
(1986) 10 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4159 of 1986

Gaur Brahmin Vidya Pracharini Sabha (Registered)

APPELLANT

Vs

Maharishi Dayanand University, Rohtak and Others

RESPONDENT

Date of Decision : 28-10-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 29, 29(2), 30

Societies Registration Act, 1860 — Section 10, 13, 14, 16, 17

Citation : AIR 1987 P&H 252

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

Bench : Single Bench

Judgement

1. The petitioner is a society registered under the Societies Registration Act. It runs and manages five educational institutions situated at Rohatak--Gaur Brahmin Ayurvedic Degree College (hereinafter referred to as the College), is one of them. The college is admitted to the privileges of Maharishi Dayanand University, respondent No. 1. The statutes, regulations and ordinances of the Kurukshetra University, in respect of admission and recognition of colleges, are applicable to respondent No. 1. Admission to the college is made by the Principal and its managing committee and it is not within the purview of the University to conduct any entrance examination for the purpose of admission to it. According to the petitioner it is beyond the jurisdiction of respondent No. 1. However, vide Annexure P 4, respondent No. 1 decided that with effect from 1986-87, admission to the Pre-Ayurvedic Course be made through a competitive Ayurvedic Entrance Examination to be conducted by respondent No. 1 on the pattern of M.B.B.S./B.D.S./Textile Course for 20 seats in the college and for another 20 seats in Mahila Ayurvedic Degree College Kanya Gurukul, Khanpur Kalan (Sonapat). Applications from candidates for admission to Pre-Ayurvedic Course to these colleges were required to reach the Assistant Registrar (Results-II) of respondent No. 1 by 5-7-1986. The contention of petitioner is that respondent No. 1 has no right to direct admissions to the colleges. It is entirely for the Principal and the Managing Committee of the college to do so. Another grievance

of the petitioner is that respondent No. 1 has wrongly reduced the number of seats of Ayurvedic Degree Course in the College from 60 to 20. It is contended that the aforesaid impugned actions of respondent No. 1 are without jurisdiction. Through the present writ petition prayer is made for issuance of a writ of certiorari quashing the action of respondent No. 1 that with effect from 1986-87 admissions to the College shall be made through competitive Ayurveda entrance examination to be conducted by the University and the order that the number of seats of Ayurvedic Course in the college is reduced to 20.

2. The petitioner had in the first instance filed C.W.P. No. 1010 of 1986 in the Supreme Court wherein the following order was passed:--

"We are of the view that the petitioner should be asked to file a petition in the High Court. We, therefore, dismiss the petition without expressing any opinion on the merits of the case and reserving liberty to the petitioner to approach the High Court. There shall be statuts quo for one week."

3. When the present writ petition came up for motion hearing before the Division Bench on August 13, 1986, an interim order was passed to the effect that no admission shall be made either by the petitioner institution or the respondents till further orders. This order was later on clarified by the Division Bench on September 24, 1986 and it was made clear that the order dated August 13, 1986, was not intended to debar respondents 1 and 2 to make admissions to institutions other than the petitioner institution. Since the admission to the college had been stayed, the writ petition was directed to be fixed for hearing on 9-10-1986.

4. The petitioner, inter alia, contended that it does not receive any aid from the State Government and is, therefore, entitled to administer and manage its affairs including the admission of students to the Ayurvedic Course. The University respondent No. 1 is not competent to hold an examination for admission of students to the college which is exclusively run by the petitioner without any aid from the State. The order for holding the entrance examination for admission to the college is beyond the scope and jurisdiction of Maharishi Dayanand University Act, 1975 (hereinafter called the Act). The Executive Council of the University no doubt can impose one of the penalties enumerated in Section 22 of the Act if the college is not complying with the requirements of the Act, statutes, ordinances or regulations of the University, but it has no jurisdiction to control admissions to the college. It is further contended that Gaur Brahmin is a minority community in Rohtak and in the State of Haryana. The petitioner was brought into existence so that it could effectively serve its language, script and culture through educational institutions and, therefore, the right to establish institutions of its choice was a necessary concomitant to the right to serve its distinct personality. These cultural and educational rights are, therefore, protected by Arts. 29 and 30 of the Constitution. It is further pleaded that the admission to the College of the students to the choice of the University would lead to absurd consequences. There would be no motivation for shouldering the financial burden of the College

if the petitioner cannot admit students according to the selection made by its selection committee. The petitioner is prepared to abide by the standards prescribed by the University. The impugned action of the University is alleged to be violative of Articles 14 and 19 of the Constitution as also against the principles of natural justice as the seats in the college have been reduced without issuing any show cause notice to the petitioner.

