Punjab-Haryana High Court
Gurpreet Singh Sidhu And Ors. vs Punjab University, Chandigarh ... on 9 September, 1982
Equivalent citations: AIR 1983 P H 70
Author: S Sandawalia
Bench: S Sandhawalia, S Goyal, S Kang
JUDGMENT S.S. Sandawalia, C.J.

1. The larger question that looms in this set of three Civil Writ Petitions is--whether a writ of certiorari lies against a privately owned and privately managed Medical College and Hospital? Inevitably, at issue is the validity of the somewhat wide ranging observations in this context by the Division Bench in Karan Singh v. Kurukshetra University, ILR (1976) 2 Punj & Har 859. Equally significant is the question--whether private institutions imparting higher medical education are instrumentalities or agencies of the State--which had also come to the force in the hearing of this reference of the Full Bench.

2. The terra firma of the factual matrix giving rise to the aforesaid issues (which are otherwise pristinely legal) may be taken from the averments in C. W. P. No. 3480 of 1981(Gurpeet Singh v. Punjab University etc. The Managing Society of the Daya Nand Medical College and Hospital--respondent No. 2, is admittedly a private institution registered under the Societies Registration Act. It is not in dispute that it is a charitable religious society privately managing the Daya Nand Medical College and Hospital, which is claimed to be a minority institution protected by the Constitution. Another similar organisation is that of the Christian Medical College and Hospital also located at Ludhiana. The 20 writ petitioners who are students seeking admission to the Daya Nand Medical College (hereinafter called 'the Medical College', aver that in the prospectus issued for this purpose, the admission to the M. B. B. S. Course was limited to categories (a) to (f) of para 7 thereof. However, category (f) was later scrapped and after interviewing the eligible candidates, the Selection Committee, on July 30, 1981 issued a provisional list of 50 selected candidates vide annexure P/3. The petitioners claim that respondent No. 5 to 9 in the said list do not belong to category 7(a) and apart from them other candidates who have been selected were not entitled to be considered in this category. It is the case of the writ petitioners that in the event of the aforesaid persons being excluded form consideration because of para 7(a), the writ petitioners are likely to be selected in their place. It is further averred that the Medical College receives substantial grants-in-aid from the Punjab Government and is strictly governed by the Regulations of the Punjab University and, therefore, under Art. 29 of the Constitution of India, the writ petitioners have a fundamental right to claim admission which can be enforced under Art. 226 of the Constitution of India. The primary relief claimed is that the admission of respondents Nos. 5 to 9 and all other similar candidates provisionally admitted vide annexure P/3 be quashed. Equally, a mandamus is sought directing the respondent-Medical College to make admission under category 7(a) of the prospectus only from amongst the students who have passed from Punjab, Punjabi and Guru Nanak Dev Universities.

3. On behalf of respondent-Medical College, the preliminary objections which have been expressly raised and strenuously pressed are, that the Medical College is a privately owned and a privately managed institution having its own Selection Committee which lays down the rules for the

admission within three parameters of binding instructions in so far as they relate to constitutional reservations. Being a minority institution it is protected by Arts. 29 and 30 of the Constitution and has a guaranteed right of freedom of internal management and otherwise being a non-statutory body it is not covered by Article 12 thereof. Therefore, no writ particularly that of certiorari lies against the bona fide selection made by the Selection Committee.

4. On merits, it is pointed out that the prospectus itself made it prominently clearly that the Selection Committee can amend the criteria for admission as considered necessary form time to time by the authorities. It is claimed that having scrapped category 7(f), the Selection Committee was free to distribute the seats among other categories or create new categories for selection. It is further averred that the writ petitioners in fact figure nowhere (actually they fall far below No. 27 therein) in the merit list of candidates from the Universities within the State of Punjab and, therefore, have no locus standi to file the present petition. On the point of State aid, the averments in para-15 are denial and the stand taken is that the Medical College receives less than 25 percent of the total expenditure in this shape.

5. Gurpreet Singh's case, along with C. W. P. No. 3569 of 1981(Miss Smita Ohri v. Punjab University etc.) originally case up before my learned brother S. P. Goyal, J. sitting singly. The preliminary objection with regard tot he maintainability of the writ against a privately owned and privately managed institution was strenuously pressed before him. Noticing the recent decision in Ajay Hasia v. Khalid Mujib, AIR 1981 SC 487 and the doubts raised against the ratio in Sh. Karan Singh's case (ILR (1976) 2 Punj & Har 859)(supra) both the cases were referred to a larger Bench. The Division Bench before which the matter was thereafter placed, endorsed that view and took particular notice of the fact that the observations in Karan Singh's case (supra) had been doubted by Harbans Lal, J. in an exhaustive reference order in Jaswinder Singh v. Punjab University, C. W. P. No. 4521 of 1976, way back on September 9, 1976. However, when earlier the matter was placed before the Full Bench, the writ petition was withdrawn thus rendering the reference infructuous. The present reference was, therefore, necessitated (meanwhile C. W. P. No 4036 of 1981, Vimit Kakkar v. The Punjab University, was also directed to be heard with Gurpreet Singh's case) and that is how these cases are before us.

