2024:DHC:3104

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20 February 2024

Pronounced on: 22 April 2024

\+ W.P.(C) 803/2022, CM APPL. 2248/2022, CM APPL. 23593/2022 and CM APPL. 7754/2024

ST. STEPHEN'S COLLEGE ..... Petitioner

Through: Mr. Romy Chacko, Mr. Shakti Chand Jaidwal, Mr. Prashant Kumar and Mr. Sachin Singh Dalal, Advs.

versus

UNIVERSITY OF DELHI AND ORS. ..... Respondents

Through: Mr. Mohinder J.S. Rupal and Mr. Hardik Rupal, Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

% **22.04.2024**

The dispute

1. The prayer clause in this writ petition, instituted by the St. Stephen's College, Delhi University ("the petitioner college"), reads as under:

> "It is, therefore, prayed that this Hon'ble Court be pleased to:-
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> a) Issue appropriate orders directing the respondent university to honour the list of candidates for P.G. Operational Research and Chemistry sent by the Petitioner College on 24th November, 2021.
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> b) Issue appropriate orders directing the respondent university to respect the choice of the selected PG candidates to study at the petitioner college

> c) Allot a proportionate number of PG seats to the petitioner college or in the alternative lay guidelines for allocation of seats to P.G. course.
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> d) Award the cost of these proceedings in favour of the Petitioner and against the Respondents; and
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> e) Pass any other/further order(s) as this Hon'ble Court may deem fit and report in the facts and circumstances of the case to meet the ends of justice.
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> AND FOR WHICH ACT OF KINDNNESS THE PETITIONER SHALL DUTY BOUND EVER PRAY"

2. With the passage of time, prayers a) and b) have been rendered infructuous. The petition, therefore, survives only with respect to prayer c).

Submissions of Mr. Romy Chacko on behalf of the petitioner

3. The grievance of the petitioner college, as is apparent from prayer clause c) in the writ petition, is that, while allotting seats for admission to Postgraduate (PG) courses in colleges affiliated to it, the Delhi University (DU) is allotting a disproportionately small number of seats to the petitioner college. Allotment of seats in PG courses amongst various colleges is admittedly done by the DU. The petitioner college alleges that there are no objective guidelines, whatsoever, governing the allotment of PG seats amongst colleges. As a result, the DU enjoys absolute and hegemonic control over the decision of the number of PG seats to be allocated to any particular college affiliated to it. In arbitrary exercise of this authority, it is

alleged that the DU has been allotting very few PG seats to the petitioner college with no due justification.

4. In order to demonstrate this fact, Mr. Romy Chacko, learned Counsel for the petitioner college drew my attention to the following table contained in para 20 of the writ petition:

UG and PG Seats Ratio Comparative 2021-22		
Physics	**UG**	**PG**
St. Stephen's College	50	6
Ramjas College	115	74
Kirorimal College	144	73
Daulat Ram College	58	NA
Hansraj College	69	69
Miranda House	86	38
Chemistry	**UG**	**PG**
St. Stephen's College	50	0
Ramjas College	115	56
Kirorimal College	144	67
Daulat Ram College	29	NA
Hansraj College	69	38
Miranda House	78	46
English	**UG**	**PG**
St. Stephen's College	30	10
Ramjas College	78	24
Kirorimal College	54	25
Daulat Ram College	78	23
Hansraj College	54	27
Miranda House	78	20
History	**UG**	**PG**
St. Stephen's College	60	6
Ramjas College	78	49
Kirorimal College	54	30
Daulat Ram College	58	27
Hansraj College	54	30
Miranda House	58	30
Mathematics	**UG**	**PG**

St. Stephen's College	50	10
Ramjas College	78	51
Kirorimal College	83	51
Daulat Ram College	58	NA
Hansraj College	62	61
Miranda House	88	37
Sanskrit	**UG**	**PG**
St. Stephen's College	10	5
Ramjas College	31	35
Kirorimal College	23	36
Daulat Ram College	46	39
Hansraj College	39	36
Miranda House	39	32

5. It is apparent, at a bare glance at the above table, that the number of PG seats allocated to the petitioner college are far less than the number of seats allocated to other colleges. Mr. Chacko submits that two possible criteria, on the basis of which, the decision regarding the number of PG seats to be allocated to a particular college may be said to be justified, could be the number of Undergraduate (UG) seats in that college and the infrastructural wherewithal of the college. He submits that neither of these considerations can be said to justify the disproportionately low number of PG seats that the DU has been allocating to the petitioner college.

