
(1989) 12 RAJ CK 0038
In the Rajasthan High Court
Case No : C.W.P. No. 3277 of 1989

Miss Mona Dhand

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-12-1989

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 41

Citation : AIR 1991 Raj 84 : (1990) 1 WLN 326

Hon'ble Judges : S.N. Bhargava, J

Bench : Single Bench

Advocate : M.R. Calla, Surendra Vyas, Marudhar Mridul, for the Appellant; Prem Asopa, R.D. Rastogi, G.S. Singhvi, Ajeet Bhandari and S.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Bhargava, J.—These four writ petitions relating to the admission of the petitioners in various educational institutions involve similar questions of law and, therefore, are being decided by this common order.

2. Adverting to the facts of Writ Petition No. 3277/89 Miss Mona Dhand v. State.

The petitioner was a student of St. Angela Sophia, Higher Secondary School, Bikaner. She studied in that school from 1982 to 1987 from Nursery to Vth standard. She was studying in Class vth when her father, who is an employee of the Government of Rajas-than, was transferred from Bikaner to Jaipur in December, 1988. Since there was no hostel facility at St. Angela Sophia Higher Secondary School, Bikaner, she obtained transfer certificate on 28-1-1989. Her father met the Principal, St. Angela Sophia School, Jaipur and requested to admit the petitioner in Class-V but the principal of the school declined to admit the petitioner in mid session and her father was assured that the petitioner will be given admission in the next session i.e. from July, 1989. The petitioner therefore was admitted in New Bells School, Tilak Nagar, Jaipur from where she passed 5th

Class in April, 1989. The petitioner's father met the Principal, St. Angela Sophia School, Jaipur in June, 1989. He was advised to contact in the first week of July, 1989. When father of the petitioner met the Principal on 1st July, 1989 and requested for admission of the petitioner, he was informed that there was no seat available and it was not possible to admit the petitioner. Thereafter father of the petitioner sent a notice through his counsel on 3-7-1989. The same was replied, denying the allegations made in the notice. It was also mentioned that the petitioner could not be given admission because student from a local school of Jaipur cannot be admitted in St. Angela Sophia School as per their policy. The petitioner's father submitted a representation to the District Education Officer which was forwarded to the Director of Education and the Deputy Director of Education assured that he will arrange for the admission of the petitioner and a letter was written by the Deputy Director, Education to the Principal, St. Angela Sophia School, Jaipur, requesting her to admit the petitioner and further stating that his office will have no objection if on transfer basis from one St. Angela Sophia School to another St. Angela Sophia School, strength is increased marginally. The petitioner's father again met the Principal of the School but with no result.

3. It has been stated in the writ petition that the respondent No. 2 "Education Society of St. Angela Sophia" is a Society" registered under the Rajasthan Societies Registration Act which runs St. Angela Sophia Higher Secondary School. It is recognised by the Govt. of Rajasthan and is given 80% aid by the Education Department of the Government of Rajasthan. The School is affiliated to the Board of Secondary Education, Rajasthan, Ajmer, and therefore, it is "State" within the meaning of Article 12 of the Constitution of India. Since it is discharging one of the constitutional functions of the State to impart education it is covered by the definition of word "State" and is amenable to writ jurisdiction. It has further been asserted that all the Sophia Schools in Rajasthan are controlled by R. C. Diocesan Society of Ajmer-Jaipur. The respondent No. 2 is also controlled by it. A student studying in one such school is entitled to be admitted in another school on transfer of parents from one city to other/

4. Notices were issued as to why the writ petition should not be admitted and disposed of.

5. Reply to the writ petition has been filed on behalf of respondent No. 2 wherein it has been denied that father of the petitioner met the principal or that the principal assured him that his daughter (petitioner) will be given admission in July, 1989. It has further been asserted that a communication was sent to the Deputy Director by the Principal on 22 1989, after receiving his letter dated 19 1989, copy whereof was also sent to the Director of Education. To this, a reply was received from the Director of Education, on 19th August, 1989 (Anx. Rule 2 wherein it was stated "admission of students to your school is entirely your institution's internal administrative matter. Hence, you are advised to take your own decision". It has been admitted by the respondent No. 2 that the Grant-in-

aid Rules are applicable to it. It has however been stated that the school does not come within the definition of word "State" nor is it an agency or instrumentality of the State and does not come within the purview of the phrase "other authorities" under Article 12 of the Constitution of India and as such, it is not amenable to writ jurisdiction.

