the basis of interim report of the Inquiry Officer, a show cause notice dated 25.5.1999 (Annexure P-2) was issued to the petitioner No. 2 requiring it to explain why it should not be disaffiliated on account of the following facts :-

"1) As per the record of the last 5 years so this institute, most of the seats were filled from the students of other States.

2) This institute has divided the seats into following two categories of its own in violation of instructions/norms of Govt.

a) Payment seats @ Rs. 20,000/- per year.

b) Free seats @ Rs. 8,000/- per year.

As per, report this fee structure has been approved from the administrator of institute but no approval has been got from the Govt.

c) This division of seats into payment and free seats has not been shown in the prospectus."

4. The petitioner No. 2 was required to furnish a reply by 28.5.1999. However, this letter is stated to have been received by petitioner No. 2 on 10.6.1999 and immediately thereafter it furnished the necessary explanation vide letter dated 14.6.1999 (Annexure P-3) which was sent by registered post. In this letter it was explained that since the course was not very popular in Punjab there were not enough takers from the State and, therefore, since the seats remained unfilled, the same were given to the outsiders. It was further pointed out that even after admitting all the applicants, some seats still remained unfilled. Regarding the issue of fee it was explained that as per the decision of the Managing Committee the division of seats on payment and non-payment basis had been kept at par with other Engineering Colleges and Polytechnics run by the private managements in the State and as such no norms had been violated. The petitioner No. 2 specifically referred to the example of United Christian Institute and also to its earlier letter No. Spl. 101 dated 25.1.1999 in which the position is stated to have been comprehensively explained. Thereafter, the respondent No. 2 issued an order dated 10.8.1999 (Annexure P-5) whereby Sh. Vinod Kumar, Coordinator, Technical Education Wing, was appointed as Supervisor for the admission for the session 1999-2000. It is further explained that the admissions for the session 1999-2000 were made under the supervision of said Sh. Vinod Kumar who submitted his report on 16.9.1999 confirming that the admissions were made on merit and the fees had been collected as per the instructions of the Government. The learned counsel pointed out that in this report reference to the resistance put up by the Principal on various issues was due to the fact that the petitioners had challenged the very appointment of Shri Vinod Kumar as Supervisor for admission in respect of which the earlier writ petition had been filed which is still pending. It was further pointed out that despite the fact that no final report had been received from the Inquiry Officer on the complaint filed by the All India Students Federation and despite the fact that it was confirmed by Sh. Vinod Kumar that the admissions for the session 1999-2000 had been made in accordance with the Government policy, the respondent No. 2 had passed the impugned order dated 27.6.2000 disaffiliating the Art & Craft, and Teacher Training Course being run by the petitioner No. 2. In this order it has been stated that no reply to the show-cause notice dated 25.5.1999 had been filed by the petitioner No. 2 and that the reminder sent to it on 18.6.1999 for obtaining the reply had been received back undelivered. The operative part of the order states that the disaffiliation was being ordered on account of the violation of the following conditions applicable to the institute :-

"i) These Institutes will make admission on merit as directed by the Director Technical Education & Industrial Training, Punjab, on the basis of Common Entrance Test or otherwise on the basis of minimum prescribed qualifications, age factor or any other precondition imposed by the Department.

ii) Management will charge fee and funds as prescribed by the Government.

iii) In case any of the conditions is violated, the department shall be fully competent to de-affiliate such institutions."

The learned counsel for the petitioner contends that the impugned order has been passed in a vindictive manner as a retaliation to the petitioners' action of filing a writ petition in the High Court against order dated 10.8.1999 appointing Sh. Vinod Kumar as a Supervisor to the admissions for the session 1999-2000. To elaborate this point our attention was invited to paragraph 10 of the writ petition, which was paragraph 10 in the earlier writ petition as well, which contains the ground of attack to the appointment of Sh. Vinod Kumar as Supervisor. Paragraph 10 of the present writ petition reads as under:

"10 : That inspite of the fact that the petitioner-institute is a private un- aided and minority institutions, and is also following the rules/regulations of the Board sincerely, the government is continuing its interference in the running of the internal administration of the petitioner-institute which is obvious from the following paragraphs."

