

(2011) 09 P&H CK 0122

High Court Of Punjab And Haryana At Chandigarh

Case No: LPA No. 1826 of 2011

Christian Medical College,
Ludhiana and Another

APPELLANT

Vs

Joel D. Masih and Others

RESPONDENT

Date of Decision: Sept. 27, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 15, 16, 30(1)

Citation: (2012) 1 ILR (P&H) 972

Hon'ble Judges: M.M. Kumar, Acting C.J.; Gurdev Singh, J

Bench: Division Bench

Advocate: D.S. Patwalia and Bhriugu Dutt Sharma, for the Appellant; Ramneek Vasudeva, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Kumar, ACJ

(1) This order shall dispose of LPA Nos. 1826 and 1846 of 2011, filed under Clause 10 of the Letters Patent Appeal, challenging the judgment dated 16.9.2011 rendered by the learned Single Judge declaring Clause 11(a) of the Prospectus (P-4), issued by the Christian Medical College, Ludhiana (Appellant College) as ultra vires of Article 14 of the Constitution. This clause requires a candidate to obtain sponsorship letter as a precondition if he desired to take admission in the MBBS and BDS courses in the Appellant College. The Appellant College has been directed to pass appropriate orders rectifying the rejection of candidature of the petitioner-respondent No. 1 to the MBBS course, within a week. The Appellant College is a minority institution protected by Article 30(1) of the Constitution. Thus, it is entitled to set up educational institutions and manage its affairs without interference by the State. The appellant-College has freedom to prescribe the mode and manner of admission. For admission to various courses such as MBBS, BDS, B.Sc. Nursing and Bachelor of

Physiotherapy, the appellant-College issued a Prospectus for UG Programs-2011 (P-4) wherein the seats of various courses have been divided broadly into two categories i.e. Open Category and Christian (Minority Category). In the prospectus under the main heading of "Admission Programme", there is a sub-heading "Christian (Minority Category) Applicants & Service Agreement", which reads thus:

Christian (Minority Category) Applicants & Service Agreement Candidates who desire to apply under the Christian sponsored category should indicate in the ICR form and will have to take a Bible Test. Such candidates are required to be sponsored by one of the sponsoring agencies of the Christian Medical College Ludhiana society for eligibility in the sponsored category. Candidates can apply to one of the sponsoring agencies of the Christian Medical College Ludhiana Society for sponsorship. List of members is given in the Annexure HI. Toward this, all MBBS, BDS. and B.Sc. Nursing candidates selected through UG AWT 2011 in this category are required to enter into a service agreement without which admission will not be granted. Service Agreement for MBBS and B.Sc. Nursing candidates is for a minimum period of two years and for BDS candidates, 1 year, after completion of the course in a hospital, or institution managed by Christian Medical College Ludhiana Society or its member Body/Church.

In keeping with the mandate of the Christian Medical College Ludhiana Society to reach out to all states with emphasis on the rural underserved and unreached areas/communities of our nation, to provide training facilities to candidates who will dedicate themselves to the healthcare of these states they represent, which would otherwise have been deprived, seats in MBBS have been earmarked area-wise for Society Sponsored candidates from States and Union territories (Pg. 10). Candidates applying to these categories should clearly indicate this in the ICR form by correctly filling the domicile field.

Admission will be entirely on merit, based on the Admission Written Test.

Candidates must provide the certificates mentioned below to be considered for admission in Sponsored Christian (Minority) category. The following original certificates must be available at the time of scrutiny of certificates otherwise the candidature will be cancelled.

- (1) Sponsorship Letter from sponsoring body/church signed by authorised signatory only.
- (2) Baptism certificate
- (3) Letter from the Pastor regarding church membership with dates (made after 28.02.2011 in the prescribed format See Annexure-1 Sample-12)
- (4) Domicile certificate issued and certified by the competent authority.

Note; 1. Christian candidates desirous of sponsorship should only apply to one sponsoring body/church. In the event that a candidate has obtained more than one sponsorship, the first one to reach the office of Registrar will be considered.

