Court No. - 11

Case :- WRIT - C No. - 37299 of 2018

Petitioner :- Minority Educational Institutions Welfare Association
Respondents :- State Of U.P. And 2 Others
Counsel for Petitioner :- Syed Fahim Ahmed,Rakesh Pande,Sudhir Kumar Malviya
Counsel for Respondents :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

Shri Sudhanshu Srivastava, learned Additional Chief Standing Counsel, at the outset, requested that the matter may be adjourned today on account of non-availability of Additional Advocate General who has been instructed in the matter. By the last order dated 15.03.2019, on assurance given by the learned Chief Standing Counsel, the date was fixed for today. Accordingly the request for adjournment made, is rejected.

The present writ petition has been filed by the Minority Educational Institutions Welfare Association, a registered Association of following 14 institutions:

1. Dr. A.H. Rizvi Degree College, Kaushambi

2. Sri Suresh Chandra Educational Institution, Handia

3. Raafiah Collee of Education, Badaun

4. Gajraj Singh Memorial Mahavidhyalaya, Etah

5. G.S.M. Teachers Training College, Etah

6. L.M.S. Mahavidhyalaya, Etah

7. L.M.S. Teachers Training, Etah

8. A.M. College of Higher Education, Gorakhpur

9. Azad Mahavidhyalaya, Siddharthnagar

10. Abdul Shahid Mahavidhyalaya, Etah

11. Balram Mahavidhyalaya, Allahabad

12. Citizen Girls College, Allahabad

13. S.M.A. Memorial College, Gorakhpur

14. Mohammad Ali Nazeer Fatima Degree College, Hardoi.

The petitioner has challenged the Government Order dated 26.10.2018 passed by the Additional Chief Secretary, Government of U.P., Lucknow-respondent no.2.

Principally, a Full Bench of this Court in **Eram Girls Degree College & Anr. Vs. State of U.P. through Principal Secretary, Basic Education, Lucknow & Ors. (Misc. Single No. 18243 of 2017)** and connected matters, decided on 16.03.2018, had the occasion to consider, the following questions referred to it:

"(i) As to whether the regulatory measures, in the matter of admissions to unaided recognized minority institutions, to be taken by the State Government will be confined to the extent of ensuring fair and transparent procedure of admission to be adopted by the minority institutions without compromising with the merit in admissions to the courses of higher education, which will include professional and technical education, or it will extend to the extent of compelling the minority institutions to "seat sharing' or appropriation of quota of seats with the State Government, even in absence of any "consensual arrangement between the unaided private minority institutions and the State'?

(ii) Which of the Division Bench judgments referred to herein above, either the judgment dated 25.09.2014 (Special Appeal Defective No. 376 of 2014) and the judgment dated 29.08.2011 (Special Appeal No. 605 of 2011) or the judgment dated 10.03.2017 in the case of Sankalp Institute of Education (supra), enunciates the correct law in respect of right of unaided recognized minority institutions to admit students in the background of the law pronounced by Hon'ble Supreme Court in the cases of T.M.A. Pai (supra) and P.A. Inamdar (supra)?

(iii) What is the extent of authority/power of the State Government to regulate admissions of students to unaided recognized minority institutions imparting education in the courses of higher education, which includes professional and technical courses, in view of the protection available to minority institutions under Article 30(1) of the Constitution of India?"

After a detailed analysis of the legal provisions and the binding precedent, the Full Bench answered the aforesaid questions thus:

"(1) In view of dictum of the Supreme court in P.A. Inamdar (supra) prescription of quota or apportionment of a percentage of seats allotted to private unaided minority professional institutions by the State, except as a consensual arrangement, is impermissible in law, as, it encroaches upon the rights of such institutions under Article 30 of the Constitution to admit students of their choice.

(2) The Division Bench judgment in Sankalp's case is not an authority on the issue of seat sharing but it correctly lays down the law regarding the mechanism to be adopted for admission to professional course such as B.Ed. The Division Bench judgment in National Mahila Mahavidyalaya does not contain any ratio decidendi. It is based on the concession of the

Standing Counsel, therefore, it is not a binding precedent. The other Division Bench judgment in Hazi Ismail's case does not lay down the law correctly on the issue of admission process i.e. mechanism to be adopted for admission to professional courses such as B.Ed. but in so far as it is understood as disapproving seat sharing by the State, it is in consonance with the law declared by the Supreme Court.

(3) (i) Subject to there being only one institution imparting education in a particular field of higher/professional/ technical education, which could have its own admission procedure and entrance test which satisfies the triple test, in other scenarios, an individual un-aided minority professional educational institution cannot hold a separate entrance test for admission to a professional course, as, it would be violative of the single-window mechanism envisaged in P.A. Inamdar's case (supra) which is a must in the field of higher and professional education.

(ii) However, if provision has been made by the State by law for holding of "CET', which is not only permissible but also desirable, all institutions will have to admit students based on such "CET' and not otherwise.

(iii) If no such provision has been made by the State, or by the University, as the case may be, then subject to the exception referred earlier, an Association comprising of all the institutions imparting education in a particular field of higher/professional education or technical education can hold "CET' subject to the satisfaction of the triple test of merit, transparency and non-exploitative-ness already referred hereinabove with regulatory measures being put in place by the University or the State, as the case may be, to ensure that this aspect is in-tune with the law discussed herein above and stepping in, if it fails the triple test. In such a scenario the minority institutions will also have to make admission on the basis of such "CET' by such an association.

