
(2019) 07 DEL CK 0132

In the Delhi High Court

Case No : Civil Writ Petition No. 6715 Of 2019, Civil Writ Petition No. 28233, 28385 Of 2019

N P Ashley & Ors

APPELLANT

Vs

University Of Delhi And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 29(2), 30, 30(1)

Citation : (2019) 07 DEL CK 0132

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Jayant Bhushan, Sunil J Mathews, Mohinder JS Rupal, A. Mariarputham, Rajesh Roshan, Rahat Bansal, Romy Chacko, Apoorv Kurup

Final Decision : Dismissed

Judgement

'''

Anu Malhotra, J",,,,

1. The petitioners vide this petition challenge the decision of the respondent nos.2 & 3 i.e. the Supreme Council of the St. Stephen's College,,,

(hereinafter referred to as the 'College' and the Governing Body & Society of the 'College' through its Chairman, St. Stephen's",,,,

College, University Enclave, North Campus, New Delhi, vide which it was reflected on the website of the 'College' to the effect that all",,,,

Christian candidates aspiring to be students of the 'College', would be interviewed by a board comprising one Christian member nominated by",,,,

the Supreme Council from the Supreme Council or the Governing Body.,,,,

2. A further prayer that has been made by the petitioners is to the effect that no member of the respondent no.2 i.e. the Supreme Council of the,,,

â??Collegeâ?? apart from the respondent no.4 i.e. the Principal of the â??Collegeâ?? be allowed to be a member of the interview panel for,,,

admissions for the academic year 2019-20 to the St. Stephenâ??s College.,,,

3. During the course of submissions that had been made on 12.06.2019 qua CM APPL.28231/2019, which was a prayer seeking an interim restraint",,,

for any persons other than the Principal of the â??Collegeâ?? as a member of the Supreme Council of the respondent no.2 being restrained from,,,

being in any interview panel for the admission of the students, reference had been made to the message from the Chairman of the â??Collegeâ??",,,

annexed as Annexure P-5 to the petition, with which the petitioner was aggrieved, which was to the effect:",,,

â??The Supreme Council had taken a decision at its meeting held on 12th March, 2019 to take steps to ensure that the right of the Christian minority",,,

for 50% seats in admissions to the College was safeguarded. The Supreme Counsel has the power to address and oversee all matters affecting the,,,

Christian character of the college. In keeping with this the Supreme Council decided that for the admissions for the academic year 2019-2020 to the,,,

College, there would be a member of the Governing Body nominated by the Supreme Council to oversee the admission process. This in no way would",,,

impact the standard of education or of the students who would be admitted to college. The Supreme Council wishes to reiterate the fact that the high,,,

academic standards of the College continue to remain pre-eminent and to this end the Supreme Council remains committed.,,,

This communication is made in clarification of the misrepresentation of the Principalâ??s Report which was reported in the media.â??,,,

4. During the course of the proceedings on 12.06.2019, it was submitted on behalf of the respondent nos.2 & 3 and the respondent no.4 that the said",,,

message dated 12.05.2019 was sought to be confined to the extent of the details in the â??Collegeâ?? Prospectus, 2019-2020 which as per the reply",,,

on behalf of the respondent nos.2 & 3 and the respondent no.4 is stated to be dated 22.05.2019. As per averments made in para 7 of the reply of the,,,

respondent nos.2 & 3 and the respondent no.4, which is stated to be vide Clause-7 of the said prospectus to be confined to the Christian candidates",,,

only in as much as Clause 7 of the prospectus reads to the effect:",,,

â??All Christian candidates will be interviewed by a Board comprising one

Christian member nominated by the Supreme Council from the Supreme,
Council or the Governing Body.

5. During the course of the proceedings on 12.06.2019, it was also submitted on behalf of the respondent nos.2 & 3 and the respondent no.4 that the

Christian member to be nominated by the Supreme Council for interviewing of the Christian candidates would be only a member of the Governing

Body of the College in terms of its Constitution with reliance having been placed on Clause 6 of the said Constitution which describes the

Governing Body of the said college which reads to the effect:

"The Governing Body of the College shall normally consist of 18 persons. These shall be members of the Society as mentioned in subparagraphs a,

b, c, d, e, f, g, h, i, j, k, l, m of rule 1. The procedure of their appointment or election and the duration of their term as members of the Governing Body"

shall be the same as laid down for their membership of the Society.