2. It is mandatory for all Christian applicants to pass the Bible Test for considering them under the Christian Minority categories. Christian applicants who fail in the Bible Test, will not be considered under the Christian Minority category.

(emphasis as in the original)

(2) It is, thus, evident that for a candidate desirous to apply for the seats reserved for the Christian (Minority Category), the foremost requirement was to have a Bible Test and such candidates were further required to be sponsored by one of the sponsoring agencies of the Christian Medical College Ludhiana Society for eligibility in the sponsored category. It is further clear that all candidates irrespective of their course applying under the Christian (Minority Category) were also required to enter into a service agreement for different duration without which admission would not be granted. For the MBBS course the minimum period of service agreement has been fixed as two years. The next thing which is discernible is that the admission were to be granted "entirely on merit, based on the Admission Written Test". It seems that the provision for production of original certificates concerning sponsorship letters, Baptism certificate and letter from the Pastor regarding Church membership has been made in order to ascertain the genuineness of a candidate whether he is a bonafide Christian and belongs to the category of Christian Minority.

(3) Now we propose to have a glance of the distribution of seats of MBBS course for the year 2011, which have been shown in a tabular form in the prospectus category-wise and the same is reproduced as under:

DISTRIBUTION OF SEATS-2011

MBBS

Category	Category Code	50 Seats
All India General Open	1	9
Christian Minority-Punjab	2	10
Christian Minority-All India (Non Punjab)	(3)	(21)
Area A	3A	4
Area B	3B	4
Area C	3C	4
Area D	3D	5
Area E	3E	4
SC/ST/BC from Punjab	4	1

Faculty Development	5	2
NRI	6	7
Total		50

Christian Minority-All India (Non Punjab) Category:

AREAA - Andhra Pradesh, Karnataka, Kerala, Tamilnadu, Puducherry

AREA B - Goa, Maharashtra, Gujarat, Daman & Diu, Dadra & Nagar Haveli, Rajasthan, Lakshadweep

AREA C - Madhya Pradesh, Chhatisgarh, Orissa, Jharkhand, West Bengal, Andaman & Nicobar Islands

AREA D - Uttar Pradesh, Bihar, Uttarakhand, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland, Sikkim, Tripura

AREA E - Jammu & Kashmir, Himachal Pradesh, Delhi, Haryana, Chandigarh

Category 2 & 3 candidates obtaining less than 50% marks in Bible test will be considered under category 1

All Admission are entirely based on merit in the Admission Written Test"

(4) A bare perusal of the distribution of seats of MBBS course shows that there is no category styled as "Christian sponsored category", in the above table. In fact, the seats for Christian candidates have been divided into two categories viz. "Christian Minority-Punjab" and "Christian Minority-All India (Non Punjab)" wherein 10 and 21 seats respectively have been provided. Again it has been stated that "All Admission are entirely based on merit in the Admission Written Test".

(5) In response to the Prospectus for UG Programs-2011 (P-4) issued by the appellant-College, the petitioner-respondent No. 1 and Mr. Eldo Elias (appellant in LPA No. 1846 of 2011) applied for admission to the MBBS course. The petitioner-respondent No. 1 applied in the category of "Christian Minority-Punjab" whereas Mr. Eldo Elias (appellant In LPA No. 1846 of 2011) applied under the category of "Christian Minority-All India (Non Punjab)". It has remained undisputed that the petitioner-respondent No. 1 answers all the eligibility conditions required for obtaining admission as a Christian Minority-Punjab category candidate such as he is a Christian by birth. He was born in a Christian family on 30.11.1992; Baptised as per the certificate of Baptism (P-2); and a member of the United Church of Northern India since birth, as is evident by the Church Membership Certificate, dated 15.5.2011 (P-3). He has also cleared the Bible test, which is mandatory for Christian candidates. At page 15 of the Prospectus, a list of documents has been given and the candidates were required to produce the original of the documents at the time of counseling for admission. As per Sr. No. 11 of the said list of documents, the Christian candidates were required to produce the following documents:

11. For Christian candidates:

(a) Sponsorship letter from sponsoring body/church(for sponsored candidates only)

(b) Baptism certificate

(c) Churchmembership.

