(11) The findings of S. P. Goyal, J. (as he then was) of this Court in *Gokal Chand's case* (supra) also support the conclusion of the trial Court in the case in hand, because in that case it was held that the controversy essentially related to the inheritance of one Gazi and for effectual and complete adjudication of the matter, the impleading of another heir to the estate of Gazi was well justifiable.

(12) The decision of this Court in (*Bhagwanti* v. *Gurmit Kaur and others*) (8), is also not attracted to the facts of the present case, as therein the controversy related to the impleading of a party in a suit for redemption of mortgaged land wherein no relief was sought against that party.

(13) There is no dispute that in the present case, the controversy relates to the factum whether Ujala had transferred the land in dispute to his grand-son Randhir earlier or he has transferred the same to his grand-daughter Mst. Ram Kali, plaintiff in the present case. Thus, without impleading the widow of aforesaid Randhir, the above referred controversy cannot be effectively and completely decided. The mere factum that Ujala had filed a suit for declaration against the widow of his grand-son Randhir is not of much consequence.

(14) For the foregoing reasons, there being no merit in this petition, the same in hereby dismissed, but the parties are left to bear their costs.

S.C.K.

Before A. L. Bahri, J.

S. D. COLLEGE EDUCATIONAL SOCIETY, BARNALA,—*Petitioner.*

versus

PUNJABI UNIVERSITY, PATIALA AND ANOTHER,—*Respondents.*

Civil Revision No. 3261 of 1987

September 1, 1988.

Constitution of India, 1950—Arts. 14, 29 and 30—Code of Civil Procedure (V of 1908)—Sec. 115—Educational Institution run by religious and linguistic minority—Admission to different courses by such institution—Instructions issued by University or State for such

(8) C.R. 337 & 338 of 1988 decided on 2nd August, 1988.

admissions—Such institution not following those instructions—Effect of such procedure—Illegal exercise of jurisdiction—Interference in revision.

Held, that in view of the provisions of Articles 29 and 30 of the Constitution of India, 1950, it is clear that right to admit students in educational institution is one of the fundamental rights conferred upon such institution run by a religious and linguistic minority which cannot be interfered with by any instructions, rules and regulations of the University or the State or by a Legislature. If such an institution denies admission, there would be no question of discrimination and infringement of Articles 14 of the Constitution. Such institution is not required to follow any such instructions, rules or regulations putting fetters on the right of admission of students to such course and further non-observance of such instructions, rules or regulations would not be a ground to disaffiliate or disentitle to any grant or aid.

(Para 10)

Held, that the Lower Appellate Court had taken an incorrect view with regard to the interpretations of different provisions of Constitution and judicial decisions. This amounts to illegal exercise of jurisdiction by the Lower Appellate Court which calls for interference in the revision petition.

(Para 11)

Petition Under Section 115 *CPC for revision of the order of the Court of Shri Bhagwan Singh, Addl. District Judge, Barnala dated* 15*th October*, 1987 *reversing that of Shri Kewal Krishan Sub Judge* 1*st Class, Barnala dated* 7*th September*, 1987 *allowing the appeal and setting aside the impugned order and directing the counsel for the parties to put in their appearance in the learned trial court on* 20*th October*, 1987.

H. L. Sibal, Senior Advocate with S. C. Sibal and R. C. Sethia, Advocates, *for the Petitioner.*

Jagan Nath Kaushal, Senior Advocate with Roshan Lal Sharma, Advocate, *for the Respondents.*

JUDGMENT

A. L. Bahri, J.

(1) The petitioner S. D. College Educational Society, Barnala filed a suit for perpetual injunction restraining the defendants, Punjabi University, Patiala and Dean College Development Council, Punjabi University, Patiala from interfering in the matter of admission to the Diploma Course in Pharmacy Class being run by the plaintiff Society

in its College at Barnala and from disaffilating the said Class or the College or from withholding the approval to the students admitted to the said Class or from taking any other action against the said College for not submitting to their proposal regarding admission to the said Class. On an application filed under Order 39, rules 1 and 2, read with section 151, Civil Procedure Code, Sub Judge, Barnala passed an interim injunction order on September 7, 1987, as above till decision of the suit. The defendants took up the matter in appeal before the Additional District Judge, Barnala who accepted the same and dismissed the application. The plaintiff Society has come up in revision petition.