The Chairman of the Society (Bishop of the Diocese of Delhi) shall be the Chairman of the Governing Body. The Governing Body may also from

among its own members elect a Vice-Chairman if it deems necessary. The Governing Body shall appoint a Recording Secretary on the

recommendation of the Principal, who shall issue notices of the meetings, maintain proper records of the proceedings and perform such other

secretarial functions as the Governing Body may direct. The Principal shall be the Member-Secretary of the Governing Body.

The Chairman and the Vice-Chairman shall be members of the Church of North India.

6. A submission was made on behalf of the petitioner nos. 1, 2 & 3 on 12.06.2019 to the effect that they fear induction of the management quota

through induction of a Christian member nominated by the Supreme Council from the Supreme Council or the Governing Body as per Clause 7 of the

prospectus dated 22.05.2019, qua which it has already been submitted on behalf of the respondent no.4 that the Christian member so nominated would

be only one who is the member of the Governing Body alone and that in terms of Clause 5 of the Constitution of the College it has been

categorically stipulated thereby to the effect:

"The Supreme Council of the College shall have no jurisdiction over the administration of the College."

The Supreme Council of the College shall meet at such times not being less than once annually, and either at the College or elsewhere, as the Bishop",,,
of the Diocese or the Chairman of the Governing Body shall appoint, notice thereof being given in such manner as shall be deemed sufficient. At the",,,
annual meeting of the Supreme Council, the Principal of the College shall submit a report of all matters affecting the religious and moral instruction of",,,
the students of the College and of matters affecting its religious character as a Christian College of the Church of North India and shall state for",,,
consideration any changes which may be contemplated.â??",,,

7. Reliance was placed on behalf of the petitioners then on 12.06.2019 and now on behalf of the petitioner on the verdict of the Honâ??ble Supreme",,,
Court in St. Stephenâ??s College Vs. Union of India (1992) 1 SCC 558 with specific reference to observations in para 60 of the said verdict which",,,
reads to the effect:",,,

â??60. The right to select students for admission is a part of administration. It is indeed an important facet of administration. This power also could be",,,
regulated but the regulation must be reasonable just like any other regulation. It should be conducive to the welfare of the minority institution or for the",,,
betterment of those who resort to it. The Bombay Government order which prevented the schools using English as the medium of instruction from",,,
admitting students who have a mother-tongue other than English was held to be invalid since it restricted the admission pattern of the schools. The",,,
Gujarat Government direction to the minority run college to reserve 80 per cent of seats for Government selected candidates with a threat to withdraw",,,
the grant-in-aid and recognition was struck down as infringing the fundamental right guaranteed to minorities under Article 30(1) of the Constitution. In",,,
Rt. Rev. Msgr. Mark Netto v. Government of Kerala the denial of permission to the management of a minority school to admit girl students was held",,,
to be bad. The Regional Deputy Director in that case refused to give sanction for admission of girl students on two grounds; (i) that the school was not",,,
open as a mixed school and that the school has been run purely as a boys school for 25 years; and (ii) that there was facility for the education of girls",,,
of the locality in a nearby girl school which was established by the Muslims and was also a minority institution. This Court noted that the Christian",,,
community in the locality wanted their girls also to receive education in the

school maintained specially by their own community. They did not think it in,,,
 their interest to send their children to the Muslim girls school run by other
 minority community. The withholding of permission for admission of girl,,,
 students in the boys minority school was violative of Article 30(1). It was also
 observed that the rule sanctioning such refusal of permission crosses,,,
 the barrier of regulatory measures and comes in the region of interference with
 the administration of the institution, a right which is guaranteed to the",,,,
 minority under Article 30(1). The Court restricted the operation of the rule and
 made it inapplicable to the minority educational institution. In Director,,,
 of School Education Government of Tamil Nadu v. Rev. Brother G. Arogiasamy,
 the Madras High Court had an occasion to consider the validity of",,,,
 an uniform procedure prescribed by the State Government for admission of
 candidates to the aided training schools. The Government directed that the,,,
 candidates should be selected by the school authorities by interviewing every
 candidate eligible for admission and assessing and awarding marks in the,,,
 interview. The marks awarded to each candidate in the interview will be added to
 the marks secured by the candidate in the S.S.L.C. public,,,
 examination. On the basis of the aggregate of marks in the S.S.L.C. examination
 and those obtained at the interview the selection was to be made,,,
 without any further discretion. The High Court held that the method of selection
 placed serious restrictions on the freedom of the minority institution to,,,
 admit their own students. It was found that the students of the minority
 community could not compete with the students belonging to other,,,
 communities. The applications of students from other communities could not be
 restricted under law. The result was that the students of minority,,,
 community for whose benefit the institution was founded, had little chance of
 getting admission. The High Court held that the Government order",,,,
 prescribing the uniform method of selection could not be applied to minority
 institutions."""",,,,