(6) It is obvious that the said clause 11 (a) of the prospectus requires a Christian candidate to obtain a sponsorship certificate from bodies/ Churches referred to in the prospectus. Admittedly, the petitioner-respondent No. 1 does not fulfill the said requirement because he is stated to have approached various sponsoring bodies but was denied a sponsorship letter as he could not meet their demands. Therefore, he left the column relating to sponsorship blank while submitting his form, for the entrance examination. On 27.5.2011, a qualifying examination was held and the petitioner respondent No. 1 was allowed to take the said examination by the appellant College without raising any objection. He secured 3rd Rank in the category of "Christian Minority-Punjab" by obtaining 96 marks. On the other hand, Mr. Eldo Elias (appellant In LPA No. 1846 of 2011) secured 30th Rank in the category of "Christian Minority-All India (Non Punjab)".

(7) On 18.7.2011, counseling/interview was held for admission to MBBS course. The petitioner-respondent No. 1 appeared and produced all relevant documents and affidavits except the sponsorship letter. On 19.7.2011, when the petitioner respondent No. 1 approached the appellant-college to deposit fee he was denied admission on the ground that he does not possess a sponsorship letter from any of the sponsoring bodies/churches referred to in the prospectus, ignoring the fact that he has secured 3rd Rank in the category of "Christian Minority-Punjab". On 20.7.2011, he addressed a letter to the appellant-college narrating the entire facts and circumstances but no action was taken. It is alleged by the petitioner-respondent No. 1 that Mr. Eldo Elias appellant (in LPA No. 1846 of 2011) has been adjusted and given admission against a vacancy pertaining to the category "Christian Minority-Punjab", totally ignoring the fact that he had never applied under that category because he has applied under the "Christian Minority-All India (Non Punjab)" category.

(8) Feeling aggrieved, the petitioner-respondent No. 1 filed the writ petition relating to these appeals for quashing of clause 11(a) of the Prospectus (P-4), which requires a christian candidate to obtain a mandatory sponsorship letter from sponsoring bodies/churches, referred to in the prospectus, failing which admission was not be granted. It has been submitted that the sponsorship letter has been indirectly made an eligibility condition because it disqualifies a candidate who does not possess a sponsorship letter. The said clause also creates a reservation within reservation amongst the Christian Minority candidates i.e. one who obtain a sponsorship letter and the other who does not possess a sponsorship letter. It has been further submitted that by virtue of Article 30(1) of the Constitution, the

appellant-college being a minority institution, is competent to prescribe the procedure for admission and the nature of test etc. but such rights are not unbridled and have to answer various tests of law. Such procedure must be fair, transparent, non-exploitative and does not have any nexus with the examination or for ensuring that a candidate belongs to the minority.

(9) The Appellant College contested the writ petition by taking the stand that the object of prescribing such a condition is to ensure that candidates serve the Christian community because earlier the candidates used to execute bonds to serve the appellant college but the same were violated with impunity. The appellants, therefore, devised a method, to ensure that candidates selected in the reserved category serve a Hospital or an Institution, run and managed by bodies, referred to in the prospectus.

(10) The learned Single Judge after noticing the judgments of Hon"ble the Supreme Court rendered in the cases of P.A. Inamdar versus State of Maharashtra (1) and Islamic Academy of Education versus State of Karnataka (2), as well as a Division Bench judgment of this Court rendered in the case of Vikram Singla versus State of Punjab (3), proceeded to consider the following two questions of law:

(1) Whether Clause 11 (a) of the prospectus, which provides an eligibility condition requiring a candidate to obtain a sponsorship letter from a sponsoring body/Church can be said to be fair, transparent and non-exploitative and, therefore, immune from challenge on the ground that it falls to the discretion of a minority institution while prescribing the procedure for admission, duly protected by Article 30(1) of the Constitution of India; and

(2) Whether Clause 11 (a) prescribes a reservation within the Christian community and operates to allocate seats to sponsoring bodies/churches referred to in the prospectus.