6. From the data applicable to the year 2021-2022, as reflected in the above extracted table, for example, Mr. Chacko points out that, while the petitioner college had 50 UG seats in Physics, it was allotted only 6 PG seats, while the petitioner college had 50 UG seats in Chemistry, it was allotted no PG seats whatsoever and the like. He also submits that the petitioner college is a reputed institution, which has more than the requisite infrastructure and facilities to provide

postgraduate education to far more than the number of students allocated to the petitioner college by the DU.

7. According to Mr. Chacko, there are two reasons why the DU is unhappy with the petitioner college, reflected in the allocation of disproportionately low number of PG seats. The first is that the DU wanted the petitioner college to co-opt, in its Selection Committee, representatives of the DU, which the petitioner college is not willing to do. The second is that the petitioner college used to subject the students, who had been allotted to the petitioner college for PG admission, to an additional interview, following which some of the allotted students were not able to make the cut to obtain admission to the petitioner college. The petitioner college used to mark the students, allotted to PG admission by the DU, on an 85:15 basis, with 85% being attributed to the marks obtained on the basis of the merit reflected in the selection by the DU and 15% towards interview. Mr. Chacko submits that the DU was unhappy at the petitioner college subjecting the students who had already been selected by the DU for PG admission in the petitioner college, to an additional round of selection by way of interview.

8. These factors, according to Mr. Chacko, learned Counsel for the petitioner college, prompted the DU to decide to allocate a lesser number of PG seats to the petitioner college.

9. Mr. Chacko submits that the right of the petitioner college to subject PG students to an additional round of interview before they

were selected flows from its unique status as a minority institution, and its fundamental right as a minority institution, to establish and administer its affairs, conferred by Article 30(1)[1] of the Constitution of India. This position, he submits, is no longer *res integra,* having been settled by the Supreme Court as far back as in 1992, by the judgment in ***St. Stephen's College v. University of Delhi***[2]. In the said decision, the Supreme Court upheld the right of the petitioner as a minority educational institution to devise its own mode of selection of undergraduate students by an interview. The following passages from ***St. Stephen's College*** may be reproduced:

> "45. From these and other relevant provisions of the Act and Ordinances, we have not been able to find any indications either in the general scheme or in other specific provisions which would enable us to say that the College is legally precluded from maintaining its minority character. That in matters of admission of students to Degree courses including Honours courses, the candidates have to apply to the College of their choice and not to the University and it is for the Principal of the College or Dean of Faculties concerned to take decision and make final admission. It is, therefore, wrong to state that there is no admission to the College but only for the University. The procedure for admission to Post Graduate courses is of course, different but we are not concerned with that matter in these cases.
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> 46. It is equally important to note that under Rule 8 of the Rules of the College Society, the management has not accepted all rules and regulations relating to composition of Governing Bodies, management of colleges, appointment of Principals etc. as prescribed by the relevant Statutes, Ordinances and Regulations of the University but has reserved its rights to accept only such directions which are not contrary to its constitution, and which it has found suitable for the better management of the College and improvements of academic standards. The College has been constituted as a self-contained and autonomous institution. *It has preserved the right to choose its own Governing Body*, *and select*

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[1] **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.

[2] **(1992) 1 SCC 558**

and appoint its own Principal both of which have a great contributing factor to maintain the minority character of the institution. It may also be noted that the Constitution of the College has been duly registered with the Registrar of Joint Stock Companies, Delhi Province, as also the University of Delhi. It is not disputed that the University has at no stage raised any objection about any of the provisions of the Constitution of the College. From these facts and circumstances it becomes abundantly clear that St. Stephen's College was established and administered by a minority community, viz., the Christian community which is indisputably a religious minority in India as well as in the Union territory of Delhi where the College is located.

Second Question

47. Whether St. Stephen's College as minority institution was bound by the University circulars dated June 5, 1980 and June 9, 1980?

