

CIVIL MISCELLANEOUS

Before D. S. Tewatia and P. S. Pattar, JJ.

KARAN SINGH, ETC.,—Petitioners.

versus

KURUKSHETRA UNIVERSITY, KURUKSHETRA, THROUGH REGISTRAR AND OTHERS,—Respondents.

Civil Writ Petition No. 4751 of 1975.

September 24, 1975.

Constitution of India (1950)—Articles 29(2) and 226—Private College receiving State aid—Students—Whether have a right to seek admission therein—Writ Petition—Whether competent against such College—The Kurukshetra University Act (XII of 1956) Section 4(a) and (k)—Schedule I Statute 4(w)—Ordinance XXI of 1974—Clause 22—University—Whether has power to appoint principal of a private college affiliated thereto—Code of Criminal Procedure (II 1973)—Section 144—Dispute regarding the management of a College—District Magistrate—Whether can appoint an administrator to run such college.

Held, that in view of clause (2) of Article 29 of the Constitution of India 1950, the students have a fundamental right for being considered for admission to an educational institution receiving aid out of State funds. (Para 12).

Held, that clause (2) of Article 29 of the Constitution confers a right on a student to have his application considered for admission even by a State-aided institution and, by a necessary implication, it casts a corresponding duty on such State-aided institution not to deny consideration of the claim of an applicant for admission. The conferment of right envisages the casting of a corresponding duty on the person against whom the right is granted, and when such person illegally refuses the right of such a person, then under article 226 of the Constitution of India the High Court is competent to issue writ to such a person even if that person is a private person. What has to be seen in deciding as to whether a writ is competent against an authority or a person is as to whether the law casts an obligation on that person and a corresponding right on the petitioner. If the law casts such an obligation on a private person and if such a private person acts illegally in carrying out that obligation or illegally depies to carry out that obligation, then a writ can be issued even to such a private person. (Para 14).

Held, that section 4 of the Kurukshetra University Act, 1956 indicates the ambit and scope of the activity that could be carried on by the University. The advancement of learning and dissemination of knowledge is, of course, the basic object of any University, but under the garb of power or duty the University cannot take over

the management and maintenance of an affiliated college whether run by a private management or the Government. The expression 'advancement of learning and dissemination of knowledge' cannot be so construed as to empower the University to take upon itself the duties of the management of a private college and appoint staff and select students for the College. What is within its power, while dealing with the delinquent management of an affiliated private college, is spelled out in clause 22 of Ordinance XXI of 1974. Appointment of the staff of a college is the primary function of the Management and, therefore, none, but the Management or any one acting for it can effect the appointment of a Principal, whether for temporary purpose or permanently. Thus, the University has no power to appoint a Principal of a private college which is affiliated to it.

(Paras 25, 27 and 30).

Held, that a perusal of sub-section (1) of section 144 of the Code of Criminal Procedure 1973 would show that the District Magistrate could give only two types of directions to any person : (1) to abstain from a certain act, and (2) to receive certain order with respect to certain property in his possession or under his management. The provisions of section 144 of the Code, by no stretch of imagination, can be construed either to mean that the District Magistrate could himself or authorise any other person to take over the entire management of a College and its premises and assets and the duty of running the College, regarding which any dispute existed which was likely to lead to breach of peace or to public disturbance. Thus the District Magistrate has no power under section 144 of the Code to appoint an administrator of a College to run the same when there are disputes regarding its Management.

(Paras 33 and 36).

Petition under Articles 226 and 227 of the Constitution of India praying that the following reliefs may be granted:—

- (a) *that a Writ of Prohibition be issued directing the Registrar, Shri S. S. Bali, Sub-Divisional Officer (Civil), Kaithal, The Station House Officer, Police Station City Kaithal, not to restrain the petitioners from attending their classes ;*
- (b) *that a writ of Certiorari be issued calling for the records of the respondents and after a perusal of the record it be declared that any proceedings if at all taken for the cancellation of the names of the petitioners from the list of the successful candidates be ordered to be quashed ;*
- (c) *that a suitable Direction be issued to the respondent to allow the petitioners to attend their classes as fulfilled students of this institution for which they were duly enrolled and issued valid receipts ;*

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- (d) *that a suitable Order be issued directing the College authorities to treat the petitioners and other students named in Annexure 'P-4' as regular students of the College and to provide all amenities and facilities for the proper conduct of their education.*
- (e) *that the production of the duly signed notice issued by the Principal of the College be ordered to be dispensed with ;*
- (f) *that the issuance of notices under High Court Rules and Orders Chapter V be ordered to be dispensed with ;*
- (g) *that the cost of this petition also be allowed.*
- (h) *that during the pendency of this Writ Petition the petitioners be ordered to be allowed to attend their classes provisionally by the respondents so that the lectures of the petitioners do not fall short and the respondents also be stayed from interfering in the entry of the petitioners in the College of Education in any manner.*

S. M. Ashri, Advocate, for the petitioner.

Mr. D. S. Lamba, Senior Deputy Advocate-General, Haryana and Shri R. P. Dahya, Advocate, for respondents Nos. 3 and 5.

J. L. Gupta, Advocate, for respondents Nos. 1, 2 and 4.

JUDGMENT

D. S. TEWATIA, J.—(1) In the two writ petitions Nos. 4751 and 5084 of 1975, common question of law and facts are involved and therefore, a common order is proposed to dispose them of.

