
(1991) 11 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11362 of 1991

Devinder Kumar

APPELLANT

Vs

Punjab State and Others

RESPONDENT

Date of Decision : 28-11-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227, 41, 45

Citation : (1992) 101 PLR 59

Hon'ble Judges : N.C. Jain, J;H.S. Bedi, J;A.L. Bahri, J

Bench : Full Bench

Advocate : Ashok Aggarwal and Yogesh Goel, for the Appellant; H.S. Riar, Addl. A.G. and Tarlok Singh, for the Respondent

Judgement

A.L. Bahri, J.—Vide this Judgment two Civil Writ Petitions (Nos. 11362 and 11410 of 1991) are being disposed of. The facts and questions of law involved therein are identical.

2. The Division Bench referred the cases to the Full Bench observing that the judgment rendered by the Division Bench in C.W.P. 13455 of 1991 (Pawan Kumar v. State of Punjab etc. dated September 16, 1991, needed re-consideration.

3. After notice of motion having been issued the respondents have filed written statements in the cases. Thus, we have afforded full hearing to counsel for the parties.

4. 78 persons are petitioners in C.W.P. 11362 and 442 in the other writ petition. All these petitioners completed age of 14 years on or before October 31, 1991 and thus claim to be eligible to appear in matriculation examination as private candidates as per Regulation No. 6 as contained in reply to Calendar of 1988 published by Punjab School Education Board, respondent No. 2. The aforesaid Regulation No. 6 was applicable to matriculation examination conducted in the years 1989-90 and 1990-91. Regulation No. 6 was amended prescribing eligibility for private candidates for matriculation examination of 1991-92, copy

of which is Annexure P. 1 which reads as under :-

"It has been decided that only those candidates can appear as a private candidate for matriculation examination of 1991-92 session who :-

(i) Have completed 14 years of age on 31st October before the start of the year of examination and have passed middle standard examination from a recognised school or any other equivalent examination considered as such by the Board at least two years prior to the start of the examination,

(ii) Have failed in the matriculation examination,

(iii) Are regular students of recognised school,

(iv) Are on the Punjab Open School Register."

5. The challenge in the writ petitions is to the amendment made in Regulation No. 6 as above as according to the petitioners they would be deprived of their right to appear as private candidate in the matriculation examination to be conducted in the year 1991-92 although they had completed 14 years of age as on October 31, 1991. The petitioners have not passed middle standard examination or any there equivalent examination considered as such by the Board. The amendment with respect to eligibility condition of passing of middle standard examination for appearing in the matriculation examination 1991-92 session has been made without authority of law. Such a condition is unconstitutional, arbitrary, discriminatory and against the principles of natural justice. Permission of the State Government was obtained before issuing of the amendment of the Regulation Annexure P.1. The change in the eligibility condition is impossible of fulfilment by the petitioners at this stage. In the written statement filed on behalf of the Board the stand has been taken that Regulation could be made under the provision of Section 17 and 24 of the Punjab School Education Board Act, 1969 and has been rightly framed. Reasons for amendment of the Regulation have also been given in the written statement that to raise the standard of education it was considered necessary. The complete data of the student passing as regular students and as private candidates for the year 1985 to 1990 was given in the written statement indicating that the pass percentage of the private candidates was much on the lower side. It was further emphasised that there was tenancy to use unfair means much more amongst the private candidates as compared to the regular candidates. The petitioners were not completely debarred from taking matriculation examination to be held in 1991-92 as even without passing middle standard examination and having completed 14 years of age as on October 31, 1991 they could still appear in the matriculation examination by joining Open School as contemplated under clause (iv) of Annexure P. 1 reproduced above. The Board will make arrangement for imparting necessary instructions to such of the candidates joining Open School to enable them to answer questions in regular subjects in Punjabi medium. Additional affidavit was filed on behalf of the petitioners inter alia alleging that medium of instructions of the petitioners was either English or Hindi and it will

not be possible for such students to pass matriculation examination in any other medium and the Regulation aforesaid debarring them from appearing in the matric examination would be unreasonable.

