

Before Permod Kohli, J.

**SELF FINANCED B.ED COLLEGES ASSOCIATION, PUNJAB
AND ANOTHER,—Petitioners**

versus

STATE OF PUNJAB & ANOTHER,—Respondents

CWP No. 10091 of 2009

1st July, 2010

Constitution of India, 1950—Art.226—Notification dated 19th May, 2009 issued by State Government—Admission to B.Ed course—State authorizing University to hold and conduct common entrance test in respect of all colleges including self-financed B.Ed Colleges—Whether State has authority to conduct entrance test in respect to unaided self-financed colleges—Held, no—Unaided self-financed institutions are at liberty to devise their own procedure of admissions of students—However such procedure should be merit based, transparent, non-exploitative and in consonance with educational standards as prescribed by the NCTE, affiliating University or Government.

Held, that the State does not have the authority to conduct entrance examination test in respect to unaided self financed (minority and non-minority institutions). It has to be left to such institutions to hold such common entrance test either at State level or even jointly with the other States. What is to be ensured is that admissions procedure is merit based, transparent and non-exploitative and in consonance with the minimum standards prescribed under the regulations framed by the NCTE or any other such rule or regulation that may be framed by the affiliating University only to the extent of ensuring merit-based admissions. When this petition came to be filed, the admissions for the academic Session 2009-10 were to take place. Those admissions have already been made and the students may be likely to complete the course. Hence, no interference is warranted in the advertisement notice and the prospectus issued by the respondents for the said academic Session. However, the Government order, dated 19th May, 2009 shall not be enforced for the academic Session 2010-11. The

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colleges and/or the petitioners who claim to be associations of such unaided self-financed institutions are at liberty to devise their own procedure of admissions of students to the B.Ed programme for the academic Session 2010-11, however, such procedure shall be merit based transparent, non-exploitative and in consonance with the educational standards as prescribed by the NCTE, the affiliation University or the Government, if any. There shall not be any dilution of the academic standards in any manner nor such institutions shall be entitled to charge any capitation free or fee more than prescribed by the committees constituted for the purpose.

(Para 10)

Rajive Atma Ram, Sr. Advocate with Arjun Partap Atma Ram,
Advocate, *for the petitioners.*

P.C. Goyal, Addl. A.G., Punjab.

Lalit Rishi, Advocate, *for respondent No. 2.*

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(1) Both the petitioners are registered as Societies under the Societies Registration Act. Petitioner No. 1 is an Association of Self Financed B.Ed. Colleges, Punjab whereas petitioner No. 2 is an Association of Self Financed College of Education, Punjab. This petition has been filed challenging a Government notification, dated 19th May, 2009, the advertisement published in the Tribune, an English Daily newspaper, dated 10th June, 2009 and the prospectus issued by the Guru Nanak Dev University, Amritsar for State level B.Ed. Entrance Test 2009 (Annexure P-7). *Vide* the Government notification dated 19th May, 2009, the State of Punjab has authorized the respondent No. 2-University to hold and conduct common entrance test for admission to B.Ed. course with effect from Session 2009-2010 onwards. Consequently, the respondent No. 2-University has issued advertisement, published in The Tribune, inviting applications from the eligible candidates for the participation in the common entrance test for admission to the B.Ed. course in the colleges of education (situated in Punjab) affiliated to Guru Nanak Dev University, Amritsar ; Panjab University, Chandigarh ; Punjabi University, Patiala and Lovely Professional University, Phagwara for the academic Session 2009-10. The date for holding the test was notified as 12th July, 2009 from 9:00 A.M. to 5:00 P.M. The eligibility conditions were as per the prospectus (Annexure P-7), issued by the respondent-University.

This test was to be conducted in respect of the colleges imparting B.Ed. course affiliated with the specified Universities. Obviously, the self Financed B.Ed. Colleges affiliated with the specified Universities are also included. The list of such colleges affiliated to Guru Nanak Dev University, Amritsar ; Panjab University, Chandigarh; Punjabi University, Patiala and Lovely Professional University, Phagwara is also given as Annexure 1 in the prospectus. Petitioners claim to be Association of such colleges/institutes having common interest. This petition has been filed allegedly seeking common relief for their member colleges.