8. It was submitted on behalf of the petitioners that in terms of Clause 5 of the
 Constitution of the "College" and in view of the verdict of the,,,
 Honâ??ble Supreme Court in St. Stephenâ??s College Vs. Union of India (supra),
 the induction of a Christian member nominated by the Supreme",,,,
 Council from the Governing Body as sought to be submitted on behalf of the
 respondent no.4 is in violation of the terms of the Constitution of the,,,

the College itself.,,,

9. On behalf of the respondent nos.2 & 3 and the respondent no.4 it was submitted in relation to the said aspect that the Constitution of the,,,

the College set forth along with the petition has to be read in a composite form and that Clause 5 thereof cannot be read in isolation to the other,,,

contents of the Constitution of the the College itself with specific reference also to Clause 11 of the said Constitution which reads to the effect:,,,

All matters pertaining to religious instruction or the religious character of the College shall be the sole concern of the Supreme Council and any,,,

decision of the Supreme Council on these matters shall be binding on the Governing Body.â?,,,

10. Reference was also made on behalf of the respondent nos.2 & 3 and the respondent no.4 to Clauses 3 & 4 of the Constitution of,,,

the the College which read to the effect:,,,

3. The religious and moral instruction of the students of the College and all matters affecting its religious character as a Christian College of the,,,

Church of North India shall be under the control of the Supreme Council of the College, consisting of the following members of the Society, all of",,,

whom must be members of the Church of North India, or of some other Church in communion therewith, or of any other duly constituted Christian",,,

Church, viz:" ,,,

(a) The Bishop of the Diocese of Delhi, CNI, who shall be the Chairman",,,

(b) Two persons appointed by the Bishop of the Diocese (under Rule 1-b) (c) The person appointed by the Church of North India Synodical Board of,,,

Higher Education (under Rule 1-g),,,

(d) The person appointed by the Diocesan Board of Education (under Rule 1-h),,,

(e) The Principal of the College (Member-Secretary).,,,

4. The Supreme Council of the College shall have the control of the religious and moral instruction of students of the College and of all matters,,,

affecting its religious character as a Christian College of the Church of North India; and, in addition, shall appoint, after proper advertisement, the",,,

Principal of the College who shall be a member of the Church of North India or of a Church that is in communion with the Church of North India.â?,,,

to thus submit that for the religious and moral instruction of the students of the

â??Collegeâ?? in relation to matters affecting its religious character in,,,
terms of Clause 11 of the Constitution itself, the religious instruction and the religious character of the College has essentially to be the sole concern of",,,
the Supreme Council and any decision of the Supreme Council on these matters would be binding on the Governing Body and it has thus been,,,
submitted on behalf of the respondent nos.2 & 3 and the respondent no.4 that the Clause 7 of the prospectus of the respondent no.2, which is sought",,,
to be confined to the extent that the nominated Christian member for the interview board would be only a person from the Governing Body does not in,,,
any manner violate the terms of the Constitution of the St. Stephenâ??s College i.e. specifically Clause 5 thereof.,,,

11. Reliance was also placed on behalf of the respondent nos.2 & 3 and the respondent no.4 on the verdict of the Honâ??ble Supreme Court in St.,,,
Stephenâ??s College (supra) with specific reference to the observations in para 49 thereof, which read to the effect:",,,

â??49. The applications are sorted out for each course of study under the direct supervision of the Tutor of admission, and are then sent to two",,,

teachers of the department concerned for scrutiny. These applications are then further scrutinised in relation to the combination of subjects taken by,,,

the students at his last examination and the order of preference indicated by him regarding the course in which admission is sought by him. At this,,,

stage in accordance with the cut-off percentage given by the departments for different combination of subjects, the two teachers of the department",,,

concerned, out of whom one is the Head of the Department and the other is a nominee of the Department, prepare a list of potential to contend that",,,

the said observations of the Honâ??ble Apex Court in the case of the St. Stephenâ??s College (supra) itself do not bring forth that there can be,,,

none other than those mentioned in the Clause 3 of the Constitution of the St. Stephenâ??s College in the interview panel.,,,

