Before Jawahar Lal Gupta, Dr. Sarojnei Saksena, K. S. Kumaran, Iqbal Singh and R. L. Anand, JJ.

RAVNEET KAUR,—*Petitioner.*

versus

THE CHRISTIAN MEDICAL COLLEGE, LUDHIANA AND ANOTHER,—*Respondents.*

CWP No. 11299 *of* 96.

May 6, 1997.

Constitution of India, 1950—*Arts.* 12, 21, 29, 30 & 226—*Indian Medical Council Act,* 1956—*Ss.* 10-*A*, 11, 15, 17 & 19-*A*—*Panjab University Act,* 1947—*Education*—*Medical admissions*—*Public duty*—*Maintainability of writ petition against private medical college*—*CMC, Ludhiana, an unaided private medical college affiliated to Panjab University is amenable to judicial review*—*High Court has power to issue appropriate writ, orders and directions under Art.* 226—*Performance of public duty by private bodies*—*Principle of*—*Actions of such bodies open to correction.*

(*Pritam Singh* v. *State of Punjab and others* 1982 (2) *SLR* 135 (*F.B.*) *and Gurpreet Singh Sidhu and others* v. *The Panjab University, Chandigarh and others, AIR* 1983 *P&H* 70 (*F.B.*) *over-ruled*).

Held, that a combined reading of the provisions of the Indian Medical Council Act, 1956, the Panjab University Act, 1947 and the regulations/rules framed there under indicates a significant degree of control over the Institution by the Central Government, the Medical Council of India and the University. This control is virtually all pervasive. Every field of activity viz. the course of study, the recruitment of the staff, the facilities for providing education and training and even the conditions of service of the members of the staff are regulated.

(Para 16)

Further held, that Article 29(2) contains a clear indication that even a private institution which is receiving aid from the State cannot discriminate on grounds of religion, caste etc. Thus, there cannot be a dichotomy a division of the institutions performing public duties into two strongly contrasted classes. The private institutions performing public duties supplement the State's effort. They are partners with the State. The private and Governmental institutions are the two sides of the same body. The right side cannot smile when the left side is pinched.

(Para 22)

Further held, that the old and conservative view regarding the maintainability of writs against the State or its instrumentalities is giving way to "a liberal meaning". The power under Article 226 is no longer confined to the issue of writs against statutory authorities and instrumentalities of the State. It covers "any other person or body performing public duty." Medical Colleges are supplementing the effort of the State. These cannot survive or subsist without recognition and/or affiliation. The bodies which grant recognition are required to ensure that the institution complies with Article 14 of the Constitution.

(Para 41)

Further held, that a private educational institution receiving aid from State funds may not be a 'State' as defined in Article 12. Yet, Article 29(2) confers a fundamental right on all citizens not to be discriminated against in the matter of admission to such an institution on grounds only of religion, caste, language or any of them. If a citizen is denied admission by such an institution on any of the grounds specified in Article 29(2), can it be said that the aggrieved person cannot seek a writ for the enforcement of his rights either under Article 32 or 226 on the ground that it happens to be a private educational institution ? Certainly not.

(Para 42)

Further held, that the view taken by the Full Bench in *Gurpreet Singh Sidhu and others* v. *The Panjab University, Chandigarh and others,* AIR 1983 P&H 70, wherein it was held that "against these institutions, no General fundamental right of equality of admission on merits can even be invoked....." is no longer good law. A citizen can invoke the right to equality in the matter of admission on merit even against a private medical college affiliated to a University. This right "without a remedy will become a mere adornment.....as writ in water."

(Para 43)

Further held, that neither the language of the Constitution nor the present day needs of society permit exemption of bodies performing public duties from "superintendence by the Courts."

(Para 45)

Further held, that :—

(i) Powers of the High Courts under Article 226 of the Constitution are wider than those of the Court of King's Bench in England.

(ii) The power of the High Courts is not confined to the issue of prerogative writs as initially understood in England. The procedural restrictions which had been impugned on the Courts in England do not bind the High Courts in this country. The High Courts are empowered to issue not

only writs in the nature of certiorari, *mandamus* etc. but also orders and directions to enforce fundamental rights or for any other purpose.

(iii) The power under Article 226 of the Constitution is not confined to the enforcement of fundamental rights like the power under Article 32. Still further, the High Courts can issue writs, orders or directions even to any person or authority discharging a public duty for enforcement of the fundamental rights or for any other purpose.

(iv) The words "any person or authority" used in Article 226 do not mean only State as defined in Article 12 or statutory authorities. These cover any person or body performing a public duty.

(v) In view of the importance of 'health' to the Community, institutions providing medical education form a district class. These institutions perform a public duty and supplement the State's effort. By their affiliation to a University or any other statutory examining body, they become partners with the State. They are, thus, subject to the restrictions contained in Part III. They are bound to act in conformity with the provisions of the Indian Medical Council Act, 1956 and the rules/regulations framed by the appropriate University/body. Whenever they act unfairly, arbitrarily or violate the prohibitions contained in Part III of the Constitution or the rules and regulations framed by the University etc., their actions can be corrected by issue of a writ of certiorari or any other appropriate writ, direction or order. Similarly, if it is found that an institution has failed to carry out an obligation under the Constitution or the rules/regulations framed by an appropriate body, it can be compelled to perform its duty by the issue of a writ of *mandamus*. This principle shall, however, not be attracted in case of every private school or college.

(vi) The Full Bench decisions of this Court in *Pritam Singh* v. *State of Punjab and others*, 1982 (2) SLR 135 and Gurpreet *Singh Sidhu and others* v. *The Panjab University, Chandigarh and others*, AIR 1983 P&H 70, do not contain a correct enunciation of law and are over-ruled.

(Para 59)

R. S. Bindra, Sr. Advocate with Umesh Wadhwa, Advocate, *for the Petitioner.*

P. S. Patwalia, Advocate with Namit Kumar, Advocate, *for the* Respondent.

JUDGMENT

Jawahar Lal Gupta, J.

(1) Is a writ petition maintainable against an un-aided private Medical College which is affiliated to a University ? A Full Bench of this Court considered this matter in *Gurpreet Singh* v. *Panjab University, Chanigarh and others* (1). It answered the question in the negative. The correctness of this view was doubted by V. K. Bali, J. while considering the case of *Dr. Vandna Midha* v. *Panjab University, Chandigarh* (Civil Writ Petition No. 6020 of 1993). The matter was referred to a larger Bench of five Judges. Before the reference could be answered, the present writ petition was listed for preliminary hearing before a Division Bench. It directed the issue of notice of motion to the respondents—the Christian Medical College, Ludhiana and its Principal. The respondents appeared and raised a preliminary objection regarding the maintainability of the writ petition. The Bench, consequently, directed that "the matter be placed before Hon'ble the Chief Justice for constituting a larger Bench at an early date." It was placed before a Bench of three Judges. Keeping in view the fact that the issue had been referred to a Full Bench of five Judges in Dr. Midha's case and the correctness of the view taken by the Full Bench in Gurpreet Singh's case was to be examined, it was directed that this matter be placed before a Bench of five Judges. Consequently, the case has been placed before this Bench. The facts may be briefly noticed.