5. The petition has been opposed by respondent No. 1 and a written statement has been filed on its behalf. It has been alleged that the petitioner had earlier filed Writ Petition No. 12908 of 1984 in the Supreme Court on similar grounds and the same was dismissed as withdrawn vide order dated 3-9-1985 (Annexure R-1/1). The University had filed a contempt application (Annexure R-1/2) against the petitioner in the Supreme Court. In the year 1985-86 the college was allowed to admit students, but it has not been consistently following the rules and regulations of the University in admitting students ignoring the merit over and above the sanctioned strength of the seats. It admitted 15 students in excess of the sanctioned strength of the University in Pre-Ayurveda Course. The Academic Council of the University vide resolution No. 96 (Annexure R-1/3) in its meeting on 5-7-1986 while regularising the excess admission in the interest of students and taking a lenient view decided to convey its displeasure to the principal and the management of the College. It is denied that the College is not getting any aid from the State. It is asserted that a sum of Rs. one lakh was paid to the College on account of grant in aid for library/laboratory equipment. The College also gave an undertaking that they will conform to the norms of the Indian Medicines Central Council and also to the rules and regulations of the University. It is denied that the petitioner is an institution established by a minority based on religion or language--Gaur Brahmin is a caste like other castes of Hindu religion. Hindus constitute a majority of population in the State of Haryana. Gaur Brahmin community has no distinct language, script or culture of its own. Therefore, Arts. 29 and 30 of the Constitution have no application in the case of the petitioner. It is further brought out that the Executive Council of the University in resolution No. 15 in its meeting held on 29-3-1986 considered and approved the recommendations of the Academic Council based on the report of the Inspection Committee consisting of four eminent teachers/doctors/administrators in the field of medical education, including representative of Indian Medicine Central Council. The inspection report of the Committee is Annexure R-1/5. It was observed by the committee that it firmly feels that the admission to Ayurvedic College should be made through an entrance examination conducted by the University for considering the inter se merit as is being done in M.B.B.S./B.D.S: and Textile Courses. The committee also recommended that admissions to the college may be reduced to 20 and annual inspection may be carried out after a year to see whether the college run by the petitioner will be able to provide facilities for five years or not. No increase in seats more than the recommended norms should be made. These recommendations were in fact based on the instructions, Annexure PC of the Indian Medicine Central Council,

New Delhi. Several complaints were being received by the University against the college. On 13-1-1978 the Executive Council of the University set up a high-powered committee to go into the details of working and teaching facilities in the college. The report of the high-powered committee dated 20-1-1978 is Annexure R 1/6. The report shows that the committee also received complaints from the students that the college would not admit any student unless capitation fee/donation was made. On 25-8-1983 another enquiry committee constituted by the Vice-Chancellor to look into the complaints received by the University regarding admission made by the College submitted its report, Annexure R-1/7. This report again shows the irregularities in admission and highlights the fact that the college was demanding donations and collecting the same from selected candidates. To eliminate these mal-practices in the matter of admission of students to the Ayurvedic course, the impugned decision was taken to introduce the admission scheme based on entrance examination. The University is under a duty to ensure that the standard of instructions imparted as well as the degrees/diplomas awarded by the University conform to the standards laid down by the Indian Medicine Central Council constituted under the Indian Medicine Central Council Act, 1971 (hereinafter referred to as the Central Council Act). The College cannot be allowed to become a teaching shop run on commercial lines--more for profit than for advancement of learning. Academic standards have to be maintained and meritorious candidates cannot be denied admission on extraneous considerations. Respondent No. 1 has pointed out that in earlier similar writ petition filed by the petitioner in the Supreme Court, to which mention has been made above, the following order was passed by the Supreme Court on 27-7-1984:--

"The admissions to College run by the petitioner shall be made pending disposal of writ petition in accordance with the procedure followed during last year. The representative of the University will be associated with the Selection Committee. Mr. Kacker learned counsel for the petitioner Colleges assures that the admissions will be made strictly in accordance with merit list prepared by the Selection Committee, subject to these modifications the interim order made earlier will continue pending disposal of the writ petition."