12. It was submitted on behalf of the respondent no.4 whilst placing reliance on the verdict of the Honâ??ble Supreme Court in The Ahmedabad St.,,,

Xavier's College Society and Ors. vs. State of Gujarat and Ors. (1974) 1 SCC 717 with specific observations in para 182 of the said verdict which,,,

read to the effect:,,,

â??182. It is upon the principal and teachers of a college that the tone and

temper of an educational institution depend. On them would depend its,,,
 reputation, the maintenance of discipline and its efficiency in teaching. The right
 to choose the principal and to have the teaching conducted by",,,,
 teachers appointed by the management after an overall assessment of their
 outlook and philosophy is perhaps the most important facet of the right to,,,
 administer an educational institution. We can perceive no reason why a
 representative of the University nominated by the Vice Chancellor should be,,,
 on the Selection Committee for recruiting the Principal or for the insistence of
 head of the department besides the representative of the University,,,
 being on the Selection Committee for recruiting the members of the teaching
 staff. So long as the persons chosen have the qualifications prescribed by,,,
 the University, the choice must be left to the management. That is part of the
 fundamental right of the minorities to administer the educational",,,,
 institution established by them.â??,,,
 to submit that the tone and temper in relation to its outlook and philosophy is
 the most important facet of the right to administer the education of the,,,
 â??Collegeâ??, which is a minority institution and that for the maintenance of
 Christian philosophies, the induction of a Christian member nominated",,,,
 by the Governing Body into the interview panel for selection of Christian
 candidates alone, is essential for the maintenance of the tenets of",,,,
 Christianity,,,
 13. Vide order dated 12.06.2019 qua CM APPL.28231/2019, the application
 made by the petitioner seeking an interim restraint against the presence",,,,
 of any other member of the Supreme Council i.e. the respondent no.2 apart from
 the respondent no.4 in the interview panel for conducting of the,,,
 interview for Christian candidates alone, it was held that there appears to be
 nothing discrepant in the said submission made on behalf of the",,,,
 respondents that the induction of a Christian member nominated by the
 Governing Body for selection of Christian candidates, alone was essential for",,,,
 maintenance of the tenets of Christianity nor does it appear in any manner that
 the induction of a Christian member to the Governing Body for,,,
 interviewing only Christian candidates for admission to the St. Stephenâ??s
 College can in any manner be termed to be in violation of Clause 5 of the,,,
 Constitution of the â??Collegeâ?? and the prayer seeking grant of an interim
 restraint against the induction of a Christian member who essentially as,,,

per the submission of the respondent no.4 itself has to be one forming the part of the Governing Body for interviewing of Christian candidates alone,,,

through the respondent no.2, cannot be granted and the said application was thus declined." ,,,

14. It is significant to observe that the petitioners assailed the said order dated 12.06.2019 vide LPA 418/2019 before the Honâ??ble Division Bench,,,

of this Court and vide order dated 26.6.2019 therein the said appeal was disposed of as withdrawn along with pending applications indicating thereby,,,

that the petitioners had withdrawn the challenge to the interim order dated 12.06.2019 whereby the prayer made by the petitioners seeking a restraint,,,

against any other member of the Supreme Council than the respondent no.4 being present in the interview panel for conducting of the interview of,,,

Christian candidates alone, - was declined." ,,,

15. Submissions that have now been made qua the petition have been in addition to the submissions that were made on 12.06.2019 and inter alia,,,

reliance was placed on behalf of the petitioners on the verdict of the Honâ??ble Supreme Court in T.M.A. Pai Foundation and Ors. Vs. State of,,,

Karnataka and Ors. (2002) 8 SCC 481 with specific reference to observations in para 152 of the said verdict which read to the effect:,,,