(2) The petitioner Miss Ravneet Kaur, ostensibly a Sikh, claims to be a convert to Christianity. She applied for admission to the MBBS course at the Christian Medical College, Ludhiana against one of the seats reserved for the "candidates" who are christians, Indian Nationals and officially sponsored by a Church or a Mission....." It is alleged that the application was sponsored by the Bishop of Amritsar,—*vide* his letter dated June 12, 1996. A copy of this letter has been produced as Annexure P. 1. The petitioner appeared in the written test. *Vide* letter dated July 17, 1996, the petitioner was informed that she had been "provisionally selected for the MBBS course, 1996....." She was asked to report to the office on July 29, 1996. She was also asked to produce various certificates including the "Baptism Certificate." On July 25, 1996, the petitioner was called upon to produce certain additional documents including the "sponsorship letter alongwith a photo copy of the sponsorship agreement/bond." Alongwith this letter, the

(1) A.I.R. 1983 P. & H. 70.

respondents had forwarded a copy of the letter dated July 20, 1996 which indicated that "the petitioner had not enclosed her sponsorship letter from an authorised person of Diocese of Amritsar i.e. Rev. C. M. Khanna." It was also stated that the petitioner's selection was provisional and subject to the production of relevant certificates in original. The petitioner avers that she met Rev. C. M. Khanna at Jammu on July 27, 1996. He informed her that his "power of sponsorship etc." had expired on May 13, 1996. When the petitioner reached Amritsar, she was informed that the Bishop had gone out of Station and would not be available for a week or 10 days. The petitioner conveyed this information to the respondents through a telegram. Only July 29, 1996, the petitioner appeared before a committee constituted by the respondents. She narrated the factual position and requested that the letter dated June 12, 1996 produced by her be treated as a valid sponsorship. The respondents did not accept her request. The petitioner alleges that the respondents are taking a hyper-technical view and have, thus, denied her admission to the MBBS Course. The petitioner prays that the respondents be directed to admit her to the MBBS Course for the year 1996.

(3) The respondents contest the petitioner's claim. They question the maintainability of the writ petition. It has been stated by way of a preliminary objection that the Christian Medical College is a privately managed, unaided, minority Institution. In view of the decision of the Full Bench in Gurpreet Singh's case, the writ petition is not maintainable. On merits, it has been admitted that the petitioner had applied for admission to the MBBS course against one of the seats reserved for the candidates sponsored for Mission Hospitals. For this purpose, a Christian applicant having Indian Nationality has to "seek official sponsorship by a Church or Mission represented on the governing body of the Christian Medical College of Ludhiana Society." The applicants must obtain a letter stating that "the candidate is sponsored for MBBS admission for the year 1996." .This letter of sponsorship had to be submitted alongwith the application form to the Registrar of the College on or before June 15, 1996 failing which the candiature was liable to be rejected. The petitioner did not submit "the official sponsorship letter as required by 15th June, 1996 even upto 29th July, 1996 i.e. the date of scrutiny of documents/certificates and testimonials etc." She had only submitted "a commending letter instead of sponsorship letter." Her name "did not figure in the list of candidates sponsored by the Diocese of Amritsar....." On June 20, 1996, she was asked to

produce "her confirmation letter/certificate which is a pre-requisite document of the sponsorship letter." Simultaneously, the College also wrote "a letter dated 20th June, 1996 to the Father Yaqub Masih, Methodist Church to confirm whether the petitioner is confirmed or not." The College was informed that "she was not yet confirmed by her Church." Still, the petitioner was informed,—*vide* letter dated July 22, 1996 that she had been "conditionally selected and that she must bring the certificate and testimonials in original for scrutiny and be present on 27th July, 1996." She was also informed that if her original "certificates, papers, testimonials etc. are not found to be in order.....", her name shall be cancelled. In the meantime, the College had sent a communication dated July 10, 1996 to the Bishop requesting that "in case the Diocese of Amritsar was sponsorsing the petitioner.....", a proper sponsorship letter be sent through courier. No reply was received. Since the petitioner was not a duly sponsored candidate and had failed to produce a letter of sponsorship even on July 29, 1996, her candidature was cancelled. In view of these facts, the respondents pray that the writ petition should be dismissed.

(4) After we had heard counsel for the parties, the respondents filed a misc. application No. 2260 of 1996 to place certain additional facts and documents on record. Notice of the application was given to the counsel for the petitioner. A reply and later even an affidavit were filed. These were taken on record. In its application, the College has pointed out that according to the guidelines for sponsorship "the individual to be sponsored must belong to the Christian faith with atleast 5 years' relationship to the Church. The petitioner claimed to belong to the Methodist Church in India." According to the letter dated June 25, 1996 received from the Church. "She was not even a confirmed member." In her application, the petitioner had claimed to have been sponsored by the Diocese of Amritsar. This is different from the Church to which she belongs. Thus, the respondents suggest that the petitioner is not even a confirmed christian. It has been further stated that the format of sponsorship letter has been given to the sponsoring agencies. The diocese of Amritsar had given a list of the candidates it had sponsored in the prescribed format which was duly signed by the authorised signatory. A copy of this list has been produced as Annexure A. 2. A certificate of the Bishop stating that "he had never sponsored the petitioner" has been produced as Annexure A. 3. A copy of the Booklet containing the guidelines has been produced as Annexure A. 4. It has also been stated that all the seats in the College had already been filled up and none of the candidates sponsored by the Diocese of Amritsar

was admitted as they had failed to secure the qualifying percentage of marks in the written test.

(5) The petitioner has disputed the claim made by the respondents. She alleges that they have made an attempt to change the defence which "could be done only by amending the written statement filed in the writ petition....." On merits, the petitioner has submitted that she was "baptised as (a) Christian on 1st January, 1988 and as such, by the date of her application for admission to the College for the MBBS course, she had been (a) christian for much more than five years." She has produced a copy of the Baptism Certificate as Annexure P. A. She admits that the format of the sponsorship letter has been prescribed by the College. It is at Page 7 of the guidelines. However, she had "stated her claim for admission to the MBBS course" on the basis of the letter dated June 12, 1996, a copy of which has been produced as Annexure P. 1 with the writ petition. She claims to be an exceptionally bright candidate who had secured 70.4 per cent marks in the test. She alleges that two seats were lying vacant when the notice was served on the respondents. These should not have been filled up after the service of the notice. She alleges that the College had committed various irregularities. These were reported in the Press on September 11, 1996. As a result, the Chairman of the Society and the governing body had submitted his resignation.

(6) These are all the pleadings.

(7) Mr. R. S. Bindra, learned counsel for the petitioner submitted that in view of the decisions of the Supreme Court in *Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Survarna Jayanti Mahotsav Smarak Trust and Others* v. *V. R. Rudani and others* (2), and *Unni Krishan and others* v. *State of Andhra Pradesh and others* (3), the decision of the Full Bench of this Court in *Gurpreet Singh Sidhu and others* v. *Panjab University, Chandigarh and others* (4), is not correct and sustainable. Consequently, the College should be directed to admit the petitioner to the First Year of MBBS Course, On the basis of her position in the merit list. The claim made on behalf of the petitioner was controverted by Mr. P. S. Patwalia,

(2) A.I.R. 1989 S.C. 1607.
(3) A.I.R. 1993 S.C. 2178.
(4) A.I.R. 1983 P. & H. 70.

counsel for the Respondent-College. He contended that a private college which is not receiving any aid from the Government is not an instrumentality of the State and is, thus, not amenable to the writ jurisdiction. The dispute between a candidate and a private medical college cannot be examined in proceedings under Article 226 of the Constitution. Learned counsel placed reliance on various decisions.

