

Before S.S. Nijjar & S.S. Grewal, JJ.

NAVPREET KAUR,—Petitioner

versus

SRI GURU RAM DAS CHARITABLE TRUST

& OTHERS,—Respondents

C.W.P. NO. 10094 OF 2003

28th August, 2003

Constitution of India, 1950—Arts. 14 & 226—Prospectus-cum-Application form for admission to MBBS/BDS course, Session 2003-2004—Part B, Codes 'C' & 'D'—Corrigendum dated 9th June, 2003 issued by the Institution—Admission to MBBS/BDS courses in a private unaided recognised Institution—Code 'C' of the prospectus makes reservation for sons/daughters of staff members of the Institution while Code 'D' makes reservation for other employees of the institutes run/managed by the SGPC—Institution modifying provisions of prospectus of reservation under category 'D' confining reservation only to employees of Gurdwaras managed by SGPC—Challenge thereto—No distinction between employees working in Gurdwaras and those working in other institutions run by SGPC, all the posts being transferable—Both categories of employees acting in furtherance of the interest of Sikh Community—Merely because the parents working in institutes other than Gurdwaras cannot lead to the presumption that they will not act in furtherance of interest of Sikh Community—Reservation made in favour of employees working in Gurdwaras is violative of Article 14 of the Constitution—Corrigendum to the prospectus issued much before the conduct of entrance test—Whether amended provisions of the prospectus valid—Held, no—Prospectus issued for admission to a course not open to alteration—Maintainability of petition—Petition against an unaided private medical college held to be maintainable in Ms. Ravneet Kaur's case by Full Bench—Ratio applied in the present case—Petition allowed directing respondents to consider the case of the petitioner for admission to MBBS/BDS course under reserved category 'Code D'.

Held, that 'Code-C' makes a provision for reservation in favour of sons and daughters by birth of staff members presently serving in the institutes run by respondent No. 1. 'Code-D' makes a reservation in favour of other employees of SGPC. The reservation is clearly made to ensure some preference to the employees working in the institutions

other than the one covered under the umbrella and protection of respondent No. 1. It cannot be said that the staff members of respondent No. 1 are not functioning in the interest of the Sikh Community. Note-(1) under Clause 3(iii) of the eligibility and qualification, mandates that a candidate will be considered Sikh/belonging to Sikh Community only if he practises the Sikh faith, maintains Sikh appearance and has faith in ten Sikh Gurus and Sri Guru Granth Sahib only. It can, therefore, be safely concluded that the reservation of the seats has been made in favour of sons and daughters of devout Sikh for the benefit of their children. In original Code-D all other employees of the SGPC would be covered including the employees working in Gurdwara managements under the direct control of SGPC. By the corrigendum all employees of the SGPC working in institutes other than the Gurdwaras, have been excluded from the benefit of reservation. This classification is not reasonable as it does not have any nexus with the object sought to be achieved. The underlying idea is to give some benefit to all the employees of the institutes run by the SGPC who cannot be given the benefit under Code 'C', which means reservation in favour of the employees of respondent No. 1. The reasoning given in support of the corrigendum is totally arbitrary. To uphold the corrigendum would be to approve the presumption that all other employees of the SGPC, working in the institutes set up by SGPC, do not perform functions which are in the interest of the Sikh Community. We are unable to find any intelligible differentia between the employees of the SGPC, whether they are working in Gurdwaras or in the Schools or Hospitals being run or established by the SGPC. We are of the opinion that all employees of the SGPC form one homogenous group.

(Paras 29 & 30)

Further held, that reservation made in favour of the employees working in the Gurdwaras is violative of the equality clause contained in Article 14 of the Constitution of India. Once the amendment is held to be unconstitutional, the original provisions of the prospectus would remain intact. Therefore, the petitioner would be entitled to be admitted on the basis of the original provision contained in 'Code D' of the prospectus.

(Paras 32 & 33)

P.S. Patwalia, Senior Advocate with D.S. Patwalia, Advocate,
for the petitioner.

Gurminder Singh, Advocate, *for respondent Nos. 1
and 4.*

JUDGMENT

S.S. Nijjar, J.

(1) We have heard the learned counsel for the parties at length and perused the record of the case.