6. At the very threshold, it may be noticed that the significant question---whether a writ of certiorari lies against a privately owned and privately managed institution---is now authoritatively concluded against the petitioners (within this jurisdiction) by the exhaustive judgment of the Full Bench in Pritam Singh Gill v. State of Punjab, AIR 1982 Punj & Har 228. The learned counsel for the petitioners laid no challenge whatsoever to the enunciation of the law therein on this point. Because of this, it is unnecessary to traverse the same ground herein afresh. Affirming the detailed reasoning in this context, in para 26 to 40 of the report in Pritam Singh's case (supra), we hold that because of the settled law that a writ of certiorari lies stricto sensu only against a body of persons enjoined to act judicially, therefore, a privately owned and privately managed non-statutory institution is outside the range of a writ of certiorari. The claim of the writ petitioners to quash the provisional selection made vide annexure P/3 is, therefore, negatived on this preliminary ground.

7-8. Skirting the up-hill and indeed the impossible task of claiming a certiorari against the respondent-Medical College, Mr. Kuldip Singh, learned counsel for the petitioners then lowered his sights and laid claim to a writ of mandamus directing the respondents to make admissions under category 7(a) of the prospectus only from amongst the students of the Universities located in the Punjab. In order to substantiate this claim, the basic stand of the learned counsel was that the Medical College is, in essence, an instrumentality or an agency of the State and thus within the ambit of Art. 12 of the Constitution of India. This, in turn was raised primarily on the ground that the respondent-Medical College was under a deep and pervasive control of the Central Government by virtue of the provisions of the Indian Medical Council Act, 1956 and the Punjab University Act, 1947.

9. It is apt to examine the two limbs of the aforesaid contention separately and one may first deal with the submission resting on the provisions of the Indian Medical Council Act. Apparently finding a total absence of any direct control of the Central Government over the Medical College the primary attempt on behalf of the petitioners was to establish an indirect or remote control of the Central Government allegedly through the medium of the Medical Council of India. Indeed the core of the attack seems to be that the Medical Council constituted under Section 3 of the Indian Medical Council Act exercises such a degree of control over all institutions imparting higher medical education, that the Central Government, which would be presumed to be controlling the aforesaid Medical Council, may be deemed as exercising an all pervasive control over the Medical College. Reliance was sought to be placed on Ss. 3, 6, 16, 17, 18, 19A, 30, 32 and 33 of the Act in an attempt to inferentially show that the Central Government exercised a total control over the respondent-Medical College.

10. A close analysis discloses that the aforesaid contentions suffers from an insidious fallacy which in essence boomerangs on the stand taken by the petitioners so as to virtually demolish the same. A reference to Section 6 of the Act makes it manifest that the Medical Council of India is a body corporate having a perpetual succession and a common seal with powers to acquire and hold property and capacity to sue and be sued in its own name. Plainly enough the Medical Council is a statutory body clothed with a legal personality distinct and separate from the Central Government and is the creation of an Act of Parliament prescribing in detail for its functioning. Therefore it deserves highlighting that even if it be assumed that the Medical Council has a modicum of control over institutions running Medical Colleges it does not at all follow that the Central Government would be clothed with an all pervasive control of such institutions by a process of remote reasoning. This apart, what calls for notice is that the executive power of the Council is vested in the larger body constituted by Section 3 of the Act and a smaller body styled as an executive body provided for in S. 10. An analysis of these provisions seems to give the lie direct to the petitioners' stand that the Medical Council is a mere shadow of the Central Government. In fact it is plain therefrom that both the Medical Council in India and the Executive Committee are in essence autonomous and predominently elected bodies which cannot at all be identified with the Central Government. To appreciate this it is necessary to read Ss. 3 and 10 :--

"S. 3 Constitution and composition of the Council :

(1) The Central Government shall cause to be constituted a council consisting of the following members, namely,

(a) one member from each State other than Union Territory, to be nominated by the Central Government in consultation with the State Government concerned;

(b) one member from the University, to be elected from amongst the members of the medical faculty of the University by members of the Senate of the University or in case the University has no senate, by members of the Court;

(c) one member from each State in which a State Medical Register is maintained, to be elected from amongst themselves by persons enrolled on such register who posses the medical qualification included in the First or the Second Scheme or in Part II of the Third Schedule;

(d) seven members to be elected from amongst themselves by persons enrolled on any of the State Medical Registers who possess the medical qualification included in Part I of the Third Schedule;

(e) eight members to be nominated by the Central Government.