(2) Since the material facts are identical in the two writ petitions, the facts alleged in Civil Writ No. 4751 of 1975 would suffice to be noticed. The facts alleged can be stated thus:

(3) A society registered as the Haryana Rural Education Society, Kaithal (respondent No. 6), hereinafter referred to as the Society, runs and manages, apart from one Jat High School at Kaithal, another institution known as the Rural College of Education at Kaithal, hereinafter referred to as the College. The aforesaid College was affiliated to Kurukshetra University and at the relevant time, one Shri B. D. Shaida, respondent No. 4, was the principal thereof. The facts further are that for the academic year 1975-76 applications

were invited for admission to the B.Ed. course in the aforesaid College and the Managing Committee of the College published the prospectus, a copy whereof is attached with the writ petition as annexure P. 1., which contained the qualification for admission and other relevant information besides the application form; that besides the prospectus the admission to B.Ed. courses conducted in various colleges including the College in question run by the Society (respondent No. 6) and the date of the interview were also got published in the newspaper by the Registrar of the Kurukshetra University; that in the aforesaid prospectus, annexure P. 1, minimum qualification for admission was indicated to be graduates in arts, science, agriculture and commerce, and candidates not having secured less than 45 per cent marks, and in case of scheduled castes and other prescribed categories not less than 40 per cent marks, were eligible for admission; that total seats fixed for B.Ed. course were 95; that the petitioners, like many others, applied for admission to the aforesaid College; that the College issued, after scrutinising their admission forms, interview cards (two such interview cards are annexed to the writ petition as annexures P. 2 and P. 3); that the petitioners and such other students, to whom the interview cards had been issued, were required to appear for interview before a Selection Committee presided over by the Principal, respondent No. 4, at 8.00 a.m. on 28th July, 1975; that the petitioners along with some other students appeared before the Selection Committee on 28th July, 1975 at the scheduled time and after the interview a list, annexure P. 4, of selected candidates, which bore the names of the petitioners, were displayed at the notice board; and that the Principal, respondent No. 4, on the said list had, however, appended the following note:

"In view of the crisis created by the local administration, it has been decided to select candidates purely on the basis of the marks obtained by them in their M.A./M.Sc. and B.A./B.Sc. examinations. The final list is on the notice board and its copies may be seen with the Head Clerk and Accountant of the College. 1 to 95 candidates must deposit their dues within 3 days; failure to do so will entitle the candidates on the waiting list to be admitted in the next 2 days. Regular classes will start with effect from 4th August, 1975".

That, in pursuance of the directions for deposit of fees within three days of the selection, the petitioners along with others deposited the

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college dues with the College authorities and they were issued receipts, original whereof are annexed to the writ petition as annexures P. 5 to P. 12; that the petitioners were qualified in all respects and no student having marks better than the petitioners was rejected out of the candidates, who had applied to the College authorities for admission in time; that on 4th August, 1975, the opening day of College, when the petitioners went to attend their classes in the College they were barred to attend the same by one Shri S. S. Bali, respondent No. 2, who claimed himself to be the incharge of the College: that to the protest of the petitioners and others that they had paid their College dues and were thus entitled to attend their classes, Shri Bali stated that he was not bound by the receipts issued by the office during the period he was not the Principal; that when they requested Shri Bali, that they be allowed to see Shri B. D. Shaida, the Principal of the College, they were informed that neither Shri Shaida nor they would be permitted to enter the College and if they created any fuss they would be made over to the police which were already posted outside the College; that when the petitioners and other students persisted they were informed by Shri Bali that only such of them would be admitted to the classes as would have the permission of the Sub-Divisional Officer (Civil), Kaithal; that when the petitioners sought an interview with the Sub-Divisional Officer (Civil), the latter declined to meet them and instead got it conveyed to them that they would approach the Civil Court for redress of their grievances; and this led the petitioners to invoke the writ jurisdiction of this Court for redress of their grievances against the action of the respondents, which they have termed as illegal, unwarranted, unjust, unconstitutional and uncalled for, in not allowing the petitioners to attend the College in question, *inter-alia*, on the ground (1) that they were duly selected by the Select Committee in accordance with the rules and regulations as well as conditions contained in the prospectus, annexure P. 1, issued by the College, and (2) that their selection for admission could not be cancelled by the respondents without hearing them when even the College dues had been got deposited from them by the College and they had been selected purely on merits.

(4) Five out of six respondents have filed their separate affidavits in reply to the allegations contained in the writ petition. On behalf of respondent No. 1, the affidavit is sworn to by the Registrar, Shri R. D. Sharma, and the stand taken therein is that the University

received complaint in regard to the admissions made in the year, 1974 to the College in question to the effect that the College authorities had taken bribes from the students, who had been admitted thereto, in the garb of donations for the College; that an Inspector of Colleges deputed by the Vice-Chancellor for making enquiries in the allegations, *vide* his report, annexure R. 1, confirmed the said allegations and so in order to prevent such corrupt practices, the respondent University issued instructions to all Colleges of Education, wherein procedure was laid down regarding admissions; that on 8th July, 1975, the Vice-Chancellor of the respondent University received various telephone calls from Kaithal complaining that the College in question was not issuing any application-form unless money was paid in advance whereupon the Vice-Chancellor deputed Professor Dool Singh, Dean, Faculty of Commerce and Head of the Department of Commerce and Management, Kurukshetra University, to investigate the complaint and report, that Prof. Dool Singh, *vide* report, annexure R. 2, reported that Shri M. S. Dhul, President of the College, stated to him that the College was meant for rural people and that not a single seat would be given to a candidate residing in an urban area; that when he asked the Incharge of the Office for an application form for admission, he was told that the same would be given on 12th July, 1975, although the last date of submission of the applications was 10th July, 1975; that on receiving the said report of Professor Dool Singh, the respondent University issued orders, dated 8th July, 1975, copy annexure R. 3, asking Shri M. S. Dhul, President of the College, to stop all admissions and forward all applications received by the Managing Committee of the College to the University and by the same order extended the date of submission of the application-forms to 22nd July, 1975; that on 21st July, 1975, a D.O. letter, copy annexure R. 4, was received by the Vice-Chancellor from Shri S. A. Khan, Superintendent of Police, Kurukshetra, stating therein that Shri M. S. Dhul, aforesaid and other members of the staff of the said College were making deliberate attempt to demand money for admission to B.Ed. classes and that he had been accepting money in the shape of donations and had been harassing the prospective candidates for admission to B.Ed. classes and Shri S. A. Khan also indicated in his D.O. letter, that he was initiating legal action against Shri M. S. Dhul and others; that Shri Dhul neither sent any reply to the order, annexure R. 3, nor complied therewith which necessitated a second letter, dated 22nd July, 1975, annexure R. 5, by a registered post which was received back with the report 'knowingly refused'; while in the mean time