(2) In this petition under Articles 226/227 of the Constitution of India, the petitioner seeks the issuance of a writ in the nature of certiorari quashing the corrigendum dated 19th June, 2003 (Annexure P-6) and the Memorandum dated 28th June, 2003 (Annexure P-5),—*vide* which the eligibility for admission under the reserved category “D” to the MBBS/BDS courses has been materially altered to the detriment of the petitioner, restricting the benefit of reservation under code “D” of Part-B of the Prospectus-cum-Application Form issued by respondent No. 1 to the sons/daughters by birth of Shiromani Gurdwara Parbandhak Committee (hereinafter referred to as “the SGPC”), employees working in the management of Gurdwara under the direct control of the SGPC, who are in continuous service for atleast 5 years and are presently working.

(3) By the agreement of the learned counsel for the parties, the writ petition is being disposed of finally at the motion stage itself.

(4) Sri Guru Ram Das Charitable Hospital Trust Amritsar (hereinafter referred to as “respondent No. 1”), was formed in the year 1992 by a Resolution of the Executive Committee of SGPC with the objectives *inter-alia* as follows :—

- (a) to establish, run, manage and maintain Hospitals, Dispensaries, Health Centres, Nursing Homes and other medical relief centres for the treatment of persons suffering from various ailments ;
- (b) to provide medical services to any person of any status and free medical services and medicines to deserving patients regardless of their religion, caste and creed to which they may belong ;

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- (c) to establish and run other Hospitals, Branches and Nursing Homes with medical and surgical facilities for specialised treatment with the latest techniques and advancement in science ;
 - (d) to promote medical, dental and other allied education and research and to establish and run medical colleges for the welfare of society ;
 - (e) to impart medical education and to make research in any branch of medicine and surgery of any kind. i.e. Allopathic, Ayurvedic, Homeopathic and other spiritual and physical methods ;
 - (f) to impart medical training in Nursing and other allied medical branches for vocational or professional career”.

(5) With these ends in view, Sri Guru Ram Das Institute of Dental Sciences and Research was set up in the year 1992, which was followed by setting up of the Medical Institute in the year 1997. Both these Institutes have been recognized by the Central Government and the respective Councils, viz., Dental Council of India and the Medical Council of India. Both these Institutes are making tremendous progress and in a very short span of time have excelled in field of medical and dental education. These institutions receive no aid from the State Government and hence are Private Unaided Institutions. The Government of Punjab by Notification No. 18/33/2001-GC (6)/4513, dated 3rd April, 2001, has declared both Sri Guru Ram Das Institutes of Medical Sciences and Research and of Dental Sciences and Research, Sri Amritsar, as Sikh Minority Community Educational Institutions. Accordingly 50% of the total seats are reserved exclusively for the members of the Sikh community. Thus, out of a total intake of 50 for the Sri Guru Ram Das Institute of Medical Sciences and Research, 25 seats are reserved for candidates belonging to the Sikh Community and in respect of the Dental Institute 30 seats out of 60 are reserved for candidates belonging to the Sikh Community.

(6) Respondent No. 1 issued prospectus-cum-Application Form for admission to MBBS/BDS Course, Sessions 2003-2004. Part-B of the Prospectus gives the break-up of the seats which is as under :—

“CODE	MBBS Course	BDS Course
A. General	09	13 or 14
B. Sons/daughters/grandsons/grand— daughters by birth of sufferers of Dharam Yudh Morcha, Emergency Morcha and Punjabi Suba Morcha only. Benefit under this reservation shall be available for only one seat once ever in the family of the actual sufferer.	09	10
C. Sons/daughters by birth of staff members presently serving in the Institutes run by Sri Guru Ram Das Charitable Hospital Trust.	01	01
D. Sons/daughters by birth of other employees of S.G.P.C. who are in continuous service for at least 5 years and are presently working.	01	01
E. Students from Backward Areas	01	0
F. Seats for NRI/NRI-sponsored candidates.	04	05 or 04
Total :	25	30”

(7) From the above it becomes evident that one seat in MBBS course has been reserved under Code “C” for sons/daughters by birth of staff members presently serving in the institutes run by respondent No. 1. Under Code “D” one seat has been reserved for sons/daughters by birth of other employees of SGPC who are in continuous service for at least 5 years and are presently working. Identical reservation has been made for the BDS Course. The eligibility of the candidate is to be determined on the basis of the Entrance Test. For the reserved

seats a candidate also has to satisfy the definition of SIKH as given in Part-B, Clause-3, Notes (1). The aforesaid condition is as under :—

3. ELIGIBILITY AND QUALIFICATION TO APPEAR IN THE ENTRANCE TEST :

The Test will be open to a candidate who :—

- (i) is resident of India and belongs to Sikh Community :
- (ii) has completed, or shall be completing by 31st December, 2003, the age of 17 years :
- (iii) has passed in the subjects of Physics, Chemistry, Biology and English individually and has obtained a minimum of 50% marks taken together in Physics, Chemistry & Biology at Senior Secondary Part II (Class 12) examination of 10+2 stream or an equivalent examination from the recognised statutory Board/University.

