

(2010) 07 SHI CK 0216
In the High Court Of Himachal Pradesh
Case No : CWP No. 4500 of 2009

Himachal Education Promotion Society and Another	APPELLANT
Vs	
State of H.P. and Another	RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Citation : (2010) 07 SHI CK 0216

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—Petitioner No. 1 runs an educational institution. Its institution is also a petitioner in this case. It is petitioner No. 2. They have filed the present petition against the State of Himachal Pradesh through Principal Secretary (Education) and H.P. University through its Registrar. Their grievance is threefold.

2. First grievance is that petitioner No. 2, being an unaided educational institution, respondents have no right or authority to say that certain percentage of seats in B. Ed. Course, which petitioner No. 2 runs, will be paid seats and certain seats as free or at subsidized rates of fee.

3. Next grievance is that the management quota has been fixed at 10% of only paid seats, whereas in other professional education institutions, the percentage of management quota is in respect of total number of seats.

4. Third grievance is that upper age limit for admission to B.Ed. Course prescribed by the University is causing prejudice to the petitioners, as they are not getting enough number of students in B. Ed. Courses, in spite of the fact that they have raised infrastructure for the number of seats allotted to them by the government.

5. No reply has been filed on behalf of the University. State has filed reply in which it is stated that quota of paid and subsidized seats has been fixed taking into account the interest of poor but more meritorious candidates. As regards the

percentage of management seats, it has been stated that there cannot be any percentage of management seats, with regard to free or subsidized seats, because such seats are reserved for poor and more meritorious students.

6. I have heard learned Counsel for the parties and gone through the record.

7. By now it is well settled that in case of unaided professional education institutions, State though has the authority to fix and rationalize the fee structure, it cannot say that some of the seats shall be subsidized and free and some others as paid. Reason is pure and simple, viz. the State having not spent even a penny on the setting up of such institutions, it cannot say that fee should not be charged from some students or it should be charged at a subsidized rate. In support of this view, reliance is placed upon eleven Judge Bench judgment of the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, Hon'ble Supreme Court in the second part of Para 37, while dealing with a similar question, held as follows:

37. ...When one considers the Constitution Bench's earlier statement that higher education is not a fundamental right, it seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the basis of the marks obtained, where the urban students always have an edge over the rural students. In practice, it has been the case of the marginally less merited rural or poor student bearing the burden of a rich and well-exposed urban student.

8. Now, when the State cannot fix any quota of free or subsidized seats and all the seats are to be filled as paid seats, percentage of management quota fixed by the Government would automatically mean the percentage of total number of seats to be filled, which remain after 15% seats of all India quota.

9. As regards the upper age limit fixed by the University for admission to B. Ed. Course, the same is no more *res integra*, it having been held by a Division Bench of this Court, vide Judgment dated 26.9.2008, in CWP No. 1231 of 2008, titled *Deepti Sharma v. State of Himachal Pradesh and Ors.* CWP No. 1231 of 2008, that University has the authority to fix the upper age limit.

10. In view of the above stated position, writ petition is disposed of in the following terms.

11. Henceforth there will be no free or subsidized seats in B. Ed. Course of petitioner No. 2-Institution and the management quota shall be deemed to be in respect of all the seats which remain after filling 15% seats of all India quota. There shall be uniform fee for all the students admitted to B. Ed. Course of petitioner No. 2.

Writ petition is disposed of accordingly.