(2) The President and Vice-President of the Council shall be elected by the members of the Council from amongst themselves.

(3) No act done by the Council shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Council.

S. 10, The Executive Committee :

(1) The Executive Committee, hereinafter referred to as the Committee, shall consist of the President and Vice-President, who shall be members ex officio, and not less than seven and not more than ten order members who shall be elected by the Council from amongst its members.

(2) The President and Vice-President shall be the President and Vice-President respectively of the Committee.

(3) In addition to the powers and duties conferred and imposed upon it by this Act, the Committee shall exercise and discharge such powers and duties as the Council may confer or impose upon it by any regulations which may be made in this behalf."

Now a reference to clause (b) of S. 3(1) would show that this provide for one member from every University to be elected by the medical faculty or by the Senate in the composition of the Council. Similarly one member from each State is to be elected from persons on the State Medical Register. Clause (d) then provides for seven members to be elected from amongst persons enrolled on any of the State Medical Registers who possess the prescribed qualification. Sub-section (2) again lays down that the President and the Vice-President shall also be elected by the members of the Council

from amongst themselves. A reference to Sch. I to the Act would indicate that even at the stage of its enactment there were as many as 43 Universities mentioned therein. Therefore cls. (b), (c) and (d) would leave no manner of doubt that the elected members of the Council far outnumber the eight members which can be nominated by the Central Government alone to the Council. Nor is it to be assumed that the Central Government in making these nominations (which appears to be a power coupled with duty) to a professional prestigious organisation would necessarily appoint persons utterly subservient thereto. All this leaves no manner of doubt that the Medical Council of India far from merely being a Government Department or a shadow thereof is in essence a statutory, autonomous, and primarily elected body. Again a reference to the aforesaid S. 10 shows that Executive Committee is constituted of the President and the Vice-President (who in turn are elected persons) and between 7 to 10 members who shall be elected by the Medical Council of India from amongst its members. The Committee, therefore, in which the executive power under the Act is vested is again plainly an elected body and far from being a mere replica of the Central Government. Therefore the stand that any control by the Medical Council of India or the Executive is deemed to be the control of the Central Government itself is on the face of it both fallacious and untenable.

11. Once the aforesaid finding is arrived at it is futile to examine in detail the other provisions of the Act to which our attention was sought to be drawn as they merely indicate some modicum of control or supervision by the Medical Council over the medical institutions in the country. This is so because such a control by the Medical Council cannot even remotely be equated with that by the Medical Government. Apart from this the provisions of Ss. 16 to 18 merely empower the Council to require information as the courses of study and examinations from the Universities or Medical Institutions in India, and to conduct an inspection of examinations and appoint visitors thereat. The powers to this nature can hardly be termed as an all pervasive or total control of the functioning of a privately owned and privately managed institution running a Medical College. Similarly Section 19(1)(a) empowering the laying down of minimum standard of medical education and Ss. 32 and 33 giving the usual powers to make rules and regulations do not in any way spell out an absoluteness of control envisaged in this context.

12. Learned counsel for the petitioners had also attempted to raise a half-hearted contention on the basis of the provisions of the Punjab University Act, 1949 and the Regulations framed thereunder. Our attention was drawn to Ss. 27, 29 and 30 of the said Act providing for the affiliation of Colleges and the obligation of such Colleges to make returns and reports of the University and the power of the latter to inspect them from time to time and lastly for the disaffiliation of such Colleges, if necessary. Regulations providing for the conditions of affiliation and admission and migration of students etc. were also referred to. The somewhat tenuous argument herein was that the Punjab University again exercises considerable control over the Medical Colleges affiliated thereto.

13. The aforesaid contention has only to be noticed and rejected. It could not even remotely be disputed that the University is both a statutory and an autonomous body created by the Punjab University Act. It could not be urged with any seriousness that the University is in any way a mere shadow or limb of the Government. It is an incorporated body by virtue of S. 4 and a reference to S. 8 would show that the supreme authority of the University vests in the Senate. That the senate is primarily an elected and independent both as also the Syndicate in which the executive powers of

the University are vested by Section 20 was not at all disputed before us. Consequently it is plain that even assuming that the Punjab University exercise a modicum of control over the respondent Daya Nand Medical Colleges this by itself cannot remotely establish that the State in any way has an all pervasive control of the same.