The reply to this paragraph in the written statement filed in the present writ petition is as under :-

"Para 10 Admitted to the extent that the petitioners institute is private, un-aided but it is specifically denied being wrong and incorrect that the respondents are interfering in the running of internal administration of the petitioners Institution."

On the other hand the reply to this para in the written statement dated 15.9.1999 filed in the earlier writ petition was as under :

"Para 10 : Wrong hence denied being incorrect. The various complaints made by the All India Sikh Students Federation. Akhil Vidyarthi Parishad, Punjab and trainees of this Institute have been received by the respondents in which allegations about wrong admission and huge charging of fee by the Management of this Institute were made. The complaints are being processed and enquiries have already been ordered. The interim report received from the Inquiry Officer shows that the prima facie there are certain irregularities/illegality being conducted by the petitioners."

From the above paragraphs it was pointed out that the same officer was shifting his stand. On 15.9.1999 he had stated that the issues regarding wrong admission and huge charging of fee were being processed and, therefore, the interference in the internal administration of the petitioner was justified. However, in the present writ petition, he has denied that any interference in the

internal administration of the petitioner was being made. The petitioner farther pointed out that it is evident from record that the entire action has emanated on the complaint of Sh. Joginder Singh, General Secretary of All India Sikh Students Federation, which was made on 21.7.1997 and which was being inquired into. Despite the fact that the inquiry officer had clearly stated that the complainant had not come forward to substantiate the complaint and despite the fact that the Inquiry Officer had merely submitted an interim report based on his observations only, the extreme step of disaffiliation vide the impugned order has been taken without any further material coming to light. It is further argued that the Inquiry Officer has merely made certain observations in his interim report dated 2.7.1998 and had not recorded any final conclusions. It was only as an interim measure that he had recommended for the appointment of a senior officer to supervise the admissions in future to ensure that the policies of the State Government were not violated. This recommendation was accepted and accordingly Shri Vinod Kumar was appointed for this purpose vide order dated 10.8.1999. Nothing had happened thereafter which could justify the issue of the impugned order disaffiliating the course run by the petitioner No. 2. The arbitrariness and illegality of the impugned order were also demonstrated on the ground of violation of principles of equity and natural justice. The petitioner No. 2 had duly furnished a reply to the show-cause notice dated 25.5.1999 on 14.6.1999 vide registered post proof of which had been furnished as Annexure P-4 with the writ petition. This reply was not taken into consideration as it is clearly mentioned in the order that no reply to notice dated 25.5.1999 had been furnished. According to the learned counsel, the respondent No. 2 in the impugned order has also stated that a reminder had been sent on 18.6.1999 which had been received back undelivered but the order does not say why it had not been sent for fresh service. According to her it was incumbent upon the respondent No. 2 to send this letter again to the petitioners so that the position explained in the reply already filed on 14.6.1999 could be brought to his notice:

5. Referring to the grounds on which the disaffiliation has been ordered she stated that there were only two basic grounds viz: i) that the admissions had been made by violating directions of respondent No. 2 to the effect that the admissions be made on merits on the basis of common entrance test or otherwise on the basis of minimum prescribed qualifications, age factor or any pre-condition imposed by the department; and ii) the fee had been charged higher than the fee prescribed by the Government. It was pointed out that the impugned order which is purported to have been passed on the basis of the interim report of the inquiry officer Sh. U.S. Sagar, does not refer to the year in which the aforesaid two violations are alleged to have taken place. According to her from the show-cause notice dated 25.5.1999 it is evident that it was based on the complaint relating to the admissions made in August, 1997. In this show-cause notice there was no charge that the admissions had been made by violating the condition of merit or any other prescribed conditions. Neither the inquiry officer had pointed out any such instance in his interim report nor does