(2) The plaintiff Society is an association of Sanatanists which is a religious and linguistic minority in Punjab. The said Society is registered with the Registrar of Firms and Societies, Punjab. The said Society is running S. D. College, Barnala having degree classes in different subjects. In the year 1985, Diploma in Pharmacy Class was started which was affiliated with Punjabi University, Patiala. The Society is having all the facilities for imparting instructions in Pharmacy upto Diploma standard as prescribed by the University and the Pharmacy Council of India. The plaintiff Society is not given aid of any kind for running the Diploma in Pharmacy Class by the Government or the University Grants Commission or any other governmental or statutory agency. The said Class is being run by the Society from its own sources. The University on June 22, 1987 wrote a letter to the Principal of the College intimating decision taken in the meeting of the Academic Council that for admission in Diploma Course in Pharmacy in the said College and to other Colleges, namely Akal Degree College, Mastuana and Shivalik College, Naya Nangal, an admission test would be held by the University on P.M.T. pattern for the Session 1987-88. To this a representation was sent by the College that the Punjabi University or any other body had no legal jurisdiction to interfere in the matter of admission or to lay down any policy or procedure for such admission as the College was being run by religious and linguistic minority which was not at all aided by the Government in any form. In the said representation, reference was made to the decision of the Punjab and Haryana High Court in *Ashu Gupta* v. *State of Punjab* (1). A reply was sent to this representation by the Dean of College Development Council of the Punjabi University that the University Academic Council had

(1) 1987(1) P.L.R. 387.

the power to prescribe the different courses and fix proper standard for admission and examination regarding affiliated Colleges. Thus, such like instructions and guidelines to regulate the admission in the Colleges under the University Regulations regarding affiliated Colleges could be issued. The College was asked to comply with the instructions of the University for prescribing admission test for Diploma Course for Pharmacy in the College. If no reply was received within the stipulated period, the University on the basis of the available record would be compelled to take further action regarding disaffiliation of Diploma Course in Pharmacy introduced in the said College. On the aforesaid lines were the pleadings of the parties taken in the suit as well as in the written statement reiterating their stand. The lower appellate Court decided the matter against the petitioner Society mainly on two grounds. Firstly, that the University had the power to prescribe in the Regulations for excellence of the education in the College to hold pre-admission test for admitting students in the College. Secondly, it was held that if it was not done, it would amount to discrimination under Article 14 of the Constitution among students who would otherwise be entitled to admission on the basis of merit. After hearing counsel for both the parties, I find that the approach of the lower appellate Court to the questions posed was not correct. Both the points referred to above are covered by judicial precedents.

(3) Articles 29 and 30 of the Constitution read as under:—

"29. *Protection of interests of minorities.*—

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(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.

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.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

(4) The fact that the plaintiff Society belongs to a religious and linguistic minority in the State of Punjab and is runing the Diploma Course in Pharmacy in the College without getting any aid either from the Government or from the University was not disputed specifically and thus was deemed to have been admitted and the decision of both the Courts below was based on such assumption. The contention of counsel for the petitioner is based on the provisions of Articles 29 and 30 of the Constitution, as referred to above, that the petitioner Society has a fundamental right to establish and to administer educational institution of its choice. It would include free and independent right of admission of students to the College. The Government or University cannot impinge upon such right and prescribe by instructions, rules and regulations for holding pre-admission test for thrusting upon the College students of its own choice. It is also in this context that it has further been argued that Article 14 of the Constitution would not be attracted as the palintiff College is neither Government nor an instrumentality of the Government. No writ of certiorari for quashing its orders or writ of mandamus could be issued against the plaintiff College. Article 29, sub-clause (2), of the Constitution only prohibited discrimination in the matters of admission into educational institutions only on the ground of religion, race, caste or language. On the other hand, learned counsel for the respondent-University has argued that the right to administer educational institution by the religious and linguistic minority does not include right of maladministration. The University by rules and regulations could provide to achieve excellent results in education by admission of students on the basis of merit in order to eradicate nepotism, favouritism and unfair practice in the matter of admission by the Colleges affiliated to the University. Reference has been made

to Chapter V of the Calendar of Punjabi University, Volume-I, which deals with the subject of admission of Colleges to the Privileges of the University which *inter alia* provides in rule 2, sub-rules (b) and (h), as under:—