6. It has further been submitted that R. C. Diocesan Society of Ajmer-Jaipur is a body registered under the Rajasthan Societies Registration Act, 1958 and Roman Catholic Diocesan Education Society, Ajmer is a separate body registered independently under the Rajasthan Societies Act, 1958 Respondent No. 3 is not a society registered under the Societies Registration Act and it does not receive any grant-in-aid from the State Govt. and the State Government has no control, whatsoever, over respondent No. 3 It has also been stated that St, Angela Sophia School at Bikaner and Jaipur are run by separate registered Societies.

7. Looking to the importance of the question involved in the present writ petitions, a general notice was issued to the learned members of bar inviting them to make their submissions on the question as to whether writ petition under Article 226 of the Constitution of India against a private aided or non aided educational institution was maintainable.

8. Mr. Marudhar Mridul Mr. Prem Asopa and Mr. R. D. Rastogi, Advocates intervened and made their submissions.

9. Learned counsel for the petitioner has placed great reliance on *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, wherein validity of the admission made to the Regional Engineering College, Srinagar was challenged. Regional Engineering College, Srinagar was one of the 15 Engineering Colleges in the country sponsored by the Government of India. The college is established and its administration and management are carried on by a Society registered under the Jammu and Kashmir Registration of Societies Act, 1898. In that case, Hon'ble the Supreme Court after taking into consideration the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, summarized the following tests :--

(1) "One thing is clear that if the entire share capital of the corporation is held by Govt. It would go a long way towards indicating that the corporation is an instrumentality or agency of Govt."

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corpn. It would afford some indication of the Corpn. being impregnated with governmental character."

(3) "It may also be a relevant factor. Whether the corpn. enjoys monopoly status which is the state conferred or State protected."

(4) "Existence of deep and pervasive State Control may afford an indication that the Corporation is a State agency or instrumentality."

(5) "If the functions of the Corpn. of public importance and closely related to governmental functions, It would be a relevant factor in classifying the corpn. as an instrumentality or agency of Government."

(6) "Specifically, if a department of Govt. is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government."

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority's case be an "Authority" and therefore, "State" within the meaning of the expression in Article 12.

10. Reliance has also been placed on a division bench decision of this Court dated 17-2-1988 passed in Writ Petition No. 2243/ 1987 Sudhir Ranjan v. B.I.T.S.

11. Reliance has also been placed on Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others, wherein the action of the Managing Committee running Gurunanak Khalsa School, which was an aided school, dispensing with the services of its two employees had been challenged and relying on Ajai Hasia's case (supra), it was held that the writ petition was maintainable because the school received 95% aid from the public exchequer.

12. Reliance has further been placed on a recent decision of the Supreme Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, In that case, a public trust was running a Science College affiliated to the Gujarat University and also received grant-in-aid from the State Government, and the question involved was about the emoluments payable to its employees. The said trust was registered under the Bombay Public Trusts Act. In this case, Hon'ble the Supreme Court considered the case of Executive Committee of Vaish Degree College. Shamli v. Lakshmi Narain (1976) 2 SCC 58 : (AIR 1976 SC 888) and Dipak Kumar Biswas Vs. Director of Public Instruction and Others, wherein the relief for reinstatement of its employees was refused by the court. Their Lordships of the Supreme Court also discussed the case of Dwarkanath v. I.T.O. (1965) 3 SCR 536 as also The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, Their Lordships of the Supreme Court, ultimately, observed as under:--

"Art. 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority".

The term "authority" used in the context must receive a liberal meaning unlike the term in Article 12 which is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of

the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to be affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

13. It has further been submitted on behalf of the petitioner that Section 14 of the Societies Registration Act 1860 provides that if upon the dissolution of any society registered under this Act, there shall remain, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than threefifths of the members present personally or by proxy at the time of the dissolution or in default thereof, by such court as aforesaid, and the respondent No. 2 is also governed by these provisions and ultimately, the property shall vest in the State.