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the University was flooded with complaints that the application-forms were not being supplied by the College to the prospective candidates for admission—one such complaint being annexure R. 6; that this conduct of the College authorities necessitated the extension of the last date of submission of the admission forms by the University to 30th July, 1975 and a telegram to that effect was also sent to the College authorities on 24th July, 1975, annexure R. 7, which was again received back with the remark 'knowingly refused'; that this non-co-operative attitude of the College authorities led the University to depute Shri I. S. Dahiya, Assistant Registrar, to go to Kaithal and notify to all concerned; that the date of submitting the application-forms was extended up to 30th July, 1975 and that the forms be obtained either from the office of the Principal of the College or from the University; that a copy of such a notice was personally pasted by him at prominent places in the College including the notice-board (copy annexure R. 8) and thereafter notice, annexure R. 9, to that effect was also published in the press—one such notice was published in the Tribune and Vir Pratap in the issue of 27th July, 1975; that on 26th July, 1975, Shri Tara Chand Gupta, dealing Assistant, was deputed by the answering respondent to go to Kaithal and collect admission forms from the Principal of the College who, on reaching there, found the College premises locked; that on 29th July, 1975, the respondent University received another D.O. letter, annexure R. 10, from Shri S. A. Khan, Superintendent of Police, Kurukshetra, wherein it was stated that Shri M. S. Dhul, along with other members had been committing extortion and dishonestly inducing the delivery of huge amounts from Rs. 2,000 to Rs. 5,000 in his favour; that the members of the management of the College were divided in regard to the distribution of money received by him in that illegal manner which carried the potentiality of creating unrest among student community and thus had serious repercussions in regard to law and order which required him to take preventive action; that Shri Khan, felt that preventive action was not sufficient and so he suggested that S.D.O. (Civil), Kaithal, be asked to run the College and a suitable person be deputed by the University for his assistance; that on the afore-said suggestion of Shri Khan, Shri S. S. Bali, (respondent No. 2) was sent to Kaithal to act as the Principal of the College and finalise admissions thereto; that one Dr. Y. P. Aggarwal, Reader in Department of Education, Kurukshetra, was nominated as the University nominee on the Selection Committee and the District

Magistrate was informed by the letter, annexure R. 11, to that effect; that Shri R. C. Gupta, an Assistant, had, with the permission of the S.D.O. (Civil), Kaithal, put-up a notice, annexure R. 12, on the notice-board to the effect, that no interview would be held on the aforesaid date, i.e., 28th July, 1975 and, therefore, no interviews were held on 28th July, 1975; that on that date it had been notified by respondent No. 2 (Shri S. S. Bali) that the interviews for selection would be held on 5th August, 1975; and that on the aforesaid date interviews were conducted by a Selection Committee consisting of respondents Nos. 2 and 3. It has been further mentioned that petitioner No. 1, who appeared for interview, was selected and was attending classes regularly; that respondent No. 4, i.e., the ex-Principal Shri B. D. Shaida, sent two communications to the respondent University, annexures R. 13 and R. 14, explaining therein the circumstances in which he was made to sign under duress a list showing the candidates-selected for admission without taking any interview; that although he tried to go to the S.D.O. (Civil) on receiving a telephone call from him, but he was prevented from doing so; and that after such a list had been signed by him he went to Narwana wherefrom he sent his letter of resignation to the University on 28th July, 1975.

(5) Shri B. R. Anand (respondent No. 3), Sub-Divisional Officer (Civil), Kaithal, besides raising a preliminary objection to the maintainability of the petition, on merits, apart from reiterating what had been stated by the Registrar in his affidavit, has additionally stated that the District Magistrate passed orders under section 144 of Criminal Procedure Code, annexure R. 3/1, and directed him to take over the administration of the College on 30th July, 1975 in his capacity as S.D.O. (Civil) and further empowered him to exercise all powers in that behalf; that he further directed that the Chairman, Members of the Executive Committee, Principal and Head Clerk of the Rural College of Education, Kaithal, should be prevented from interfering in the discharge of his (S.D.O.'s) duties in that respect; that petitioner No. 2, although appeared before the Selection Committee and selected on merits, but he did not deposit the College dues nor did he turn up thereafter in the College and thus forfeited his claim to admission, and petitioners Nos. 3 and 4 neither submitted their application-forms nor appeared before the Selection Committee and, therefore, had no claim to admission to the College; that from the office of the Principal of the College some papers were found and in one of them, annexure R. 3/2, 95 names of those candidates,

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who were selected to B.Ed. classes for the year 1975-76, were given; and that, besides the above, another paper under the signature of Shri B. D. Shaida, dated 28th July, 1975, which was a form of notice, was also found therefrom and it was to the following effect:

“In view of the crisis created by the local administration it has been decided to select candidates purely on the basis of marks obtained by them in their M.A./M.Sc. and B.A./B.Sc. examinations. The final list is on the notice-board and its copies may be seen with the Head Clerk and Accountant of the College. 1 to 95 candidates must deposit their dues within 3 days, failure to do so will entitle the candidates on the waiting list to be admitted in the next 2 days. Regular classes will start, with effect from 4th August, 1975.