48. The first circular of the University dated June 5, 1980 has prescribed the last date for receipt of applications for admission. By the second circular dated June 9, 1980 all the Colleges of Delhi University were directed to admit students solely on the basis of merit determined by the percentage of marks secured by the students in the qualifying examinations. The first circular left by itself could not have been complained of, but it is so closely connected with the directive in the second circular. If the last date fixed in the first circular for receipt of applications was followed, then the College could not have selected applicants by following its own admission programme. It is the case of the College that it has been following its own admission programme for more than 100 years and over the years it has built up a corporate image in a number of distinctive activities. The admission programme of the College has become a crucial instrument to promote the excellence of the institution and it forms part of the administration which the College is entitled to have as a minority institution under Article 30(1) of the Constitution. The University cannot direct the College to dispense with its admission programme in the absence of proof of maladministration of the College. The circulars have been challenged also on the ground that they are not regulative in nature. It is said that if students are admitted purely on the basis of marks obtained by them in the qualifying examination it would not be possible for any Christian student to get admission. It has been found that unless concession is afforded, the Christian students cannot be brought within the zone of consideration. They generally lack merit when compared with the other applicants.

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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 institution'. 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 standards 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 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 v. Bombay Education Society***[3]; ***Kerala Education Bill, 1957, Re***[4] ; ***Sidhajbhai Sabhai v. State of Bombay***[5] ; ***Rev. Father W. Proost v. State of Bihar***[6] ; and ***State of Kerala v. Mother Provincial***[7] .

55. Though Article 30(1) is couched in absolute terms in marked contrast with other fundamental rights in Part III of the Constitution, it has to be read subject to the power of the State to regulate education, educational standards and allied matters. In ***Ahmedabad St. Xavier's College Society v. State of Gujarat***[8] which was the decision of a nine Judge Bench, Ray, C.J., with whom Palekar, J., concurred, observed that upon affiliation to a University, the minority and non-minority institutions must agree in the pattern and standards of education. Regulations which will serve the interest of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions. It was further observed:

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[3] **(1955) 1 SCR 568 : AIR 1954 SC 561**
[4] **1959 SCR 995 : AIR 1958 SC 956**
[5] **(1963) 3 SCR 837 : AIR 1963 SC 540**
[6] **(1969) 2 SCR 73 : AIR 1969 SC 465**
[7] **(1970) 2 SCC 417 : (1971) 1 SCR 734**
[8] **(1974) 1 SCC 717 : (1975) 1 SCR 173**

> "That the ultimate goal of a minority institution too imparting general secular education is advancement of learning. This Court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education."

56. In the same case Khanna, J., put the principles with a different emphasis:

> "The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education. The right to administer educational institutions can plainly not include the right to maladminister. Regulations can be made to prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of an educational institution without qualified teachers. The State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations made in the true interests of the efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational."

57. Mathew, J., had this to state:

> "The heart of the matter is that no educational institution established by a religious or linguistic minority can claim total immunity from regulations by the legislature or the University if it wants affiliation or recognition; but the character of the permissible regulations must depend upon their purpose. As we said, such regulations will be permissible if they are relevant to the purpose of securing or promoting the object of recognition or affiliation. There will be borderline cases where it is difficult to decide whether a regulation really subserves the purpose of recognition or affiliation. But that does not affect the

> question of principle. In every case, when the reasonableness of a regulation comes up for consideration before the court, the question to be asked and answered is whether the regulation is calculated to subserve or will in effect subserve the purpose of recognition or affiliation, namely, the excellence of the institution as a vehicle for general secular education to the minority community and to other persons who resort to it. The question whether a regulation is in the general interest of the public has no relevance, if it does not advance the excellence of the institution as a vehicle for general secular education as, ex hypothesi, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards. This is the reason why this Court has time and again said that the question whether a particular regulation is calculated to advance the general public interest is of no consequences if it is not conducive to the interest of the minority community and those persons who resort to it."

58. In ***Lily Kurian v. Sr. Lewina***[9] it was pointed out:

> "Protection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minority's choice enshrined in Article 30(1) means 'management of the affairs' of the institution. This right is, however, subject to the regulatory power of the State. Article 30(1) is not a charter for maladministration; regulation, so that the right to administer may be better exercised for the benefit of the institution, is permissible; but the moment one goes beyond that and imposes, what is in truth, not a mere regulation but an impairment of the right to administer, the article comes into play and the interference cannot be justified by pleading the interests of the general public; the interests justifying interference can only be the interests of the minority concerned."

59. The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to maladminister. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will

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[9] **(1979) 2 SCC 124 : 1979 SCC (L&S) 134**

serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations, contracts, torts etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. *Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. That is a privilege which is implied in the right conferred by Article 30(1).*

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.[10] 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.[11] In ***Rt. Rev. Magr. Mark Netto v. State of Kerala***[12] 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 opened 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 girls 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 the 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*

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[10] (1955) 1 SCR 568 : AIR 1954 SC 561
[11] (1963) 3 SCR 837 : AIR 1963 SC 540
[12] (1979) 1 SCC 23 : (1979) 1 SCR 609

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 T.N. v. Rev. Brother G. Arogiasamy***[13] , 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 SSLC public examination. On the basis of the aggregate of marks in the SSLC 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.