It has been pointed out that the petitioner admitted as many as 75 candidates to B.Ed. Course to its College of Education by departing from the order of merit thereby deliberately denying admission to more meritorious candidates in the select list prepared on the basis of merit by the selection committee which included representative of the University. Enquiry in this regard was made by the University through a committee. Report of the committee dated 10-9-1984 showed that the petitioner with mala fide intention and in order to cover up its irregularities was deliberately avoiding the enquiry committee. With a view to keep out a number of students selected on merit, letters were sent to them on addresses different from those given in their admission forms/despatch register either by omitting the name of the village or by changing the station. A detail in this regard has been given in the written statement. Respondent No. 1 contends

that under the aegis of the University such malpractices cannot be allowed to continue. Thus the decision was taken to regulate the admission on merits vide the impugned order. Seats in the college have been reduced to 20 keeping in view the hospital facilities, number of beds and other requirements fixed by the Indian Medicine Central Council. A rejoinder has been filed on behalf of the petitioner to counter the averments made in the written statement to reassert what has been stated in the petition.

6. The contention of the learned counsel for the petitioner that it is a minority institution, is not tenable. Brahmins are high caste Hindus and Hindus are in majority in the State of Haryana. Therefore, protection of Arts. 29 and 30 of the Constitution is not available to it. The learned counsel, however, relied on a Division Bench judgment of this Court in *Karan Singh v. Kurukshetra University*, Kurukshetra ILR (1976) P&H 859, wherein it has been held inter alia that University is not empowered to take upon itself the duties of the management of private college and appoint staff and select students for the college. What is within its powers while dealing with delinquent management of an affiliated private college is spelt out in Clause (22) of Ordinance XXI of 1974 of Kurukshetra University.: Even by virtue of the powers aforesaid the University could not impose the penalties enumerated therein without giving an opportunity of hearing to the management. The context in which the observations in *Karan Singh's* case (*supra*) occurred is, however; different as would be elaborated in the later part of this judgment.

7. The learned counsel then referred to the provisions of Ss. 2, 5, 10, 13, 14 and 16 of the Act, besides Ordinance 38.1, 16, 22, 24, 25, 27 and 31 to bring out that the University-respondent No. 1 admits a College to its privileges; its powers to provide for research and instructions in different branches of learning; to hold examinations and grant degrees, diplomas and other academic distinctions; the authorities of the University i.e. the Court, the Executive Council, the Academic Council, different faculties etc. also have the powers enumerated in the Act. Statutes and ordinances of the University are to provide for matters enumerated in sections 13 and 14 of the Act. Among other matters the ordinances can provide for admission of the students to the University and their enrolment as such. However, there is no provision vesting power with the University to regulate admissions to colleges admitted to its privileges, nor is there any provision authorising the University to limit or reduce number of students which an affiliated college may admit to its courses.

8. The above submissions of the learned counsel have again to be examined in the context of the present case. It is to be noted that degree in Ayurveda Course which the University-respondent No. 1 grants is subject to recognition by the Indian Medicine Central Council. The objects of the Central Council Act are to provide for the constitution of Indian Medicine Central Council and the maintenance of a Central Register of Indian Medicine and for matters connected therewith. Section 14 of the Act inter alia lays down that the medical