(Sd.) . . .

Dated : **Kaithal,**

Principal.

the 28th July, 1975.”

It was further mentioned in the said return that the Selection Committee consisting of respondents Nos. 2 and 3 selected the students for admission on 5th August, 1975, after interview strictly on merits and their names were displayed on the notice-board and it was notified that the College would start functioning on 11th August, 1975 and the selected candidates were required to pay the College dues before that date.

(6) Shri B. D. Shaida, respondent No. 4, in his affidavit in reply to the allegations, has stated that after summer vacation the College reopened on 21st July, 1975; that he attended to his duties till 24th July, 1975 and thereafter took leave for 25th and 26th July, 1975; that on 27th July, 1975, which was a Sunday, Shri Ram Saran, Manager of the College, went to the deponent's residence at Ambala and asked him to accompany him (Shri Ram Saran) to Kaithal; that Shri Ram Saran first took him to Police Station, Kaithal, where Shri M. S. Dhul, President of the College, was confined; that the latter directed the deponent to be present in College for interviewing the candidates on 28th July, 1975 despite the fact that the deponent had informed Shri Dhul, that it would not be proper to hold interviews when the

last date for the submission of the forms had been extended up to 30th July, 1975; that on 28th July, 1975, the deponent reached the College at 8.00 a.m. where a large number of persons were present; that the Manager of the College asked him to start interviews; that despite his efforts to explain to the Manager that the University had extended the date for submission of application-forms to 30th July, 1975 and that somebody from the University might be coming the Manager insisted on starting interviews; that while he was talking to the Manager a telephone call was received from S.D.O. (Civil), Kaithal (respondent No. 3), requiring him (respondent No. 4) to see him; that when respondent No. 4 made efforts to go out of the College, he was ordered by the Manager to conduct the interviews and disobey the order of the S.D.O. (Civil) saying that he was neither under the S.D.O. (Civil) nor under the University; that the said Manager further told him that in the circumstances interviews would not be possible and, therefore, required him to sign a prepared list of candidates to be admitted to the B.Ed. classes; that he signed the aforesaid list under duress; that, in fact, no interview had been held, as no candidate had been called inside his office for interview; that after signing the list in question he left Kaithal without meeting the S.D.O. (Civil) or anybody else and reached Narwana, where, after consulting his elder brother, he sent in his resignation by post on the same date, i.e., 28th July, 1975; that thereafter he went to the Registrar, Kurukshetra University, on the same day and met him at his house at 5.30 p.m. and submitted to him a report, annexure R. 13, in regard to what had transpired in the College on 28th July, 1975; that the deponent met the Superintendent of Police, Kurukshetra, on 29th July, 1975, in his office and reported in writing the aforesaid facts to him as well; that he had a reason to believe that the admissions to B.Ed. classes were not being made fairly by the management, as the University guide-lines were not observed and a rumour was current that the management was taking donations from the students seeking admission to that class; and that since he did not want to become a party to such a scandal he consequently resigned with 24 hours' notice.

(7) Shri S. S. Bali, respondent No. 2, merely submitted the documents which consisted of a list of candidates that he and respondent No. 3 had selected for admissions, which was annexure R. 2/1, and a list of candidates, annexure R. 2/2, which depicted the names of the candidates who were borne on the aforesaid merit list as also on the list that had been earlier prepared by the erstwhile

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management of the College; and that he also furnished a copy of the guidelines laid down by the University, annexure R. 2/5, as also a copy of the notice, annexure R. 2/3, whereby the last date of submission of the application-forms was extended to 30th July, 1975.

(8) On behalf of respondent No. 6, the Society, an affidavit of Shri Shankar Lal, its Secretary, has been placed on the record. The plea taken on behalf of respondent No. 6 in the aforesaid affidavit is that the College of Education, Kaithal, was started by the respondent Society in the year 1970 and it was got duly affiliated to the Punjab University, Chandigarh, and later to the Kurukshetra University under the provisions of law; that the Kurukshetra University had adopted the Punjab University's Regulations for the purpose of governance and administration of the said College; that the powers of principal of an affiliated College are unfettered and he has full powers to use his discretion in all matters pertaining to internal administration of College which included the admission of students as well; that the respondent Society was an autonomous body under the various provisions of law and that respondent Nos. 1, 2, 3 and 5 had not been clothed with any power to interfere with the administration of the College and its internal matters including the admission of students; that the petitioners were duly selected and were, therefore, the students of this institution; that there were no internal disputes among the members and the management or the governing body in any manner; that the provisions of law which permit interference on the part of the University are limited and are only to the extent of the University Syndicate authorising the Vice-Chancellor to appoint a representative or representatives of the University on the managing body of the College for such period as may be prescribed by the Syndicate, and referred to rule 11.2, at page 164, of the Punjab University Calendar Volume I, (1973 Edition) in this regard; that the petitioners were eligible for admission to B.Ed. Class; that they had been duly selected at a regularly convened interview on merit basis and there was no occasion for any outside interference; that the number of applications received from the candidates totalled 158 and out of them 95 candidates, including the petitioners, were selected strictly on merit basis; that the number of application-forms that were sold out was 200; that the respondent-Society accepts the claim of the petitioners in all respects and considers them as students on the roll of the College and that as a result of the interference of respondents Nos. 1, 2, 3 and 5, it is handicapped in catering to the needs of these students; that the action of the respondents

Nos. 1, 2, 3 and 5 in preventing the petitioners from pursuing their studies amounts to rustication and expulsion of *bona fide* students of an affiliated College without due process of law; that no person, as appointed by the University, can legally function as a Principal of an affiliated College in any manner—the governing body being the only competent authority to appoint and remove such person; that in case the managing committee of the respondent—Society had been remiss in regard to the observance of any rules and regulations of the respondent University, then the Society could be penalised only in the manner stated in the Calendar and no rule or regulation or even provision of any statute authorises the University to superimpose its Principal on the institution run by the respondent—Society.