61. *In the instant case also the impugned directives of the University to select students on the uniform basis of marks secured in the qualifying examinations would deny the right of St. Stephen's College to admit students belonging to Christian community*. It has been the experience of the College as seen from the chart of selection produced in the case that unless some concession is provided to Christian students they will have no chance of getting into the College. If they are thrown into the competition with the generality of students belonging to other communities, they cannot even be brought within the zone of consideration for the interview. Even after giving concession to a certain extent, only a tiny number of minority applicants would gain admission. This is beyond the pale of controversy.

62. The grievance of the University and the Students' Union is that the College Admission Programme is a device to manipulate the merits and not a scientific test to assess performance of

[13] **AIR 1971 Mad 440 : (1971) 1 MLJ 325 : 84 Mad LW 195**

candidates. The selection is made by judging the candidates at the interview and the marks secured in the qualifying examinations are not taken into account for selection. The marks are only relevant for calling the candidates for interview. We have carefully examined the College Admission Programme and in our opinion, the contention urged for the University and Students' Union is misconceived. The purpose of the interview is not to reassess or remeasure the merits of the applicants in the qualifying examinations. The marks secured in the qualifying examinations are indeed relevant for selection and the interview is only supplementary test. The College fixes different cut-off percentage of marks in different subjects. The candidates are called for interview in the ratio of 1:4 or 1:5 depending upon the candidate's choice of selection of courses of study. The interview is conducted by men of high integrity, calibre and qualification. They are men who deal with education and the students. During the interview, questions are asked to test the candidate's knowledge of the subject and his general awareness of the current problems. The student is also required to furnish in the application form his interest, hobbies, values, career plan etc. Each member of the Interview Committee grades the performance of the candidates and the selection is made for each course of study by taking into consideration the opinion expressed by all the members of the Interview Committee. By consensus the final list of candidates is prepared. The selection is thus made on the basis of the candidate's academic record and performance at the interview keeping in mind his/her all round competence, capacity to benefit from being in the College as well as potential to contribute to the life of College. Judging the performance by grading is a well known method followed in the academic field.

65. The College seems to have compelling reasons to follow its own admission programme. The College receives applications from students all over the country. The applications ranging from 12,000 to 20,000 are received every year as against a limited number of 400 seats available for admission. The applicants come from different institutions with diverse standards. The merit judging by percentage of marks secured by applicants in different qualifying examinations with different standards may not lead to proper and fair selection. It may not also have any relevance to maintaining the standards of excellence of education. As observed by this Court in ***D.N. Chanchala v. State of Mysore***[14] the result obtained by a student in an examination held by one University cannot be comparable with the result obtained by another candidate in an examination of another University. Such standards

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[14] **(1971) 2 SCC 293 : 1971 Supp SCR 608**

depend on several human factors, method of teaching, examining and evaluation of answer papers. The subjects taught and examined may be the same, but the standard of examination and evaluation may vary, and the variations are inevitable. In the premises, the admission solely determined by the marks obtained by students, cannot be the best available objective guide to future academic performance. The College Admission Programme on the other hand, based on the test of promise and accomplishment of candidates seems to be better than the blind method of selection based on the marks secured in the qualifying examinations. We are, therefore, unable to accept the submission that the College Admission Programme is arbitrary and the University criteria for selection is objective.

66. *So in the end we are driven to conclude that St. Stephen's College is not bound by the impugned circulars of the University.*

Third Question

67. Whether St. Stephen's College and the Allahabad Agricultural Institute as minority institutions are entitled to accord preference in favour of or reserve seats for candidates belonging to their own community and whether such preference or reservation would be invalid under Article 29(2) of the Constitution?

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70. We are concerned in this question with discrimination, and mainly with discrimination on ground of religion in the aided educational institutions. The issue involves the citizen's entitlement as a part of his personal liberty not to be discriminated on the ground of religion as against the minority's right in their own educational institution. This is the most difficult and complicated issue and is seemingly not covered by any authority of this Court. The determination of the issue mainly depends upon the constitutional compass of Articles 29(2) and 30(1) of the Constitution.