the impugned order refer to even a single instance of such admission. It was further pointed out that as prescribed by the Government, the admissions are made by a selection committee which is headed by the Sub Divisional Officer (C) who is a very senior Government officer and this by itself ensures that the Government policies are not violated. Thus, this could not be a ground for disaffiliating the course being run by the petitioner No. 2. It was further pointed out that the charge in the show-cause notice was that most of the seats had been given to students from other States and the position about this had duly been explained in the letter dated 14.6.1999. It had been pointed out that the course was not very popular and not even a single eligible applicant had been denied admission. It had also been further explained that even after granting admission to all the eligible candidates some seats had remained unfilled.

6, Regarding the other grounds of disaffiliation about charging the fee and funds in excess of what had been prescribed by the Government it was contended that the Government had not prescribed any fee for the unaided institutions. The petitioners in the reply dated 14.6.1999 had duly explained that in the absence of any prescription by the Government, the institution was charging the same fee as was being charged by the other Engineering Colleges and Polytechnics run by the private managements. The learned counsel for the petitioners also invited our attention to reply to paragraphs (viii) and (ix) of the written statement. In reply to paragraph (viii) it has been clearly mentioned that "the fee structure for the private unaided institutions is already under consideration of the department and the same will be made applicable as and when it is finally decided/ approved." However, in paragraph (ix) it is stated as under :-

"It is wrong and incorrect to say that the Department is not issuing any guidelines for charging of fee by the private un-aided Institutions which are affiliated to the respondent No. 2. The Private unaided Institute will charge fee in accordance with the rates prescribed by the Govt. The petitioner has not charged the fee in consonance with the orders issued by the respondents."

She referred to the contradiction in the reply to the above two paragraphs. In para (viii) it is stated that the fee structure was under consideration and in para (ix) it is alleged that guide-lines had already been issued for charging fee by the private unaided institutions. To further highlight this point that no such guide-lines had been issued in respect of private unaided institutions she further referred to the order issued by the Department of Technical Education & Industrial Training Institute dated 15.3.1999 (Annexure P-14) wherein the fee structures in Industrial Training Institutes etc. were revised. In this letter after giving the necessary details of revision it is mentioned as under :-

"Duration of New Rates :

The new rates would be applicable from 1999-2000. The decision should be implemented in all Govt. Industrial Training Institutes prospectively i.e. commencing from the academic session 1999-2000 for student admitted in

1999- 2000. Students admitted prior to 1999-2000, will therefore, continue to be charged fees at the old rates. Privately managed aided institutions may be advised to adopt the new fee structure for the academic year 1999-2000 for students admitted from 1999-2000."

From the extract as reproduced above it is apparent that even the revised fee structure applicable for the session 1999-2000 was made applicable to privately managed aided institutions only and it did not. prescribe any fee structure for the unaided institutions like the petitioners. Learned counsel for the petitioners also contended that the Supervisor appointed by the respondent No. 2 Sh. Vinod Kumar had also confirmed that the admissions for the session 1999-2000 had been made on merit and proper fee had been charged. Thus, when no fee structure had been prescribed for private unaided institutes it is not understood as to how it could have been disregarded or violated. The impugned order also does not mention as to how and in what manner the fee structure had been violated. Thus, it was contended that respondent No. 2 was not justified in disaffiliating the course run by petitioner No. 2 on this ground also.

7. Mrs. S.K. Bhatia, learned Deputy Advocate General, Punjab supported the action of the respondent No. 2. She referred to the circular dated 8.6.1999 issued by the respondent No. 2 prescribing the procedure for admission and referred to some Clauses thereof to show that the petitioner No. 2 had violated some of the conditions mentioned therein. She refuted the claim of the petitioners that there were not enough applicants from within the State to fill all the seats reserved for them. According to her since the year 1999 when the admissions were being made under the supervision of a supervisor, all such seats were filled by candidates from within the State and, therefore, it is not believable that in earlier years enough candidates from within the State were not available. According to her even if there were not enough candidates for the seats reserved for the candidates of the State of Punjab, the same could not be filled by admitting students from outside. According to her it was incumbent upon the petitioner No. 2 to keep them unfilled and admission to those seats should, have been done as per condition No. 6 which reads as under :

"6. For unfilled seats, in case admission is required the same would be done at the level of the head office after advertisement it in the newspapers."

