

Before D. V. Sehgal, J.

PAWAN KUMAR,—*Petitioner.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ Petition No. 96 of 1986.

September 12, 1986.

Constitution of India, 1950—Articles 12, 28(3), 29, 41 and 226—University Grants Commission Act (III of 1956)—Section 3—Central Government notifying and declaring the Thapar Institute of Engineering and Technology, Patiala, a registered Society to be a deemed University under Section 3 of the Act—Institution so notified—Whether a ‘public authority’ and therefore, ‘State’ within the meaning of Article 12—Action of such deemed University—Whether amenable to writ jurisdiction under Article 226 of the Constitution.

Held, that Thapar Institute of Engineering and Technology, Patiala, was originally registered as a society under the Societies Registration Act, 1860. However, on its being declared as a deemed University under Section 3 of the University Grants Commission Act, 1956, it enjoys a legal authority. A large number of students are on its rolls. Article 41 of the Constitution of India, 1950 directs the State within the limits of its economic capacity to make effective provisions for securing the rights to education. To this extent it is discharging a State function. It is, therefore, subject to public duties and rights. Under Article 28(3) of the Constitution, it is prohibited from compelling a student to attend religious worship. Under Article 29(2) it is prohibited from denying a student admission on grounds of religion, race, caste or any of them. Under the Act it is also subject to the control of the Commission in various matters. Therefore, it has to be held that Thapar Institute of Engineering and Technology, Patiala, is an authority, enjoying power of governmental nature expressly conferred by the Act. It has the authority to admit or expel its students. A student who is expelled is prevented from obtaining a degree. Therefore, it has to be held that Thapar Institute of Engineering and Technology has the necessary legal authority and is, therefore a public authority within the meaning of Article 12 of the Constitution and is thus amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. (Paras 12 and 13).

Petition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to send for the records

Pawan Kumar v. State of Punjab and another (D. V. Sehgal, J.)

of the case and after a perusal of the same:—

- (i) issue a writ, order or direction, especially in the nature of Certiorari, quashing the impugned order (Annexure P/4) by which the admission of the petitioner has been cancelled illegally and arbitrarily ;
- (ii) dispense with the filing of attested/certified copies of the annexures and dispense with the serving of advance notices to the Respondents ;
- (iii) allow the writ petition with costs.

It is further prayed that the Hon'ble Court be also pleased to issue ad-interim order, commanding the Respondent Principal to permit the petitioner to continue his studies in the Institute, where he has already been studying since 1984, during the pendency of the writ petition.

Ram Lal Gupta, Advocate, for the Petitioner.

Ashok Bhan, Senior Advocate with Ajay Mittal, Advocate and Rakesh Garg, Advocate, for the Respondent.

JUDGMENT

D. V. Sehgal, J.

(1) The petitioner states that he belongs to a very poor family and his father is engaged in selling green fodder in a suburb of Bhatinda. He being a hard working and brilliant student passed his Pre-Engineering Examination in 1984. The prospectus of the Thapar Institute of Engineering & Technology, Patiala, respondent No. 2, provided that 5 per cent seats in the Course for Degree in Engineering were reserved for candidates belonging to backward classes. He applied against one of these seats. The certificate as prescribed and printed in the admission form to the effect that he was born in a family belonging to a backward class was signed by the Tehsildar on the authority of a certificate dated 17th September, 1984. Annexure P1 issued by the Sub Divisional Officer (Civil), Bhatinda. On the basis of academic merit in the Pre-Engineering Examination and the certificate that he belongs to a backward class, he was admitted to the Bachelor of Engineering (Civil) course in the Institute, respondent No. 2, in October, 1984. Since then, he continued his studies in the Institute. He passed two semester examinations in the year 1985. He also appeared in the third semester examination in December, 1985.

(2) However, on 15th November, 1985, the Pincipal of respondent No. 2 issued a notice Annexure P 2 to the petitioner requiring him to show cause and explain as to how did he take admission against a reserve seat meant for backward classes by giving a false certificate that he belongs to a backward class. He submitted his reply Annexure P 3 explaining that the certificate furnished by him was not a false one. He in fact belongs to a backward class in terms of the Punjab Government policy letter dated 19th November, 1974, as mentioned in Annexure P1. On 21st December, 1985 he received the impugned order Annexure P 4 from the Principal intimating that his admission to the Bachelor of Engineering Course in the Institute, respondent No. 2, stood cancelled as the information supplied by him at the time of submitting application form was wrong and he had wrongly claimed that he belonged to a backward class.