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<u>Articles 29(1) and 30(1) of the Constitution</u>

78. Having set the scene, we can deal with the provisions of Articles 29(1) and 30(1) relatively quickly. Under Article 29(1) every section of the citizens having a distinct language, script or culture of its own has the right to conserve the same. Under Article

> 29(1), the minorities — religious or linguistic — are entitled to establish and administer educational institutions to conserve their distinct language, script or culture. However, it has been consistently held by the courts that the right to establish an educational institution is not confined to purposes of conservation of language, script or culture. The rights in Article 30(1) are of wider amplitude. The width of Article 30(1) cannot be cut down by the considerations on which Article 29(1) is based. The words "of their choice" in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes. (See: ***Father W. Proost v. State of Bihar***; ***Ahmedabad St. Xavier's College v. State of Gujarat*** ; and ***Kerala Education Bill case***.)
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> 102. *In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard.* The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to members of communities other than the minority community. *The admission of other community candidates shall be done purely on the basis of merit.*"

10. Mr. Chacko also relies on paras 19, 40, 41 and 181 of the judgment of the nine Judge Constitution Bench of the Supreme Court in ***Ahmedabad St. Xaviers College Society***, which read thus:

> "19. The entire controversy centres round the extent of the right of the religious and linguistic minorities to administer their educational institutions. The right to administer is said to consist of four principal matters. *First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons elected by them.* Second is the right to choose its teachers. It is said that minority institutions want

teachers to have compatibility with the ideals, aims and aspirations of the institution. *Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications.* Fourth is the right to use its properties and assets for the benefit of its own institution.

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40. *The provisions contained in Section 33A (1) (a) of the Act state that every college shall be under the management of a governing body which shall include amongst its members, a representative of the university nominated by the Vice-Chancellor and representatives of teachers, non-teaching staff and students of the college.* These provisions are challenged on the ground that this amounts to invasion of the fundamental right of administration. It is said that the governing body of the college is a part of its administration and therefore that administration should not be touched. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised through a body of persons in whom the founders of the institution have faith and confidence and who have full autonomy in that sphere. The right to administer is subject to permissible regulatory measures. Permissible regulatory measures are those which do not restrict the right of administration but facilitate it and ensure better and more effective exercise of the right for the benefit of the institution and through the instrumentality of the management of the educational institutions and without displacing the management. If the administration has to be improved it should be done through the agency or instrumentality of the existing management and not by displacing it. *Restrictions on the right of administration imposed in the interest of the general public alone and not in the interests of and for the benefit of minority educational institutions concerned will affect the autonomy in administration.*

41. Autonomy in administration means right to administer effectively and to manage anti conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. *The right of administration is day to day administration. The choice in the personnel of management is a part of the administration*. The university will always have a right to see that there is no mal-administration. If there is maladministration the university will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the

requirements of the teachers and the students. In ***State of Kerala v. Very Rev. Mother Provincial, etc.***[15] this Court said that *if the administration goes to a body in the selection of whom the founders have no say, the administration would be displaced. This Court also said that situations might be conceived when they might have a preponderating voice. That would also effect the autonomy in administration.* The provisions contained in Section 33A(1)(a) of the Act have the effect of displacing the management and entrusting it to a different agency. The autonomy in administration is lost. New elements in the shape of representatives of different types are brought in. The calm waters of an institution will not only be disturbed but also mixed. These provisions in Section 33A(1)(a) cannot therefore apply to minority institutions.

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181. We think that the provisions of sub-sections (1)(a) and (1)(b) of Section 33A abridge the right of the religious minority to administer educational institutions of their choice. *The requirement that the college should have a governing body which shall include persons other than those who are members of the governing body of the Society of Jesus would take away the management of the college from the governing body constituted by the Society of Jesus and vest it in a different body. The right to administer the educational institution established by a religious minority is vested in it. It is in the governing body of the Society of Jesus that the religious minority which established the college has vested the right to administer the institution and that body alone has the right to administer the same. The requirement that the college should have a governing body including persons other than those who constitute the governing body of the Society of Jesus has the effect of divesting that body of its exclusive right to manage the educational institution. That it is desirable in the opinion of the legislature to associate the Principal of the college or the other persons referred to in Section 33A(1)(a) in the management of the college is not a relevant consideration. The question is whether the provision has the effect of divesting the governing body as constituted by the religious minority of its exclusive right to administer the institution. Under the guise of preventing maladministration, the right of the governing body of the college constituted by the religious minority to administer the institution cannot be taken away. The effect of the provision is that the religious minority virtually loses its right to administer the institution it has founded. Administration means 'management of the affairs' of the institution. This management must be free of*