(iv) The Act, 2006 does not apply to minority institutions nor does it prohibit prescription of a Single Window System in respect to them, but as per law."

Thus, it was specifically held - apportionment of percentage of seats by way of allottment to a private unaided minority professional educational institutions, is impermissible except by way of consensual arrangement, as that would amount to infringement of Article 30 of the Constitution of India.

Coming to the challenge raised in the present petition, the Government Order dated 26.10.2018, first refers to an earlier Government Order dated 27.09.2011 that provided for reservation of 50 students according to the directions issued by the State Government. It was later amended by Government Order dated 13.10.2011 to 50 percent. It is not in dispute that

the said clause 5(i) of the aforesaid Government Order was withdrawn by a Government Order dated 23.12.2011.

Beside the above recital, the impugned Government Order dated 26.10.2018 then states, it had come to the knowledge of the State Government that minority institutions were admitting non-minority students against 50 percent seats falling in the management quota. Consequently, it has been directed that the minority institutions shall admit only such students against 50 percent management quota who belong to that minority community. In the event of any seats remaining unfilled from that category of students, the same would be returned to the University to be filled by it.

Heard Shri Rakesh Pande assisted by Shri. Syed Fahim Ahmad, learned counsel for the petitioner and Shri Sudhanshu Srivastava, learned Additional Chief Standing Counsel for the State.

Shri Pande has based his submissions on the opinion of the Full Bench insofar as it lays down, the State would have no authority to make admissions in an unaided minority professional institution except by way of consensual arrangement (which arrangement does not exist in the present case) and, therefore, the Government Order seeking to provide the same is ultra vires and in the teeth of the dictum of the Full Bench. Also, he would submit, there is no allegation of rule of merit being diluted by the minority institutions, while granting admissions.

Shri Sudhanshu Srivastava, learned Additional Chief Standing Counsel has, on the contrary, submitted, no encroachment is being made by the State on the rights of the unaided minority institutions to grant admissions. Only with respect to the

management quota which should primarily be filled up by students of the particular minority professional institutions, a provision has been made whereby only in the event of the minority institutions failing to fill up such seats with students belonging to particular minority, the State may intervene and fill up the same from the general merit list. Therefore, it has been submitted, there is no violation of the dictum of the Full Bench noted above.

Shri Srivastava has also relied on the decision in **T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors., (2002) 8 SCC 481**. Relying on paragraphs 58, 59 and 68 of that judgment, it has been submitted the State Government may make regulations to ensure that meritorious candidates are not unfairly treated or put at a disadvantage. Also, it would be permissible for the University and the Government to require such private unaided institutions to provide for merit based selection.

Having considered the arguments so advanced by learned counsel for the parties, at the present, it is undisputed that the decision of the Full Bench of this Court in **Eram Girls Degree College & Anr. (supra)** has attained finality. Therefore, insofar as apportionment of seats is concerned, clearly, except for consensual arrangement, if existing, the State and its agencies and the University cannot encroach on the rights of such minority institutions to grant admissions.

As a fact, it is not the case of the State that there exists any consensual arrangement between the minority institutions and the University or the State Government or any of its agency for grant of admissions by the University or the State Government or it agency at any of the unaided minority professional institutions, who are the members of the petitioner Association.

Second, as to the Government Order dated 27.09.2011 as amended by Government Order dated 13.10.2011, it is the case of the State itself that clause 5(i) of the said Government Order providing for 50% admissions to be made on the recommendation of or at the instance of the University, stands specifically withdrawn, by the Government Order dated 23.12.2011. Therefore, reference made to the Government Order dated 27.09.2011, in the impunged Government Order, does not result in any legal consequence.

What, therefore, survives for consideration is whether the State Government could, in any way, step into the situation by providing for any other restriction qua the admissions, against its management quota, by the concerned unaided minority institution, running a professional course .

Once the principle has been settled by the Full Bench and there has not been shown to exist any other law to enable the State Government or the University to directly encroach upon the freedom of the unaided minority institution to admit students of its choice, it cannot be accepted that the State Government could act in a colourable exercise of power by interfering with the admission process against the management quota.

Insofar as it is undisputed to the petitioner that its member colleges would only make admissions strictly on the basis of merit through the process of common counselling, the allegation of violation of the ratio in **T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors.,** is unfounded and premature.

At this stage, the impugned Government Order, insofar as it seeks to interfere and interject the the admissions to be made against the management quota of minority institutions, is clearly in the teeth of the ratio of the Full Bench in **Eram Girls Degree College & Anr. (supra)**.

Even otherwise, on a general principle, if the impugned Government Order is given effect, it would ghettoise the minorities by forcing their (minority) institutions to admit students only of that particular minority. While the minority institutions arise and exist to protect the interest of minorities, they cannot be forced to look only inwards and not admit students of other communities. In a modern, secular and democratic state, that idea is itself so abhorring, it does not merit any further or deeper discussion. It has been stated to be rejected.

Accordingly, the writ petition succeeds and is **allowed**. The Government Order dated 26.10.2018 is quashed, leaving it open to the particular institution of the petitioner Association to make admissions under the management quota, in accordance with law.

No order as to costs.

Order Date :- 29.3.2019
AHA