(12) The learned Single Judge answered the aforementioned questions against the appellant College by making the following observations:

".....The condition, however, does not advance the object of identifying a bonafide christian, of protecting reservation for christian candidates or in any manner facilitating the admission process or the entrance examination. The object of clause 11 (a), plainly put, is nothing more than an attempt to obtain a binding service bond that would operate after the candidate completes the MBBS course.

The respondent-college, a minority institution, may legitimately prescribe conditions to ensure that a candidate applying under the category of christian minority is a bonafide Christian. The respondents have in fact prescribed three such conditions, namely, a Baptism Certificate, a certificate showing membership of a Church, and the passing of a Bible test. The condition requiring a candidate to obtain a certificate from a sponsoring agency, in my considered opinion, has no nexus with the

reservation provided for christian candidates as it does not foster the admission process, or help in identifying a Christian candidate. The clause merely ensures that a candidate executes a service bond under pain of being declared ineligible. A service bond, though, permissible in law, cannot be set down as a precondition to eligibility, so as to render an eligible candidate ineligible. In addition, the condition that only those candidates would be eligible as have obtained a sponsorship letter, in essence ends up reserving seats for sponsoring bodies/Churches as their letters, would determine the eligibility of a christian candidate.

By requiring a candidate to obtain a sponsorship letter from named churches/bodies, as a pre condition, to admission the respondents have conferred the power to, render ineligible, a candidate, otherwise eligible and duly qualified. An eligibility condition, to be valid must disclose a reasonable nexus, with the object, in this case reservation for christian candidates. The condition, as framed, discloses an attempt to ensure that a christian candidate serves the community after graduation and not to ensure that the candidate is a bonafide christian.

The right of a minority institution to administer its affairs and for that purpose to ensure that candidates belong to its religion, language or denomination is protected by Article 30(1) of the Constitution of India. Where, however, a minority institution prescribes a condition that has no nexus, with the admission or the identity of a minority candidate, such a condition may legitimately be termed as unfair, exploitative and, therefore, unsustainable in law. The condition requiring a candidate to obtain a sponsorship letter, in my considered opinion, imposes an eligibility condition, that does not stand the test of fairness, is arbitrary, exploitative and, therefore, cannot form part of the eligibility criteria. As a consequence, the part of the prospectus that requires a candidate to obtain a sponsorship letter from bodies/Churches referred to in the prospectus and Clause 11 (a) of the prospectus are unfair, exploitative, arbitrary and have to be quashed. (emphasis added)

(12) The learned Single Judge has also repelled the contentions viz. (a) that the petitioner-respondent No. 1 has not impleaded the affected candidate; (b) he was aware of the condition in the prospectus; and (c) that the petition is belated. It has been categorically observed that the vacant seat has been filled up during pendency of the petition by diverting it from the category of "Christian Minority-Punjab" to that of "Christian Minority-All India (Non-Punjab)". In fact, the appellant-College in an apparent attempt to render the writ petition in fruituous, allotted the seat to a candidate from another category.

(13) We have heard Mr. D.S. Patwalia, learned counsel for the Appellant College, Mr. Bhriugu Duct Sharma for Mr. Eldo Eliyas appellant and Mr. Ramneek Vasudeva for the writ petitioner respondent No. 1.

(14) The nexus theory or theory of reasonable classification forbids class legislation. The classification must not be "arbitrary, artificial and evasive". A classification is

required to satisfy well known two conditions, namely:

- (a) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and
- (b) The differentia must have a rationale relation to the object sought to be achieved by the statute.

(15) However, after the judgment in *E.P. Royappa versus State of Tamil Nadu* (4), the concept of equality underwent change. It was observed that the "dynamic concept of equality cannot be cribbed cabined and confined" within the traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14".