(8) It is in the context of the pleas raised by the counsel for the parties that the question as posed at the outset arises for consideration.

(9) In the pre-independence era, the facilities for education were limited. After the dawn of independence, public instruction became one of the priorities. Since then and in spite of economic constraints, the Government has tried to open educational institutions all over the country. The governmental effort has been supplemented by private organisations and even by individuals in a good measure.

(10) Traditionally, schools and colleges were treated as temples of learning. In order to ensure that these temples do not degenerate into shops and certain minimum facilities for education are provided, the Government as well as the Boards and Universities have adopted certain regulatory measures. In case of technical education, the degree of control has been comparatively greater. In view of the importance of health to the community, so far as medical education is concerned, stringent measures have been laid down by an Act of parliament.

(11) The Parliament enacted the Indian Medical Council Act, 1956 to provide for the constitution of the Medical Council of India, the maintenance of a Medical Register and the matters connected therewith. Section 10A of the Act *inter alia* provides that "no person shall establish a medical college .....except with the previous permission of the Central Government obtained in accordance with the proivisions....." Even the existing medical colleges cannot "open a new or higher course of study or training.....or increase its admission capacity in any course of study or training....." without the prior approval of the Central Government. Rigorous procedure for obtaining permission from the Central Government has been laid down. It is *inter alia* provided that "every person or medical college shall for the purpose of obtaining permission.....submit to the Central Government a Scheme.. ..." in the prescribed form which shall be referred to the Medical Council for its recommendations. The

Council shall *inter alia* consider (a) whether the proposed medical college or the existing college would be in a position of offer the minimum standards of medical education as prescribed by tre council.....", (b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course.....has adequate financial resources; (c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study have been or would be provided within the time limit specified in the scheme; (d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college would be provided within the time limit specified in the scheme; (e) whether any arrangement has been made or programme drawn to impart proper training to students ...by persons having the recognised medical qualifications." The Act also postulates that where any medical college is established without the prior permission of the Central Government medical qualification granted to any student of such college shall not be "a recognised medical qualification....." Section 11 of the Act provides that the medical qualifications granted by any University or Medical Institution in India which are included in the First Schedule shall be the recognised qualifications for the purposes of this Act. Section 15 of the Act postulates that "the medical qualifications included in the Schedules shall be sufficient qualification for enrolment or any State Medical Register." It has been further provided that "no person other than a medical practitioner enrolled on a State Medical Register, (a) shall hold office as physician or surgeon...in Government or in any institution maintained by a local or other authority: (b) shall practise medicine in any State." Under Section 17 of the Act, Medical Inspectors can be appointed "to inspect any medical institution, college, hospital or other institution where medical education is given, or to attend any examination held by any University or medical institution for the purpose of recommending to the Central Government recognition of medical institution." Provision for appointment of visitors at examinations has been made under Section 18. If it is found that the courses of study and examination to be undergone in or that the staff, equipment, accommodation, training and other facilities for instruction provided in medical institution or University or College "do not conform to the standards prescribed by the Council" the Central Government can on the recommendation of the Council and after such further enquiry as it may consider necessary order withdrawal of recognition of the qualification or the institution. Under Section

19A, the Council is competent to prescribe the minimum standards of medical education for granting recognised medical qualifications. The Council can also prescribe standards of professional conduct and etiquette and a Code of ethics for medical practitioners. The Act provides for maintenance of registers, in the prescribed manner, of Medical practitioners to be known as the Indian Medical Register and the State Medical Register which shall include the names of persons who possess the recognised medical qualifications and are entitled to "practise as a medical practitioner in any part of India....."

(12) The 1st Schedule to the Act contains the list of recognised medical qualifications granted by different Universities and medical Institutions in the Country. In the Second Schedule, the "recognised medical qualifications granted by medical Institutions outside India" have been delineated. Schedule 3 enlists the "Medical Qualifications granted by Medical Institutions not included in the 1st Schedule."

(13) The Act regulates the establishment of medical colleges and the conduct of medical practitioners. The Act is aimed at ensuring that medical colleges maintain standards of education, provide adequate facilities and only such people as are duly qualified practise medicine and surgery.

(14) Still further, it is true that a good building, sophisticated equipment and trained staff are essential for setting up an educational instiution. However all these can only enable the College to impart training. No amount of training will enable the students to practise medicine and surgery. It is essential for them to take an examination and get a degree from a recognised institution as contemplated in the Act. The seal of recognition of the institution and approval of the training through examination of the candidates by the University are essential pre-requisites so as to enable them to use their skills. Thus, the Institution is required to get affiliation to enable the students to take the examination for the award of a recognised medical degree.

(15) In the present case, the Respondent-College is affiliated to the Panjab University. It is obliged to comply with the regulations and the rules framed by the appropriate authority under the provisions of the Panjab University Act, 1947. The constitution of the governing body, the minimum qualifications which a member of the teaching staff has to possess, the conditions of eligibility for admission to the course of study are regulated by the provisions made by

the University. A committee appointed by the University is entitled to inspect the college. If it is reported that certain provisions have not been complied with, action can be taken against the Institution. In case of violation of the regulations or the rules, the University can refuse to accept the students for the University Examination. It can debar the members of the teaching staff from being appointed as examiners etc. or from seeking election to a University body or even continuing thereon. The College is bound to comply with the rules framed by the University in respect of "the conditions of service and conduct of teachers." The University also prescribes the academic qualifications and teaching experience etc. for appointment to the teaching posts in the Institution.

(16) A combined reading of the provisions of the Indian Medical Council Act, 1956, the Panjab University Act, 1947 and the regulations/rules framed thereunder indicates a significant degree of control over the Institution by the Central Government, the Medical Council of India and the University. The control is virtually all-pervasive. Every field of activity viz. the course of study, the recruitment of the staff, the facilities for providing education and training and even the conditions of service of the members of the staff are regulated.

(17) Another fact which may be mentioned here is that during the later part of this century, there have been rapid advances in Biotechnology. Sophisticated equipment is now available for diagnosis as well as treatment. The parts of the body which were hither-to-fore considered as blind lanes can now be seen and probed with the help of endoscopes. Facilities of computerised tomography and ultra sound equipment enable the medical men to see almost every part of the body. Magnetic Resonance Imaging gives an accorate picture of virtually the entire body. Most of this sophisticated equipment has to be imported from abroad. The Government not only allows the import but sometimes, it may even give exemption from payment of customs duty to the medical colleges and hospitals. If calculated in terms of money, it can amount to substantial aid by the State. It is not surprising that the respondent-college has acknowledged in its prospectus that the Government of India and Punjab "have continued their interest and support in the work and development of the College and its hospital."