â??152. At the same time, the admissions to aided institutions, whether awarded to minority or non-minority students, cannot be at the absolute sweet" ,,,

will and pleasure of the management of minority educational institutions. As the regulations to promote academic excellence and standards do not,,,

encroach upon the guaranteed rights under Article 30, the aided minority educational institutions can be required to observe inter se merit amongst the" ,,,

eligible minority applicants and passage of common entrance test by the candidates, where there is one, with regard to admissions in professional and" ,,,

non-professional colleges. If there is no such test, a rational method of assessing comparative merit has to be evolved. As regards the non-minority" ,,,

segment, admission may be on the basis of the common entrance test and counselling by a state agency. In the courses for which such a test and" ,,,

counselling are not in vogue, admission can be on the basis of relevant criteria for the determination of merit. It would be open to the state authorities" ,,,

to insist on allocating a certain percentage of seats to those belonging to weaker sections of society, from amongst the non-minority seats.â??" ,,,

to contend that the presence of a member of the Supreme Council of the respondent no.2 in the interview panel for Christian candidates alone apart,,,

from the Principal of the college i.e. the respondent no.4 would detract from the observance of the inter se merit amongst the eligible minority,,,

applicants and passage of common entrance test and would be violative of the Constitution of India.,,,

16. Vide para 450 of the said verdict, the Honâ??ble Apex Court had deliberated upon question no.4, which was to the effect:",,,

â??Q.4. Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or",,,

by the University to which the institution is affiliated?,,,

and the same was answered to the effect:,,,

A. Admission of students to unaided minority educational institutions, viz., Schools where scope for merit based selection is practically nil, cannot be",,,

regulated by the State or the University (except for providing the qualifications and minimum conditions of eligibility in the interest of academic,,,

standards).,,,

Right to admit students being an essential facet of right to administer educational institutions of their choice, as contemplated under Article 30 of the",,,

Constitution, the State Government or the University may not be entitled to interfere with that right in respect of unaided minority institutions provided",,,

however that the admission to the unaided educational institutions is on transparent basis and the merit is the criteria. The right to administer, not being",,,

an absolute one, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof and it is more so, in the",,,

matter of admission to undergraduate Colleges and professional institutions.,,,

The moment aid is received or taken by a minority educational institution it would be governed by Article 29(2) and would then not be able to refuse,,,

admission on grounds of religion, race, caste, language or any of them. In other words it cannot then give preference to students of its own",,,

community. Observance of inter se merit amongst the applicants must be ensured. In the case of aided professional institutions, it can also be",,,

stipulated that passing of common entrance test held by the State agency is necessary to seek admission.â??,,,

17. The petitioners thus submit that the decision of the respondent nos.2 & 3 and the respondent no.4 dated 12.05.2019 is unprecedented and violates,,,

Clause 5 of the Constitution of the "College". It is however submitted on behalf of the petitioners that no minority institute in exercise of its,,,

rights under Article 30 of the Constitution of India can indulge in maladministration.,,,

18. On behalf of the respondent nos.2 & 3 and the respondent no.4, the main contesting parties to the present petition, submissions that had been made",,,

on 12.06.2019 were reiterated in relation to the aspect that the Constitution of the "College" has to be read in a composite form and that the,,,

Clause 5 thereof cannot be read in isolation to the other contents of the Constitution of the respondent no.2 itself with specific reference also to Clause,,,

11 of the said Constitution which reads to the effect:,,,

"All matters pertaining to religious instruction or the religious character of the College shall be the sole concern of the Supreme Council and any,,,

decision of the Supreme Council on these matters shall be binding on the Governing Body.",,,

Clauses 3 & 4 of the Constitution of the respondent no.2 were also relied upon which have already been adverted to hereinabove.,,,

19. The respondent nos.2 & 3 and the respondent no.4 also placed reliance on the verdict of the Hon'ble Supreme Court in The Ahmedabad St.,,,

Xavier's College Society and Ors. vs. State of Gujarat and Ors. 1974) 1 SCC 71 with specific reference to the observations in para 182 which have,,,

already been adverted to hereinabove.,,,

20. Reliance was also placed on behalf of the respondent nos.2 & 3 and the respondent no.4 on the verdict of the Hon'ble Supreme Court in,,,