NOTES :

- (1) A candidate will be considered Sikh/belonging to Sikh Community if he practises the Sikh faith, maintains Sikh appearance, i.e., he/she does not Cut or trim hair and wears turban (in case of male candidates) and has the word "singh/kaur" with his/her name, has faith in the Ten Sikh Gurus and Sri Guru Granth Sahib only, and does not owe allegiance to any other sect or religion".

(8) Apart from this, Clause 9.4 deals with the certificates to be attached with the application form. For the purposes of the decision of this petition, Clause 9.4 is relevant, which is as under :—

"9.4 Documents to be submitted by a candidate claiming a reserved seat under Category D (wards of SGPC employees) :

- A certificate from the Secretary, Shiromani Gurdwara Parbandhak Committee, that he/she is an employee of the S.G.P.C. with least five years service and that there has been no misconduct on the part of the said employee during the period of his/her service.

IMPORTANT :

A candidate claiming a seat against a reservation category must attach with his application form all the required documents, as prescribed above, in support of his claim. If any of the documents is not attached with the application form, his claim for the reservation category will be ignored, no correspondence will be entered into, and his result will be declared only under the general category merit list".

(9) Relying on the aforesaid Prospectus issued by respondent No. 1, the petitioner applied for admission for both MBBS and BDS course. She made an application for admission on one of the reserved seats under Code "D". The mother of the petitioner is a teacher at Maharaja Ranjit Singh Public School, Tarn Taran, Amritsar, which is under the management of SGPC. The petitioner was issued Admit Card for the Entrance Test against the reserved category "D". The petitioner received a letter dated 28th June, 2003 from respondent No. 1, informing her that Admit Card sent to her earlier stands changed to General Category and her result will be declared under the General Category alone. The petitioner was informed that under the revised and amended definition of reservation category "D", her mother does not fulfil the condition of working in the management of Gurdwaras under the direct control of SGPC. This letter was based on a corrigendum issued by respondent No. 1 in partial modification of the Prospectus issued for the Entrance Test for admission to MBBS/BDS course for all Indian Sikh Minority Community candidates. Under Code "D" it was now provided as under :—

Code	MBBS Course	BDS Course
D Sons/daughters by birth of SGPC employees working in the management of Gurdwaras under direct control of SGPC, who are in continuous service for at least 5 years and are presently working".	01	01

(10) The writ petition was filed by the petitioner on 3rd July, 2003 which came up for motion hearing before this Court on 24th July, 2003. By interim order, it was directed that the petitioner will be allowed to participate in the counselling and will be treated eligible under Clause (D) of the Prospectus. In case no candidate higher in merit than her is available, she will be granted admission. The interim relief was provisional subject to further orders of the Court. The petitioner claims that the change in the Prospectus has been made only to give benefit to the sons/daughters who are working in the management of Gurdwaras, arbitrarily. The change has no nexus with the object sought to be achieved.

(11) On the other hand, the respondents have pleaded that no legal right of the petitioner has been infringed. Relying on the judgment of the **T.M.A. Pai Foundation versus State of Karnataka**, (1) it has been submitted the SGPC is autonomous for making provision in the matters regarding the admission of the students. It is free to devise a system which is suitable for the minority institution. Giving the justification for the change in the Prospectus, it has been stated that with regard to the reservation in Clause "D", "it was felt that as per the terminology used in the Prospectus, it was not clear as to for which employees of the SGPC this reservation was meant. Hence, by the corrigendum it has been clarified that the reservation is meant only for the employees working under the direct control of SGPC. The corrigendum was issued on 9th June, 2003 much before the date of the conduct of the Entrance Test on 9th July, 2003. The petitioner had, in fact, been informed of the Memorandum through letter dated 28th June, 2003 that her case would be considered only in the general category".