(9) Mr. J. L. Gupta, learned counsel for the respondent-University, has raised three preliminary objections to the maintainability of the writ petition: (1) that the petitioners have no legal right, much less a fundamental one, to admission to the College in question and, therefore, neither any writ partaking of the character of a writ of *mandamus* nor any direction can be issued to the respondents; (2) that no writ is competent against a private institution, i.e., the College in question to which the petitioners are seeking admission through this writ petition; and (3) that in the eventuality of the success of the writ petition, the students equal to the number of the petitioners shall have to be displaced from the College out of the students who had been selected by respondents Nos. 2 and 3 and, therefore, such students as are likely to be so displaced are a necessary party, as no order to their detriment could be passed, without violating the principles of natural justice, in their absence.

(10) Dealing with the first of the three preliminary objections that the petitioners have no legal right to seek admission or to get admission to a private college, it must be observed that the College in question is affiliated to the Kurukshetra University, respondent No. 1, and it is the admitted case that the College was receiving State aid. (letter from Haryana Government marked X). The learned counsel for the petitioners has sought to rest the right of the petitioners to admission to a State-aided educational institution under clause (2) of Article 29 of the Constitution of India. This clause reads:—

“No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of

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State funds on grounds only of religion, race, caste, language or any of them.”

Learned counsel for the respondent, countering the aforesaid stand of the petitioners, has urged that clause (2) of Article 29 of the Constitution is attracted only in the event when the admission to an educational institution envisaged in that clause is denied on the prohibited grounds mentioned therein. Elaborating his submission, the learned counsel stressed that in the present case, the admission of the petitioners to the educational institution in question is denied on the ground that they had not been duly selected for admission and not on any prohibited ground mentioned in clause (2) of Article 29 of the Constitution.

(11) The counsel for the petitioners has urged that in fact the petitioners were duly selected by a duly constituted Selection Committee in compliance with the provisions of the Kurukshetra University Act, the statutes, the ordinances and the regulations made thereunder as also the instructions issued by the University and further took up the stand that in any case the petitioners could not be denied the consideration of their applications by respondent No. 2, the Principal appointed to the College in question by respondent No. 1, even if, for the sake of argument, it was accepted that respondent No. 2 had the authority to select the students for admission to the College. Mr. Ashri, learned counsel for the petitioners, has sought substance for his aforesaid submission from the decisions in *The State of Bombay v. Bombay Education Society and others* (1), *The State of Madras v. Shrimati Champakam Dorairajan* (2), *Banshidhar v. University of Rajasthan and another* (3), and *Umesh Chandra Sinha v. V. N. Singh and others* (4). In *Bombay Education Society's case* (supra), the question involved was as to whether the students, whose mother tongue was not English, were entitled to take admission to an institution run by Anglo-Indian community where the medium of instruction was English. The argument advanced on behalf of the State in support of the circular whereby such students, whose mother tongue was not English, were debarred

(1) 1955 S.C.R. 568.

(2) 1961 S.C.R. 525.

(3) A.I.R. 1963 Rajasthan 172.

(4) A.I.R. 1968 Patna 3.

from taking admission to an institution where the medium of instruction was English, was that it was done to give impetus to the study and learning of Hindi which has been recognized as the *lingua franca* of the country and it was further urged that Article 29 of the Constitution was incorporated in the Chapter of Fundamental Rights only to protect the cultural and educational rights of the minorities. Their Lordships of the Supreme Court negated this contention and approved the following observation from *Shrimati Champakam Dorairanjan's case* (supra):—

“It will be noticed that while clause (1) protects the language, script, or culture of a section of the citizens, clause (2) guarantees the fundamental right of an individual citizen. The right to get admission into any educational institution of the kind mentioned in clause (2) is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens.”

In *Banshidhar's case* (supra), the following observations of Shinghal, J., who delivered the opinion for the Bench, are instructive:—

“The Jaswant College, Jodhpur, is admittedly a public institution which is maintained by the State exchequer for public benefit. All those who are eligible can, therefore, apply for admission to it and in the absence of any impediment, it cannot be said that they have no right to do so. All those who otherwise fulfil the requisite qualification, and so long as there is vacancy in the College, have a right to say that they cannot be discriminated against and shut out from being admitted in the College on arbitrary and illegal grounds. In this case the order refusing admission is a speaking order and it shows that admission has been denied because, according to the Principal, the petitioner was not eligible under the rules. The Court is, therefore, entitled to see whether denial of admission on the above grounds is justified.”

In *Umesh Chandra Sinha's case* (supra), where the question raised by the petitioner was that he had been denied admission on an illegal ground, it was held that the applicant was entitled to have his

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application considered on merit even if he could not claim the admission as of right. It was further held that even if there were applicants who had more marks than the petitioner, the petitioner could not be denied his right to challenge an ordinance of the University as being discriminatory.