Secretary, Malankara Syrian Catholic College Vs. T. Jose and Ors. (2007) 1 SCC 38 6elucidating the principles laid down in T.M.A. Pai (supra)",,,

reiterated in P.A. Inamdar Vs. State of Maharashtra whereby the Hon'ble Supreme Court laid down vide para 19 of the said verdict which reads,,,

to the effect:,,,

"19. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:,,,

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights :,,,

- a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;,,,
- b) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of,,,
duty on the part of any of its employees;,,,
- c) To admit eligible students of their choice and to set up a reasonable fee structure;,,,
- d) To use its properties and assets for the benefit of the institution;,,,
- (ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more,,,
advantageous position vis-a-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national,,,
interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority institutions",,,,
also.,,,,
- (iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory,,,
measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are,,,
necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State",,,,
concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also",,,,
conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations",,,,
prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).,,,
- (iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the",,,,
freedom to appoint teachers/Lecturers by adopting any rational procedure of selection.,,,,
- (v) Extention of aid by the State, does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State",,,,
to ensure proper utilization of the aid, without however diluting or abridging the

right under Article 30(1).â??",,,

21. It is essential to advert to para 28 of the said verdict which reads to the effect:,,,

â??28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to,,,

the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community,",,,

senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores",,,

the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy,,,

and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited, to head the institution,",,,

provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the",,,

same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.",,,

22. The respondent nos.2 & 3 and the respondent no.4 have also placed reliance on the verdict of the Honâ??ble Supreme Court in St. Stephenâ??s,,,

College (Supra) with specific observations in para 30 thereof, which reads to the effect:",,,

â??30. Surprisingly, the Delhi University in the pleading, has neither denied nor admitted the minority character of the College. But the counsel for the",,,

University have many things to contend which will be presently considered. Mr. Gupta, counsel for the petitioner in T.C. No. 3 of 1980 has specifically",,,

urged that the College was established not by Indian residents, but by foreign Mission from Cambridge and therefore, it is not entitled to claim the",,,

benefit of Article 30(1). From the counter affidavit filed by Dr. J. H. Hala - the Principle of the College in W. P. Nos. 13213-14 of 1984 and from the,,,

publication of ""The History of the College"" the following facts and circumstances could be noted : The College was founded in 1881 as a Christian",,,

Missionary College by the Cambridge Mission in Delhi in collaboration with the Society for the Propagation of the Gospel [SPG] whose members,,,

were residents in India. The College was found in order to impart Christian religious instruction and and education based on Christian values to,,,

Christian students as well as others who may opt for the said education. The Cambridge Brotherhood with plans of establishing the Christian College,,,

in Delhi sent the Cambridge Mission whose members were : Rev, J. D. Murray, Rev. E. Bickarsteth, Rev. G. A. Lefroy, Rev. H. T. Blackett, Rev." ,,,

H. C. Carlyon and Rev. S. S. Allnutt, of the said members of the Cambridge Mission, Rev. Allnutt, Rev. Blackett and Rev. Lefroy teamed up with",,,

Rev. R. R. Winter of the SPG to establish the College. It will be seen that Cambridge Mission alone did not establish the College. The Cambridge,,,

Mission with the assistance of the members of the SPG who were residents in India established the College. The contention to the contrary urged by,,,

Mr. Gupta, counsel for the petitioner in T.C. No. 3 of 1980 is, therefore, incorrect. The purpose of starting the College could be seen from the Report",,,

of 1878 to the Cambridge Brotherhood and it states ""the students after leaving St. Stephen's Mission School joined non Christian College and lost touch",,,

with Christian teachings the case would be otherwise if we were able to send them from our school to a College, where the teachings would be",,,

given by Christian professors and be permeated with Christian ideas."" (F. F. Monk in A History of St. Stephen's College, Delhi, Calcutta, 1935, p. 3).",,,

In October 1879 the Cambridge Committee expressed the desirability of imparting instruction also in secular subjects.""It was also felt that the",,,

influence of the missionaries would be greatly increased if they held classes in some secular subjects and did not conform their teachings to strict,,,

religious instruction""",,,

31. Originally, the College building was housed in hired premises paid for by the SPG. A new building was eventually constructed by the Society for",,,

the Propagation of the Gospel wherein the foundation stone bore the following inscription To the Glory of God And the Advancement of Sound,,,

Learning And Religious Education The new building of the College was eventually opened on December 8, 1881, by Rev. Allnutt. On the said building",,,

on the front of the porch, at the top of the parapet, a 'cross' in bas - relief was placed and immediately under the bracket the words ""Ad Dei Gloriam""",,,

had been inscribed which have since been adopted as the College motto,,,

32. Today the new College building in the University campus has also a large 'cross' at the top of the main tower and in the front porch is inscribed the,,,

St. Stephen's motto ""Ad Dei Gloriam"" to perpetuate and remind the students

the motive and objective of the College, namely, ""The Glory of God.""",,,

33. There is also a chapel in the College campus where religious instruction in the Christian Gospel is imparted for religious assembly in the morning,,,