14. My attention was also drawn to Rakesh Kumar v. Gramothan Vidyapeeth Siksha Mahavidyalaya Sangaria and another 1987 (2) W. L. No. 339 , and Frank Anthony Public School Employees" Association Vs. Union of India (UOI) and Others,

15. On the other hand, learned counsel for the non-petitioners have submitted that no relief has been sought against the non-petitioner No. 3 nor it has been mentioned as to whether respondent No. 3 is a society registered under the Societies Registration Act or under any statute. It is neither funded by the government nor public and therefore, no writ petition can be filed and issued against respondent No. 3. Learned counsel for the non-petitioners in Writ Petition Nos. 3277/ 89 and 3701/89 have also submitted that respondent No. 2 is a Society registered under the Societies Registration Act and is an independent body having its own constitution, memorandum of association, Rules and Regulations. No person from the Government is on their body of management and the government has no control, whatsoever on the working of the Society. No government functionary is involved either in the registration or the administration of the Society. He has further submitted that R. C. D. Education Society which was registered as early as in 1976-77 at Ajmer is an independent body registered under the Rajasthan Societies Registration Act, 1958. Likewise, Bikaner institution is also run by an independent registered body, whereas the Society running Jaipur School St. Angela Sophia was registered in the year 1970-71, whereas Ajmer Society was registered only in 1985-86. Each body has its own memorandum of association, rules and regulations. As far as the Mission at Ajmer is concerned, it has nothing to do with the schools. It is independent body having its own constitution. R. C. D. Education Society, Ajmer only concerns the sisters who are working in different institutions. St. Angela Sophia School does not get any grant in aid up to Vth standard and imparting education is only

one of the objectives of the society. Government has given grant to the school in recognition of the services being rendered by the Society but there is no control of the government as such in the day to day administration and functioning of the school. The school is run by the governing body. The management of the school vests with the Governing Body. The budget of the school is not required to be approved by the Government. Expenses are not required to be audited by the Government. There is no direct nexus between Ajmer Society, Bikaner Society or Jaipur Society. Their teachers and students are not transferable. There is no right vesting in the students coming from one school to get admission in another school and any of these societies cannot be termed as an instrumentality or agency of the Government. Mere grant of some fund in recognition of the services, activity of the society in running the school to impart education by itself is not sufficient to hold that it is an agency or instrumentality of the State.

16. It has further been submitted that right to receive education has not been included in Part-III of the Constitution of India and as such, there is no fundamental right of the petitioner. Moreover, the religious bodies are given freedom to run their educational institutions and, therefore, no interference can be made and no writ can be issued under Article 226 of the Constitution of India. The Directive Principles are not enforceable as they do not confer any right or create any obligation on the society.

17. Reliance has been placed on *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, in which case the appellant was an employee of the Institute of Constitutional and Parliamentary studies and was dismissed. Their Lordships of the Supreme Court observed that the Institute of Constitutional and Parliamentary Studies was born as a voluntary organisation. At the inception, it was certainly not a government organisation nor its objects are those which are a State obligation to fulfil. It was born out of the feeling that there should be a voluntary organisation to fulfil its objects which were not governmental business and ultimately, it was found that it is neither an agency nor an instrumentality of the State so as to come within the purview of expression "other authorities" under Article 12 of the Constitution of India.

18. Reliance has also been placed on *Dipak Kumar Biswas (supra)* wherein the petitioner had been appointed as a Lecturer in an aided College and his services were terminated in five months' time for want of approval for the re-appointment by the Director of Public Instructions. In that case, it has been held that even though the college in question may be governed by the statutes of the University and the Education Code framed by the Government of Meghalaya and even though the college may be receiving financial aid from the government, it would not be a statutory body because it has not been created by any statute and its existence is not dependent upon any statutory provisions.

19. Learned counsel for the respondents have also submitted that the directive principles of state policy contained in Part-IV of the Constitution are not enforceable. Reference in this connection was made to *V. Marken-deya and*

others v. State of A. P. 1983 (3) S. L. J. 33.. They are the principles to be followed while making laws or framing policy. They have submitted that if every body discharging some of the public duties are held to be "State within the meaning of Article 12 of the Constitution, then since sanitation and health is also primary duty of the State, Sulabh complexes run and managed by private authorities will also fall within the meaning of "State" under Article 12 and so also private coaching classes being run at houses because they also impart education. Similarly, it is the duty of the Government to provide food to the public and ordinary shop keepers also provide and sell food, they will also become an agency of the State and fall within the definition of word "State" under Article 12 of the Constitution of India.