(12) It is submitted by Mr. P.S. Patwalia, learned Senior Counsel appearing for the petitioner that the SGPC runs a large number of institutions such as schools, colleges, hospitals etc. Respondent No. 1 having been declared a Minority Institution has been permitted to make reservation for the students belonging to the Sikh Minority. Code "C" makes reservation for the sons and daughters of staff members of respondent No. 1 Code "D" has made a reservation for other employees of SGPC. A distinction has been created between

(1) AIR 2003 S.C. 355

the employees of respondent No. 1 and other employees of the Institutes which are being run/managed by the SGPC. The "other employees" form one uniform class. The object of the reservation is to select the best candidates from this class. The corrigendum seeks to confine the reservation arbitrarily and without any justification only to the employees of Gurdwaras managed by the SGPC. Mr. Patwalia submitted that the classification cannot be justified for excluding the sons and daughters of the employees working in the institutions other than the Gurdwaras which are being run by the SGPC. The reservations in favour of the sons and daughters of the employees of the Gurdwaras, is contrary to the resolution passed by the Executive Committee of the SGPC which laid down the objects for which respondent No. 1 was set up. Even otherwise, there is no distinction between the employees working in the Gurdwaras and those working in other institutions as a large number of posts are transferable. The learned counsel has referred to a number of employees who have been transferred from Gurdwaras to schools and from schools to Gurdwaras. Relying on the aforesaid, learned counsel for the petitioner has submitted that all the employees working in the institutions established by the SGPC are the employees of SGPC. They are not the employees of any particular institution. Therefore, there can be no distinction between the other employees working in the Gurdwaras and other employees not working in the Gurdwaras. The only justification given in the written statement was that the corrigendum has been issued to clarify as to which employees of the SGPC would take the benefit of reservation under Clause-D, Part-B of the Prospectus. The reservation, according to the learned counsel, was restricted only to the sons and daughters by birth of SGPC employees working in the management of Gurdwaras under direct control of SGPC, who are in continuous service for atleast 5 years and are presently working, "and acting in furtherance of the interest of the Sikh Community". Learned counsel further submitted that the aforesaid reason is totally vague. The respondents have merely picked up the term "acting in furtherance of the interest of the Sikh Community" from the notification dated 3rd April, 2001 whereby the Sikh Educational Institutions run by the SGPC have been treated as minority Educational Institutions. It is submitted that the employees working in the hospitals and educational institutions are also acting in furtherance of the interest of the Sikh Community. In view of Notes (1), under Clause-3 of Eligibility and Qualification, Part-B of the

Prospectus, a candidate will be considered Sikh/belonging to Sikh Community if he practices the Sikh faith, maintains Sikh appearance. The parents of these children are also devout Sikh. Therefore, merely because the parents are working in institution other than the Gurdwaras, cannot lead to the presumption that they will not act in furtherance of the interest of the Sikh Community.

(13) It is further submitted that the provisions of the Prospectus cannot be amended after the same has been published. In the present case, the petitioner had been issued the Admission Card. The process of admission had virtually come to a close. Therefore, the corrigendum, Annexure P-6, is liable to be quashed in view of the law laid down by this Court in the case of **Amardeep Singh Sahota versus State of Punjab and others, (2)** and **Indu Gupta versus Director of Sports, Punjab, and another, (3)**.

(14) Averting to the above argument of Mr. Patwalia, Mr. Gurminder Singh, learned counsel for the respondents has submitted that the ratio of law laid down **Amardeep Singh Sahota's** case (*supra*), would not be applicable, in the facts and circumstances of this case. According to the learned counsel, the Supreme court has held in the case of **Rajiv Kapoor & Ors versus State of Haryana & Ors.,(4)** that the government had the authority to issue any criteria for admission at variance with the Prospectus and such criteria had to be followed. Learned counsel has also sought to distinguish the ratio of law laid down in **Amardeep Singh Sahota's** and **Indu Gupta's** cases (*supra*), by submitting that in those cases the question was whether after the entrance test which had been conducted as per the provisions contained in the Prospectus, subsequently the terms of the Prospectus can be varied. In the present case, the corrigendum to the Prospectus was issued much before the conduct of the Entrance Test and the petitioner was duly informed about it before the Entrance Test.

(15) Learned counsel for the respondents further submitted that the reservation is based on intelligible differentia between the employees working in Gurdwaras managed by the SGPC and the

(2) 1993 (4) S.L.R. 673

(3) 1999 (4) R.S.J. 667

(4) JT 2000(3) S.C. 635 (AIR 2003 S.C. 1476)

employees working in the other institutions. The functions performed by other employees in educational institutions and hospitals cannot be equated with the functions performed by the employees of the SGPC working in the Gurdwaras under the direct control of the SGPC.

(16) We have considered the submissions made by the learned counsel for the parties.