(2) The short and only point involved requiring consideration in the present petition is the right of the Government or for that matter, any of its nominees including an affiliating University to conduct the common entrance test for admission to B.Ed. course in the self financed/unaided colleges/institutions. The contention of the petitioners is that the colleges of the petitioners and their members being self financed and unaided colleges have the right to devise their own admission procedure for admission of students. This right is being claimed on the basis of various judgments of the Hon'ble Apex Court in case of **P.A. Inamdar and others versus State of Maharashtra and Others (1)**. As also, the judgment dated 22nd August, 2006, passed by this Court in C.W.P. No. 9547 of 2006.

(3) The University-respondent No. 2 in its short reply has only claimed its right to conduct the Common Entrance Test on the strength of the Government notification dated 19th May, 2009. It is accordingly stated that in view of the authorization of the State Government, the University is entitled to conduct the entrance test for selection of students for admission to B.Ed. course for the Session 2009-10 in respect to all colleges affiliated with Universities specified in the above notification. In so far the State is concerned, it has pleaded that State has the right to hold a common entrance test in any trade or discipline to ensure equal opportunity to all eligible students. It is further pleaded that at the time of grant of No Objection Certificate to all such colleges, they were bound down to obey the rules of the Government. The Government has also relied upon judgment of the Hon'ble Apex Court in case of **T.M.A. Pai Foundation and Others versus State of Karnataka and Others (2)**. In response to the specific

(1) (2005) 6 S.C.C. 537 = (2002) 8 S.C.C. 481 = (2003) 6 S.C.C. 697

(2) 2002 (6) S.L.R. 627

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avertment of the petitioners that the judgment of Hon'ble Apex Court in P.A. Inamdar (*supra*) obligates the Government to allow the minority institutions and self financed institutions to devise their own procedure for entrance test and in view of the dictum of the aforesaid judgment, the petitioners are entitled to make admissions by holding a common entrance test for the self financed/unaided institutions, it is pleaded that no prejudice is to be caused by holding the common entrance test by Government's nominee.

(4) It is useful to briefly refer to the gist of the judgments relied upon by the petitioners as the entire relief claimed in the petition is based upon above referred judgments.

(5) In **T.M.A. Pai Foundation and Others versus State of Karnataka and Others**, (*supra*) a Constitution Bench of the Hon'ble Supreme Court was primarily considering the right of the minority institutions to establish and administer educational institutions by any organization. It has been held that an unaided minority institution established has the right to administer the institution, right to administer includes the right to make admissions by devising procedure at its own level and no interference is permissible from the Government or the University except ensuring the merit base selection and maintenance of the educational standards and also to lay down the qualifications and minimum conditions of eligibility for faculty. The issue relating to the unaided self-financed non-minority institutions did not directly fall for consideration in the said judgment, however, while considering the right of unaided institutions in totality, the Hon'ble Supreme Court made following observations :—

"It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forgo or discard the principle of merit. It would, therefore, be permissible for the university or the government at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the Management sufficient discretion in admitting students. This can be done through various

methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the state agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz, graduation and post graduation non-professional colleges or institutes."

(6) In P.A. Inamdar and Others versus State of Maharashtra and Others, (supra) while referring the matter to a larger Bench, the Hon'ble Supreme Court framed following questions for consideration :—

- "(1) To what extent can the State regulate admissions made by unaided (minority or non-minority) educational institutions? Can the State enforce its policy of reservation and/or appropriate to itself any quota in admissions to such institutions?"*
- (2) Whether unaided (minority and non-minority) educational institutions are free to devise their own admission procedure or whether the direction made in Islamic Academy for compulsorily holding an entrance test by the State or association of institutions and to choose therefrom the students entitled to admission in such institutions, can be sustained in light of the law laid down in Pai Foundation?"*
- (3) Whether Islamic Academy could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions?"*
- (4) Can the admission procedure and fee structure be regulated or taken over by the Committees ordered to be constituted by Islamic Academy?"*

(7) In the present case, primarily issues No. 2 and 4 are relevant these issues stand answered in the latter part of the judgment. Relevant observations of the Court are contained in Paras 133, 136, 137, 138 and 147.