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[15] **(1970) 2 SCC 417**

> *control so that the founders or their nominees can mould the institution according to their way of thinking and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right."* Sections 48 and 49 of the Kerala University Act, 1969, which came up for consideration in that case respectively dealt with the governing body for private colleges not under corporate management and the managing council for private colleges under corporate management. Under the provisions of these sections, the educational agency or the corporate management was to establish a governing body or a managing council respectively. The sections provided for the composition of the two bodies. It was held that the sections had the effect of abridging the right to administer the educational institution of the religious minority in question there. One of the grounds given in the judgment for upholding the decision of the High Court striking down the sections is that these bodies had a legal personality distinct from governing bodies set up by the educational agency or the corporate management and that they were not answerable to the founders in the matter of administration of the educational institution. The Court said that a law which interferes with the composition of the governing body or the managing council as constituted by the religious or linguistic minority is an abridgment of the right of the religious minorities to administer the educational institution established by it [see also ***Rev. Father W. Proost v. State of Bihar***[16] and ***Rt. Rev. Bishop S. K. Patro v. State of Bihar***.[17]]"

11. The above two judgments, submits Mr. Chacko, clarify, firstly, that a minority educational institution is entitled to devise its own mode of selection of students belonging to the minority community and enjoys autonomy in that regard and, secondly, that a minority educational institution also enjoys autonomy with respect to its governing body and the members, who would form part thereof.

<u>Right to administer under Article 30(1) cannot be denied</u>

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[16] **(1969) 2 SCR 73**
[17] **(1969) 1 SCC 863**

12. The submission is unexceptionable. The right of the petitioner-College to modulate its admission process so as to ensure that students belonging to the Christian minority have a leg up in the matter of admission to its portals stands acknowledged by the Supreme Court and cannot, therefore, be regarded as *res integra*. Included, in the right to administer its institution under Article 30(1) of the Constitution of India is, also, the right to decide on the members of its Governing Body. The right under Article 30(1) does not, however, extend to maladministration of the affairs of the minority institution, in which event the regulatory powers vested in the University would be invocable.

13. The only grounds on which the respondents had restricted the number of PG seats allocated to the petitioner college being thus unsustainable in law, Mr. Chacko submits that the DU has to be directed to discontinue this practice of discriminatory allotment of seats.

<u>Stand of DU in counter-affidavit</u>

14. In the counter affidavit filed by way of response to the writ petition, the DU has taken serious exception to the practice of the petitioner college in subjecting the students, who had already been selected and shortlisted by the DU for admission to postgraduate courses to an additional round of interview and, on that basis, refusing to admit some of the students. This practice, according to the counter affidavit filed by the DU, had necessarily to stop. While all other

colleges were honouring the selection process adopted by the DU before allocating the students to PG courses, it was the petitioner college alone which was adopting a different course and subjecting the selected students to an additional round of interview. The students, who could not clear the interview round, were, therefore, not granted admission by the petitioner college, were, thereby, left in the lurch. The Delhi University had, in such circumstances, to make special efforts to ensure that such students were admitted in other colleges. This was creating disharmony among students and also upsetting the entire system of allocation of PG seats amongst colleges.

15. The averments in the counter affidavit leave no manner of doubt that this "rebellious" attitude of the petitioner college, in subjecting the students shortlisted for admission to the PG courses, by the DU, to a further round of interview, was the main factor which provoked the DU to reduce the number of seats allocated to the petitioner college.

Additional Affidavit by DU and response of petitioner thereto

16. During the course of hearing in this writ petition, this Court, by order dated 13 July 2022, directed the DU to file an additional affidavit, explaining the mechanism by which the seat allocation was done by the DU for PG courses and the reason why, compared to 2020-2021, a disproportionately lesser number of seats was allocated to the petitioner college for the year 2021-2022.

17. In compliance with the said direction, the DU has filed an additional affidavit dated 25 August 2022. The additional affidavit essentially reiterates the averments contained in the counter affidavit filed by the DU by way of response to the writ petition. It once again gives voice to the objection of the DU to the additional interview process to which the petitioner college subjects the students, who had already been shortlisted for admission to PG courses by the DU in the petitioner college. In para 15 of the additional affidavit, it is candidly acknowledged thus:

> "15. Under these circumstances when the Petitioner College has time and again shown scant regard for the University system and the interest of the student applicants, the obvious consequences were to stop allocation of any seat to the Petitioner College for which the Petitioner College is to blame itself."