6. In Pawan Kumar v. State of Punjab C. W. P. No. 13455 of 1991. the Division Bench after making reference to Sec. 24 of the Act held that prior permission of the State Government was not required to amend the Regulation by the Board. Only a copy of the Regulation so amended was required to be submitted to the State Government. Reference was also made to the scheme of open Schools. The Board had set up 543 Centres for giving necessary instructions and anyone undergoing such training course would be entitled to appear as a private candidate in the matriculation examination to be conducted by the Board. With these observations the writ petition was dismissed.

7. Section 17 of the Act lays down powers and functions of the Board. Relevant extract of Section 17 is reproduced below :-

"Powers and functions of the Board:-

Subject to the provisions of this Act, the Board shall exercise and perform the following powers and other functions, namely:-

xxxx xxxx xxxx xxxx (5) admit to the examinations, on the prescribed conditions, candidates who have pursued the prescribed Courses of instruction, whether in (affiliated institutions) or otherwise ;

xxxx xxxx xxxx xxxx (12) lay down conditions and restrictions for admission of candidates to the examination;

xxxx xxxx xxxx xxxx (16) organise and provide lectures, demonstrations, educational tours and "exhibition, seminars and symposia and take such other measures, as may be necessary to raise and promote the quality and standard of school teaching and education;"

Section 24 of the Act authorise the Board to make Regulations for carrying out the provisions of the Act and copy of the Regulation so made is required to be submitted to the State Government. Section 24 (2) (b) is reproduced below which is relevant for consideration in this case:-

"(2) In particular and without prejudice to the generality of the foregoing power, the Board may make regulations providing for all or any of the following matters, namely :-?

xx xx xx the conditions on which candidates shall be admitted to the examinations and the fees to be paid by them;"

The aforesaid Regulation No. 6 was amended by the Board by virtue of the powers conferred by the two provisions referred to above. The Division Bench, therefore, rightly came to the conclusion that Regulation No. 6 was amended under authority of law.

8. At the time of addressing arguments in the present cases learned counsel for the petitioners did not challenge the correctness of the judgment of the Division Bench in Pawan Kumar's case on the grounds which were made the basis of such decision.. However it was argued that the amendment of Regulation No. 6 is unreasonable and thus liable to be quashed as it completely debars the petitioners from appearing in the matriculation examination to be conducted in 1991-92. But for this amendment in the Regulation, the petitioners under the old Regulation No. 6 could have, as a matter of right, appeared in such examination. The condition imposed in the Regulation is oppressive and harsh as the petitioners are supposed to wait for two years after passing middle standard examination to appear in the matriculation examination as private candidate. Learned counsel for the petitioners in support of the aforesaid contention relied upon the decision of the Supreme Court in *Ajay Hasia etc. v. Khalid Mujib Sehravardi and Ors.*, AIR 1950 SC 1975 . The case related to admission to the Regional Engineer College, Srinagar. The administration and management of the college was carried on by a Society registered under Jammu & Kashmir Registration of Societies Act. Some rules were framed under the memorandum of association of the Society. Rule 15 conferred power on the Board to make bye-laws for admission of students to various courses and clause (14) of Rule 15 empowered to Board to delegate to a committee or a chairman such of its powers for the conduct of its business as it may deem fit. Pursuant to clause (4) of clause (15) Board of Governors laid down provision for admission of students to various courses in the college by passing a resolution. It was this resolution which was subject matter of discussion in the case. Selection for admission was made which was challenged by the petitioners in that ease on different ground which were covered by the decision of the Supreme Court in *Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others*, , and the grounds which was further considered by the Supreme Court in *Ajay Hasia's case (supra)* were that the Society acted arbitrarily in the matter of grant of admission firstly by including marks obtained by the candidates at the qualifying examination, secondly by relying upon Viva Voce examination for test for determination on comparative merit of the candidates, thirdly by allocating as many as 50 marks for Viva Voce examination as against 100 marks allocated for the written test and lastly by holding superficial interviews lasting only 2 to 3 minutes on average and asking questions which had no relevance to assessment of suitability of the candidates. Learned counsel for the petitioners had referred to the following observations of the Supreme Court in the aforesaid case relating to allocation of marks for Viva Voce test :

"Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

9. The aforesaid observation are to be taken into consideration in the context of the resolution of the byelaws which was under discussion in the aforesaid case. Obviously while considering the applicability of Article 14 of the Constitution if the statute or the Regulation framed thereunder are considered to be arbitrary and discriminatory they would be against the provision of the constitution and hence ultra virus and while considering the applicability of Article 14 of the Constitution the Court also finds that the action was highly unreasonable and that would be supporting the conclusion of arbitrariness and discrimination. Learned counsel for the petitioner also referred to the decision of the Supreme Court in AIR India Vs. Nergesh Meerza and Others, . The question which was considered in para 80 of the judgment relate to a resolution terminating services of Air Hostess on first pregnancy. The aforesaid provision was held to be violative of Article 14 of the Constitution. The following observations were made :-

"Having taken the AH in service and after having utilised her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor AH not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us that the termination of the services of an AH under circumstances is not only a callous and cruel act but an open insult to Indian Womanhood- the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution."

In para 95 of the judgment reference was made to the earlier decision of the Supreme Court in Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, from where the following passage was quoted :

"Legislation, which arbitrarily or excessively invades the rights, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the freedom guaranteed under Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in reasonableness."

In para 96 reference was made to the decision of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . and the following passage there from was quoted :-

"The view I have taken above proceeds of the assumption that there are inherent or natural human rights of the individual recognised by and embodied in our Constitution.....If either the reason sanctioned by the law is absent, or "the procedure followed in arriving at the conclusion that such a reason exists is unreasonable, the order having the effect of deprivation or restriction must be quashed,"

and Bhagwati, J. observed thus :

"Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically,, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.....It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied".

10. In Dwarka Prasad's case (supra) the question involved related to interpretation of Article 19(1)(g) and clause (6) of the Constitution relating to imposition of reasonable restrictions that the aforesaid observations were made. In Air India's case (supra) and in Maneka Gandhi's case (supra) also the consideration of scope of Article 14 was vis-a-vis fundamental rights conferred by the Constitution. In Ajay Hasia's case (supra) for consideration was a Regulation or Bye-law of the Society providing procedural matters that was tested on the touch-stone of reasonableness or fairness. All these decisions are, therefore, not helpful in deciding the question raised above.

11. A clear cut distinction was brought out between a Bye-law and Regulation made under a statute and the grounds on which the same could be challenged as ultra vires the provisions of the Constitution in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, . a case concerning Educational Board (like the respondent in the present case) constituted under the provisions of Maharashtra Secondary and Higher Secondary Education Board Act of 1965. The matter related to vires of Regulation 104 (3) framed under the aforesaid Act which reads as under :-

"104. VERIFICATION OF MARKS OBTAINED BY A CANDIDATE IN A SUBJECT.

(1) Any candidate who has appeared at the Higher Secondary Certificate Examination may apply to the Divisional Secretary for verification of marks in any particular subject. The verification will be restricted to checking whether all the answers have been examined and that there has been no mistake in the totaling of marks for each question in that subject and transferring marks correctly on the first cover page of the answer-book and whether the supplements attached to- the answer book mentioned by the candidate are intact. No revaluation of the answer-book or supplements shall be done. (2) Such an application must be made by the candidate through the Head of the Junior College which presented him for the examination, within two weeks of the declaration of the examination results and must be accompanied by a fee of Rs. 10/- for each subject."

12. It was held that such a regulation was made under the Authority of law i. e. the provisions of the aforesaid Act, which are like the aforesaid provisions in the

present case. While referring to the provisions made by subordinate Legislature like Rules, Regulations or Bye-laws, it was observed in para 18 as under, while making distinction therein vis-a-vis the ground of challenge being ultra vires the provisions of the Constitution:-

"The constitutionality of the impugned regulations has to be adjudged only by a three-fold test, namely, (1) whether the provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution."

In para 16 it was observed as under :-

"The legislature, while enacting Sections 36 and 38, must be assumed to have been fully aware of the niceties of the legal position governing the distinction between rules/regulations properly so called and bye-laws. When the statute contains a clear indication that the distinct regulation-making power conferred under S. 36 was not intended as a power merely to frame bye-laws, it is not open to the Court to ignore the same and treat the regulations made u/s 36 as mere bye-laws in order to bring them within the scope of justiciability by applying the test of reasonableness."