> "2. A college applying for admissions to the privileges of the University shall send a letter to application to the Dean, College Development Council and shall satisfy the syndicate:
>
> (b) that the qualifications of the teaching staff, their grades of pay and the conditions governing their tenure of office are such as to ensure efficient conduct of the course of instruction to be undertaken by the College;
>
> (h) that the admission of the college to the privileges of the University, having regard to the educational facilities provided by other colleges in the same neighbourhood, will not be injurious to the interests of education; and

The Rules further provide that the institution shall faithfully observe the provisions of the statute, ordinances and regulations of the University as made from time to time. Rules 10 and 12 provide as under:—

> "10. Every College admitted to the privileges of the University shall furnish such reports, returns and other information as the Academic Council may require to enable it to judge the efficiency of the College.
>
> 12. If a college does not satisfy the conditions imposed by the University regarding affiliation or extension of affiliation even after a reasonable time has been allowed to the college or makes violation of the conditions of affiliation imposed from time to time, the matter shall be reported to the Academic Council/Syndicate (as the case may be), by the Dean, College Development Council for such action against the college as the Academic Council/Syndicate may deem fit."

(5) After making reference to the aforesaid rules and regulations, it has been argued on behalf of the University that if the petitioner-Society would fail to observe the instructions issued by the University in the matter of procedure for admission to the Pharmacy Course through examination to be held by the University, it would be constrained to withdraw affiliation of the petitioner-Society's College.

(6) The scope of Articles 29 and 30 of the Constitution was subject matter of consideration by the Supreme Court when the Kerala Education Bill, 1957 was referred by the President of India to the Supreme Court for opinion. The said case is reported in *re. The Kerala Education Bill,* 1957 (2). Some of the observations of the Supreme Court which are relevant may be noticed as under:—

> "A minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Article 30 (1). This right, however, is subject to Clause 2 of Article 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only or religion, race, caste, language or any of them.
>
> Article 30 (1) gives two rights to the minorities, (1) to establish and (2) to administer educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then that the constitutional right to administer an educational institution of their choice does not necessarily militate

(2) A.I.R. 1958 S.C. 956.

against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided. Reasonable regulations may certainly be imposed by the State as a condition for aid or even for recognition.

The minorities evidently desire that education should be imparted to the children of their community in an atmosphere congenial to the growth of their culture. The Constitution makers recognised the validity of their claim and to allay their fears conferred on them the fundamental rights referred to in Articles 29 and 30. But the conservation of the distinct language, script or culture is not the only object to choice of the minority communities. They also desire that scholars of their educational institutions should go out in the world well and sufficiently equipped with the qualifications necessary for a useful career in life. Without recognition, the educational institutions established or to be established by the minority communities cannot fulfil the real objects of their choice and the rights under Article 30(1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions. There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Article 30(1). The legislative power is subject to the fundamental rights and the legislature cannot indirectly take away or abridge the fundamental rights which it could not do directly and yet that will be the result if the said Bill containing any offending clause becomes law."

(7) The aforesaid decision has been noticed in subsequent decisions of the Supreme Court as well as decisions of this Court. Since, in the present case, the question relates to admission of students in the educational institution run by a religious and linguistic minority,

further reference is being made to such decisions relating to the aforesaid question. *Rev. Sidhrajbhai Sabbai and others* v. *State of Gujarat and another* (3), was a case where State of Gujarat had reserved 80 per cent of the seats to be filled in by the Government and the threat was also given to withhold grant-in-aid and recognition of the College by framing rules and regulations which were held to infringe the fundamental freedom guaranteed to the College under Article 30(1) of the Constitution. The observations made in paras 15 and 16 of the aforesaid judgment may be noticed as under:—

> "15. The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19 it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution the right guaranteed by Article 30(1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test—the test of reasonableness and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.
>
> 16. We are, therefore, of the view that the Rule 5(2) of the Rules for Primary Training Colleges, and Rules 11 and 14 for recognition of Private Training institutions, in so far

(3) A.I.R. 1963 S.C. 540.

as they relate to reservation of seats therein under orders of Government, and directions given pursuant thereto regarding reservation of 80 per cent of the seats and the threat to withhold grant-in-aid and recognition of the College, infringe the fundamental freedom guaranteed to the petitioners under Article 30(1)."