18. The petitioner college has, in its response to the additional affidavit, reiterated its contention that, by virtue of the special status enjoyed by it as a minority institution and in view of the law laid down in ***St. Stephen's College*** and ***Ahmedabad St. Xaviers College Society***, the petitioner college was well within its rights in subjecting the students, shortlisted by the DU for admission to PG courses, to an additional round of interview. Denying the petitioner college this right, it is urged, would amount to nullifying the fundamental right guaranteed to the petitioner college under Article 30(1) of the Constitution of India.

<u>Change in nature of controversy with introduction of CUET</u>

19. Time, however, is a great healer and, with the passage of time and intervening developments, the issue of the legitimacy of the manner in which the petitioner college was admitting students, who had been shortlisted for PG courses by the DU, does not really survive for consideration.

20. Come 2022-2023, the Government introduced the Common University Entrance Test (CUET), to be conducted by the National Testing Agency (NTA), as the sole mode of admission to seats in undergraduate courses in colleges in Central Universities. The process of admission by the CUET was extended to PG courses with effect from the academic year 2023-2024.

Judgment and interim order of Division Bench in ***St Stephen's College***

21. The issue of whether, after the introduction of the CUET for UG courses, the petitioner college was still entitled to devise its own admission process whereby 85% weightage would be attributed to the CUET score of the candidate and 15% to the marks obtained in interview to be conducted by the petitioner college, was made subject matter of dispute in WP (C) 8814/2022 (***St. Stephen's College v. University of Delhi***[18]). The Division Bench of this Court, in a detailed judgment, rendered in the said writ petition held, following the judgment of the Supreme Court in ***St. Stephen's College,*** that the petitioner college was entitled to continue to hold an interview, and

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[18] **2022 SCC online Del 2893**

allocate 15% marks to the interview with 85% marks for CUET score, in the case of minority students to be admitted by it. However, it was held that non-minority students admitted by the petitioner college could not be made to subject themselves to an interview.

22. The relevant passages from the judgment of the Division Bench may be reproduced thus:

> "49. A reading of the foregoing judicial pronouncements holding the field also demonstrates that no categorical judicial assertion has been rendered with regard to a minority institution's right to administer an institution of its choice under Article 30(1) being extended to its non-minority members. In the absence of such an assertion and from a plain reading of Article 30(1), it can only be discerned that the right enumerated therein did not encompass the non-minority community. The golden rule of interpretation clearly denotes that words must be read in its ordinary, natural and grammatical meaning. Assuming that the non-minority community would also be subjected to a specialised process of admission would entail reading into the constitutional provision an aspect that does not exist. This line of interpretation can also be culled out from the aforesaid Judgements which have set conditions for the kind of State regulations that can be effectuated upon a minority educational institution, and how the same may only be permissible if they are in furtherance of the minority interest, not non-minority interest, and conducive to those who resort to it.
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> *****
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> 51. Consequently, *this Court is of the opinion that while the Petitioner-College retains its authority to conduct interviews in addition to the CUET for the admission of students belonging to the minority community, it cannot devise a policy that forces the non-minority community to undergo an interview as well. Therefore, the right of the Petitioner-College to conduct interviews and accord to them 15% weightage for the purposes of admitting students does not extend to non-minority students, and solely pertains to its minority students.*
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> *****

> 63. Therefore, even though there exist limitations to the regulations of the State when it comes to interfering in the admission process instituted by the Petitioner-College under its fundamental right as per Article 30(1) for the minority community, it emerges before this Court that the Respondent No.1 is well within its right to formulate policies regulating the right of the Petitioner-College, which is an aided educational institution, to admit students if it is of the opinion that the admission policies of the Petitioner-College may potentially lead to maladministration and lower the standard of excellence of the institution. Accordingly, the policies of Respondent No.1 that is under consideration in the instant matter do not traverse beyond reasonability and do not impinge upon the rights of the Petitioner-College under Article 30(1).
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> *****
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> 70. *Consequently, the communication dated 09.05.2022 issued by Respondent No.1 is liable to be set aside to the extent that it mandates a single merit list for admission of candidates belonging to the Christian community regardless of any denominations/sub-sects/sub-categories within the Christian community.* The Petitioner-College is, therefore, directed to follow the admission policies for the year 2022-2023 as formulated by Respondent No.1. Further, in accordance with the subsequent communication dated 24.05.2022, the Petitioner-College must withdraw its Admission Prospectus and issue a Public Notice declaring the amended admission procedure."