(16) These principles of law when applied to clause 11 (a) of the Prospectus, would bring out apparent inconsistency with Article 14 of the Constitution. According to that clause, sponsorship letter from sponsoring body has to be obtained despite the fact a candidate has proved that he belongs to Christian community. He still needs to produce a sponsorship certificate. Such a requirement is diversion from the basic object that admission is to be given to candidates belonging to Christian community. The classification is based on the intelligible differentia between Christian (Minority Category) and Open Category. It would be creating micro classification, which would be arbitrary and result in edging out meritorious in preference to inferior candidate. One class of Christian candidates would be sponsored by a body of Christian whereas the other would not be. Can such a sub-classification be sustained particularly, when merit is sacrificed in the process. In *E.V. Chinnaiah versus State of Andhra Pradesh* (5), a Constitution Bench has observed that if a class within a class of members of Scheduled Castes is created then the same would amount to micro-classification or sub-classification. It would be violative of Article 14 of the Constitution. The observations made in *E. V. Chinnaiah*'s case (*supra*) reads thus:-

The conglomeration of castes given in the Presidential Order, in our opinion, should be considered as representing a class as a whole. The contrary approach of the High Court, in our opinion, was not correct. The very fact that a legal fiction has been created is itself suggestive of the fact that the Legislature of a State cannot take any action which would be contrary to or inconsistent therewith. The very idea of placing different castes or tribes or group or part thereof in a State as a conglomeration by way of a deeming definition clearly suggests that they are not to be sub-divided or sub-classified further. If a class within a class of members of the Scheduled Castes is created, the same would amount to tinkering with the List. Such sub classification

would be violative of Article 14 of the Constitution of India. It may be true, as has been observed by the High Court, that the caste system has to stuck up in the Society but with a view to do away with the evil effect thereof a legislation which does not answer the constitutional scheme cannot be upheld. It is also difficult to agree with the High Court that for the purpose of identifying backwardness, a further inquiry can be made by appointing a commission as to who amongst the members of the Scheduled Castes is more backward. If benefits of reservation are not percolating to them quitably measures should be taken to see that they are given such adequate or additional training so as to enable them to compete with the others but the same would not mean that in the process of rationalizing the reservation to the Scheduled Castes the constitutional mandate of Articles 14, 15 and 16 could be violated.(emphasis added)

(17) Similar views have been expressed in the Division Bench judgments of this Court rendered in the cases of Suresh Pal v. State of Haryana and others (CWP No. 19753 of 2004, decided on 26.10.2006); Gajey Singh v. State of Haryana (CWP No. 398 of 2004, decided on 6.7.2006) and Yadav Kalyan Prishad (Registered), Gurgaon v. State of Haryana and another (CWP No. 19837 of 2009, decided on 26.7.2010).

(18) If that be so then artificial classification introduced and created by issuance of sponsorship certificate by a body of Christians would not be permissible because such a certificate is no test of being a Christian. We express our agreement with the view that there cannot be mirco classification within the same class. Once a person is proved to be a Christian by passing Bible Test and producing Baptism Certificate, the proof that he belongs to Christian community stands furnished. To say that he must produce sponsorship letter from sponsoring body/Church duly signed by authorised signatory would be wholly unreasonable, unfair and capricious. In the face of such a condition the merit would give way and inferior candidates would come up. In the present case the writ petitioner-respondent No. 1 has stood at Sr. 3 in his category of 10 seats reserved for Christian Minority-Punjab. On account of lack of sponsorship certificate alone he has been denied admission. The seat has been shifted to Christian Minority-All India (Non-Punjab) quota candidate, namely, Mr. Eldo Elias. Therefore, we are not inclined to admit the appeal.

(19) Mr. Patwalia, has raised the issue that seat of Christian Minority-Punjab was offered to Mr. Eldo Elias before filing of the writ petition. However, we are of the view that nothing would turn on this argument. The fact remains that Mr. Eldo Elias belongs to Christian Minority All India (Non-Punjab) quota and far less meritorious than the writ petitioner-respondent No. 1. Therefore, he is not entitled to any seat in the quota meant for Christian Minority Punjab. For the reasons aforesaid, these appeals fail and are accordingly dismissed. We have been apprised that one seat under the All India MBBS quota is unfilled. The appellant-College is given liberty to consider the candidate at Sr. No. 15, namely, Mr. Eldo Elias against the aforesaid vacant seat. The appeals stands disposed of.