(12) Mr. J. L. Gupta, learned counsel for the respondent-University relied for his submission on the ratio of *Satishwar Singh v. The Chief Commissioner, Union Territory of Chandigarh and others* (5). Tuli, J., in this case, had held that right of being selected for admission was not a fundamental right. Facts in that case were that certain seats were reserved in a certain medical institution for the *bona fide* residents of Union Territory of Chandigarh. The petitioner on the basis of his marks had been selected by the Union Territory Administration, but later on his selection was cancelled when it was discovered that he had filed false affidavit to the effect that he had not applied to other medical colleges for admission. It was discovered that he had applied for admission to other medical colleges and had indicated his domicile as being other than Chandigarh and it was against this background that the learned Judge held that the petitioner had no right to admission to the medical college in question as nominee of the Union Territory of Chandigarh. The right of admission, before the Court, was sought to be rested on Article 15 of the Constitution of India and, while construing the language of that Article, the observation that the petitioner's right of being selected for admission was not a fundamental right, was made by Tuli, J. Otherwise, it is too late in the day in view of the Supreme Court's decisions already noticed and the clear language of clause (2) of Article 29 of the Constitution to deny that the students have fundamental right for being considered for admission to an educational institution of the kind envisaged in the aforesaid clause. In view of the above, the contention of Mr. J. L. Gupta that the petitioners have no legal right to seek admission to the College in question is repelled.

(13) The second preliminary objection that the writ petition in question cannot be maintained as no writ could be issued against a private college is equally fallacious. For one thing, the relief in the

writ petition is sought against respondent No. 1 which is the University; respondent No. 2 Shri S. S. Bali who claimed to be the Principal of the College in question on the strength of an order, made by the University, respondent No. 1, appointing him to be the Principal of the said College, and the Sub-Divisional Officer (Civil), Kaithal, respondent No. 3. Writ against all the three respondents is clearly competent, for the case of the petitioners, as laid in the writ petition, is that they had been duly selected for admission to the College in question and had even deposited their fees, but they were not being allowed to study in the College and attend classes by respondent No. 2 who claimed himself to be the Principal of the College and respondent No. 3 who claimed himself to be the Administrator of the College. So far as the College management, which is respondent No. 6 to the petition, is concerned, it admits the claim of the petitioners and has taken a stand that they were duly admitted to the rolls of the institution and were entitled to study therein and that respondents Nos. 1, 2 and 3 were illegally interfering with their right to study in the said institution.

(14) Even if, for the sake of argument, it is admitted that the writ in the ultimate analysis is directed against the College in question, the writ is, nevertheless, maintainable even against the College which is a State-aided institution and clause (2) of article 29 of the Constitution confers a right on a student to have his application considered for admission even by a State-aided institution and, by a necessary implication, it casts a corresponding duty on such State-aided institution not to deny consideration of the claim of an applicant for admission. The conferment of right, by necessary implication and almost with as much certainty as the day follows the night, envisages the casting of a corresponding duty on the person against whom the right is granted, and when such person illegally refuses the right of such a person, then under article 226 of the Constitution of India the High Court is competent to issue writ to such a person even if that person is a private person. What has to be seen in deciding as to whether a writ is competent against an authority or a person is as to whether the law casts an obligation on that person and a corresponding right on the petitioner. If the law casts such an obligation on a private person and if such a private person acts illegally in carrying out that obligation or illegally denies to carry out that obligation, then a writ can be issued even to such a private person. In the present case, clause (2) of Article 29 of the Constitution has cast an obligation on a State-aided private institution not to

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deny admission to an applicant-student to the institution on the ground of religion, race, caste and language. The language of clause (2) clearly envisages a due consideration of the applicant's claim to admission before the stage for denial of admission can arise, and if a student's claim to admission is just not considered, how could he show as to on what grounds admission to him had been denied? For the reasons stated, we hold that although the relief is not sought against respondent No. 6, the Management of the College, yet even if in the ultimate analysis it is held that relief is sought against the Management of the College, the writ is maintainable against it.

(15) As regards the third preliminary objection that the writ petition deserves to be dismissed for non-joinder of necessary parties, the stand of the petitioners is that they have not asked for any relief against the students that are alleged to have been selected by the Selection Committee appointed by respondent No. 1, and, therefore such students were not necessary party to the present petition. It has been further contended on behalf of the petitioners that even if, for the sake of argument, it is accepted that in the event of the success of the petition the result would be that students selected by the Selection Committee of the University equal to the number of the petitioners shall have to be displaced unless the University increases the number of seats or accommodates them elsewhere in other educational colleges, the names of such students cannot be ascertained, the same not having been made known in the return by the respondents and, therefore, on account of uncertainty in regard to the names of students who may be likely to be affected by the result of the petition, they could not be impleaded as respondents to the present petition.

(16) We are of the opinion that the stand taken by the petitioners is perfectly correct and reasonable, for unless it is made known in the return as to who would be the students who are likely to be effected in the event of the success of the petition, it could not be possible for the petitioner to implead them as respondents. For the reasons stated, there is no merit in this preliminary objection raised by the respondents as well.

(17) The question that now arises for consideration is as to whether, when the management of the College not only accepts the

stand of the petitioners in its entirety both with regard to their having been duly selected for admission as also with regard to their having paid the dues of the College, it is open to respondent No. 2 Shri S. S. Bali claiming himself to have been appointed Principal on *ad hoc* basis of the College by respondent No. 1, and Shri B. R. Anand, Sub-Divisional Officer (Civil), Kaithal, claiming himself to have been appointed Administrator of the College by District Magistrate vide his order dated 29th July, 1975 passed under section 144 of the Code of Criminal Procedure, to prevent the petitioners from joining the College and pursuing their studies.

(18) It is not in dispute that the College in question was affiliated to the Kurukshetra University after complying with the requirements of the Kurukshetra University Act and the statutes, ordinances and regulations made thereunder in this regard. It is also not in dispute that till 28th July, 1975, respondent No. 6 legally constituted the management of the said College. It is further not in dispute that any change in the management could be effected only in accordance with the bye-laws of respondent No. 6, the Haryana Rural Education Society, Kaithal, which is a registered society. It can also not be disputed that appointment of the staff including the Principal was the function of the management and not of any outside authority including the University and the Government, though educational qualifications for the post of the Principal as also the other staff could be prescribed by the University. It is also the admitted case of the parties that 28th July, 1975, was initially fixed as the date of interview for admission and that on that day a list of 95 students strictly on the basis of their marks had been prepared by the Selection Committee, envisaged in the prospectus annexure P. 1, which was presided over by the Principal B. D. Shaida, respondent No. 4, though without coming face to face with the students i.e. without putting any questions to the students who had been selected.