14. Inevitably the claim of the petitioners that the respondent Medical College is an instrumentality or an agency of the State has not to be tested on the touch-stone of the authoritative observations in Ajay Hasia v. Khalid Mujib, AIR 1981 SC 487, on which indeed primary reliance was placed by Mr. Kuldip Singh as well. It is unnecessary now to go to the larger rationale of the judgment because the test for determining as to when a body can be said to be an instrumentality or agency of the Government have now been authoritatively formulated, to which reference which follow. However, before applying the same it is relevant to notice that the final Court has itself tried to tread a golden mean in determining whether a body is an instrumentality of the State or otherwise. Regarding the application of these tests it was rightly observed as under (at p. 496) :--

"... .... These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression 'other authorities', it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning be tempered by a wise limitation."

With the aforesaid note of caution clearly in mind one may now proceed to notice the six tests and apply the same with particularity to the respondent-Medical College :--

" (1) One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government;

(2) Whether the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character;

(3) It may also be a relevant factor--whether the corporation enjoys monopoly status which is the State conferred or State protected;

(4) Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality;

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government;

(6) Specifically, if a department of Government is transferred to a corporation, it would be strong factor supportive of this inference of the corporation being an instrumentality or agency of

Government."

Herein it is plain that no question of any governmental share capital in the respondent-institution arises at all. The unrebutted averment of the respondent is that the respondent-College receives less than 25 per cent of its total expenditure as State aid. The second test which requires that the financial assistance must be such as to meet almost the entire expenditure of the Corporation is, therefore, not even remotely satisfied. Equally evident it is that no question of the respondent commanding any monopoly status or its functions being closely related to governmental functions arises here. Similarly the sixth test regarding a department of Government being transferred to the corporation is not even remotely attracted. The detailed discussion earlier would show that any modicum of control by the Medical Council of India or the Punjab University has not the least relevance to the deep and all pervasive State control required by test No. 4. It seems to be plain that not even one of the six authoritative tests laid down stands satisfied herein.

15. In this context it is also apt to recall the observations of the Full Bench in Pritam Singh Gill's case (AIR 1982 Punj & Har 228 at pp. 233-234)(supra)-

".... .... However, what deserves highlighting herein is the fact that it is not any finical kind of State control which is adequate to satisfy the stringent conditions spelled out in test No. 4. It can perhaps be said that with the ever extending activities of the welfare State, there would hardly be a field wherein it may not exercise some modicum of control or reference. However, this it not the kind of control which would convert any and every legal person into a State for the purposes of Article 12 of the Constitution of India. What their Lordships have highlighted is that, firstly, the State control must be both deep and pervasive. Not only that, its depth and persuasiveness must be of a kind as to lead to a clear pointer that the body indeed is either a State agency or an instrumentality thereof." In the light of the aforesaid legal and factual position and conclusion is inevitable that the respondent-Medical College and hospital is in no way an instrumentality or agency of the State. Nor can it be said as a rule that privately owned and privately managed institutions imparting higher medical education would become instrumentalities or agencies of the State merely because of the provisions of the Indian Medical Council Act or the Universities, to which they may be affiliated.

16. Repelled on his main ground that the respondent-Medical College was an instrumentality or agency of the State (with the consequent applicability of Article 14), Mr. Kuldip Singh had then raised an ancillary contention. This was rested wholly on Regulation II of the Medical Council of India with regard to the selection of students to the Medical Faculty. It was contended that this Regulation II has statutory force and it lays a mandatory duty on the respondent-College to make selections for admission in accordance therewith, which can be enforced by a writ of mandamus despite the fact that the respondent-College is a private body.

17. To appreciate this contention, one must first read the relevant part of Regulation II of the Medical Council of India :--

"II Section of students :--

The selection of students to a medical college should be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country :--

(a) In States, having only one Medical College and one University/Board/Examining the marks obtained at such qualifying examination be taken into consideration.

(b) In States having more than one University/Board/Examination Body conducting the qualifying examination (or where there are more than one medical college under the administrative control of one authority), a competitive entrance examination should be held so as to achieve a uniform evaluation due to the variation of the standard of qualifying examinations conducted by different agencies.

(c) to (e) ...."