13. The aforesaid provision in Regulation 104(3) of the Maharashtra Regulations was held not to be in the nature of the bye-law and it was not ultra vires on the ground of its being unreasonable.

14. With regard to the policy decision to be taken by the authorities under the provisions of the Act it was observed as under in para 14 of the judgment :-

"It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would, have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of a policy laid down by regulation-making body because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute."

In para 16 of the judgment it was observed as under :-

"Any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act:"

In para 22 of the judgment it was observed as under :-

"It is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by the legislature or its delegate and to strike down as unreasonable a bye-law (assuming that the Regn. 104(3) is a bye-law) merely on the ground that the policy enunciated therein does not meet with the approval of the Court in regard to its efficaciousness for implementation of the object and purposes of the Act."

15. The ratio of the decision in Maharashtra State Board's case is fully applicable to the case in hand. By virtue of the provisions of Sections 17 and 24 of the Act, Regulations were framed by the Board for laying down conditions and restrictions for admission of candidates to the examination. The candidates who are covered by such Regulations could be admitted to the examination to be conducted by the Board. Regulation No; 6 as amended Annexure P. 1 provides the relevant date fixed (herein for eligibility of the candidate for appearing in the examination to be held in 1992 for admission of private candidates. In case the old rule had not been amended, the petitioners could have been admitted to the examination as private candidates on completion of 14 years of age as on October 31, 1991. The Board took a policy decision for the reasons already enumerated above as contained in the written statement that in order to raise the standard of education it was considered proper that all the students must pass middle standard examination and thereafter to pass matriculation examination after expiry of a period of two years. The regular school students are required to wait for two years to appear in the matric examination after passing their middle. standard examination , and if such a condition is also made applicable to the private candidates they are brought at par with the regular school students. Thus it cannot be said that the policy framed is unreasonable, arbitrary, capricious, discriminatory or unfair. In the case of private candidates this condition is applicable to all who are to pass middle standard examination in any of the mediums of education such as Punjabi, English or Hindi. All such candidates have to wait for two years after passing middle standard examination to appear in the matric examination as private candidates. What has been argued on behalf of the petitioners is that they have not passed middle standard examination and if they now pass middle standard examination they have to wait for two more years to appear in the matriculation examination, under Regulation 6 as amended. According to them this has unnecessarily enlarged the educational career of the students which would not be in the interest of the students as a whole and it is in this sense that the amended Regulation is being described as oppressive and harsh. Apart from the fact that reasonableness of the Regulation cannot be gone into by the Court as held by the Supreme Court in Maharashtra Beard's case, it is not found that the result is to follow as has been suggested by the counsel for the petitioners. Persons who have not passed middle standard examination can also appear in the matriculation examination as private candidates if they are registered in the Punjab Open School. At this stage it may further be stated that all students whatever medium they have taken in the course of their educational

career i. e. Punjabi, English or Hindi can be registered in the Punjab Open Schools to take instructions in Punjabi medium to appear in the matriculation examination as private candidate. This shows that the Board was conscious of the fact that ordinarily candidates who had already completed 14 years of age or were to complete the same on October 31, 1991 were required to wait for two years on passing middle standard examination to make them eligible for appearing in the matriculation examination and under the amended rule they could not appear in the matriculation examination to be held in 1992. It was to accommodate this class of candidates that provision was made in clause (iv) of Annexure P. 1 to give them an opportunity of appearing in the matriculation examination to be held in 1992 if they chose to be registered in Open School. The scheme of Open School has also been furnished giving all the necessary particulars. It is not considered necessary to refer to the same in his judgment as the only ground stressed on behalf of the petitioners is that they had not passed middle standard examination ; their medium of instruction had been English or Hindi and not Punjabi and it would be difficult rather impossible for them to clear the matriculation examination with Punjabi medium even by attending the Open School. This contention cannot be accepted. It is for the Board to consider as to what type of education is to be imparted in the Open Schools to make the students proficient for taking matriculation examination to be held in 1992. If the Board considers that in the policy framed for opening Punjab Open Schools, this purpose can be achieved, the Court is not to sit in judgment over such a policy decision as already observed by the Supreme Court in Maharashtra Board's case. The Regulation as amended is not at all unreasonable as it gives opportunity." even to the petitioners and the like candidates who had not passed middle standard examination to appear in the matriculation examination to be held in 1992 without any discrimination of medium of instruction as all such students who are to join Open School are to pass the matriculation in Punjabi medium. The Regulation as framed even otherwise is reasonable.