(19) The Society, respondent No. 6, till 28th July, 1975, was, unquestionably, responsible for running the College in question and for managing its affairs and also for arranging for the selection of the students for admission to the College in question. The respondents Nos. 1, 2 and 3 have however, taken the stand that the selection made on 28th July, 1975, was no selection in the eye of law as

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the students had not actually been interviewed and the Principal had been made to sign a prepared list of 95 students. But before going into the question as to whether the selection made on 28th July, 1975 was valid or invalid, it has to be examined as to whether respondents Nos. 2 and 3 have any *locus standi* to say that the selection of the petitioners for admission to the College was invalid and then prevent them from pursuing their studies in the College.

(20) Therefore, the question arises (1) as to whether Shri S. S. Bali, respondent No. 2, is a legally appointed Principal of the College, whether on *ad hoc* or on permanent basis and (2) whether respondent No. 3, Sub-Divisional Officer (Civil), Kaithal, is duly appointed Administrator of the College in place of respondent No. 6.

(21) Mr. S. S. Bali, traces his authority to act as Principal to an order, passed by the University, appointing him as the Principal for the College in question. So, it has to be seen as to whether the University has any such power. Mr. J. L. Gupta, learned counsel for the respondents, argued that power to the University to act, as it had acted, flows from sub-sections (a) and (k) of the Kurukshetra University Act, 1956, (hereinafter referred to as the Act). Section 4 of the Act is in these terms :—

“4. The University shall exercise the following powers and perform the following duties, namely:—

- (a) to provide for research and instruction in such branches of learning as the University may think fit and to take such steps as it considers necessary for the advancement of learning and dissemination of knowledge ;
- (b) to hold examinations and grant such degrees, diplomas and other academic distinctions or titles to persons as may be laid down in the Statutes, Ordinances or Regulations ;
- (c) to confer honorary degrees or other distinctions on approved persons in the manner laid down in the Statutes ;

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- (d) to institute prizes, medals, research studentships, exhibitions and fellowships ;
 - (e) to receive gifts, donations, benefactions from Government and to receive gifts, donations and transfers of movable or immovable property from transferors, donors, testators, as the case may be ;
 - (f) to institute and appoint persons to professorships, readerships, lecturerships, fellowships, and chairs or posts of any description ;
 - (g) to co-operate with educational and other institutions in India and abroad, having objects similar to those of the University, by exchange of teachers, scholars and professors in such manner as may be conducive to their common objects ;
 - (h) to do all such things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the University ;
 - (i) to supervise and control the residence and discipline of the students of the University and to make arrangements for their health and welfare ;
 - (j) to deal with any property, belonging to or vested in the University, in such manner as the University may deem fit for advancing the objects of the University ;
 - (k) to maintain colleges located within the limits of the area referred to in sub-section (1) of Section 3-A or, subject to the provisions of sub-section (2) of that Section, recognize colleges not maintained by the University but located within the said area and to withdraw such recognition; and
 - (l) to frame Statutes, Ordinances or Regulations and alter, modify or rescind the same for all or any of the aforesaid purposes.

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(22) Mr. J. L. Gupta has next referred us to the power of the Vice-Chancellor to act in emergency envisaged by sub-clause (iv) of Statute 4 of Schedule I attached to the Act, which is in the following terms :—

“It, in the opinion of the ‘Upa-Kulapati’ (Vice-Chancellor), an emergency has arisen, which requires that immediate action should be taken, the ‘Upa-Kulapati’ (Vice-Chancellor) shall take such action as he deems necessary and shall report the same for confirmation at the next succeeding meeting of the authority which, in the ordinary course, would have dealt with the matter.”

(23) Mr. J. L. Gupta has taken the stand, basing himself on the aforesaid provisions of section 4 of the Act and the provisions in the Schedule I aforesaid, that it was open to the University, if it considered necessary for the advancement of learning and dissemination of knowledge, to go to the extent of taking the step of appointing the staff of an affiliated college including the Principal, select students for admission thereto and arrange for imparting of instructions to them.

(24) Mr. J. L. Gupta, in the alternative, has argued, basing himself on clause 22 of Ordinance XXI passed and approved by the Executive Council on 3rd January, 1974, that if it was open to the University to decline to accept a student of the affiliated college for the University examination if the said college had not been complying with the requirements of the Act and the Statutes or Ordinances or Regulations, made thereunder, and any instructions issued by it or on its behalf, then how could it be said that a minor punishment short of that, i.e. merely of denying to the students to continue their studies in the College, could not be imposed by the University on the students in question ?

*Clause 22 of the Ordinance XXI is in the following terms :—

“If at any time the Executive Council finds that a College is not complying with the requirements of the Act, Statutes,

Ordinances or Regulations of the University, or any instructions issued by it or on its behalf, the Executive Council will have the authority to impose any one or more of the following penalties :—

- (1) Students of the College concerned shall not be accepted for the University examination ;
- (2) the College staff shall be debarred from University work such as appointment as examiners, superintendents of examination centres, etc.;
- (3) the Principal or the teacher concerned shall be debarred from seeking election or nomination to a University body or his name shall be removed from the list of members of the University bodies ;
- (4) the recognition, granted to the College be withdrawn in part or in whole."