In the context of the afore-quoted Regulation, it seems wholly unnecessary to examine the ancillary contention raised on behalf of the petitioners on principle because it is concluded against them by the authoritative precedent in State of M. P. v. Nivedita Jain, AIR 1981 SC 2045. Therein, their Lordships had occasion to exhaustively consider the scope of Regulations I and II of the Medical Council of India. It was held that Regulation I, which prescribes for the eligibility of candidates for admission to medical course, was mandatory whereas Regulation II, far from being so, did not have any statutory force. In fact, it was after opining that Regulation II, recommending the process of selection, was outside the authority of the Council under Section 33 of the Indian Medical Council Act that their lordships, for a variety of other reasons, concluded as under (at p. 2057) :--

"We are, therefore, of the opinion that Regulation II of the council, which is merely directory and in the nature of a recommendation, has no such statutory force as to render the order in question which contravenes the said Regulation illegal, invalid and unconstitutional."

18. Once it is held that Regulation II is neither mandatory nor has a statutory force and is beyond the scope of Section 33 of the Indian Medical Council Act, it seems to be plain that the very corner-stone of the petitioners' stand in this context falls and the argument resting thereon must crumble. The Full Bench in Pritam Singh Gill v. State of Punjab, AIR 1982 Punj & Har 228, pithily summed up the basic prerequisites for a writ of mandamus as under (at p. 245) :--

"It would be manifest from the above that to successfully invoke the mandamus jurisdiction, the petitioner has not only to show a clear public or statutory duty laid on the respondent but an equally clear legal right to enforce the same."

In view of the findings above, it seems to be plain that neither of the two conditions is even remotely satisfied here and, therefore, the claim for a writ of mandamus must be rejected.

19. The last arrow to the bow of the petitioners was a firm reliance on the view expressed by the Division Bench in Karan Singh v. Kurukshetra University, ILR (1976) 2 Punj & Har 859. On those premises, it was contended that even though the respondent-Medical College was a private body yet

Article 29(2) confers a fundamental right of the petitioners to be considered for admission thereto on merits alone and a corresponding duty on the respondent which can be enforced against it by mandamus. Undoubtedly, the observations in Karan Singh's case (supra) lend unstinted support to the stand, yet we must proceed to examine the correctness of the same in view of a frontal challenge raised thereto on behalf of the respondents. Indeed, as was noticed at the outset, a pointed doubt about the validity of this view had necessitated this reference to the larger Bench.

20. Now a close analysis of the judgment in Karan Singh's case on this particular point would indicate that the Bench rejected the strenuously pressed twin preliminary objections on behalf of a private rural educational college at Kaithal, that the student-writ petitioners had no fundamental or legal right to claim admission to the said College (on which alone a writ of mandamus was sought to be rested) and consequently no writ was competent against a private educational institution. The basic premise on which the Division Bench proceeded was that Art. 29(2) of the Constitution confers a fundamental right on the students to be considered for admission on merits alone to all educational institutions aided out of State fund. Inevitably a corresponding duty on such institutions to admit students was inferred which was held to be enforceable by way of a writ as well.

21. It seems to be manifest that the core question herein is whether Article 29(2) confers a fundamental right of equality of admission on all eligible students to a State aided private educational institution. With the greatest respect it appears to me that the said Article confers no such doctrinaire right and construing it in any such abstruse terms may, apart from other anomalies tend to erode the protection expressly afforded to the cultural and educational rights of the minorities by Article 29 and 30 of the Constitution itself.

22. What precisely is the width and the scope of Article 29(2) must not be construed in isolation but in the larger scheme of the fundamental rights guaranteed by Part III of the Constitution. This part is prominently and meaningfully categorised by the framers of the Constitution themselves. The opening Article 12 and 13 of the Chapter are general in nature containing therein the definition clause and the declaration that laws inconsistent with or in derogation of the fundamental rights are void to that extent. Thereafter follow the Articles under the distinct sub-heads--the rights of equality, the rights of freedom, the rights against exploitation and the right of freedom, of religion etc. What would prominently catch the eye first in this context, therefore, is the fact that Article 29(2) does not fall within any of this set of fundamental rights comprised in Article 14 to 28 and separately categorised as well. If it were at al intended to confer a general fundamental right of equality of admission of all students in all State aided institutions then its rightful place should have been within the well-known rights to equality. Nor does this Article come within the ambit of the now celebrated rights of freedom generally and freedom of religion particularly and the prohibition against exploitation. The location of this Article and its express exclusion from the generic fundamental rights is thus a matter of patent significance which cannot be lost sight of.