(3) Through the present writ petition, he impugns the order Annexure P. 4 by contending that it is wholly illegal, arbitrary, contrary to the policy instructions of the State Government issued under Article 16(4) of the Constitution of India, and against the principles of natural justice and equity and good conscience and prayed for the issuance of a writ of certiorari quashing the impugned order.

(4) This petition came up for motion hearing before a Division Bench on 12th February, 1986, when the following order was passed:—

“It has already been settled in C.W.P. No. 3617 of 1985, decided on July 31, 1985, that a petition under Article 226 of the Constitution is not competent against Thapar Institute of Engineering & Technology, Patiala, which is a privately owned institution. Dismissed.

(5) However, on a review application No. 18 of 1986 filed on behalf of the petitioner, after hearing the learned counsel for the parties, the Division Bench passed the following order on 5th May, 1986:—

“Civil Writ Petition No. 96 of 1986 was dismissed on the short ground that the respondent being a privately owned institution, no petition under Article 226 of the Constitution

Pawan Kumar v. State of Punjab and another (D. V. Sehgal, J.)

would be competent against it. It has now being pointed out that because of the Central Government Notification under section 3 of the University Grants Commission Act, 1956, the respondent-institution has been declared to be a university and, as such, would be a local authority within the meaning of Article 12 of the Constitution. Our order dated February 12, 1986, dismissing the petition on the said ground is, therefore, reviewed and the petition is ordered to be listed again for motion hearing before the regular D.B. for May 20, 1986."

(6) On 20th May, 1986 the petition was admitted by the Division Bench and since it relates to the admission of the petitioner to the Engineering Course, it was ordered to be listed for hearing high up in the list in the week commencing August 4, 1986. The petitioner in the meantime was allowed to take the examination at his own risk and responsibility.

(7) The institute respondent No. 2 filed its written statement. It was contended therein that the petitioner gave a false certificate to the effect that he belonged to a backward class by birth. He thus misled the authorities to give him admission against a seat reserved for backward class candidates. It was further pointed out that the admission form nowhere provided that a candidate belonging to an economically backward class as the petitioner claims himself to be could apply against one of the seats reserved for backward class candidates. It was, therefore, asserted that he secured admission by playing a fraud on the authorities. In the course of arguments, the learned counsel for respondent No. 2 once again raised the contention that the institute, respondent No. 2, is not an authority and is therefore not 'the State' within the definition of Article 12 of the Constitution and as such is not amenable to the writ jurisdiction of this Court.

(8) The first and the primary question therefore which requires to be decided is whether the institute respondent No. 2 is an authority and therefore 'the State' within the meaning of Article 12 of the Constitution. The Division Bench in its order dated 12th February, 1986 had relied on an earlier judgment in C.W.P. No. 3617 of 1985, decided on 31st July, 1985, wherein, *inter alia*, it was held as under:—

"A Division Bench of this Hon'ble Court in C.W.P. 4662 of 1984 decided on 30th November, 1984 on the basis of an

earlier Full Bench decision in *Gurprit Singh Sidhu, Ludhiana, and others v. Panjab University, Chandigarh, and others*, (1) ruled that Thapar Engineering College, Patiala, is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India being a privately managed Institution. The learned counsel for the petitioner, however, relying on the recent decision of the Supreme Court in *Manmohan Singh Jaitla v. Commissioner, Union Territory, Chandigarh, and others*, (2) contended that as the Institution is getting Government aid it would be a instrumentality of the State and, therefore, amenable to the writ jurisdiction. In the additional affidavit filed by the Principal of the Institution, it has been pointed out that the Government aid received in the year 1984-85 was Rs. 0.51 lacs, whereas total expenditure incurred was Rs. 1.19 lacs. It is thus evident that the Institution is meeting more than 50 per cent expenses from its own resources. The Supreme Court decision in *Manmohan Singh's* case (supra), therefore, is of no help to the petitioner in this case as we are bound by the previous D. B. decisions. This petition is dismissed."