16. No fundamental right of the petitioners has been infringed by framing Regulation No. 6-Annexure P. 1. The Directive Principles as contained in Chapter IV of the Constitution under" Articles 41 and 45 deals with the question of education and other subjects. Article 41 directs the State for making effective provision for securing right to education and Article 45 requires the State to provide free and compulsory education within a period of 10 years from commencement of the Constitution to the children until they complete age of 14 years. Even though these rights are not fundamental, and are not judicially enforceable as such, once the State by Legislature or administrative action provides facility for education its action must conform to the standard of equality and rationality underlying Article 14 of the Constitution. After 42nd amendment of the Constitution the subject of education has been inserted in list III of 7th Schedule attached to the Constitution. Punjab School Education Board Act of 1969 was enacted to achieve the object enunciated in the Directive Principles

aforesaid. It is left to the State to take policy decision in the matter of imparting education to the children and to implement the same framing enactments, rules and Regulations. If is the framework of enactment or policy decision there is any discrimination among similarity situated students the action could be subject to challenge. Otherwise whatever right exists is under the statute or the policy decision aforesaid as existing at the relevant time. For the session 1991-92 Regulation No. 6, as amended, Annexure P. 1 is to apply as all the persons who are covered in either of the clauses (i) to (iv) ought to be permitted to take matriculation examination as private candidates. The Regulation No. 6 as framed above is prospective in nature as the same is to apply for the session 1991-92 final examination to be held in 1992. For the examination held in 1991 it was the old Regulation which was applicable.

17. Learned counsel for the petitioner has argued that Regulation No. 6 as aforesaid is bad on account of being operative retrospectively. In support of this contention reliance was placed on the decision of the Supreme Court in Nani Gopal Mitra Vs. The State of Bihar, . The ratio of the decision aforesaid cannot be applied to the case in hand That was a case under the Prevention of Corruption Act With regard to some procedural matters amendment was made during pendency of the appeal and it was observed that the procedural amendment would operate retrospectively but in cases instituted under old procedure and which were still pending, when the amendment came in to force, old procedure would apply. The other case relied upon the subject in Hukam Chand etc. Vs. Union of India (UOI) and Others, . That was a case under the Displaced Persons Compensation and Rehabilitation Act While making reference to Section 40 of the Act it was observed that the same did not empower the Central Government either expressly or by necessary implication to make rule retrospectively As far as position of law as enunciated in this judgment is concerned there is no dispute Sections 17 and 24 of the Act authorises the Board to make regulations, as stated above. The regulation made is to apply retrospectively for the examination to be conducted in 1992 as already stated above. Further reliance was placed by the learned counsel for the petitioners on the decision of this Court in C. W. P. No 12503 of 1991 (Ashwani Sharma and Ors. v. Union of India and Anr.,. decided on August 28, 1991. In this case the petitioners joined the college in 1989-90, class 10+2 in Commerce faculty. They passed the same in April/May, 1991. As per Prospectus of the College then issued they could join B. Com. Part I in the College subject to the condition that they had obtained 40% marks. The college while changing the criteria for academic session 1991-92 allowed admission to B. Com. Part I to students of the college of commerce as well as others on merit. In this manner some of the petitioners who had secured more than 45% marks were ignored and had approached the Court. The Court observed in the operative part of the, judgment that undisputedly the old boys were to be given admission in B.Com. Part I according to the Prospectus prior to the change. The change could certainly be made but not to the prejudice of boys who had taken admission to the college on the explicit representation of the