qualifications granted by any University, Board or other medical institutions in India which are included in the IInd Schedule shall be the recognised qualifications for the purposes of Central Council Act. It is further provided that any University, Board, or other medical institution in India which grants a medical qualification not included in the IInd Schedule may apply to the Central Council to have any such qualification recognised and the Government after consulting the Central Council may by a notification in the official gazette amend the IInd Schedule so as to include such qualification there. Section 17 of the Act provides that any medical qualification included in the IInd, IIIrd and IVth Schedules to the Act shall be sufficient qualifications for enrolment on any State Register of Indian Medicine. Section 18 of the Act provides that every University, Board or medical institution in India which grants a recognised medical qualification shall furnish such information as the Central Council may from time to time require as to the courses of study and examinations to be undergone in order to obtain such qualification as to the ages at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification. Section 19 of the Act lays down that the Central Council shall appoint such number of medical inspectors as it may deem requisite to inspect any medical college, hospital or other institution where education in Indian medicine is given or to attend any examination held by any University, Board or medical institution for the purpose of recommending to the Central Council recognition of medical qualifications granted by that University, Board or medical institution. Section 21 of the Act provides that when upon report by the Inspector it appears to the Central Council that the courses of study and examination to be undergone in, or the proficiency required from candidates at any examination held by the University, Board or medical institution and that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University, Board or Medical Institution or in any College or other institution affiliated to the University do not conform to the standard prescribed by the Central Council, the Central Council may make a representation to that effect to the Central Government after considering the same and after following the procedure provided in sub-sections (2), (3) and (4) of S. 21 of the Act, may direct that recognition to the qualification already granted shall be up to a specified date and not after that. Section 22 of the Act vests power in the Central Council to prescribe the minimum standards of education in Indian medicine required for granting a recognised medical qualification by Universities, Board or other institutions in India. These provisions in the Central Council Act leave no scope for doubt that the University-respondent No. 1, to maintain recognition of the degree awarded by it in Ayurveda, has to follow the norms laid down by the Central Council and to abide by the instructions issued by the Council from time to time, on the report of its Inspectors who have a right to visit the medical institutions, and colleges.

9. A letter dated 18-6-1985, Annexure P 2, was addressed by the Central Council

to the Universities having faculty of Ayurveda/Indian system of medicines including the respondent No. 1, conveying the decision of the Central Council on the basis of reports of its Inspectors that minimum number of beds in a hospital attached with an Ayurvedic College shall not be less than 60 and admission strength shall be determined on the basis of number of beds in the college hospital. It was further decided that each college should achieve the student bed ratio of 1: 3 within two years and the ratio of 1: 5 should invariably be achieved by the end of 7th 5 Year Plan 1989-90. The University was requested to ensure that there is an independent Ayurvedic Hospital attached with the Ayurvedic Colleges affiliated with it having minimum of 60 beds and not more than 20 students admitted to Ayurvedacharya Course in the context of 1: 3 ratio of students and beds. In case number of beds are less than or just 60 then under no circumstances more than 20 students should be admitted. If the number of beds are more than 60 even then ratio of 1: 3 should be adhered to. The number of beds of hospital which is not attached with the college not be counted for the purpose of admission. Academic Council of the University in a meeting held on 17-3-1986, after considering the report of the Inspection Committee which had visited the Ayurvedic Colleges affiliated to it took, inter alia, the following decisions with regard to the college of the petitioner for raising the standard of instructions in the college:--

(a) Admission to Pre-Ayurvedic Course may be reduced from 50 to 20 students with effect from academic sessions 1986-87; and

(b) Annual inspection may be carried out after a year to see whether the college will be able to provide the facilities for five years or not.

It was further decided that admission to Pre-Ayurvedic Course should be made through a competitive entrance examination to be conducted by the University from the academic session 1986-87 on the pattern of M.B.B.S./B.D.S./Textile Course. It was further decided to recommend to the Government that Ayurvedic Colleges should be nationalised and one or two good Ayurvedic Colleges may be run by the Government and if the Government cannot nationalise, it should provide enough funds to such institutions so that all the norms laid down by the Central Council can be fulfilled. This decision was conveyed by the University to the petitioner vide letter dated 12-5-1986, Annexure P-3, and it was in pursuance of the same that the impugned decision Annexure P-4 to make admissions to Pre-Ayurvedic Course, through a Competitive Ayurvedic entrance examination, was taken. It is also worth noting that the above decision was preceded by the report Annexure R-1/5 submitted by the Inspection Committee which was appointed by the University and which inspected the college. It was reported, inter alia, by the committee that the staff of the college both in number and quality has been poor. The pay scales of the staff are not in conformity with the recommendations of the University Grants Commission with the result that the brilliant persons are not attracted. It was recommended that the University should insist that the petitioner must accept the recommendations of the