34. It would thus appear that since its foundation in 1881, St. Stephen's College has apparently maintained its Christian character and that would be",,,

evident from its very name, emblem, motto, the establishment of a chapel and its religious instruction in the Christian Gospel for religious assembly.",,,

These are beyond the pale of controversy Constitution of the College,,,

35. It is said that during the early part of the College history, it was managed by the Mission Council - a totally Christian body. Late in 1913 it was",,,

registered as a society and a Constitution was formulated on November 6, 1913 which was adopted by the SPG Standing Committee and by the",,,

Cambridge Committee. The Constitution as it stands today again maintains the essential character of the College as a Christian College without,,,

compromising the right to administer it as an educational institution of its choice. The Constitution of the College consists of Memorandum of the",,,

Society and Rules. Clause 2 of Memorandum states that ""the object is to prepare students of the College for University degrees and examinations and",,,

to offer instruction in doctrines of christianity which instruction must be in accordance with the teachings of the Church of North India""",,,

23. It has been submitted on behalf of the respondent nos.2 & 3 and the respondent no.4 that the management of the â??Collegeâ?? as observed by,,,

the Honâ??ble Supreme Court itself in St. Stephenâ??s College (supra) is being looked after by the Supreme Council and the Governing Body and,,,

thus the presence of a person nominated from the Governing Body alone of the â??Collegeâ?? by the Supreme Council in the interview panel for,,,

selection of Christian candidates alone does not in any manner detract from the merits of the candidature of a student to obtain admission to the,,,

â??Collegeâ?? in any manner in as much as the admission programme of the â??Collegeâ?? as observed in para 49 of the verdict of the,,,

Honâ??ble Supreme Court in St. Stephenâ??s College (supra) makes it very clear that the opinion of all the members is taken into account and the,,,

final list of candidates selected for admission is put up on the basis of consensus between all of them and thus the presence of a Christian member of,,,

the Governing Body alone as nominated by the Supreme Council would not in

any manner detract from the fairness of the admission process.,,,

24. The grievance of the petitioners is to the effect that in terms of the verdict of the Honâ??ble Supreme Court in T.M.A. Pai Foundation and Ors.,,,

Vs. State of Karnataka and Ors (supra) itself inter se merit between the students of the Christian category in terms of para 152 of the said verdict has,,,

to be maintained.,,,

25. It is essential to observe that candidates called for the interview by the College are only after they have achieved the requisite cut off of the,,,

College even for the Christian category and thus as observed in para 50 of the verdict of the Honâ??ble Supreme Court in St. Stephenâ??s College,,,

(supra) which reads to the effect:,,,

â??50. To Christian students, relaxation up to 10 per cent is given. The Scheduled Castes/Scheduled Tribes candidates who are having a minimum of",,,

50 per cent of marks are called for interview for selection to Honours courses. For B.A. pass course, a further concession to them is granted and the",,,

qualifying marks are reduced even below 50 per cent. As far as sportsmen and sportswomen are concerned, national or State level players are given",,,

concession normally up to 10 per cent and in exceptional cases up to 15 per cent or even more. However, a Christian student, who is below the cut -",,,

off percentage by more than 10 per cent is never called for interview.â??,,,

makes it apparent that even the Christian candidate below the cut off of more than 10% is not called for the interview. The same thus itself makes it,,,

apparent that it cannot in any manner be contended that by the presence of Christian member of the Governing Body as nominated by the Supreme,,,

Council of the College in the interview panel for the interviewing Christian candidates alone would in any manner impinge on the education standards,,,

of the institution and it was observed vide paras 53 & 54 of the said verdict by the Honâ??ble Supreme Court to the effect:,,,

â??53. Article 30(1) provides""",,,

30. Right of minorities to establish and administer educational institutions. - (1) All minorities, whether based on religion or language, shall have the",,,

right to establish and administer educational institutions of their choice.,,,

54. The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The",,,

administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institutions. This management,,,

must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how",,,

the interests of the community in general and the institution in particular will be best served. But the standard of education are not a part of the,,,

management as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people.,,,

Such regulations do not bear directly upon management although they may indirectly of affect it. The state, therefore has the right to regulate the",,,

standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational,,,

institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management,,,

must be left to them, they may be compelled to keep in step with others. There is a wealth of authority on these principles. See : State of Bombay",,,