20. My attention was also drawn to Arts. 25, 26 and 30 of the Constitution which provide right to freedom of religion and culture and educational rights as also Article 37 which says that Part-IV of the Constitution is not enforceable in a court of law.

21. Learned counsel for the respondents have placed reliance on the following authorities :--

Sheela Sachidananda Damle v. Deputy Director of Education Amravati Division (1981 (3) SLR 197) wherein it has been held that the school teachers could not maintain a writ petition for enforcement of Secondary School Code and the educational societies receiving 100% salary from the aid given by the State cannot be termed as an instrumentality of the State.

Gurpreet Singh Sinbhu v. The Punjab University, Chandigarh and Daya Nand Medical College and Hospital (1983(1) SLR 220) wherein it has been held that a writ petition does not lie against privately owned and managed non-statutory educational institutions, relying on earlier Full Bench decision in Pritam Singh Gill v. State of Punjab (AIR 1982 P & H 228).

M. N. Siddeswaraiah v. Managing Director, Bangalore District Co-operative Central Bank Ltd. 1984 Lab 1C 1357 : (1984(2) SLR 647) wherein, relying on Vaishya Degree College (supra), it has been observed that a Co-operative Society is not a statutory body and, therefore, no writ lies against such a society. Similar view has been taken by the Punjab and Haryana High Court in Ajmer Singh v. The Registrar, Co-operative Societies, Punjab (1980 (3) SLR 347).

The Managing Committee, High School, Jammui v. Sri Sheonandan Sinha "Vikas" 1978 Lab 1C 82 : 1977 (2) SLR 492 wherein Patna High Court observed that writ petition against the Managing Committee of an aided school which is neither a statutory body nor a public authority deriving powers from the statutory provisions does not lie and it does not come within the definition of "State" under Article 12 of the Constitution of India.

G. Chandrasekharan v. Tool Room and Training Centre 1982 (3) SLR 580) wherein Delhi High Court after noticing Ajay Hasia's case (supra) and

International Airport Authority's case (supra), has observed that a writ petition against the Society registered under the Societies Registration Act, 1860 is not maintainable since it is not a "State" within the meaning of Article 12 of the Constitution nor an "authority" within the meaning of Article 226 of the Constitution of India.

Sabhajit Tewary Vs. Union of India (UOI) and Others, wherein the Council of Scientific and Industrial Research, a society registered under the Societies Registration Act has been held not to be an authority under Article 12 of the Constitution as it does not have statutory character like the Oil and Natural Gas Commission or the Life Insurance Corporation of India etc. It has further been observed that though the Prime Minister is the President or that the Government appoints nominees to the Governing Body or that the Government may terminate the membership will not establish anything more than the fact that the Government takes special care that the promotion, guidance and cooperation of scientific and industrial research and other activities of the Council towards the development of industries in the Country are carried out in a responsible manner. This judgment is rendered by a bench consisting of five Hon'ble Judges of the Supreme Court. The cases of The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, and Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., were relied and approved.

23. Reliance has also been placed on Chakradhar Patel Vs. Samasingha Service Co-operative Society Ltd. and Others, wherein it has been held that a Co-operative Society which is a Society within meaning of Section 2(k) of Orissa Co-operative Societies Act is not State (within meaning of Article 12 of the Constitution of India and writ petition against it is not maintainable.

24. Gurpreet Singh Sidhu v. Punjab University (AIR 1983 P & H 70 (FB)) wherein it has been held that no writ petition lies against privately owned non-statutory institutions.

25. It has further been submitted on behalf of learned counsel for the respondents that no petitioner has got a right to get admission in a particular school and there is no law or authority to this effect. There are no statutory rules regarding admission, either framed by the Government or by any other authority nor is there any policy laid down by the Government regarding admission in the schools.

26. It has further been submitted that all these institutions are run and managed by minority community and, therefore, they have got protection under Articles 25, 26 and 30 of the Constitution of India and in this connection, reliance has been placed on Rt. Rev. Msgr. Mark Netto Vs. State of Kerala and Others, and Gurpreet Singh (supra).