(18) The building and equipment are the body frame of the Institution. The affiliation to the University is the soul which gives

it life. It gains recognition. It becomes entitled to train personnel who would be qualified to take care of the health of the community. The Institution becomes a partner with the State in performing a public duty. Should it still be treated as an isolated island which is immune from the intervention of the courts in spite of the wide language of Article 226 of the Constitution ?

(19) Part III of the Constitution embodies the Fundamental Rights. It begins with the definition clause in Article 12. The provision indicates that the mandate of Part III is not directed merely against the executive and legislative organs of the Union and the States but also extends to the local bodies, instrumentalities of the State and other bodies which discharge governmental or public functions. Article 13 *inter alia* provides that laws which are inconsistent with or in derogation of the fundamental rights shall not be valid. Articles 14 to 16 embody the equal protection clause. Article 17 abolishes Untouchability and forbids its practice in any form. Article 18 provides for abolition of titles. Article 19 protects the right to freedom of speech etc. Article 20 debars the making of *ex post facto* criminal law and the infliction of a penalty greater than that which might have been inflicted under the law in force at the time when the act was committed. Article 21 guarantees the right to life and liberty. It has been interpretted to include the right to education. Article 22 embodies the safeguards against arrest and detention. Article 23 to 28 embody protection against exploitation, prohibition of employment of children in factories and right to freedom of religion etc. Article 29(1) confers the fundamental right on every section of citizens to conserve their distinct language, script and culture. In exercise of this right, any section of citizens can establish and maintain an educational institution as such a right "is a necessary concomitant to the right to conserve its distinctive language scripts or culture....." (see Kerala Education Bill—AIR 1958 SC 956—Pr. 20 at Page 976). Clause 2 of Article 29 debars any educational institution receiving aid out of the State funds from denying admission on grounds "only of religion, race, caste, language....." In other words, the provision confers a fundamental right on every citizen not to be discriminated against in the matter of admission even by a private Educational institution receiving financial aid from the Government on the grounds of religion etc. Article 30 embodies a special provision in respect of the religious and linguistic minorities What is implicit in Article 29(1) is made explicit in Article 30(1).

(20) Having conferred these rights, the Constitution has also provided remedies under Articles 32 and 226. An aggrieved person

has been given the right to move the Supreme Court for the enforcement of the rights conferred by Part III of the Constitution. Article 226 of the Constitution permits the High Courts to issue "directions, orders or writs including writs in the nature of habeas corpus, *mandamus,* prohibition, *quo warranto* and *certiorari*....." against "any person or authority including in appropriate cases any Government.....for the enforcement of any of the rights conferred by Part III and for any other purpose." These remedies shall be available to a citizen even against a private educational institution when it denies admission only on grounds of religion, race or caste etc. Thus, on a plain reading of the provision in Article 29, it is clear that a private educational institution is not immune from judicial surveillance of the Supreme Court or the High Courts.

(21) Still further, the Constitution imposes a duty on the State to treat equals equally. It debars it from acting arbitrarily. The state as well as its instrumentalities cannot make a law or rule which violates Part III of the Constitution. Does it mean that other bodies which perform public duties but do not fall within the definition of 'State' under Article 12 of the Constitution are free to treat equals unequally, act arbitrarily and to make or follow rules that are clearly violative of the prohibitions embodied in Part III of the Constitution ?

(22) The Constitution cannot be interpretted to mean that there are two sets of rules for the same game. It is only right that every Institution which is charged with a public duty follows the mandate of Article 14. It cannot act arbitrarily, treat equals unequally and made or follow rules that are clearly violative of the prohibitions embodied in Part III of the Constitution. In fact, Article 29(2) contains a clear indication that even a private institution which is receiving aid from the State cannot discriminate on grounds of religion, caste etc. Thus, there cannot be a dichotomy—a division of the institutions performing public duties into two strongly contrasted classes. The private institutions performing public duties supplement the State's effort. They are partners with the State. The Private and Governmental institutions are the two sides of the same body. The right side cannot smile when the left side is pinched.

(23) Mr. Patwalia, counsel for the Respondent-College, however, contended that in spite of the wide language of Article 226, a

writ can issue only against the State or other authorities as contemplated under Article 12 of the Constitution. He relied on the decision of a Division Bench of Madras High Court *In re Gadea Magabhushana Reddi and another* (5), to point out that a writ of prohibition cannot issue against a political party or that Article 226 should not be construed so as to replace the ordinary remedy available to a litigant under the general law of the land. He also referred to a Division Bench decision of the Madras High Court in *L.T. Corporation* v. *State of Madras* (6), and a decision of the Delhi High Court in *National Seeds Corporation Employees* v. *M. S. Corporation* (7), to point out that "it cannot be said that now under Article 226, a writ in the nature of prohibition could issue even to a private person prohibiting him from doing some act which is likely to injure an applicant." Learned Counsel also referred to the judgment of their Lordships of the Supreme Court in *Election Commission of India* v. *S.V.S. Rao* (8), to contend that the purpose of Article 226 was "to place all the High Courts in the country in somewhat the same position as the Court of King's Bench in England." Is it so ?

(24) According to Webster's 3rd New International Dictionary, a 'writ' means "a formal written document—a legal instrument in an epistolary form issued under seal in the name of the English Monarch from Anglo Saxon times to declare his grants, wishes and commands; an order or mandatory process in writing issued under seal in the name of the Sovereign or of a Court or Judicial Officer from the appropriate authority commanding the person to whom it is directed to perform or refrain from performing an act specified therein."

(25) In 'Judicial Review of Administrative Action' by Prof. De Smith, Woolf and Jowell (Fifth Edition) at Page 617, 'The Historical Development of Judicial Review Remedies and Procedures' including the Writs of Certiorari and Mandamus has been traced in the following words :—

> "In the earliest times, the royal writs were sealed governmental documents drafted in a crisp, business-like manner, by which the King conveyed notifications or orders. Certiorari was essentially a royal demand for information; the King, wishing to be certified of some

(5) A.I.R. 1951 Madras 249.
(6) A.I.R. 1954 Madras 549.
(7) A.I.R. 1972 Delhi 292.
(8) 1953 S.C.R. 1144.

matter, orders that the necessary information be provided for him...The Calendar of inquisitions mentions numerous writs of certiorari addressed to the escheator or the Sheriff, to make inquisitions the earliest are for the year 1260.....

In early times, the King also issued countless innominate writs that included the word *'mandamus'*—'the autocratic head of a vast administrative system will have occasion to *mandamus* his subjects many times in the course of a day'—

Subject.....came in increasing numbers to seek a remedy from the King himself, in the form of a royal writ. In this way, it has been noted, 'arbitrary, even irresponsible interventions in law suits' took place. By the middle of the 12th century such royal interventions became judicialised and redress was obtained through the King's court rather than from the King himself. The development of the writ system, therefore, has about it a hint of paradox for modern administrative law; what began as executive commands aimed at avoiding judicial proceedings became in turn the Central mechanism for the judicial control of executive action."

Why the term 'prerogative writs' ?