(17) In **Amardeep Singh Sahota's case** (*supra*), the Full Bench was dealing with a case where the government had issued instructions on 7th/12th June, 1991 for admission to MBBS/BDS course to the persons who belong to reserved category of Sportsmen/women. The criteria for admission was a mixture of excellence in sports and merit in the pre-entrance test. This criteria had also been embodied in the Prospectus. Subsequently, on 17th July, 1992, the instructions were issued by the Government waiving off the minimum qualifying marks in the competitive entrance test. These instructions were challenged by the petitioner. In paragraph 17 of the judgment, it has been held as under :—

“17. It may at this stage further be stated that the Notification dated 13th July, 1992 goes contrary to the policy which was laid down for admission in the Notification dated 20th May, 1992, on the basis of which the Prospectus had been issued to the students and the students appeared for test on the basis of the policy laid down in the Prospectus. The Prospectus cannot subsequently be changed by the State Government to the detriment of the students to benefit certain other students. In **Ravdeep Kaur versus The State of Punjab and others**, I.L.R. (1985) 1., Punjab and Haryana, 343, a division Bench of this Court had an occasion to consider the value of a Prospectus issued for admission to an entrance examination. It was held that the eligibility for admission to a course has to be seen according to the Prospectus issued before the entrance examination and that the admission has to be made on the basis of instructions given in the Prospectus as the instructions issued have the force of law. We agree with the view taken by the Division Bench. Since, the Prospectus issued for admission to the 1992-93 Course in the

medical college has the force of law and the students appeared in the examination on the basis of the instructions laid down in the said Prospectus, it was not open to the State Government to issue contrary instructions and as such also the Notification dated 13th July, 1992 issued by the State Government is invalid in law”.

(18) The aforesaid ratio of law makes it clear that the Prospectus issued for admission to a course has the force of law and it was not open to alteration. It is not possible to agree with the submissions made by Mr. Gurminder Singh that since the corrigendum has been issued before the petitioner sat in the entrance test, therefore, the ratio of law laid down in **Amardeep Singh Sahota's case** (*supra*), would not be applicable. The view expressed in Amardeep Singh Sahota's case was subsequently approved by the another Full Bench in the case of **Raj Singh versus The Maharishi Dayanand University and others** (5). In this judgment, it has been held that a candidate will have to be taken to be bound by the information supplied in the admission form. In **Amardeep Singh Sahota's case** (*supra*), the Full Bench had approved the proposition of law laid down in **Ravdeep Kaur versus The State of Punjab**, (6) by a division Bench of this Court that so far as the admissions are concerned, the Prospectus is the law. The eligibility of the candidate for admission to a course has to be seen according to the Prospectus issued before the entrance examination.

(19) In view of the aforesaid observations, it would not be possible to uphold the validity of the corrigendum as it had been issued before the entrance test. The law laid down above, has been reiterated by another Full Bench of this Court in **Indu Gupta's case** (*supra*). In paragraph 10 of the judgment, the Full Bench noticed the ratio of law as laid down in another Full Bench judgment of this Court in the case of **Rahul Prabhakar versus Punjab Technical University, Jalandhar and others**, (7). In that case, it has been held as follows :—

“A Full Bench of this Court in **Amardeep Singh Sahota versus The State of Punjab**, 1996 (4) SLR 673, had to consider the scope and binding force of the provisions

(5) 1994(4) R.S.J. 289 (1994 (2) S.L.R. 580)

(6) I.L.R. 1985 (1) Pb. & Hy. 343

(7) 1997(3) R.S.J. 475

contained in the prospectus. The Bench took the view that the Prospectus issued for the admission to a course, has the force of law and it was not open to alteration. In **Raj Singh versus Maharishi Dayanand University, 1994** (4) RSJ 289, another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a course has to be seen according to the Prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the Prospectus, having the force of law. Again Full Bench of this Court in **Sachin Gaur versus Punjabi University, 1996** (1) RSJ, 1, took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test, 1997, have the force of law and have to be strictly complied with. No modification can be made by the court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the co-ordinator or the competent authority, as the case may be, the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected”.

(20) After noticing the aforesaid observations in **Rahul Prabhakar's case** (*supra*), the Full Bench in **Indu Gupta's case** (*supra*), has laid down the ratio of law which is as follows :—

11. The cumulative effect of the above well enunciated principles of law, is that the terms and conditions of the brochure where they used pre-emptory language cannot be held to be merely declaratory. They have to be and must necessarily to be treated as mandatory. Their compliance would be essential otherwise the basic principle of fairness in such highly competitive entrance examinations would stand frustrated. Vesting of discretion in an individual in such matters, to wave or dilute the stipulated conditions of the brochure would *per se* introduce the element of discrimination, arbitrariness and unfairness. Such unrestricted discretion in contravention to the terms of the brochure would decimate the very intent behind the terms and conditions of the brochure, more particularly, where the cut off date itself has been provided in the brochure.