27. Learned counsel for the respondents have further submitted that if interference is made in the working of these educational institutions which are

run on the philanthropic grounds, they will receive a great set back and ultimately, harm the cause of education for which they exist. Moreover, the petitioners have got an alternative remedy by way of filing a suit in a particular case; if the petitioners feel that great injustice has been done with them they can always approach the civil court for redressal of grievance.

28. Shri Marudhar Mridul, Advocate, has made his submissions and has drawn my attention to the Grant-in-Aid Rules, 1963. He has submitted that different considerations will weigh if any school is receiving grant-in-aid from the Government. He has submitted that since under the Constitution it is the obligation of the State to impart education to all the citizens but since the resources of the Government are limited, it is not possible for the Government to open schools so as to provide education to each and every citizen and, therefore, various institutions are permitted to impart education and hence, the Government also gives aid to them for running their school. Grant-in-aid Rules is a complete code in itself and complete for the agreements with the teachers and employees, management and power to issue directions and under the Education Code as well, several standing instructions and orders have been issued to various schools and colleges, by the Government and, therefore, schools which are receiving grant in aid definitely come within the meaning of the the word "State" under Article 12 of the Constitution of India. He has placed reliance on a Full Bench decision of the Kerala High Court in *M. Kunju Mohammed v. State of Kerala* (1984 Lab 1C 1124) wherein their Lordships have set out the tests which should be applied when a question arises as to whether an authority is "State" within the meaning of Article 12 of the Constitution, if it is an instrumentality or agency of the Government. That was a case wherein it was held that the Kerala State Industrial Development and Employment Corporation Ltd. is an instrumentality of the State and thus "State" within the meaning of Article 12 of the Constitution of India and amenable to writ jurisdiction.

29. Mr. Mridul has also submitted that imparting education is the basic and fundamental duty of the Government because if the citizens are not educated it will not be possible for them to earn their livelihood properly in a respectable manner. Therefore, even Article 21 of the Constitution of India will be attracted and in that connection, he drew my attention to famous case of *Olga Tallis*, giving right to live. He also drew my attention to Article 23 of the Constitution which prohibits "Begar". If the citizens are not given education, they will not be able to earn their bread and people will use them as Begar. He further submitted that the time has come when the judicial interpretation should be changed looking to the social need and social obligations and what was once a perfectly valid legislation may in course of time become discriminatory and liable to challenge being violative of Article 14 of the Constitution of India. Reliance was placed on *Motor General Traders v. State of Andhra Pradesh* (AIR 1984 SC 121) and *Rattan Arya and Others Vs. State of Tamil Nadu and Another*,

30. Mr. Mridul further submitted that since the institutions are recognised by the

Government and there is a procedure prescribed in the Education Code, and the Government has full control on these institutions, these institutions get privilege being recognised institutions. By recognition, they get status and enjoy privileges in addition to financial aid.

31. Mr. Prem Asopa, learned counsel for one of the petitioners submitted that right relating to freedom of speech and expression provided under Article 19(I) (a) of the Constitution would include right of education. Unless one is educated, he cannot enjoy the right enshrined in Article 19(I)(a) of the Constitution. He also drew my attention to Article 29(2) of the Constitution which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of the State funds on grounds only of religion, race, caste, language or any of them and there can be no right without a remedy and the remedy is provided under Article 226 of the Constitution. Moreover, Article 41 provides that the State shall within the limits of its economic capacity and development make effective provision for securing the right to work, education and...."

32. He has also submitted that the Rajas-than Secondary Education Act, 1957 also puts restriction and obligation on the institutions and they are bound by the directions issued by the Board.

33. Shri R. L. Rastogi, Advocate has also appeared in support of the case of the petitioner and has submitted that the education is neither a trade nor a business but a duty cast on the Government. He has also submitted that a writ petition is lying wherein the employees of private institutions not receiving grant in aid have also claimed for equal pay for equal work.

34. I have carefully gone through the case file, considered the various submissions made at the bar and have also gone through the various authorities cited before me.

35. There is no dispute that Article 41 of the Constitution of India casts a duty on the State to make effective provision for education of the citizens of this country but in the same Article, it has been mentioned that it should be done within the limits of its economic capacity and development. It is really a matter of great concern that though our country has made great achievements in the fields of agriculture, industry and other areas but still the Government has not been able to provide adequate facilities for education of general public. Therefore, the Government must make efforts in the right earnest to provide for schools, for giving education to the citizens of our country. The population in the rural areas is still most uneducated and they do not possess even the necessary education of putting their signatures or having even basic facilities for education, though the Government has made education compulsory. It is high time when the Govt. should review the situation and take effective steps in this direction to fulfil its obligations cast upon it by Article 41 of the Constitution of India.