(26) In paragraph 14—008, it has been pointed out that "It is in a case decided by Montagu and three Brethren not noted for their independence of the Crown that Habeas Corpus is for the first time reported as being called a 'prerogative writ'. In Montagu's words, it is a prerogative writ, which concerns the King's justice to be administered to his subjects; for the King ought to have an account why any of his subjects are imprisoned."

(27) In paragraph 14—001, it has been stated "But it is easy enough to explain why Mansfield and Blackstone who were good King's men should have insisted on the prerogative character of Habeas Corpus. And if these were the qualities which in their eyes entitled Habeas Corpus to classification as a prerogative writ, they were shared in large measure by mandamus, 'a command issuing in the King's name from the Court of King's Bench' and 'a writ of most extensively remedial nature'. The writ of *mandamus*, moreover, expressly alleged a contempt of the Crown consisting in the neglact of a public

duty; and it was a writ of grace. The 'prerogative' characteristics of prohibition and certiorari were still more obvious. Prohibition had always been associated with the maintenance of the rights of the Crown. Certiorari was historically linked with the King's person as well as with the King's Bench; it was of high importance for the control of inferior Tribunals, particularly with respect to the administration of criminal justice; it was a writ of course for the kind but not for the subject."

(28) However, the British Model is not strictly applicable in this country. There are certain basic differences. Firstly, the British Constitution has evolved empirically over the centuries. It does not appear to have drawn anything from the example of other countries. We have a written document which draws extensively from the experience of various countries. Secondly, the British Constitution contains no general guarantee of individual rights. Our Constitution guarantees Fundamental Rights which are inviolable. Thirdly, the British Parliament is supreme and soverign. In India, the acts of Parliament and other Legislatures are subject to judicial review and the State is precluded from violating the Fundamental rights either by law or through executive action. Still further, we are a democracy with an elected head of the State. There is no one with any prerogative.

(29) In view of these vital differences, it is not surprising that our Constitution-makers did not adopt the strict model of 'prerogative writs' as it existed in England prior to the promulgation of the Supreme Court Act, 1981. In our Constitution, every High Court has power to issue "to any person or authority.....directions, orders or writs including writs in the nature of habeas corpus, *mandamus*, prohibition, *quo warranto* and certiorari or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose." The power is not confined to the issue of 'prerogative writs' as initially understood in England. The High Courts can issue writs 'in the nature of.....'. They can also issue directions or orders for the purpose of enforcing the rights conferred by Part III and for any other purpose. The conservative view as initially expressed by the courts in India has not been accepted by the Apex Court in various decisions. In *P. J. Irani* v. *State of Madras and another* (9), a Constitution Bench observed at Page 1738 that—"the power of the High Court under Article 226 of the Constitution is not

(9) A.I.R. 1961 S.C. 1731.

limited to the issue of writs falling under particular groupings, such as the certiorari *mandamus* etc. as these writs have been understood in England, but the power is general to issue any direction to the authorities *viz.* for enforcement of fundamental rights as well as for other purposes."

(30) A few years later, in *Dwarka Nath* v. *Income Tax Officer* (10), it was held that—

> "Article 226 is couched in comprehensive phraseology and it *ex-facie* confers a wide power on the High Court to reach injustice wherever it is found. A wide language in describing the nature of the power, the purposes for which the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in the nature of prerogative writs as understood in England but the scope of those writs also is widened by the use of the expression "nature" which expression does not equate the writs than can be issued in India with those in England but only draws an analogy from them. That aprat. High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate the scope of the power of the High Court under Article 226 with that of the English Court to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India, functioning under a federal structure. Such a construction would defeat the purpose of the article itself."

(31) A decade later, in *Rohtas Industries* v. *Staff Union* (11), while dealing with Article 226 of the Constitution, it was observed as under :—

> "The expansive and extra-ordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can effect *any person even*

(10) A.I.R. 1966 S.C. 81.
(11) A.I.R. 1976 S.C. 425.

a private individual and be *available for any* (other) *purpose,* even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226 (1-A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to the *residence* of such person. But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a China Shop. This court has spelt out wise and clear restraints on the use of this extra-ordinary remedy and High Courts will not go beyond those whole some inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The matter of law is justice and a potent drug should be judiciaously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the *kui vive* and to cut back on or liquidate that power may cast a peril to human rights."

(32) Thereafter, while dealing with a public interest petition for release of bounded labour under Article 32 of the Constitution in *Bandhua Mukti Morcha* v. *Union of India and others* (12), their Lordships at page 814 were pleased to observe as under :—

"The Constitution makers deliberately did not lay down any particular form of proceeding for enforcement of a fundamental right nor did they stipulate that such proceeding should conform to any rigid pattern or straight jacket formula as, for example, in England, because they knew that in a country like India where there is so much of poverty, ignorance, illitracy, deprivation and exploitation, any insistence on a rigid formula of proceeding for enforcement of a fundamental right would become self defeating because it would place enforcement of fundamental rights beyond the reach of the common man and the entire remedy for enforcement of fundamental rights which the Constitution makers regarded as so precious and invaluable that they elevated it to the status of a fundamental right, would become a mere rope of sand so far as the large masses of the people in this country are concerned.....It will be seen that the power conferred by Clause (2) of Article

(12) A.I.R. 1984 S.C. 802.

32 is in the widest terms. It is not confined to issuing the high prerogative writs of habeas corpus, mandamus, prohibition, certiorari and *qua* warranto, which are hedged in by strict conditions differing from one writ to another and which to quote the words spoken by Lord Atkin in *United Australia Ltd.* v. *Barclays Bank Ltd.* (1941) AC 1 in another context often "stand in the part of justice clanking their medieval chains". But it is much wider and includes within its matrix, power to issue any directions, orders or writs which may be appropriate for enforcement of the fundamental right in question and this is made amply clear by the inclusive clause which refers to in the nature of habeas corpus, mandamus, prohibition, *quo* warranto and certiorari. It is not only the high prerogative writs of mandamus, habeas corpus, prohibition, *quo* warranto and certiorari which can be issued by the Supreme Court but also writs in the nature of these high prerogative writs and therefore even if the conditions for issue of any of these high prerogative writs are not fulfilled, the Supreme Court would not be constrained to fold its hands in despair and plead its inability to help the citizen who has come before it for judicial redress, but would have power to issue any direction, order or writ including a writ in the nature of any higher prerogative writ. This provision conferring on the Supreme Court power to enforce the fundamental rights in the widest possible terms shows the anxiety of the Constitution makers not to allow any procedural technicalities to stand in the way of enforcement of fundamental rights. The Constitution makers clearly intended that the Supreme Court should have the amplest power to issue whatsoever direction, order or writ may be appropriate in a given case for enforcement of a fundamental right.....

We may point out that what we have said above in regard the exercise of jurisdiction by the Supreme Court under Art. 32 must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226, for the latter jurisdiction in also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 and the same powers can and must therefore be exercised by the High Court while exercising jurisdiction under Article 226. In fact, the

jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights."

(33) A little later, in *Umaji Keshao Meshram and others* v. *Smt. Radhikabai and another* (13), their Lordships held that the power under Article 226 of the Constitution was wider than the pre-constitution power of the Chartered High Courts to issue prerogative writs.