She also submitted that, the list of unfilled seats trade-wise should have been put on the notice board along with the list of selected candidates as required by condition No. 13 of the said circular which reads as under:-

"13. Alongwith the list of selected candidates, the lists of unfilled seats be put up on the notice board trade-wise."

Regarding the fee structure she relied on the memo dated 15.3.1999 (Annexure P-14) in which the fee structure had been prescribed. Lastly she contended that the petitioner had no vested right to claim affiliation as imparting education could not be treated as trade or business, and it was, therefore, totally a matter of

discretion of the respondents to grant affiliation or not. For this proposition she placed reliance on the decision of the apex Court in *Until Krishnan, J. P. & others v. State of Andhra Pradesh & others* 1993(2) RSJ 1 : 1993(2) SCT 512 (SC).

8. After having heard the counsel for the parties and after perusing the relevant documents, we are satisfied that impugned order dated 27.6.2000 (Annexure P-6) cannot be sustained for more reasons than one. It has been correctly pointed out that the said order is contrary to the principles of equity and natural justice. The petitioner No. 2 had duly furnished a reply to the show-cause notice on 14.6.1999, which had been sent by registered post. However, while passing the impugned order this reply has not been considered. The presumption of a letter having been sent by registered post will be in favour of its receipt by the addressee. At any rate, as has been correctly pointed out, the respondents No. 2 chose to issue a reminder on 18.6.1999 which was admittedly received back undelivered. The order does not mention as to why it could not be delivered. However, he has made no attempt to get this letter re-delivered in order to afford a reasonable opportunity of being heard to the petitioners. Thus, the order is clearly violative of principles of equity and natural justice having been passed without affording a reasonable opportunity of being heard.

9. Even on merits the petitioner No. 2 has clearly been able to show that the grounds for disaffiliating its course was unwarranted. At the outset we would like to mention that the validity of the order will have to be seen only on the basis of charges brought in the show-cause notice and the findings recorded thereon. No other grounds which do not find any mention either in the show-cause notice or in the order can be pressed into service to support the impugned order. The first ground for disaffiliation is that the petitioner No. 2 has violated the condition that the admissions are to be made on merit on the basis of common entrance test or otherwise on the basis of minimum prescribed qualification, age factor or any other pre-condition imposed by the department. A perusal of the show-cause notice dated 25.5.1999 shows that there is no such charge levelled against the petitioner No. 2. However, neither the show-cause notice nor the impugned order referred to even a single instance of admission where this condition had been violated. Even at the time of arguments no specific instance was brought to our notice. On the other hand in the inspection report regarding admissions made in 1998 on 25/26.8.1998 Smt. Usha Rani, Deputy Director (Inspection) has stated that admissions had been made under the Chairmanship of S.D.p. (C) by following the due procedure. Similarly, in his report dated 16.9.1999 the Supervisor appointed by the respondent No, 2, Shri Vinod Kumar, has clearly stated that the admissions made, for the session 1999-2000 were in order. Thus, there is no material on record to justify the charge of violating the condition of merit for the purpose of admissions. Similarly, the charge of collecting the fee higher than what was prescribed by the Government is also without any basis. Despite our pointed queries to the Deputy Advocate General as to what was the fee structure prescribed by the Government for the unaided institutions and in what manner the petitioner No. 2 had charged fee higher than what was

prescribed, she could not point out any document or circular in which such a fee structure had been prescribed. On the other hand, as already pointed out by the learned counsel for the petitioners, no fee structure appears to have been prescribed for the unaided private institutions even up to this date. The contention of the petitioners that they were charging the same fee as were being charged by other unaided private institutions has remained uncontroverted. Thus, this charge relied upon in the impugned order remains unsubstantiated. Since these are the only two charges on the basis of which the impugned order has been passed and since both the charges have been found to be without any basis, the impugned order cannot be sustained.