36. It is true that the provisions contained in Part IV of the Constitution are not

enforceable through a Court of law but all the same, the State cannot escape its responsibility and duty to give effect to the directive principles of State Policy. Though a direction cannot be issued to the Government but the Court can expect that the State will fulfil its obligation in this direction because education will solve many problems in the country. The people will understand the need of family welfare schemes, which is the biggest problem of the country. They will also become aware of the facilities and the concessions provided by the State Legislature and the Parliament to improve conditions of downtrodden, industrial labour and agriculturists. Their way of living and style will change, their health will improve and the whole culture and atmosphere of the country will change if the people are educated. The democracy will also flourish in the right perspective.

37. But all the same, it cannot be said that the philanthropic institutions or educational institutions managed and run by the minorities or private registered societies carry on the State function. The Govt. has its own limitations and since it has not been possible so far to provide for educational institutions for whole of the community, the Govt. is promoting and sometimes encouraging private bodies, agencies and institutions to impart education. In view of the numerous decisions cited before me, a private body or a Society registered under the Societies Registration Act, 1860 cannot be termed as "State" within the meaning of Article 12 of the Constitution of India or falling within the category of "any other Authority", within meaning of Article 226 of the Constitution, unless they are statutory authorities or instrumentality of the State. Even in the latest decision of the Supreme Court in *v. R. Rudani* (supra), their Lordships have carved out exceptions. It is true that the term "authority" used in Article 226 of the Constitution must receive a liberal meaning but the authority or the body must be performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. Justice Subba Rao in *Dwar-kanath v. ITO* (supra) has of course observed that Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. But the Court has its own limitation as well. It is bound by the Constitution and cannot go beyond that. The whole scheme must be within the legal frame work. It is also true that it is not necessary that the duty to be enforced should be imposed only by a statute. It may be sufficient to impose the duty by charter, common law, custom or even contract but in the present case, no duty is cast upon these institutions to admit everybody whoever applies nor there is any obligation on these institutions/societies to admit everybody whoever applies. Mere receipt of grant-in-aid from the State Government will not make the institution "State" within the meaning of Article 12 of the Constitution. Merely because these educational institutions have been affiliated with the Board of Secondary Education, Rajasthan, will also not

make them "State" either. No control over these institutions vests with the Government. The Director of Education, himself in his reply Annexure R-2/ 2 has stated that "admission of students to your school is entirely your institutional internal administrative matter, hence, you are advised to take your own decision" and I think rightly because every school or educational institution wants to make its own image by improving its standard and its result and that can be done only if they have power to select the students at the time of giving admission. If they are obliged to admit each and every student whoever applies, it will become a mess and in that situation, neither any standard can be maintained nor the best results can be achieved nor even discipline can be maintained in the educational situations. The educational institutions should frame a guideline for themselves and should put restrictions on themselves to regulate their action regarding admission of students to these institutions because nowadays, there is always a great rush for admission in the educational institutions. Every parent wants that his children should be admitted in good and reputed school but the seats in every school are limited. They are not unlimited. Therefore, to have public faith and public confidence, it is necessary that these institutions should prescribe a criteria and guidelines for themselves which should be observed invariably at the time of student admission to the schools.

38. Their Lordships of the Supreme Court in *Tekraj's case* (supra) has held that an institution of constitutional and parliamentary studies registered under the Societies Registration Act, 1860 is not "State" within the meaning of Article 12 of the Constitution of India, though it receives substantial contribution from the Government and the Government has full control over its activities but since it was neither an agency nor instrumentality of the State, therefore, it would not come within the definition of "other authorities" under the Constitution. Hon'ble Five Judges of the Supreme Court in *Sabhajit Tewary* (supra) has held that the Council of Scientific and Industrial Research is not an "authority" within the meaning of Article 12 of the Constitution, even though the Prime Minister is the President, the Government appoints nominees to the Governing Body and the Government can terminate the membership, meaning thereby that the Government has full control over the Society.