23. In the converse Article 29(2) falls within the specific head of the 'Cultural and Educational Rights' which have been guaranteed to the minorities. The heading of the Article and its marginal note is not without significance and has been so construed authoritatively. In terms these provisions are declared to be for the protection of the interest of minorities. Similar language is again used in

the heading in Article 30. It is well-settled that the two Article 29 and 30 are parts of the same integrated whole of the protection of cultural and educational rights of minorities and have to be read together.

24. Now part from the above Clause (2) of Article 29 is undoubtedly connected with Clause (1) thereof to which it succeeds. Indeed it has been sometimes said that it is in the nature of a proviso to Clause (1). The later provision guarantees a right to every section of the citizen of India who have a distinct language, script or culture of its own to preserve the same. There is no dispute that this rights includes within it the consequential right of such a minority to establish and maintain educational institutions of its own in order to conserve such language, script or culture. An educational institution of this kind run by such a minority community, which receives no aid from the State funds, is thus clearly out of ambit of Clause (2) of Article 29. Indeed apart from minority Schools and Colleges educational institutions not run by the State itself are divisible into three classes-

(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.

It seems to be plain on principle and is otherwise settled beyond cavil that private educational institutions falling in categories (i) and (ii) above in whose case no strings of State aid are attracted 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 impugned 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 with regard to the aforesaid classes of educational institutions no fundamental right generally of all citizens students to claim admission can possibly arise. Therefore the premise that Article 29(2) confers a fundamental right of equality of admission of 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 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 the 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 Art. 29(2) is confined only to discrimination on grounds of religion, race, case and language in State aided institutions and no more.

25-A. Adverting now to educational institutions maintained by the State exclusively and to which also Article 29(2) applies it is plain that they form a distinct class. What perhaps calls for prominent notice is the fact that when the State itself runs educational institution it is in an intrinsically different position from private individuals or collection of private persons or minorities owning and managing their educational institutions. Because of the equality clauses of the fundamental rights which are applicable to the State alone it cannot even in this field act arbitrarily. It is now too well-settled that any arbitrary, unguided or whimsical exercise of power by the State even in its administrative functions is correctable under the Constitution. However, private persons or collection of private persons running charitable or minority educational institutions do not seem to be under any such obligation which has been laid by the Constitution on the State alone. The distinction between the limitation placed on State action by the fundamental rights and other provisions of the Constitution has to be kept sharply in mind because those considerations cannot mathematically apply to private persons or association of private persons establishing and administering educational institutions. Indeed so far as the minorities are concerned this freedom to administer educational institutions of their choice is a guaranteed right which cannot be infringed by ordinary laws. Indeed it is the ignoring of this distinction betwixt the State action and private action which seems to have led to the fallacy of assuming that what would be true qua institutions exclusively maintained by the State would be applicable also to privately owned and privately managed educational institutions.

26. Again viewing Article 29 as an integral whole it would appear that whilst Clause (1) thereof guaranteed to a sectional minority a right to establish and administer educational institutions for conserving its language, script or culture yet at the same time by Clause (2) a fetter was placed thereon of such an institution received aid out of the State funds. To repeat if such a minority institution received no aid its right to admit or not to admit students was unfettered but if it received aid out of State funds then Clause (2) exacted a price therefor that even such an institution could then no longer discriminate on four express prohibited grounds of religion, race, caste and language. Now this Clause (2) was widely worded in order to alley any apprehension that minorities may

themselves be discriminated against on the aforesaid four grounds for admission into majority institutions or those run by the State. This is indeed evident from the language of the Article itself but as an aid the legislative history thereof is again a pointer to the same effect. Reference in this connection may be made to the authoritative work on the framing of Indian Constitution by B. Shiva Rao (pages 272 to 281) which would indicate that the larger thrust of these provisions was not the conferment of any generic fundamental rights on citizens but the protection of the interest of minorities and the apprehension of any discrimination against them.

27. Equally apt is to advert to Art. 15(4) and arrive at a harmonious construction of the same with Article 29(2). As has already been noticed, if it was intended to confer any fundamental right of quality of admission for citizens to even private educational institutions receiving aid from State funds then its rightful place should well have been within Article 15 itself originally. Further as a matter of legislative history it deserves recalling that in State of Madras v. Smt. Champakam Dorairajan, AIR 1951 SC 226, the Supreme Court had struck down the reservations made in favour of minorities on the basis of what was called the communal G. O. in State run institutions in Madras on the 9th of April, 1951, primarily because of its contravention of Article 29(2). As a consequence of this judgment Clause (4) of Article 15 was added by the Constitution (1st Amendment) Act 1951. This, in essence, was limited to legitimising the reservation of seats in educational institutions for educationally backward classes or for Scheduled Castes and Scheduled Tribes. It is significant that even when making this amendment on general right of equality of admission to all educational institutions including private ones receiving State aid was even remotely attempted. Equally significant it is that though Article 15 further prohibits discrimination on the basis of caste and place of birth also these do not find any mention in Art. 29(2). It is obvious that categorisation on the basis of sex and place of birth would be perfectly legitimate under Article 29(2). This also highlights the fact that the prohibition in Article 29(2) is limited and confined only to religion, race, caste and language and is in contrast to the larger fundamental right spelt out in the generic provisions of Article 15.

