

(2017) 11 PAT CK 0053

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17842 Of 2016

Z. A. Islamia College

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 09-11-2017

Acts Referred:

Constitution Of India, 1950 — Article 29(1), 29(2), 30, 39(2)

Citation : (2018) 2 PLJR 487

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Abhinav Srivastava, Madanjeet Singh, Narendra Kumar, Anjani Kumar

Final Decision : Disposed Of

Judgement

1. In case of St. Stephen College Vs. University of Delhi reported in 1992(1) SCC 55,8 the Supreme Court held that minority educational institutions

are free to adopt their own selection procedure for admission of students. The Supreme Court, however, laid down that the Colleges, through that

process may admit 50% of students of their own community.

2. The said decision of the Supreme Court to the extent it allowed minority Colleges to admit 50% of their own community was doubted in a

subsequent decision of Supreme Court and finally in case of T.M.A. Pai Foundation Vs. State of Karnataka reported in (2002) 8 SCC 481 held that it is

true that one of the rights to administer an educational institution is to grant admission to the students. The Supreme Court, however, held that as long

as an educational institution, whether belonging to the minority or majority community, does not receive aid, it would be its right and discretion to grant

admission to such students as it chooses or selects subject to provision regulating grant of such admission. However, in view of the language used in

Article 29(2) of the Constitution of India, the Supreme Court in T.M.A. Pai Foundation (supra) did not agree with the law laid down in case of St.

Stephen College of fixing 50% of permitting minority institutions to reserve 50% of the seats for admission to candidates belonging minority

communities, on the basis of the minority status, interpreting Article 29(2) of the Constitution of India which reads thus:-

Article 29 (1) xx xx xx

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on

grounds only of religion, race, caste, language or any of them.

3. On the question of the right of minority institutions to adopt their own procedure for selecting students for their admission has been finally

recognized by the Supreme Court in case of T.M.A. Pai Foundation (supra), wherein the Supreme Court held in no uncertain terms that right to admit

students being an essential facet of right to administer education institutions of their choice, as contemplated under Article 30 of the Constitution of

India, the State Government or the University may not be entitled to interfere with the 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. In quick succession, the

Supreme held that 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 the grounds of religion, race, caste, language or any of them. It emphatically held thus, that an aided minority

educational institution cannot then give preference to students of their own community. It also held that observance of inter se merit amongst the

applicants must be ensured.

4. The petitioner is admittedly an aided minority educational institution affiliated to Jai Prakash University, Chapra, imparting education for various

Under Graduate and post Graduate courses.

5. This writ application has been filed with a grievance that the University has prepared a merit list for admission to P.G. Course in different subjects.

Based on the said merit list, the University is supplying names of the candidates to the Colleges including this College to admit them in respective

courses. It is, accordingly, the grievance of the petitioner that the University is

infringing their right to administer the educational institution conferred under Article 30 of the Constitution of India. It is the case of the petitioner-College thus, that if is left with no other option but to admit students on the basis of list furnished by the University and, thereby, the University is prohibiting the College from admitting students of their own choice, in breach of their constitutional right.

6. Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioner has relied on Supreme Court's decision in case of T.M.A. Pai

Foundation (supra) and Secretary, Malankara Syrian Catholic College Vs. T.Jose reported in (2007) 1 SCC 38 6to contend that the action of the respondent University is in violation of Article 30 of the Constitution of India.

7. Learned counsel appearing on behalf of the University, on the other hand, has submitted that it is now well settled in view of the decision in case of

Modern Dental College and Research Center and others Vs. State of M.P. and others reported in (2016) 7 SCC 35 3and Division Bench decision of

this Court in case of Mirza Ghalib T.T. College Vs. State of Bihar reported in 2017(1) PLJR 25,6 that merit should be the criteria for admission and

there is no illegality if the University has undertaken a centralized process of selection for admission to all Colleges, either constituent or affiliated

under the University in various courses.

8. So far as the submission made on behalf of the University referring to Supreme Court's decision in case of Modern Dental College and

Research (supra) and Mirza Ghalib T. T. college (supra), I am of the view that it has to be kept in mind that those decisions relate to admission to

professional courses where the Courts emphasized the need of a Common Entrance Test for admission to privately aided or unaided Colleges, both

minority institutions and non-minority institutions.

9. In view of what has been laid down by the Supreme Court in case of T.M.A.Pai Fondation (supra), I do not think there should be any element of

doubt over the legal position that right to admit students is an essential facet of right to administer educational institutions of their choice, as

contemplated under Article 30 of the Constitution of India. The University or the State Government cannot compel the minority institutions to admit

students selected and recommended by them. The right of the minority institutions not only to reject such candidates to admit on reasonable grounds

and select candidates of their choice in intact under Article 30 of the Constitution of India.

10. In view of clear provision under Article 39(2) of the Constitution of India, however, even minority institutions cannot deny admission to non-minority candidates.

11. The Court is informed at the Bar that the admissions are complete for current academic Session. This writ application, in that view of the matter,

is disposed of with a direction that the University or the State Government shall not interfere with the process of selection of students for admission to

U.G. or P.G. Courses being run in the College, which are admittedly not professional courses, till such process is found to be fair, transparent, based

on merit and in conformity with any regulation laying down the process of selection for admission. The University, in view of the discussion as above,

cannot compel the College to admit students as suggested and recommended by it.

12. This application stands disposed of accordingly.