(34) The above decisions clearly show that the powers of the High Courts under Article 226 are not confined to the issue of prerogative writs as understood in England. The powers are much wider than those of the Court of King's Bench. These are not subject to the procedural restrictions being followed in a small country like England.

(35) Mr. Patwalia placed strong reliance on the decision of the Full Bench of this Court in Gurpreet Singh's case (supra) to contend that a writ petition is not maintainable against a private educational institution.

The Full Bench had concluded as under :—

"(i) that, on the specific language of Articles 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 P&H 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

(13) A.I.R. 1986 S.C. 1272.

State. Nor can it be said as a rule that privately owned and managed institution 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 India 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 prerequisities for a writ of mandamus are not even remotely satisfied."

(36) The correctness of the conclusion recorded by the Full Bench was doubtful in view of the plain language of the Constitution. However, the matter has been put beyond any doubt by the Apex Court by its pronouncements in *Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suraraa Jayanti Mahatsav Smarak Trust and others* v. *Rudani and others* (14), and *Unni Krishnan J. P. and others* v. *State of Andhra Pradesh and others* (15).

(37) In Anadi Mukta's case (supra), the Court was considering the question of "the maintainability of the writ petition for mandamus as against the management of the College." On facts, their Lordships had found that the College was receiving government aid. It was argued that "the management of the College being a trust registeded under the public Trusts Act is not amenable to the writ jurisdiction of the High Court." After reviewing the case law, in para 14, their Lordships observed as under :—

"If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to Mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was managing the

(14) A.I.R. 1989 S.C. 1607.
(15) J.T. 1993 (1) S.C. 474.

affiliated college to which public money is paid as Government aid. Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Government Institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party."

Still further, in para 19, it was observed that:—

"The term 'authority' used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Court to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'Any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. *They may cover any other person or body performing public duty.* The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

(38) The above observations clearly show that High Courts have the power to issue writs not only to statutory authorities and instrumentalities of the State but also to "any other person or body performing public duty."

(39) The matter again fell for consideration before their Lordships of the Supreme Court in Unni Krishnan's case (supra). One of the questions which arose for consideration before their Lordships was—"Whether the grant of permission to establish and the grant of affiliation by a University imposes an obligation upon an educational institution to act fairly in the matter of admission of the students ?"

(40) After consideration of the matter, their Lordships were pleased to *inter alia* observe in para 102 that "private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are in no position to meet the demand particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most important functions of the Indian State it has no monopoly therein. Private educational institutions including minority educational institutions too have a role to play."

In para 113, it was observed that :—

> "In short, the position is thus; No educational institution except a University can award degrees (Sections 22 and 23 of the UGC Act). The private educational institutions cannot award their own degrees. Even if they award any certificates or other testimonials they have no practical value in as much as they are not good for obtaining any employment under the State or for admission into higher courses of study. The private educational institutions merely supplement the effort of the State in educating the people, as explained above. It is not an independent activity. It is an activity supplemental to the principal activity carried on by the State. No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory—in the interest of general public—upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students, recruitment of employees and their conditions of service. Since the recognising/affiliating authority is the State it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the

Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. Affiliation/recognition is not there for any body to get it gratis or unconditionally. In our opinion, no Government, authority or university is justified or is entitled to grant recognition/affiliation without imposing such conditions. Point so would amount to abdicating its obligations, enjoined upon it by Part III; its activity is bound to be characterised as unconstitutional and illegal. To reiterate, what applied to the main activity applies equally to supplemental activity. The State cannot claim immunity from the obligations arising from Articles 14 and 15. If so, it cannot confer such immunity upon its affiliates."

(41) It is, thus, clear that the old and conservative view regarding the maintainability of writs against the State or its instrumentalities is giving way to "a liberal meaning." The power under Article 226 is no longer confined to the issue of writs against statutory authorities and instrumentalities of the State. It covers "any other person or body performing public duty." Medical Colleges are supplementing the effort of the State. These cannot survive or subsist without recognition and/or affiliation. The bodies which grant recognition are required to ensure that the institution complies with Article 14 of the Constitution. These decisions represent a quantum jump—from 'the tests' in *Ajay Hasia* v. *Khalid Mujib* (16), to a liberal meaning to the term 'authority' in Article 226.

(42) A private educational institution receiving aid from State funds may not be a 'State' as defined in Article 12. Yet, Article 29(2) confers a fundamental right on all citizens not to be discriminated against in the matter of admission to such an institution on grounds only of religion, caste, language or any of them. If a citizen is denied admission by such an institution on any of the grounds specified in Article 29(2), can it be said that the aggrieved person cannot seek a writ for the enforcement of his rights either under Article 32 or 226 on the ground that it happens to be a private educational institution ? Certainly not.

(43) In view of these conclusions, the view taken by the Full Bench in *Gurpreet Singh's case* (supra) wherein it was held that

(16) A.I.R. 1981 S.C. 487.

"against these institutions, no general fundamental right of equality of admission on merits can even be invoked....." is no longer good law. A citizen can invoke the right to equality in the matter of admission on merit even against a private medical college affiliated to a University. This right "without a remedy will become a mere adornment.....as writ in the water". It is not so.

(44) Another thing which deserves mention is that even in England, there has been a clear change. It has been recognised that powers of court can no longer be ousted simply by invoking the word 'prerogative'. In 1949, Lord Denning wrote that "just as the pick and shovel is no longer suitable for the winning of coal so also the procedure(s) of *mandamus* (and) *certiorari*.....are not suitable for the winning of freedom in the new age." According to Prof. De Smith, "mandamus and certiorari have, in point of fact, proved to be surprisingly adaptable to modern needs. Though modest, the reforms made to the rules of the Supreme Court in 1977 (and put on a statutory basis in 1981) nevertheless acted as a catalyst to very significant judicial innovation in the filed of substantive law." Shall we inspite of these advances in the realm of law still continue to follow the archaic formulations given in English decisions ?

(45) In *Inland Revenue Commissioners* v. *National Federation of Small and Self-employed business Ltd.* (16A), Lord Diplock said—"any judicial statements on matters of public law if made before 1950 are likely to be a misleading guide to what the law is today." In the same case, Lord Roskill said—cases cited at the bar....."were of little assistance.....(because) in the last 30 years.....(the) stricter rules determining when such orders, formerly the prerogative writs, might or might not issue, have been greatly relaxed. The law can rule only when given life by the court." In the words of Prof. De Smith (as quoted by Seervai in the Constitution of India, Volume II at Page 1238) "public policy demands that ends of justice should not be frustrated through devotion in a contempt of judicial functions that would exempt many public bodies from effective superintendence by the courts." The strict rules regarding the issue of writ having been relaxed in England, there appears to be no ground to adopt a retrograde policy in India. Neither the language of the Constitution nor the present day needs of society permit exemption of bodies performing public duties from "superintendence by the Courts."

(16A) 1982 A.C. 617.