The brochure has the force of law. Submissions of applications complete in all respects is a sine qua non to the valid acceptance and consideration of an application for allotment of seats in accordance with the terms prescribed in the brochure.”

(21) From the aforesaid, it becomes evident that the Prospectus issued for the Session 2003-2004, could not have been amended by corrigendum, Annexure P-6.

(22) Mr. Gurminder Singh has relied on the observations made by the Supreme Court in **Rajiv Kapoor's case** (*supra*). In that case, the Supreme Court by referring to the Full Bench decision in **Amardeep Singh Sahota's case** (*supra*), has observed as follows :—

- “10. The High Court in allowing the writ petition purported to follow an earlier judgment of the Full Bench of the very High Court reported in **Amardeep Singh Sahota Vs. State of Punjab**, 1993 (2) 104 PLR 212. On carefully going through that judgment, we find that the Full Bench did not doubt the competency or authority of the

Government to stipulate procedure for admission relating to courses in professional colleges, particularly in respect of reserved category of seats, but on the other hand, it specifically deprecated the decision to do away with the requirement of minimum marks criteria in respect of seats reserved for sports category and that too by passing orders after the examinations were held under a scheme notified in the Prospectus. As a matter of fact the Full Bench, ultimately directed, in that case, that selections for admission be finalized in the light of the criteria specified in the Government orders already in force and the Prospectus, after ignoring the offending notification introducing a change at a later stage”.

(23) These observations do not advance the case projected by Mr. Gurminder Singh learned counsel for the respondents. The Supreme Court noticed that the Full Bench had deprecated the decision to do away with requirement of minimum marks criteria in respect of seats reserved for sports category. In Rajiv Kappor’s case (*supra*), the Supreme Court, came to the conclusion that the Government orders which were under challenge did not introduce, for the first time, either the Constitution of a Selection Committee or evolving the system of interview for adjudging the merits of the candidates in accordance with laid down criteria. The Supreme Court held as follows :—

“11. So far as the cases before us are concerned, the High Court, not only held that the Government order dated 21st May, 1997 issued after the declaration of the result of the entrance examination held pursuant to the Prospectus issued for 1997, could not be followed but went a step further to hold that except the Prospectus in question nothing else could be looked into and that the Government orders had the effect of varying the criteria laid in the Prospectus in the matter of selections to the seats reserved for HCMS candidates. We are unable to appreciate this reasoning. The Government orders dated 21st May, 1997, did not introduce, for the first time, either the constitution of a Selection Committee or evolving the system of interview for adjudging the merits of the candidates in accordance with the laid

down criteria. It merely modified the pattern for allotment of marks under various heads from the total marks. Therefore, even if the modified criteria envisaged under the order dated 21st May, 1997 is to be eschewed from consideration, the earlier orders and the criteria laid down therein and the manner of assessment of merit by the Selection Committee after interview, were still required to be complied with and they could not have been given a complete go-bye, as has been done by the High Court.”

(24) The ratio of law laid down by the Supreme Court in Rajiv Kapoor’s case (*supra*), was considered by a Division Bench of this Court in the case of **Kamal Bhatia and others versus State of Punjab and others (8)**. The Division Bench has observed as follows :—

“6.Thus, the Supreme Court held that in addition to the Prospectus the orders of the Government also governed the admission. It is, therefore, clear that controversy before the Supreme Court was not whether the criteria mentioned in the prospectus could be changed or not but was merely whether the orders of the Government could also be taken into account on an issue which had been left open in the Prospectus. The Apex Court had merely disagreed with the findings of the High Court that the admissions in questions had to be made in terms of the stipulations contained in the Prospectus issued by the University and in assuming that the Government had no authority to issue directions laying down any criteria other than the one contained in the Prospectus. The Supreme Court had no occasion to deal with the issue whether the criteria mentioned in the prospectus could be changed subsequent to the holding of the test or not.

7. In the case in hand the specific concession given in the prospectus to the candidates admitted through LEET-99 is sought to be withdrawn after the entrance test has been already conducted and result thereof declared. This according to us is not permissible.....”.

(25) The corrigendum issued by the respondents would not fall within the ratio of law in Rajiv Kapoor's case. The restriction of reservation in Clause-D only to the employees of the Gurdwaras under the control of the SGPC, has not been issued by the Government. She will not be considered under the General Category. In the meantime, she has lost the chance to apply to any other institution in the General Category as her applications for admissions in other institution is also time bound.