Education Society, (1955 (1) SCR 568 : 1954 AIR(SC) 561), Kerala Education Bill, 1957, Re 1959 SCR 995 : 1958 AIR(SC) 956) Sidhrajibhai Sabhai",,,

v. State of Bombay (1963 (3) SCR 837 : 1963 AIR(SC) 540), Rev. Father Proost v. State of Bihar (1969 (2) SCR 73 : 1969 AIR(SC) 465), and",,,

State of Kerala v. Mother Provincial (1970 (2) SCC 417 : 1971 (1) SCR 734).â??,,,

26. It is essential to observe that the oral interview which is a supplementary test and not an exclusive test for assessing the suitability of a candidate,,,

for college admission and even the interview confers no wide discretion to the Selection Committee to pick and choose any candidate of their choice,,,

and that they have to select the best among those who are called for the interview as observed vide paras 63 & 64 of the said verdict, which read to",,,

the effect:,,,

â??63. The oral interview as a supplementary test and not a exclusive test for assessing the suitability of candidates for college admission has been,,,

recognised by this Court. But at the same time, to avoid arbitrariness in the selection it has been repeatedly held that there shall not be allocation of",,,

high percentage of marks for oral interview test. Where candidate's personality is yet to develop, it has been emphasised that greater weight has per",,,

force to be given to performance in the written examination and the importance to be attached to the interview test must be minimal. The Court has,,,

generally indicated that interview marks should not be more than 15 per cent of the total marks. (See: R. Chitralekha and Ors. v. State of Mysore and,,,

S. No.,Subject,Nominee,Qualification

1.,Chemistry,"Mr. Deepak Mukarji, Former

Corporate Affairs Chief

Shell India.", "B . A . Eco (H), Senio

,Management Development

at IIMD Lausann

Switzerland, Henley

Management School UK.

2.,Sanskrit,"D r . Renish Geevaghese

Abraham, Bursar, College

Faculty Member,

Department of English", "M.A., Ph.D.

3.,English,"Rev. Dr. Monodeep Danie

Dean, College Head, Delh

Brotherhood Society", "IPh.D

i

4.,Physics,"M r s . Anuradha Amos,

Principal, St. Thomas School,

Mandir Marg", "M.A., M.Ed.

5.,History,"Mr. Deepak Mukarji, Former

Corporate Affairs Chief

Shell India", "B . A . Eco (H), Senio

,Management Development

at IIMD Lausann

Switzerland, Henley

Management School UK

6.,B.A. Programme,"D r . Renish Geevaghese

Abraham, Bursar, College

Faculty Member,

Department of English","M.A., Ph.D.

7.,Philosophy,"Rev. Dr. Monodeep Danie

Dean, College Head, Delh

Brotherhood Society","I Ph.D.

i

8.,Economics,"Mr. Deepak Mukarji, Former

Corporate Affairs Chief

Shell India","B . A . Eco (H), Senio

,Management Development

at IIMD Lausann

Switzerland, Henley

Management School UK.

9.,B. Sc. Programme,"Mr. Deepak Mukarji, Former

Corporate Affairs Chief

Shell India","B . A . Eco (H), Senio

,Management Development

at IIMD Lausann

Switzerland, Henley

Management School UK

10.,Mathematics,"Mr. Deepak Mukarji, Former

Corporate Affairs Chief

Shell India","B . A . Eco (H), Senio

,Management Development

at IIMD Lausann

Switzerland, Henley

Management School UK.

S. No.,Qualifications,,

- 1., "B.A. Eco (H), Senior Management Development a
IIMD Lausanne Switzerland, HenleyM anagement
School UK.",,
- 2., "M.A., Ph.D.",,
- 3., Ph.D.,,
- 4., "M.A., M.Ed.",,
- 5., "B.A. Eco (H), Senior Management Development a
IIMD Lausanne Switzerland, HenleyM anagement
School UK",,
- 6., "M.A., Ph.D.",,
- 7., Ph.D.,,
- 8., "B.A. Eco (H), Senior Management Development a
IIMD Lausanne Switzerland, HenleyM anagement
School UK",,
- 9., "B.A. Eco (H), Senior Management Development a
IIMD Lausanne Switzerland, HenleyM anagement
School UK.",,
- 10., "B.A. Eco (H), Senior Management Development a
IIMD Lausanne Switzerland, HenleyM anagement
School UK",,