University Grants Commission as regards pay scales and service conditions of the staff. It was further pointed out that the University is not represented on the selection committee of the college for appointment of the staff. Report Annexure P-1/6 is the result of an earlier inspection carried out by a committee headed by Dr. C. Parkash, Director-Principal Medical College, Rohtak. It points out that there is total of eleven staff members including the Principal of the College. There are ten whole time teachers while one is part-time teacher who is supposed to take classes in Medicine and Pathology. There are no professors or readers. The teachers both from their number and also from designation are far much below the mark of the standard laid down by the Central Council as well as by the faculty. There is no hospital attached to the College. It was pointed out that on earlier inspection of the College, the inspecting team met a few student representatives who convinced the team that no student was admitted unless the guardian or someone else who accompanied him at the time of admission paid donation. The Committee wanted to assure itself whether these donations were credited to the College funds by looking into the account books which were, however, not produced before the Committee on the plea that the books had gone to the auditors. It was felt that the college does not fulfil the norms laid down by the Central Council. If the college is allowed to function the shortcomings are so many that it will not be possible to fulfil the conditions as per the recommendations of the Central Council in the foreseeable future with the funds available. On a complaint that the authorities of the College of the petitioner were demanding donations from the selected students, the Vice-Chancellor had constituted a Committee to look into the admissions to the college. The committee visited the college on 13-8-1983. The report of the enquiry committee Annexure R-1/7 mentions a very unsatisfactory state of affairs in the college.

10. In the above perspective what is required to be seen is whether the University so as to maintain recognition of its degree in Ayurveda with the Central Council can exercise proper control on the college both with respect to the number of students to be admitted keeping in view the facilities for instructions and hospital beds available with it and admission of students entirely on the basis of merit so as to do away with the malpractices of capitation fee/donation from students and their parents who are less meritorious but are financially in a position to meet with the demands of the college.

11. In the context of the provisions of the Central Council Act, I am of the view that the University has the requisite power to regulate the number of seats as also admission of students to the college. Section 14(h) of the Act vests power in the University to make statutes which may, inter alia provide the condition under which colleges and institutions may be admitted to the privileges ;of the University and withdrawal of such privileges. Ordinance 38.15(c) lays down that the Principal of the recognised college shall submit to the Registrar before the 31st of August each year a report indicating the number and distribution of students. Ordinance 38.17 lays down that the Academic Council/Executive

Council shall cause every recognised college to be inspected from time to time by one or more competent persons authorised by it in this behalf. Ordinance 38.22 lays down that the inspection will be directed primarily for the purpose of ascertaining if the conditions of recognition prescribed by the University are complied with; that adequate measures are taken to ensure efficiency as regards qualifications and duties performed by the members of the staff, instructions, residences and supervision of students and other similar matters; and if the rules concerning the science practicals are being complied with and the laboratories are properly fitted with requisite apparatus, gas and water supply. A close study of the above provisions of the Act, the statutes and ordinances, would show that if on inspection by an Inspection Committee, the Academic Council finds that the facilities for instructions and practicals available in the college are inadequate, it can take a decision to reduce the number of students to be admitted to the college. For the same reason if the Academic Council reaches at the conclusion that merit is being forsaken and the criterion for admission to the college is payment of capitation fee and donation by the candidates or their parents, it can direct regulation of admission to the college on merit. In my view the University took the impugned decisions after adopting the prescribed procedure and the decisions are material based. These cannot be said to be ultra vires the provisions of the Act, statutes and ordinances.

12. In the conspectus of the above discussion, I find that the observations made by the Division Bench in Karan Singh's case (ILR (1976) 2 Punj and Har 859) (supra) do not apply to the case in hand. It may also be noted that the ratio of Karan Singh's case (supra) as regards protection to the college under Art. 29(2) of the Constitution was not approved by a Full Bench of this Court in Gurpreet Singh Sidhu and Others Vs. Punjab University, Chandigarh and Others, wherein, inter alia it was observed as under:--

"In the converse Art. 29(2) falls within the specific head of the "Cultural and Educational Rights" which have been guaranteed to the minorities. The heading of the article and its marginal note is not without significance and has been so construed authoritatively. In terms. these provisions are declared to be for the protection of the interest of minorities. Similar language is again used in the heading of Art. 30. It is well-settled that the two Arts. 29 and 30 are parts of the same integrated whole of the protection of cultural and educational rights of minorities and have to be read together."

13. Therefore, finding no merit in this petition the same is dismissed. Parties are however, left to bear their own costs.

14. Petition dismissed.