(26) From a perusal of the objects and reasons for setting up respondent No. 1, as contained in the resolution of the Executive Committee of the SGPC, reproduced in the earlier part of the judgment, it becomes evident that the institution is performing a laudable charitable role for the treatment of humanity suffering from various ailments. This is the function, which is normally performed by the State. It has now been judicially recognized that private medical institutions perform a vital public function in protecting the health of the nation. The institutions where medical education and instructions are imparted, are duty bound to comply with the mandate of Article 14 of the Constitution of India. Such institutions cannot "act arbitrarily, treat equals unequally and to make or follow rules that are clearly violative of the prohibitions embodied in Part-III of the Constitution". The aforesaid ratio of law is laid down in the Full Bench decision of this Court in the case of **Miss Ravneet Kaur versus The Christian Medical College, Ludhiana, (9)**. The precise question which fell for the decision of the Full Bench was, whether a writ petition is maintainable against an unaided private Medical College which is affiliated to a University? In that case, Miss, Ravneet Kaur, ostensibly a Sikh, who claimed to be a convert to Christianity, had applied for admission to 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.....". She claimed to have been duly sponsored by an authority of person Diocese of Amritsar, i.e., Rev. C.M. Khanna". The petitioner was provisionally selected for the MBBS course in 1996. She was asked to produce various certificates including the "Baptism Certificate" and the letter of "sponsorship". When the petitioner approached Rev. C.M. Khanna, for the sponsorship certificate, she

was informed that his power of sponsorship etc., had expired, on 13th May, 1996. Since, she did not produce the sponsorship certificate, admission was denied to her. She had, therefore, challenged the decision of the Selection Committee and prayed for the issuance of a writ directing the respondents to admit her to the MBBS course for the year 1996. The respondents raised a preliminary objection to the maintainability of the writ petition. After an elaborate discussion, Jawahar Lal Gupta, J. speaking for the Bench observed as under :--

“37. The above observations clearly show that High Court 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”.

41. It is, thus, clear that the old and the 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 and Article 14 of the Constitution. These decisions represent a quantum jump from “the test” in *Ajay Hasia versus Khalid Mujib*, AIR 1981 SC 487, [1980 (3) SLR 467 (SC)] to a liberal meaning to the term “authority” in Article 226”.

(27) The aforesaid ratio of law leaves no manner of doubt that the present writ petition is maintainable.

(28) The next question which arises for consideration is as to whether the amendment in Code-D as brought about by the corrigendum is, unreasonable and hence, violative of Article 14 of the Constitution of India. The twin objects of setting up respondent No. 1, are to provide medical relief to the community at large and to promote medical, dental and other allied education. The medical colleges are to be run for the welfare of the society. Since the institution has been setup by the S.G.P.C., it has been recognised as a minority institution. It, therefore, enjoys the protection under Article 30 of the Constitution of India.

(29) 50% of the seats have been reserved for the Sikh Community. They are to be filled in accordance with the reservations made for various categories contained in Part-B of the prospectus. We are concerned only with "Code-D". "Code-C" makes a provision for reservation in favour of sons and daughters by birth of staff members presently serving in the institutes run by respondent No. 1. "Code-D" makes a reservation in favour of other employees of S.G.P.C. The reservation is clearly made to ensure some preference to the employees working in the institutions other than the one covered under the umbrella and protection of respondent No. 1. It cannot be said that the staff members of respondent No. 1 are not functioning in the interest of the Sikh Community. Note-(1) under Clause-3 (iii) of the Eligibility and Qualification, mandates that a candidate will be considered Sikh/belonging to Sikh Community only if he practises the Sikh faith, maintains Sikh appearance and has faith in Ten Sikh Gurus and Sri Guru Granth Sahib only. It can, therefore, be safely concluded that the reservation of the seats has been made in favour of sons and daughters of devout Sikh for the benefit of their children. In original "Code-D", all other employees of the S.G.P.C. would be covered including the employees working in Gurdwara managements under the direct control of S.G.P.C. By the corrigendum all employees of the S.G.P.C. working in institutes other than the Gurdwaras, have been excluded from the benefit of reservation.