(46) Mr. Patwalia has placed firm reliance on the Full Bench judgment in *Pritam Singh's case* to contend that the principle enunciated by Lord Justice Atkin in R. *v.* Electricity Commissioners, 1924 (1) King's Bench 171, still holds the field. Indeed, their Lordships have observed as under :—

> "That the dictim of Lord Justice Atkin in *Electricity Commissioner's case* (supra), with some inevitable developments therein, with the passage of sixty years, still holds the fields, is plain from the consideration of the subject in the authoritative work of the Constitutional Law of India by H. M. Seervai. Therein the whole discussion of the writ of certiorari has been made on the anvil of Lord Atkin's statement of the principles. Particularly with regard to the writ of certiorari in India, the learned author says as follows :
>
> *Certiorari*
>
> "16.159. As before, the law will be stated with reference to Atkin L.J.'s statement of the principles which underline the court's jurisdiction to issue certiorari.
>
> 16.150. The writ of certiorari lies not only against inferior courts stricto sensu, but to any person, body or authority having the duty to act judicially or the duty to act fairly..."

(47) Their Lordships of the Full Bench have cited Seervai to maintain that the formulation to Lord Justice Atkin "still holds the field". With respect, the view taken by their Lordships does not appear to be correct, Seervai in para 16.94 (Constitutional Law of India, Third Edition—1984) has referred to the above observations and remarked that even though this passage has been quoted with approval by many Indian and English decisions, "the conclusions drawn from Lord Atkin's formulations of the scope of certiorari that it lay only to quash proceedings where there was a duty to act judicially, is no longer fully accurate, for certiorari has been granted in cases of administrative acts if there was a duty as act 'fairly' "In the Fifth Edition of 'Judicial Review of Administrative Action" by Prof. De Smith, at page 1011, it has been observed as under :—

> A-020 "Till the 1960s it was generally assumed that certiorari and prohibition could not issue to a body of persons acting in a purely administrative capacity, though in fact the orders had often issued in respect of acts and decisions

bearing only a remote resemblance to the judicial. This assumption is now obsolete and, in any event, the recent introduction of a single procedure an application for judicial review in which any of the common law forms of relief may be sought, has further diminished the practical significance of having to characterise as judicial the order or decision impugned."

(48) While referring to the formulation of Lord Justice Atkin in the Fourth Edition, Prof. De Smith had observed that "its utility as a reliable guide to full range of circumstances in which the remedies of certiorari and prohibition are available is open to serious question. In a period of judicial activism in many areas of Administrative Law, the courts have generally not been prepared to allow the development of more open textured substantive rules of judicial review to be hampered by medieval anachronisms." Similarly, Prof. Wade in 'Administrative Law' (Fourth Edition—1977 at page 532) said "At almost every point they understate the true position ; the scope of the remedies being in reality substantially wider."

(49) Not only that. Even the basic premise of the Full Bench decision that the duty to act judicially is the paramount consideration for the issue of the writ of certiorari. is itself open to doubt. The distinction between judicial/quasi judicial acts on the one hand and the administrative acts on the other has now virtually vanished. It is now recognised that even administrative acts which have civil consequences have to be passed in conformity with the principles of fairness, justice, equity and natural justice. The narrow formulation of Lord Justice Atkin in *Electricity Commissioner's case* (supra) has been considerably modified by the decision of the House of Lords in *Ridge* v. *Baldwin*, (1964) AC 40 and *O'Reilly* v. *Mackman* (16). At page 1129, Lord Diplock observed as under :—

"It will be noted that I have broadened the much-cited description by Atkin LJ in *R* v. *Electricity Comms* ...of bodies of persons subject to the supervisory jurisdiction of the High Court by prerogative remedies which in 1924 then took the form of the prerogative writs of *mandamus*, prohibition, *certiorari* and *quo warranto* by excluding Atkin LJ's

(16) 1982 (2) All E.R. 1124.

limitation of the bodies of persons to whom the prerogative writs might, issue, to those 'having a duty to act judicially'. For the next forty years this phrase gave rise to many attempts with varying success, to draw subtle distinctions between decisions that were quasi-judicial and those that were administrative only. But the relevance of arguments of this kind was destroyed by the decision of this House in Ridge *v.* Baldwin (1963) 2 All ER 66 (1964) AC 40, where again the leading speech was given by Lord Reid. Wherever any person or body of persons has authority conferred by legislation to make *decisions of the kind I have described, it is amenable to the remedy of an order to quash its decision either for error of law in reaching it or for failure to act fairly towards the person who will be adversely* affected by the decision by failing to observe either one or other of the two fundamental rights accorded to him by the rules of natural justice or fairness, *viz.* to have afforded to him a reasonable opportunity of learning what is alleged against him and of putting forward his own case in answer to it, and to the absence of personal bias against him on the part of the person by whom the decision fails to be made. In *Ridge* v. *Baldwin* (1963) 2 All ER 66 at 76, (1964) AC 40 at 72 it is interesting to observe that Lord Reid said 'We do not have a developed system of administrative law—perhaps because until fairly recently we did not need it.' By 1977 the need had continued to grow apace and this reproach to English law had been removed. We did have by them a developed system of administrative law, to the development of which Lord Reid himself, by his speeches in cases which reached this House, had made an outstanding contribution. To the landmark cases of *Ridge* v. *Baldwin and Anisminic* I would add a third. *Padfield* v. *Minister of Agriculture, Fisheries and Food* (1968) 1 All ER 694, (1968) AC 997, another case in which a too-time judgment of my own in the Court of Appeal was (fortunately) overruled." (emphasis supplied).

(50) The above observations clearly show that the issue of 'prerogative writs' is not limited to the authorities having a duty to act judicially. It can issue when there is an error of law or a failure to act fairly towards the person who is adversely affected by the order. Equally, a writ of certiorari can issue when there is violation of the principles of natural justice.

(51) Prof. Wade in his book on 'Administrative Law', clearly observed that "the law of natural justice and that of *certiorari*.....had this in common—that both applied nominally only to judicial or *quasi judicial* functions. By overlooking the fact that these terms had long been used to include administrative functions, the courts relapsed into a profound muddle.....The law was once again saved from its own backsliding in *Ridge* v. *Baldwin* where Lord Reid reinterpretted Atkin L.J.'s words about 'the duty to act judicially'. This was a case of a breach of natural justice remedied by a declaratory judgment.....The Courts have substantially made no difficulty over holding that certiorari is a suitable remedy for unlawful administrative determinations of all kinds. (Fourth Edition Page 535 to 537).

(52) Nearer home, certiorari is now available in cases wherein even an administrative act or decision affects civil rights or has civil consequences. In *State of Orissa* v. *Binapani Dei* (17), it was observed as under :—

> The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the service register, from holding an enquiry if there existed sufficient grounds for holding such enquiry and for refixing her date of birth. But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version of defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called thereof. The rule that a party to whose prejudice an

(17) A.I.R. 1967 S.C. 1269.

order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed ; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. It the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

(53) In view of the above, it is no longer necessary that an authority must be under a duty to act judicially before its actions may be corrected by the issue of a writ of certiorari. Is the authority required to act fairly ? Yes. Writ of Certiorari can issue.