10. We may also refer to the contention of the learned Deputy Advocate General that admissions to outsiders have been granted even over and above the quota fixed for them. We have already noticed that in the show-cause notice this charge had been levelled. However, it was not made ground for disaffiliating the institution in the impugned order. The petitioner No. 2 has clearly explained that they have not denied admission even to a single student from the State of Punjab and even after granting admission to all the eligible candidate who had applied for the course, some seats are still lying vacant. In such a situation, we are satisfied that no grievance can be made if students from outside are accommodated. Such an action could warrant interference only if the outsiders are accommodated at the cost of the candidates from the State of Punjab. Not even a single instance has been pointed out where an applicant from the State of Punjab had not been granted admission. At any rate as already mentioned this has not been made a ground for disaffiliation in the impugned order and, therefore, is purely academic.

11. Looking from another angle also the impugned order appears to be totally unjustified. The facts already noticed above clearly show that the entire case had been initiated on the basis of a complaint filed by the All India Sikh Students Federation. The complainant had not come forward to support the complaint or substantiate the charges levelled therein. The respondent No. 2 had referred the matter to an Inquiry Officer who was seized with the matter. The inquiry is still under process and the final report has not been submitted. The Inquiry Officer, in order to prevent any possible violation of the Government policy, had in his interim report recommended for the appointment of a senior level officer to supervise the admission into the petitioner No. 2. This recommendation had duly been accepted and implemented vide order dated 10.8.1999 and Sh. Vinod Kumar was appointed as the Supervisor. He had duly supervised the admissions for the sessions 1999-2000 and submitted his report about the same being in accordance with the instructions of the Government. In the light of these facts and in the absence of any further material coming to the notice of me respondent No. 2 it seems very strange that without awaiting for the final report of the Inquiry Officer he has chosen to pass the impugned order dated 27.6.2000 after one year. This does lend credence to the charge of the petitioners that the provocation for passing the impugned order was the filing of the earlier writ

petition by the petitioners challenging the appointment of Sh. Vinod Kumar as Supervisor which had irked the respondent No. 2. However, we shall part with this matter with these observations only and not record any further finding.

12. The reliance placed by the Deputy Advocate General on the decision of the Supreme Court in Unni Krishnan's case (supra) is totally misplaced. In that case the Supreme Court was dealing with the issue whether the right to establish an educational institution carries with it the right to recognition or the right to affiliation. It was held that there was no such fundamental right. However, the Supreme Court further observed that the private institutions were merely supplementing the activity of the State to impart education to the people and they cannot survive without recognition or affiliation from the State authorities. It was, therefore, held that the State was under an obligation to impose appropriate conditions for grant of recognition/affiliation and must insist on the compliance of such conditions before granting recognition/affiliation. However, the apex Court has nowhere held that it is merely a discretion of the State authorities to grant or not to grant affiliation to a private institution. In the present case, the impugned order is being challenged on the ground that the petitioner has not violated any of the conditions imposed by the State and as such affiliation already granted to it could not be withdrawn.

13. In view of the above discussion, we allow this writ petition and quash the impugned order dated 27.6.2000 passed by respondent No. 2 disaffiliating the Art & Craft and Teacher Training Course run by the petitioner No. 2. However, in the circumstances of the case, there shall be no order as to costs.

14. Before parting we would like to clarify that in case the Inquiry Officer in his final report finds the petitioners guilty of any violations, the respondents shall be free to take any appropriate action in accordance with law. We also expect the respondents to take decision objectively and not be provoked by the fact that the petitioners had approached this Court.

15. Writ Petition allowed.