(30) We are of the considered opinion that the aforesaid classification is not reasonable as it does not have any nexus with the object sought to be achieved. The underlying idea is to give some benefit to all the employees of the institutes run by the S.G.P.C. who can not be given the benefit under Code-C, which means reservation in favour of the employees of respondent No. 1. The reasoning given in support of the corrigendum is totally arbitrary. To uphold the corrigendum would be to approve the presumption that all other employees of the S.G.P.C., working in the institutes set up by S.G.P.C., do not perform functions which are in the interest of the Sikh Community. We are unable to find any intelligible differentia between the employees of the S.G.P.C., whether they are working in Gurdwaras or in the Schools or Hospitals being run or established by the S.G.P.C. We are of the opinion that all employees of the SGPC form one homogeneous group. The employees working in Gurdwara's cannot

be singled out for favourable treatment, in the matter of providing educational facilities to the children of these employees. It has been brought to our notice that all the employees of the SGPC are transferable. On 29/31st July 2003, an affidavit had been filed by the Secretary of respondent No. 1. In reply to the same, the petitioner has given some details of the transferred employees. In fact, five of these employees have been transferred to the very school in which the mother of the petitioner is a teacher. The reply runs as under :—

“Further the fact that this averment has no basis to stand on would also be clear from the fact that employees working in Gurdwara are subject to transfer to educational institutions and vice-versa. A list of five such employees who have been transferred only to one school where the petitioner’s mother is teaching is reproduced hereunder :—

Sr. No.	Name/Address and Status	Date of Transfer	From	To
1.	Nirmaljit Kaur Sewadardni	7-9-99	Sri Darbar Sahib Tarn Tarn.	Maharaja Ranjit Singh Public School Tarn Taran.
2.	Harjinder Singh, Driver	30-12-99	Office of S.G.P.C. Amritsar.	-do-
3.	Sakattar Singh son of Arjan Singh, r/o Sahabapur, Teh. Tarn Taran, Distt. Amritsar	16-3-00	Sri Darbar Sahib	-do-

	Clerk—			
	Supervisor			
	Supdt.			
	-do-	21-12-92	Maharaja	Gurdwara
	Acctt.		Ranjit Singh	Charan
			Public	Kanwal
			School,	Sahib
			Tarn	Machhi
			Taran	wara
4.	Jagir Singh, Cashier	7-10-91	Sri Darbar Sahib, Tarn Taran.	Maharaja Rajit Singh Public School, Tarn Taran
	-do-	20-9-00	Maharaja	Office of
	Acctt.		Ranjit Singh	S.G.P.C.,
			Public School	Amritsar.
			Tarn Taran	
5.	Pargat Singh, Clerk	18-10-91	Sri Darbar Sahib, Amritsar.	Maharaja Ranjit Singh Public School Tarn Taran”.

(31) A perusal of the above shows that Nirmaljit Kaur was working as Sewadarni in a Gurdwara and has been transferred to a school. Harjinder Singh, Driver, has been transferred from the office of the SGPC to the Maharaja Ranjit Singh Public School, Taran Taran. Now assume that these transferred employees had taken the benefit of reservation in favour of their children on the ground that they had been working in the Gurdwara management. Their children, who have been admitted on the basis of reservation, would be permitted

to continue with the studies even though, the employees had been transferred. On the other hand, an employee of a school would be denied the same benefit.

(32) Mr. Gurminder Singh, learned counsel for the respondents, however, states that the reservation is in favour of those employees who are in continuous service for at least five years and are presently working. Therefore, the clause is not discriminatory. We are unable to accept this submission of the learned counsel for the respondents. The term “presently working” would relate to the date on which a candidate seeks admission. Once, the admission is taken, there is no impediment in the employees being transferred, yet the benefit of reservation enures for the whole course. We are, therefore, unable to discern any rationale in the issuance of the corrigendum. In fact, it clearly shows, as submitted by Mr. P.S. Patwalia, learned Senior Advocate, appearing for the petitioner, that the reservation has been made only to show favour to the employees working in the Gurdwaras. We are of the considered opinion that such reservation is violative of the equality clause contained in Article 14 of the Constitution of India.

(33) Mr. Gurminder Singh, learned counsel for the respondents, has also submitted that no relief could be granted to the petitioner as by issuance of the corrigendum, the original “Code—D” stood deleted. Therefore, even if the corrigendum is held to be unconstitutional, the original “Code—D” would not revive. At best, it could be said that there is no reservation under “Clause—D” and the petitioner could only be considered for admission in the general category. We are unable to accept the aforesaid submission. Once the amendment is held to be unconstitutional, the original provisions of the Prospectus would remain intact. Therefore, the petitioner would be entitled to be admitted on the basis of the original provision contained in “Code-D” of the Prospectus.

(34) In view of the discussion above, the present writ petition is allowed. Corrigendum dated 19th June, 2003, Annexure P-6, and the Memorandum dated 28th June, 2003, Annexure P-5, are hereby quashed. A writ of mandamus is issued directing the respondents to consider the case of the petitioner for admission to the MBBS/BDS Course under the reserved category Code-D of the original Prospectus.

No costs.

R.N.R.