28. Lastly it would appear that carried to the abstruse length of reading Article 29(2) as a generic fundamental right of equality of admission on merits to all educational institutions receiving aid out of State funds would tend to conflict and erode the protection afforded of minorities to establish and administer educational institutions of their choice. That the establishment of such institutions by minorities and the freedom of internal administration thereof by them is the core of the protection of such cultural and educational rights is spelt out by a string of a cases of the final Court beginning with the reference on the Kerala Education Bill, AIR 1958 SC 956. If a fundamental right of equality of admission to all citizens even into such minority educational institutions on the ground that they receive aid out of State funds is enforced it would be obvious that the minority right to administer their educational institutions (with State aid) including therein the right of admission would necessarily give way to such a claim and would be eroded. In fact the general citizenry would thus be able to swamp the minority institutions and thus take away its minority character and the protection in terms sought to be given to them under Articles 29 and 30. Such a construction would also tend to dry up the sources to private charity and enterprise in the field of educational which have so far contributed materially to the cultural and educational development of the country. If privately owned and privately managed educational institutions and particularly those maintained by the

minority community are left with no freedom of internal management and admission the motivating purpose for their creation would be lost and the large sphere of private financial contribution to educational development would be scotched at its very source. Consequently in order to harmonise with the constitutional protection to minority cultural and educational rights, Article 29(2) has to be read within the four-corners thereof and not in conflict therewith.

29. What emerges from the aforesaid discussion on the basis of the provisions of the Constitution itself and on principle seems to be equally well supported by precedent if not directly and certainly by way of analogy. In Karan Singh's case (ILR (1976) 2 Punj & Har 859) reliance was particularly sought to be placed on Champakam Dorairajan's case (AIR 1951 SC 226)(supra). What, however, seems to have missed notice is the significant fact that specifically that was a case of discrimination on the basis of the Communal G. O. particularly with regard to discrimination on grounds to caste and religion. The educational institutions therein far from being private ones were being run by the State itself. The case was thus undoubtedly within that limited sphere where Article 29(2) would have play. With the greatest respect I am unable to derive any general fundamental right of equality of admission to all private educational institutions receiving State aid from the said judgment. Equally it bears repetition that this judgment led to an amendment of the Constitution and the insertion of Clause (4) to Article 15 which again negatives any such intent of conferring a generic right. In State of Bombay v. Bombay Education Society, AIR 1954 SC 561, their Lordships again highlighted the distinction between the general right under Article 15 and the circumscribed prohibition in Article 29(2). It was pin-pointed that the latter was only a remedy or protection against a species of wrong, namely, the limited discrimination on four grounds only specified therein, in those terms (at p. 566) :--

"..... .... Article 15 protects all citizens against the State whereas the protection of Article 29(2) extends against the State or anybody who denies the right conferred by it. Further Article 15 protects all citizens against discrimination generally but Article 29(2) is a protection against a particular species of wrong namely denial of admission into educational institutions of the specified kind."

Again in the celebrated reference in the matter of the Kerala Education Bill (AIR 1958 SC 956), Chief Justice Das observed as follows (at p.,978) :--

"..... .... The real import of Art. 29(2) and Art. 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it."

The limited protection afforded by Article 29 was again reiterated in W. Proost v. State of Bihar, AIR 1969 SC 465. However, more pointed observations were made by their Lordships in the celebrated case of Kumari Chitra Ghosh v. Union of India, AIR 1970 SC 35, as under (at p. 38) :--

"We are unable to see how Art. 15(1) can be invoked in the present case. The rules do not discriminate between any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Nor is Article 29(2) of any assistance to the appellants. They are not being denied admission into the Medical College on grounds only of religion, race, caste, language or any of them. ...."

Later in an exhaustive judgment by a Nine Judges Bench in Ahmedabad St. Xaviers College v. State of Gujarat, AIR 1974 SC 1389, the aforesaid principle stands authoritatively reiterated.

30. In fairness to the learned counsel for the petitioners reference must be made to Randhir Singh v. State of Haryana, AIR 1977 SC 2209, on which some mis-placed reliance was sought to be placed for contending that such a generic right was enforceable against a private institution as well.