(8) The State has filed an additional affidavit, wherein it is stated that the basic purpose for holding a common entrance test for B.Ed. course in all Government colleges, Private Aided Colleges and private Unaided Colleges is to provide an equal opportunity to all students to compete against each other and to ensure a rational procedure for fair and merit based-admission. It is further stated that it is intended to save the students from inordinate burden of having to appear in multiple entrance examinations and further to ensure equal opportunity to all the eligible students coming from different States. The State has also relied upon the regulations framed by the NCTE prescribing the eligibility, qualifications and other related factors to regulate the institutions imparting the B.Ed. course. In so far admissions are concerned, the following stipulations have been made :—

(2) Eligibility

- (a) *Candidates with at least fifty percent marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme.*
- (b) *The reservation in seats and relaxation in the qualifying marks in favour of the reserved categories shall be as per the rules of the concerned Government.*

(3) Admission Procedure

Admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government/U.T. Administration and the University."

(9) Based upon the above regulations, it is sought to be impressed upon that these regulations empower the State to conduct the common entrance test. I have carefully perused these regulations. There is nothing

in these regulations, which may, in any manner, confer a right upon the Government to make admissions to hold a common entrance test for admission to unaided self financed institutions. It only prescribes eligibility criterion for a student to seek admission to the B.Ed. programme and also prescribes that the admission procedure has to be merit based either on the basis of the qualifying examination or the entrance examination or any other selection process as per the policy of the State Government/U.T. Administration and the University. Thus, what is needed is to ensure fairness of the procedure as per the policy envisaged under Clause 3 which has been framed by the State Government/U.T. Government or the University. It is only to the extent of ensuring fairness of selection/process of admission. In the garb of such policy, the State or affiliating body cannot take over the entire admission process. A Division Bench of this Court in CWP No. 9547 of 2006 titled as **The Association of Education Colleges (Self Financing) of Haryana versus State of Haryana and others**, has held a similar view relying upon in **P.A. Inamdar (supra)**.

(10) In view of the ratio of the judgment in **T.M.A. Pai Foundation (supra)** and **P.A. Inamdar cases (supra)**, I am of the considered view that the State does not have the authority to conduct entrance examination test in respect to unaided self financed (minority and non-minority institutions). It has to be left to such institutions to hold such common entrance test either at State level or even jointly with the other States. What is to be ensured is that admissions procedure is merit based, transparent and non-exploitative and in consonance with the minimum standards prescribed under the regulations framed by the NCTE or any other such rule or regulation that may be framed by the affiliating University only to the extent of ensuring merit-based admissions. When this petition came to be filed, the admissions for the academic Session 2009-10 were to take place. Those admissions have already been made and the students may be likely to complete the course. Hence, no interference is warranted in the advertisement notice and the prospectus issued by the respondents for the said academic Session. However, the Government order dated 19th May, 2009 shall not be enforced for the academic Session 2010-2011 nor the respondents will hold a common entrance test for admission to B.Ed. course in the self-financed unaided institutions for the academic Session 2010-11. The colleges and/or the petitioners who claim to be associations of such unaided self-financed

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institutions are at liberty to devise their own procedure of admissions of students to the B.Ed. programme for the academic Session 2010-11, however, such procedure shall be merit based, transparent, non-exploitative and in consonance with the educational standards as prescribed by the NCTE, the affiliating University or the Government, if any. There shall not be any dilution of the academic standards in any manner nor such institutions shall be entitled to charge any capitation fee or fee more than prescribed by the committees constituted for the purpose.

(11) This petition is accordingly allowed in the above manner.