(9) The relevant part of the judgment, dated 30th November, 1984 in C.W.P. No. 4662 of 1984 also bears reproduction which is to the following effect:—

"The petitioner impugns the action of the two respondents—Guru Nanak Engineering College, Ludhiana (No. 4) and Thapar College of Engineering Course for the Session 1984-1985 against the 2 per cent seats reserved for the category of outstanding sportsmen to which category he claims to belong. In nut shell, his claim is that it is in the light of the Government instructions, dated January 25, 1984 (Annexure Petition 2) that he has been deprived of this admission. He impugns these instructions as arbitrary and violative of Article 14 of the Constitution of India.

It is the conceded position that the impugned instructions have since been incorporated by the respondent Institutions in their prospectus and thus they have of their own

(1) A.I.R. 1983 Punjab and Haryana 70.

(2) A.I.R. 1985 S.C. 364.

Pawan Kumar v. State of Punjab and another (D. V. Sehgal, J.)

adopted the criteria specified therein for regulating admissions to the course.

Having heard the learned counsel for the petitioner, we are of the opinion that neither the alleged instructions (Annexure Petition 2) can be said to have been issued by the Government—it is only a letter from the Director of Sports, Punjab addressed to the Director of Public Instruction, Punjab, and some of the Heads of Medical and Technical Institutions suggesting the method and manner in which the admissions to the professional courses be regulated—nor can these be said to have the force of instructions which can possibly govern admissions to the course in question. Further, these instructions having been adopted by the two institutions take the colour of a criteria laid down by these institutions for regulating the admission of sportsmen to the engineering course. It has firmly been ruled by a Full Bench of this Court in *Gurpreet Singh Sidhu and others v. The Panjab University, Chandigarh, and others* (3) that a writ petition is not maintainable against a non-statutory educational institution run and managed by a private body. Thus, we dismiss this petition *in limine*.”

(10) It further bears mention here that in *Gurpreet Singh Sidhu's* case (supra), the Full Bench had placed reliance on an earlier Full Bench judgment in *Pritam Singh Gill v. State of Punjab and others*, (4). In *Pritam Singh's* case, the question that came up for consideration was whether the Punjab State Co-operative Land Mortgage Bank is an authority and, therefore ‘the State’ within the meaning of Article 12 of the Constitution. The Full Bench held as under:—

“From the aforesaid authoritative enunciation it is now well settled that once it is established that a body is an instrumentality and agency or projection of the State, then its mere legal garb, under which it is clothed namely, whether it is a co-operative society, or a company or a society registered under the Societies Registration Act, ceases to have dominance. In a way the law now pierces

(3) 1983(1) S.L.R. 220.

(4) A.I.R. 1982 Pb. & Hary. 228.

the veil of mere form to arrive at the kernel of true substance. It has, however, to be highlighted that the aforementioned six test may not individually be decisive and their cumulative effect in each particular case has to be taken into account. Consequently if on the basis of these tests the inevitable conclusion is reached that a co-operative society is in essence an instrumentality of the State, then the mere fact that it was registered under the Co-operative Societies Act would in no way render it immune to the writ jurisdiction. This inevitably follows from the consistent observations of the final Court in the trilogy of cases wherein a Government company incorporated under the Companies Act, a society registered under the Societies Registration Act and an authority specifically created by a statute have all been deemed to be within the ambit of Article 12, if they were established to be the instrumentality or the agency of the State in essence."

(11) The learned counsel for the petitioner laid stress on the fact that keeping in view the ratio of the judgment in *Pritam Singh Gill's* case and the Supreme Court judgment in *Manmohan Singh Jaitla's* case, respondent No. 2 is 'an authority' and therefore 'the State' within the meaning of Article 12 of the Constitution. I, however, need not go into this aspect in depth because I am bound by the Division Bench judgments of this Court mentioned above, yet it is important to note that the Central Government in exercise of the powers conferred on it by section 3 of the University Grants Commission Act, 1956 (hereinafter called 'the Act') on the advice of the Commission has declared that respondent No. 2 shall be deemed to be a University for the purposes of the aforesaid Act,—*vide* Notification dated 30th December, 1985 Annexure R 2/1. This notification is subsequent to all the aforesaid Division Bench and Full Bench judgments. It is, therefore, necessary to examine its effect. Section 22 of the Act lays down that the right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 of the Act or an institution specially empowered by an Act of Parliament to confer or grant degrees. No other person or authority shall confer or grant or hold himself or itself out as entitled to confer or grant, any degree. Section 2 (f) of the Act defines 'University' to mean 'a University established or incorporated by or under a

Pawan Kumar v. State of Punjab and another (D. V. Sehgal, J.)

Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned be recognised by the Commission in accordance with the regulations made in this behalf under this Act.' Section 3 of the Act provides that the Central Government may, on the advice of the Commission, declare by notification in the Official Gazette that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of the Act and on such a declaration being made all the provisions of the Act shall apply to such an institution as if it were a University within the meaning of clause (f) of section 2 of the Act. Chapter III of the Act elaborates the powers and functions of the University Grants Commission and provides, *inter alia*, that the Commission may enquire into the financial needs of the University; allocate and disburse out of the funds of the Commission grants to Universities established or incorporated by or under a Central Act for the maintenance and development of such universities or for any other general or specified purpose; recommend to any University the measures necessary for the improvement of university education and advise the University upon the action to be taken for the purpose of implementing such recommendations; require a University to furnish it with such information as may be needed relating to the financial position of the University or the studies in the various branches of learning undertaken in that University together with all the rules and regulations relating to the standards of teaching and examination in that University respecting each of such branches of learning.

(12) The institution, respondent No. 2, was no doubt originally registered as a Society under the Societies Registration Act. However, on its being declared a University, it enjoys legal authority. A large number of students are on its rolls. Article 41 of the Constitution directs the State within the limits of its economic capacity, to make effective provision for securing the right to education. Respondent No. 2, to this extent, is discharging a State function. It is, therefore, subject to public duties and rights. Under Article 28 (3) of the Constitution, it is prohibited from compelling a student to attend religious worship. Under Article 29 (2), it is prohibited from denying a student admission on grounds of religion, race, caste or any of them. Under the Act it is also subject to the control of the Commission in various matters already referred to above.

(13) While concluding that Jamia Milla is deemed to be a University under section 3 of the Act, it is 'an authority' and thus 'the

State', a Division Bench of Delhi High Court in *Amir-Jamia and others v. Desharath Raj*, (5), observed that the very concept of a University is universality. A University cannot be a private institution in the sense that it is not subject to the provisions of the Constitution or the provisions of law, particularly when it receives large amounts in aid from the State. Under section 22 (1) of the Act it is given the authority to confer degrees. It would have no authority to confer or grant any degree had it not been notified by the Government to be deemed to be a University. It is, therefore, abundantly clear that respondent No. 2 is 'an authority' enjoying powers of governmental nature expressly conferred by the Act. It has the authority to admit or expel the students. A student who is expelled is prevented from obtaining a degree. He is, thus, denied the benefit of a power which is conferred on respondent No. 2 by the State to be exercised for public purpose on the logic elaborately set out in *Amir-Jamia's* case (supra). There is no escape from the conclusion that respondent No. 2 has the necessary legal authority and is therefore a public authority within the meaning of Article 12 of the Constitution and is thus amenable to the writ jurisdiction of this Court under Article 226 of the Constitution.

(14) Now coming to the merits of the case, I am of the considered view that the claim of the petitioner is based on firm foundations. A photostat copy of the admission form of the petitioner has been appended with the written statement of respondent No. 2. The backward class certificate printed therein which is duly filled in and signed by the Tehsildar, Bhatinda, is to the following effect:—

"I certify that Mr. Pawan Kumar son of Shri Ram Sarup of village Bhatinda district Bhatinda by birth belongs to backward class. Certificate issued,—vide S.D.O. (C) Bhatinda No. 58 dated 17 September, 1984, community which is recognised by the Punjab Government,—vide notification No. 2662-SWG-II-63/6934 dated 20th April, 1983 read with Punjab Government letter No. 5420-SWI-74/23309 dated 19th November, 1974"

(15) The two Government letters to which reference is made in the said certificate are attached with the petition as Annexures P. 3 and P. 6 respectively. In the former, which is issued under the subject "Classification of certain classes of people as Backward Classes other than the scheduled castes and scheduled tribes", it has been directed that all the residents of Punjab State