31. Counsel's reliance on Randhir Singh's case (supra) obviously stems from a patent factual misapprehension. It was sought to be assumed that Kamla Nehru School in which admission was sought by the petitioners therein was a private institution. This stand is, however, totally belied. Randhir Singh's case (supra) was an appeal from a judgment of this Court dismissing C. W. P. No. 1506 of 1977 in limine on 1st of June, 1977. A reference to the original record would disclose that the petitioners' own case was that the Kamla Nehru School was the junior wing of Moti Lal Nehru School of Sports, Rai, which on the petitioners' own averments was set up in 1974 by the Government of Haryana and was being administered by it through the Secretary, Government of Haryana, Sports Department. It is thus plain that the educational institution was a Government owned and Government run institution. Even otherwise it is plain that the question of maintainability of a writ against private institution was not and in fact could not even be remotely raised before their Lordships of the Supreme Court far from being pronounced thereupon. The only objection referred to in paragraph 5 of the report (on which alone tenuous reliance was placed) was that during the emergency the writ was not maintainable under the amended provision of Article 226 of the Constitution. Their Lordships repelled that objection summarily which cannot even remotely be considered as a warrant for holding that was earlier a fundamental right of admission to all private institutions as well or that a writ was maintainable against the same.

32. On the other hand, within this Court, there is a long line of precedent frontally contrary to the stand taken on behalf of the petitioners. Reference, in this context may instructively be made to Satishwar Singh v. Chief Commissioner, Union Territory of Chandigarh, (1970) 72 Pun 76; Harish Kumar Jain v. Punjab University, (1970) 72 Pun LR 989; Dewa Singh v. Kurukshetra, University, AIR 1971 Punj & Har 340 and Chaman Lal Talwar v. Guru Nanak University, AIR 1973 Punj & Har 390.

33. Equally, there seems to be virtually unanimity in precedent of the other High Courts in line with the aforesaid view. Without quoting extensively therefrom, reference in this connection made be made to Ramesh Chandra Chaube v. Principal, Bipin Behari Intermediate Collage, Jhansi, AIR 1953 All 90; Km. Asha Lata v. Principal, Meerut College, Meerut, AIR 1959 All 224; Vikaruddin v. Osmania University, AIR 1954 Hyd 25; Anand Kumar Jain v. Government of Madhya Prasad, AIR 1959 Madh Pra 265; Sardar Jaswant Singh v. Board of Secondary Education, West Bengal, AIR 1962 Cal 20; Dr. R. Narayana Swamy v. State of Mysore, AIR 1968 Mys 180 and Nookavarapu Kanakadurga Devi v. Kakatiya Medical College, AIR 1973 Andh Pra 83.

34. Reverting back to Karan Singh's case (ILR (1976) 2 Punj & Har 859)(supra) it would appear that the matter was not presented before the Bench on its larger perspective. For the exhaustive reasons given above, with the greatest respect to the learned Judges of the Division Bench in Karan Singh's

case (supra), I am unable to agree with the wide ranging observations therein on this point and am constrained to overrule the same.

35. To conclude finally, it is held as under :--

(i) that, on the specific language of Article 15 and 29 of the Constitution of India; on principle; and on authoritative precedent, there is no fundamental right of equality, conferred on all citizens, for admission on merit alone, in privately owned and managed educational institutions receiving aid out of State funds;

(ii) that, in accordance with the rule laid down in Pritam Singh Gill v. State of Punjab, AIR 1982 Punj & Har 228, no writ of certiorari lies against privately owned and managed non-statutory educational institutions;

(iii) that the respondent--Daya Nand Medical College and Hospital, is in no way an instrumentality or agency of the State. Nor can it be said as a rule that privately owned and managed institutions imparting higher medical education would become instrumentalities or agencies of the State merely by virtue of the provisions of the Indian Medical Council Act or the respective Universities to which they may stand affiliated; and

(iv) Regulation II of the Medical Council of Indian with regard to the selection of students to the medical faculty lays no statutory public duty on the respondent-Medical College nor confers any legal right on the petitioners to enforce the same and consequently the pre-requisites for a writ of mandamus are, not even remotely satisfied.

36. In view of the findings aforesaid, all the three Civil Writ Petitions are thus not maintainable and are hereby dismissed. In view of the somewhat intricate legal and constitutional issues involved, we leave the parties to bear their own costs.

Goyal, J.

37. I fully agree.

S.S. Kang, J.

38. I fully agree.

39. Petitions dismissed.