(8) In *The Ahmedabad St. Xaviers College Society and another etc.* v. *State of Gujarat and another* (4), the right to administer educational institutions by religious and linguistic minorities was specified in para 19 of the judgment as under:—

"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 institutions have faith and confidence in their own committee or body consisting of persons selected 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". (Emphasis supplied.)

(9) The matter was also under consideration of the Full Bench of the Punjab and Haryana High Court in *Gurpreet Singh Sidhu, Ludhiana and others* v. *Panjab University, Chandigarh and others* (5), as to whether a writ of certiorari would lie against Dayanand Medical College and Hospital, a privately owned and managed institution which was not an instrumentality or agency of the State merely by virtue of the provisions of Indian Medical Council Act or the respective Universities to which it was affiliated. After making reference to Articles 15 and 29 of the Constitution, it was held that there was no fundamental right of equality conferred on

(4) A.I.R. 1974 S.C. 1389.

(5) A.I.R. 1983 Pb. & Hry. 70.

all citizens for admission on merit alone in a privately owned and managed educational institution receiving aid out of State funds. In accordance with the rule laid down by the Full Bench in *Pritam Singh Gill* v. *State of Punjab* (6), it was held that no writ of certiorari lies against a privately owned and managed non-statutory educational institutions. With respect to the educational institutions not run by the State itself, following classifications were observed:—

(i) those which do not seek either aid or recognition from the State;

(ii) those which seek recognition by the State or University authorities but no aid, and

(iii) those which seek and secure financial aid.

In paragraphs 24 and 25 of the judgment in *Gurpreet Singh Sidhu's case* (supra), it was observed as under:—

"24. It seems to be plain on principle and is otherwise settled beyond civil that private educational institutions falling in categories (i) and (ii) above in whose case no strings of State aid are attached are free to establish and administer these educational institutions with a modicum of internal freedom of management. As against these institutions no general fundamental right of equality of admission on merits can even be invoked under any constitutional provision. So far as minority institutions of this nature are concerned their freedom of management is constitutionally guaranteed and cannot be even impinged upon by Parliamentary or State laws. It would seem to follow that if a minority institution which receives no aid out of the State funds chooses to bar its door against citizens not belonging to the same community it would well be within its rights to do so. Similarly privately owned and privately managed educational institutions not receiving State aid (even though not falling within the category of a minority institution) would equally have a freedom of internal management subject, of course, to any State laws made to the contrary. It is thus evident that

(6) A.I.R. 1982 Pb. & Hry. 228.

with regard to the aforesaid classes of educational institutions no fundamental right generally of all citizen students to claim admission can possibly arise. Therefore the premise that Article 29(2) confers a fundamental right of equality of admission to all educational institutions is plainly untenable. In other words all private educational institutions not receiving aid out of State funds are wholly out of the ambit of Article 29(2).

25. Coming now to the specific language of Article 29(2) it deals specifically with two classes of educational institutions, namely, those maintained by the State itself or those receiving aid out of State funds. It is apt to deal with these separately and one may first advert to those educational institutions receiving aid out of State funds. Undoubtedly these institutions come within the ambit of this Article. What, however, calls for notice herein is that Article 29(2) is couched in the language of prohibition which is limited in terms and not in those of the conferment of a general or generic right of equality. The prohibition here is specific and confined to four grounds alone on which discrimination for admission into educational institutions receiving aid out of the State funds is barred. These are in terms those of religion, race, caste and language. Of particular significance is the use of the word 'only' in this context by the framers of the Constitution. Therefore, the prohibition extends only to these four categories and necessarily does not cover to any other ground. It would follow, therefore, that a denial of admission into any educational institutions of this nature also on grounds other than these four is in no way prohibited and indeed from the language employed it is either recognised or certainly acquiesced in. It seems to be plain that if the intent was to confer any generic right of equality of admission on merit to all these institutions there was no difficulty in plainly and simply conferring an equality of admission on all citizens to State aided educational institutions. No such wide ranging language has been used and on the other hand designedly constricted and specific phraseology employed. It consequently follows that the prohibition under Article 29(2) is confined only to discrimination on grounds of religion, race, caste and language in State aided institutions and no more."