Pawan Kumar v. State of Punjab and another (D. V. Sehgal, J.)

whose family income is less than Rs. 1,000 per annum irrespective of the fact as to which caste, community or class they belong to and what profession they are following shall be entitled to the privileges extended to the backward classes. In the second letter the income per annum of such a family has been substituted by Rs. 3,600 for Rs. 1,000. Para 2 of the written statement makes it clear that respondent No. 2 has categorically admitted that the petitioner belongs to a poor family. The question therefore is whether the petitioner made any false statement or fraudulently secured admission under the reserve category of backward class candidates. The certificate of the Sub-Divisional Officer (Civil) to which a reference has been made in the certificate of the Tehsildar reproduced above has been appended with the petition as Annexure P. 1 and it is almost to the same effect as the certificate of the Tehsildar. The learned counsel for respondent No. 2 contended that the language of the certificate contained in the admission form leaves no scope for doubt that only those candidates who by birth belong to backward classes as declared by the State Government are entitled to seek admission in the reserve category of backward class students. The letters of the State Government Annexures P. 5 and P. 6 to which specific reference has been made in the certificate of the Tehsildar categorically state that economically backward residents of the State of Punjab irrespective of caste, community or class shall be treated as backward classes and they shall be entitled to all the privileges extended to backward classes. The Government instructions referred to above have been specifically made mention of in the certificate of the Tehsildar. If respondent No. 2 was of the view that the petitioner was not entitled to seek admission against reserve category of backward classes, it was open to it to decline admission to him but this was not done. No information was concealed by the petitioner. It is too late in the day when the petitioner has already completed four semesters to cancel his admission. I find support for the view that I am taking from *Shri Krishan v. The Kurukshetra University*, (6). It was held therein that where a person on whom the fraud is allegedly committed is in a position to discover the truth by due diligence, fraud is not proved, it is neither a case of *suggestio falsi* or *suppressio veri*. There was ample time and opportunity for the authorities of respondent No. 2 to have found out the defect in the admission of the petitioner. If it acquiesced in the infirmity, if there was any, which the admission of the petitioner suffered from

(6) A.I.R. 1976 S.C. 376.

and allowed him to continue for three semesters, it has no power to withdraw his candidature.

(16) In view of the above discussion, I quash the order dated 9th/14th December, 1985 Annexure P. 4 of the Principal of respondent No. 2 and issue a writ of *mandamus* directing respondent No. 2 to allow the petitioner to continue with his studies in the Course for Degree in Engineering (Civil) in the Institute. There shall, however, be no order as to costs.

R.N.R.

Before D. S. Tewatia and D. V. Sehgal, JJ.

SARWAN SINGH DADRI,—Petitioner.

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 2204 of 1986.

September 17, 1986.

Indian Medical Council Act (CII of 1956)—Section 15(2) (b)—Indian Medicine Central Council Act (XLVIII of 1970)—Section 17(2) (b)—Punjab Ayurvedic and Unani Practitioners Act (XLII of 1963)—Section 15 (1)—Drugs and Cosmetics Rules, 1945—Rules 2 (ee) (iii)—Persons qualified to practice the Indian System of medicine enrolled on the State or Central Register maintained for registration of such practitioners—Persons aforesaid—Whether entitled to practice the modern system of medicine—Notification issued by the Punjab Government under Rule 2 (ee) (iii) of the Drug Rules, declaring such practitioners as persons entitled to practice the modern system of medicine for the purposes of the Drugs Act—Such medical practitioners—Whether entitled to practice the modern system of medicine—Said notification—Whether ultra vires the provisions of 2 (ee) (iii) of the Drug Rules and liable to be struck down.

Held, that medical practitioners registered under section 15 (1) of the Punjab Ayurvedic and Unani Practitioners Act, 1963 are not equipped with professional qualifications to practice the Modern System of Medicine as they do not possess any prescribed diploma or degree from a recognised medical institution in modern system of medicine. Even a person who has acquired the prescribed diploma or degree from a recognised medical institution is not entitled to practice Modern System of Medicine unless he is so registered, for Section 15 (2) (b) of the Indian Medical Council Act, 1956