23. To the extent the above judgment of the Division Bench in ***St. Stephen's College*** does not allow an interview to be conducted for admission of non-minority students, the petitioner college has carried the matter to the Supreme Court in Civil Appeals 7636-7637/2022. The said civil appeals are presently pending before the Supreme Court.

24. Following the above judgment, another Division Bench of this Court has, on 21 July 2023, passed an interim order in WP (C) 5426/2023 in the following terms:

> "28. In view of the above, this Court is of the opinion that a *prima facie* case has been made that the Petitioner will suffer an irreparable loss if interim relief is not granted at this juncture. The balance of convenience also lies in favour of the Petitioner. Accordingly, as an interim measure, this Court directs that the admission policy as framed by this Court *vide* judgment dated 12.09.2022 shall be followed for the Academic Year 2023-24 and the *St. Stephen's College will adopt the marks secured in the CUET with 85% weightage for CUET and the College's interview for shortlisted candidates with a weightage of 15% for Christian minority candidates. For non-minority candidates, the College will adopt the marks secured in the CUET alone as the sole eligibility criteria.* The admissions made in the College would be subject to the final outcome of the instant writ petitions."

25. Mr. Romy Chacko, appearing for the petitioner college, submits that the petitioner college is entitled, in view of the above legal position, to follow the same procedure as has been approved by the Division Bench of this Court in ***St. Stephen's College*** and the interim order dated 21 July 2023 in WP (C) 5426/2023 *(supra)*, insofar as minority students are concerned.

26. As the aspect of whether the petitioner college can resort to interview of non-minority students is presently pending before the Supreme Court and the judgment of the Division Bench in ***St. Stephen's College*** is presently against the petitioner on that score, Mr. Chacko submits that petitioner-College would not adopt the interview process for non-minority students.

27. Mr. Rupal, who appears for the DU, submits that, so long as the petitioner college restricts holding of interview for admission of PG students only to students belonging to the Christian minority community, the DU would not have any objection and would hereafter

ensure that there is proportionate allocation of PG seats to the petitioner college, without the number of seats allocated being disproportionately less as compared to the seats allotted to other colleges.

28. In view of the said statement, it is not necessary for this Court to enter in merits into the aspect of the reasonability of the method of allocation of seats in the PG courses, by the DU.

<u>Uncanalized allocation of PG seats impermissible</u>

29. However, the Court takes note of the fact that there is no guideline whatsoever governing such allocation. This is not an acceptable situation. Grant of uncanalized and absolute discretion is an invitation to arbitrariness. While the Court cannot, in exercise of the jurisdiction vest in it by Article 226 of the Constitution of India, direct framing of guidelines, or creation of a policy[19], it is deemed appropriate that the DU be directed to consider doing so, in order to avoid any scope for arbitrariness.

Conclusion

30. For the aforesaid reasons, this writ petition is disposed of in the following terms:

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[19] Refer U.O.I. v. N.K.Sharma, AIR 2024 SC 182

(i) The petitioner college is permitted to subject minority students, seeking admission to PG courses in the petitioner college to interview and to allocate 15% marks to interview with 85% being allocated for the students' CUET score.

(ii) Non-minority students would, however, not be subjected to any interview for admission to PG courses in the petitioner college. Their admission would solely be on the basis of their CUET score.

(iii) The DU would ensure, henceforth, that allocation/allotment of PG seats in the petitioner-College is not disproportionate. Among other considerations, the DU may consider, in deciding on the number of PG seats to be allotted, the infrastructure available with the concerned College, and the number of UG students in that course of study admitted in the College. These, however, are merely suggestions, and the DU is at liberty to adopt any objective criterion as it deems fit in that regard.

(iv) In order to avoid further heartburn on this score, the DU is directed to consider framing of an appropriate policy or appropriate guidelines, to govern allocation/allotment of seats in PG courses amongst various colleges.

31. This writ petition is disposed of in the aforesaid terms, with no order as to costs.

<u>CM APPL 2248/2022, CM APPL 23593/2022 and CM APPL 7754/2024</u>

32. These applications do not survive for consideration and stand disposed of.

C.HARI SHANKAR, J

APRIL 22, 2024
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<u>Click here to check corrigendum, if any</u>