college that old boys would be given admission to B.Com. Part I who had secured 40% marks. The writ Petition was allowed by the Division Bench on August 28, 1991. The position in the present case is entirely different. Either before the amendment of the Regulation or thereafter the petitioner had not changed their position like the one in the case referred to above by joining any institution that the Board could be estopped from applying the amended provisions to the petitioners. If the argument of the learned counsel for the petitioners is analysed logically, the purpose and object of the Act and the Regulations framed there under would be frustrated. As has been argued by the learned counsel for the petitioners it would be unjust to implement Annexure P. 1 for a period of two years as the petitioners were given the impression under the old Regulation that on attaining the age of 14 years they would be permitted to take matriculation examination as private candidate without passing middle standard examination. If this contention is accepted in respect of the petitioners who have now just completed 14 years of age or little earlier, all the children who had joined class I or who were studying in class 7th would contend that they joined the schools hoping under the old Regulation they would appear in the matriculation examination on completion of 14 years of age without passing middle standard examination, and that the amended Regulation should not be enforced at least for a period of 7 years. In other words the contention of counsel for the petitioners boils down to this that any enactment, rule or regulation should be enforced from class I. If that is so no policy of the State would be implemented to upgrade the standard of education. Under Article 45 referred to above a duty is cast upon the State to make provision for education of the children till they attain the age of 14 years but that does not mean that after the children attain 14 years of age no enactment, rules or regulations can be made. Even for higher education it is the duty of the State to make provision. It is only under the provision of the Act, Rules or Regulations framed thereunder that a candidate can claim his right for admission to an examination. If the petitioners, for the reasons best known to them refuse to join Open School, they cannot claim as a matter of right to appear in matriculation examination as private candidates. By amendment of Regulation No. 6, as already stated no vested right of the petitioners has been infringed.

18. The Court cannot give any directions for admission of student in the matriculation examination to be held in 1992 who do not fall under any of the categories of clause (i) to (iv) of Regulation No. 6 Annexure P. 1. The Supreme Court in *State of Tamil Nadu and Ors. v. St. Joseph Teachers Training Institute and Anr.* J. T. 1991. (2) S. C. 343. commented on the decision of the Court where such directions were given by the Court which were not warranted by the Act, Rules or the Regulations as under:-

"The Full Bench issued directions permitting the students to appear at the examination and directing the appellant authorities to make a special provision for supplementary examination. These directions in our opinion were unauthorised and wholly unjustified."

"The practice of admitting students by unauthorised educational Institutions and then seeking permission for permitting the students to appear at the examination has been looked with disfavour by this Court."

"The Court cannot be a party to direct the students to disobey the statute as that would be destructive of the rule of law."

"Since the students of unrecognised institutions were legally not entitled to appear at the examination held by the Education Department of the Government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. The directions issued by the Full Bench are destructive of the rule of law. Since the Division Bench issued the impugned orders following the judgment of the Full Bench the impugned orders are not sustainable in law."

19. From the discussion of various aspects of the case the following conclusions are arrived at :-

(1) Regulation No. 6-Annexure P. 1 has been framed by virtue of the authority formed under sections 17 and 24 of the Punjab School Education Board Act.

(2) Regulation No. 6 Annexure P. 1 providing categories of candidates who can be admitted to matriculation examination does not violate Article 14 of the Constitution.

(3) Regulation No. 6 - Annexure P. 1 cannot be challenged on the ground of unreasonableness.

(4) Regulation No. 6-Annexure P. 1 is otherwise not unreasonable.

(5) In the matter of laying down policy decision under the Directive Principles the authority vest with the State and the authorities constituted under the statute, to frame schemes for promoting education. Such authorities or Boards are the best judges on the subject and the Court is not to sit on their judgment.

20. Since the writ petitions deserve dismissal, the petitioners or the like students who had not got themselves registered in the Open School so far, would be admitted to such schools within a period of 10 days from today so that they may not suffer in completing their educational carrier.

21. Since it has been suggested that the Board is holding matriculation examination in 1992 in all the three languages i.e. English, Hindi, Punjabi medium for regular students, the Board may re-consider their decision promptly to save the interest of the present petitioners or the like students who were preparing for appearing in the matriculation examination with English or Hindi as medium and waive the stringent provision of passing of middle class examination and to permit them to take the examination as private candidates at least for two years.

22. With the observations aforesaid both these writ petitions are disposed of. No

order as to costs.