(54) In Gurpreet Singh's case (supra), it has been ruled that a writ of certiorari cannot issue to correct the actions of private institutions which are not created by a Statute. This observation is based on the assumption that the point has been settled in Pritam Singh's case (supra). However, in the country of origin, the view appears to be established that a writ of certiorari can issue against a non-statutory authority. In R. v. *Criminal Enquiries Compensation Board* (18), it was *inter alia* observed at Page 784 :—

"It is a trusim to say that the law has to adjust itself to meet changing circumstances and although a tribunal, constituted as the board, has not been the subject of consideration or decision by this court in relation to an order of certiorari. I do not think that this court should shrink from entertaining this application merely *because the board have no statutory origin.* It cannot be suggested that the board have unlawfully usurped jurisdiction : they act with lawful authority, albeit such authority is derived from the executive and not from

(18) 1967 (2) All England Reports 770.

an Act of Parliament. In the past this court has felt itself able to consider the conduct of a Minister when he is acting judicially or *quasi judicially* and while the present case may involve an extension of relief by way of *certiorari* I should not feel constrained to refuse such relief if the facts warranted it."

(emphasis supplied).

(55) Almost two decades later in *R.* v. *Panel on Take Overs* (19). it was observed as under :—

"I do not agree that the source of the power is the sole test whether a body is subject to judicial review, nor do I so read Lord Diplock's speech. Of course the source of the power will often, perhaps usually, be decisive. If the source of power is a statute, or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review. If, at the other end of the scale, the source of power is contractual, as in the case of private arbitration, then clearly the arbitrator is not subject to judicial review : see *R.* v. *Disputes Committee of the National Joint Council for the Craft of Dental Technicians;* ex p Neate (1953) 1 All ER 327, (1953) 1 QB 704. *But in between these extremes there is an area in which it is helpful to look not just at the source of the power but at the nature of the power. If the body in question is exercising public law functions, or if the exercise of its functions have public law consequences, then that may, as counsel for the applicants submitted, be sufficient to bring the body within the reach of judicial review.* It may be said that to refer to public law in this context is to beg the question. But I do not think it does. The essential distinction, which runs through all the cases to which we referred, is between a domestic or private tribunal on the one hand and a body of persons who are under some public duty on the other.....

Nor do I think that the distinction between the Criminal Injuries Compensation Board and a private foundation or

(19) 1987 (1) All England Reports 564.

trust for the same purposes lies in the source of the funds. The distinction must lie in the nature of the duty imposed, whether expressly or by implication. *If the duty is a public duty, then the body in question is subject to public law.*

So once again one comes back to what I regard as the true view, that it is not just the source of the power that matters but also the nature of the duty. I can see nothing in *R.* v. *Criminal Injuries Compensation Board,* which contradicts that view, or compels us to decide that, in non-statutory cases, judicial review is confined to bodies created under the prerogative, whether in the strict sense, or in the wider sense in which that word has now come to be used."

(56) This decision has been approvingly followed in Unni Krishnan's case (supra) by justice Mohan in para 229.

(57) In view of the above, it cannot be said that a writ of *certiorari* cannot issue against a body discharging public duty merely because it is not created by a Statute. The source of power is not important. It is the nature of power that is relevant.

(58) As for mandamus, the position has now been settled. The decisions of the Apex Court in the cases of Anadi Mukta and Unni Krishnan (supra) clearly made the remedy of mandamus available against an institution performing public duty.

(59) In view of the above, we hold that :—

(i) Powers of the High Courts under Article 226 of the Constitution are wider than those of the Court of King's Bench in England.

(ii) The power of the High Courts is not confined to the issue of prerogative writs as initially understood in England. The procedural restrictions which had been imposed on the Courts in England do not bind the High Courts in this country. The High Courts are empowered to issue not only writs in the nature of *certiorari, mandamus* etc. but also orders and directions to enforce fundamental rights or for any other purpose.

(iii) The power under Article 226 of the Constitution is not confined to the enforcement of fundamental rights like the

power under Article 32. Still further, the High Courts can issue writs, orders or directions even to any person or authority discharging a public duty for enforcement of the fundamental rights or for any other purpose.

(iv) The words "any person or authority" used in Article 226 do not mean only State as defined in Article 12 or statutory authorities. These cover any person or body performing a public duty.

(v) In view of the importance of 'health' to the Community, institutions providing medical education form a distinct class. These institutions perform a public duty and supplement the State's effort. By their affiliation to a University or any other statutory examining body, they become partners with the State. They are, thus, subject to the restrictions contained in Part III. They are bound to act in conformity with the provisions of the Indian Medical Council Act, 1956 and the rules/regulations framed by the appropriate University/body. Whenever they act unfairly, arbitrarily or violate the prohibitions contained in Part III of the Constitution or the rules and regulations framed by the University etc., their actions can be corrected by issue of a writ of *certiorari* or any other appropriate writ, direction or order. Similarly, if it is found that an institution has failed to carry out an obligation under the Constitution or the rules/regulations framed by an appropriate body, it can be compelled to perform its duty by the issue of a writ of mandamus. This principle shall, however, not be attracted in case of every private school or college.

(vi) The Full Bench decision of this Court in *Pritam Singh* v. *State of Punjab and others*, 1982 (2) SLR 135 and *Gurpreet Singh Sidhu and others* v. *The Panjab University, Chandigarh and others*, AIR 1983 P&H 70, do not contain a correct enunciation of law and are overruled.

(60) Now a word about the petitioner and the petition. Admittedly, the petitioner was a candidate for admission to one of the seats reserved for the persons sponsored for Mission Hospitals. For this purpose, it is necessary that the applicant should be a Christian. The candidate has to seek an official sponsorship by a

Church or Mission. Such sponsoring body should be represented on the Governing body of the Christian Medical College, Ludhiana. According to the stipulation in the Prospectus, the letter of sponsorship "had to be submitted along with the application form to the Registrar of the College, on or before June 15, 1996." It is not disputed that the petitioner had not submitted a sponsorship letter with her application form. She had only produced a letter from Dr. A. C. Lal 'commending' her for admission to the MBBS Course. Even on being asked, she could not submit the requisite letter of sponsorship. In this situation, the respondents cannot be blamed for not accepting her candidature.

(61) The petitioner alleges that the respondents have taken a hyper-technical view. She is a *bona fide* Christian. The grievance is misconcieved. She was present in court. She was briefly questioned. It appeared that the act of conversion was only to ensure admission. She did not appear to have been nodding familiarity with what happens in a Church.

(62) In the circumstances of the case, we are unable to hold that the petitioner was eligible to be considered for admission against a seat reserved for "candidates who are christians, Indian Nationals and officailly sponsored by a Church or a Mission." Consequently, the petitioner has no cause for grievance which may be remediable through the present proceedings. Thus, while rejecting the preliminary objection raised on behalf of the respondents regarding the maintainability of the writ petition, we find that on merits, the petitioner is not entitled to the issue of a *mandamus* directing the respondents to admit her to the MBBS Course. The writ petition is, accordingly, dismissed. However in the circumstances of the case, there will be no order as to costs.

R.N.R.

Before Ashok Bhan & K. S. Kumaran, JJ.

PRAN NATH BHATIA AND OTHERS,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

CWP 3050 of 97.

21st March, 1997.

Constitution of India, 1950—*Arts.* 243 (ZG) & 327—*Punjab Municipal Corporation Act*, 1976—*Ss.* 8 &9—*Delimitation of Wards of*