The matter was again considered in *Ashu Gupta* v. *State of Punjab and others* (7). After making reference to the Full Bench decision of this Court in Gurpreet Singh Sidhu's case (supra), it was held as under:—

> "That no general fundamental right of equality of admission on merits can be invoked under any constitutional provision against an educational institution established and maintained by a minority."

With respect to the instructions issued by the Director, Technical and Industrial Education, Punjab, who framed policy and procedure in the matter of making admissions to the Course, it was held that the respondent Educational Institution run by a religious and linguistic minority, i.e. respondent No. 3 in that case, was not bound to follow the same. Further reference was made to the Division Bench decision of this Court in the case of *Kanya Mahavidayalia, Jalandhar* v. *State of Punjab* (8), and it was held that the management of such an institution cannot be interfered by an outside authority as it would amount to negation of fundamental rights under Article 30(1) of the Constitution. It was held that it was thus clear that respondent No. 3 (as referred to above) was not amenable to with jurisdiction of this Court.

(10) In view of the provisions of Articles 29 and 30 of the Constitution, it is clear that right to admit students in educational institution is one of the fundamental rights conferred upon such institution run by a religious and linguistic minority which cannot be interfered with by any instructions, rules and regulations of the University or the State or by a Legislature. If such an institution denies admission, there would be no question of discrimination and infringement of Article 14 of the Constitution. Such institution is not required to follow any such instructions, rules or regulations putting fetters on the right of admission of students to such Course and further non-observance of such instructions, rules or regulations would not be a ground to disaffiliate or disentitle to any grant or aid. Thus, in the circumstances of the present case, the trial Court had rightly exercised its discretion in the matter of granting *ad interim* injunction restraining the respondents as referred to above. The lower appellate Court was not justified in interfering with the exercise of such discretion.

(7) A.I.R. 1987 Pb. & Hry. 227.

(8) 1986(2) S.L.R. 415.

(11) The learned counsel for the respondents has argued that this Court in the exercise of power under section 115 of the Code of Civil Procedure cannot set aside the order of the lower appellate Court passed in the exercise and jurisdiction vested in it, even if the order was erroneous on facts or in law. Reference in this context has been made to the decisions of the Supreme Court in *Keshardeo Chamria* v. *Radha Kiseen Chamria and others* (9), *M/s. D.L.F. Housing and Construction Co. (P.) Ltd.* v. *Sarup Singh and others* (10), and *The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and another* v. *Ajit Prasad Tarway, Manager (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Huderabad* (11). In the last case mentioned above in para 5 of the judgment it was observed as under:—

> "In our opinion the High Court had no jurisdiction to interfere with the order of the first appellate Court. It is not the conclusion of the High Court that the first appellate Court had no jurisdiction to make the order that it made. The order of the first appellate Court may be right or wrong; may be in accordance with law or may not be in accordance with law but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate Court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction under section 115 of the Civil Procedure Code."

The contention of the counsel for the respondents cannot be accepted in the facts and circumstances of the present case when the lower appellate Court had taken an incorrect view with regard to the interpretations of different provisions of the Constitution and the judicial decisions as referred to above. Present is a case of illegal exercise of jurisdiction by the lower appellate Court which calls for interference in the revision petition.

(12) For the reasons recorded above, this revision petition is accepted. The order of the lower appellate Court is set aside and that of the trial Court issuing *ad interim* injunction, as referred to above, is restored. There will be no order as to costs.

S.C.K.

(9) A.I.R. 1953 S.C. 23.
(10) A.I.R. 1971 S.C. 2324.
(11) A.I.R. 1973 S.C. 76.