39. As such, keeping in mind the various observations made by the Supreme Court and other High Courts which I have quoted above, I am of the view that these educational institutions which are private bodies registered under the Societies Registration Act, imparting education, cannot be termed to be "State" or "an authority" within the meaning of Article 12 of the Constitution of India.

40. Coming to the facts of Writ Petition No. 3277/89. The allegation of the petitioner is that her father met the Principal of the school in February, 1989 who assured him that the petitioner will be given admission in the next session. Moreover, it has also been denied that the petitioner's father met the Principal in June, 1989 who advised him to contact in the first week of July, 1989. It has also come on record that schools at Bikaner and Jaipur are not governed by common

management. They are two separate registered societies who are running these institutions. The teachers are not transferable. Only the sisters of these institutions are transferable. The letter Ex. 5 written by the Deputy Director, Education, Bikaner, requesting the Principal of the institution to admit the petitioner had been superseded by the subsequent letter of the Director, Primary and Secondary Education (Annx. R-2/2) wherein he has more specifically stated that "admission of the students to your school is entirely your institution's internal administrative matter". Hence, you are advised to take your own decision." There are no allegations of mala fide against the Principal or any body else. Sophia school has got a very good reputation throughout Jaipur and every parent wants that his/her ward should be admitted in that school and, therefore, there is great rush and it is not possible for the institution to admit each and every student whoever applies and, therefore, they have to adopt some method of selection. It is also not possible that even in transfer cases, they must give admission though it is desirable that they must accommodate the students who come on transfer, specially the one reading in their sister schools, at the place other than Jaipur. The main reason as to why admission had been refused to the petitioner seems to be that the petitioner's father got the petitioner admitted in Blue Bells School, Tilak Nagar, Jaipur and as a matter of policy, Sophia School does not admit students coming from different schools of Jaipur. Moreover, the petitioner is already studying in the said school and during mid term, it will not be in her interest as well to disturb and admit in the aforesaid institution. In this view of the matter, Writ Petition No. 3277/89 filed by Miss. Mona Dhand is dismissed.

41. Now coming to the facts of Writ Petition No. 3278/89.

42. The petitioner was admitted in Class III in the year 1981 and since then, he is studying in St. Xavier School continuously. He passed his Class Xth from Central Board of Secondary Education, New Delhi, in 1989 and obtained 352 marks out of 500 but was not admitted in Science group in Class XIth, though some other students who had obtained some less marks than the petitioner have been given admission in Science Group and the petitioner has been admitted only in Commerce Group, whereas 2% weightage for each subject was given to a student who was outstanding in curricular activities i.e. who has represented the school in different games, athletics or has been acting for social service. It will be pertinent to note that St. Xavier School does not receive the grant-in-aid from the Government and, therefore, in view of my decision in Writ Petition No. 3277/89 that these private institutions registered under the Societies Registration Act, 1860 are not statutory bodies and does not come within the definition of word "State" or other authority under the Constitution, no mandamus can be issued and therefore Writ Petition No. 3278/ 89 is also dismissed without going into the merits of the case.

43. Similarly in Writ Petition No. 3359/ 89 question of admission to Class XIth in St. Xavier School is involved and the facts are just similar to the one in writ

petition No.3278/ 89.

44. Therefore, Writ Petition No. 3359/ 89 is also dismissed.

45. Lastly coming to the facts of Writ Petition No. 3761/1989. In this writ petition the point of admission in St. Angela Sophia School on the ground of transfer of her father from Ajmer to Jaipur is involved. The petitioner was studying in Sophia School, Ajmer and wanted admission in Jaipur on account of transfer of her father in the mid session. It may be noted that the junior section of the Sophia School does not receive any grant in-aid from the State Government. The petitioner should again apply for her admission in Sophia School in the next session 1990-91 and I hope that her case for admission will be sympathetically considered on merits without any prejudice or without being observed by the fact that the petitioner had filed the present writ petition.

46. In view of my finding that writ petition is not maintainable against such educational institutions, this Writ Petition No. 3701/89 is also dismissed.

47. However, before parting with the case, I will like to observe that these observations are particularly in relation to admission of the students in schools and it will not govern the cases with regard to the employment of teacher.

48. In the result, all these writ petitions are dismissed without any order as to costs.