Since, apart from clause 22 of Ordinance XXI relied upon by Mr. J. L. Gupta, some of the other clauses of the said Ordinance also have a bearing on the case, so these also deserve notice. These are :—

- "1. The University shall recognise, for admission to its privileges, such Colleges as may be decided upon by the Executive Council from time to time.
- "2. A college applying for recognition shall send a letter of application, in the form prescribed by the University for this purpose (Appendix I) to the Registrar and shall satisfy the Executive Council :—
 - (a) that the College shall have a regularly constituted governing body. (This condition shall not apply in the case of Colleges maintained by the Government).
 - (b) that the qualifications of the teaching staff, their grades of pay and the conditions governing their tenure of office are such as to ensure efficient conduct of the courses of instruction to be undertaken by the College ;

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- (c) that the buildings in which the College is to be located, are suitable and that provision will be made in conformity with the rules of the University, for the residence, in the College, or in lodgings approved by the College, of students not residing with their parents or guardians, and for the supervision and physical welfare of students ;
- (d) that the provision has been or will be made for a Library ;
- (e) where recognition is sought in any branch of experimental science, arrangements have been or will be made in conformity with the rules of the University for imparting instructions in that branch of Science in a properly equipped laboratory or museum ;
- (f) that due provision will, so far as circumstances may permit, be made for the residence of the Head of the College and some members of the teaching staff in, or near, the College or the place provided for the residence of students ;
- (g) that the financial resources of the College are such as to make due provision for its continued maintenance ;
- (h) that the recognition of the College, having regard to the educational facilities provided by other Colleges in the same neighbourhood will not be injurious to the interests of education ; and
- (i) that the College rules fixing the fees (if any) to be paid by the students have not been so framed as to involve such competition with any existing College in the same neighbourhood as would be injurious to the interests of education.

The application shall further contain an assurance that after the College is recognized any transference of management and all changes

in the teaching staff shall be forthwith reported to the Vice-Chancellor, and that the institution shall faithfully observe the provisions of the University, as made from time to time.

3 to 6— * * * * *

7. If a college fails to start classes during the academic year for which permission has been given, the recognition for the course(s) concerned shall stand cancelled.

“8. A College may not, without the previous permission of the Executive Council, suspend instruction in course (s) of study for which it is authorised to teach.

9. * * * * *

10. * * * * *

11. Every College shall also furnish such reports, returns and other information as the Executive Council may require from time to time to enable it to judge the efficiency of the College.

12. The Principal of every recognised College shall submit to the Registrar, before the 31st August each year a report indicating :—

(a) the changes in the management ;

(b) changes in (i) the teaching staff and qualifications of new members (ii) other staff ;

(c) number and distribution of students ;

(d) income and expenditure of the previous financial year ;

(e) results of examinations ;

(f) scholarships ;

(g) condition of library ; and

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(h) number of students in the college hostel.

13. The following record must be kept by every recognised College and submitted, when required, to the officer nominated by the Vice-Chancellor :—

(1) A register of admissions and withdrawals. The register will give, in the case of every student, the date of admission, date of birth, name of birth-place, parentage, attendance at College examinations and results of such examinations, a record of University career, and date of withdrawal.

(2) Registers of daily attendance of students at lectures.

(3) A register of fees.

(4) A time-table.

14. The Executive Council shall cause every recognised College to be inspected from time to time by one or more competent persons authorised by it in this behalf.

Provided that such College shall be inspected ordinarily once in every three years, and at other times where in the opinion of the Executive Council such inspection is necessary.

15 to 22 * * * * *

23. Where the Executive Council proposes to withdraw the recognition of a College, in whole or in part, the Executive Council shall send, to the Head of the College concerned, a notice stating therein the grounds on which the action is proposed to be taken together with an indication that any representation in writing submitted on behalf of the College, within a specific period, shall be considered by the Executive Council. The period may, if considered necessary by the Executive Council, be extended.

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24. On receipt of the representation or on expiration of the period referred to in clause 23, the Executive Council shall consider the notice of motion, the statement and representation, if any, and make such order as the circumstances may require.
25. Where, by an order made under clause 24, the rights conferred by recognition are withdrawn in whole or in part, the grounds for such withdrawal shall be stated in the order and communicated to the Head of the College concerned."

(25) Now dealing with the contention that the power to the University to do what it has done flows from sub-section (a) and (k) of section 4 of the Act, it must be observed that section 4 of the Act indicates the ambit and scope of the activity that could be carried on by the University. The advancement of learning and dissemination of knowledge is, of course, the basic object of any University. But the question arises: Does this mean that under the garb of power or duty the University can take over the management and maintenance of an affiliated College whether run by a private management or the Government? If the power can be considered that comprehensive, then even if a private College does not desire to be affiliated to the University, then too it could compel affiliation of such a private institution.

(26) Admittedly, neither in the provisions of the Act that precedes or succeeds section 4 of the Act nor in any statutes, ordinances or regulations, it is envisaged that the University *suo motu* could affiliate a private College even against the wishes of its management. On the contrary, as the various clauses of the Ordinance XXI already reproduced show that the University accepts affiliation on an application made by the management of a private College and on being satisfied that the requirements envisaged for affiliation in the Ordinance XXI are fulfilled and, by necessary implication, rules out *suo motu* action, on the part of the University, to affiliate a private College.

(27) In our view, the expression 'advancement of learning and dissemination of knowledge' cannot be so construed as to empower the University to take upon itself the duties of the management

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of a Private College and appoint staff and select students for the College. What is within its power, while dealing with the delinquent management of an affiliated private College, is spelled out in clause 22 of the Ordinance XXI of 1974. Even by virtue of the powers under clause 22 aforesaid, the University could not impose the penalties enumerated therein without giving an opportunity of hearing to the management.

(28) It is the well-known canon of construction of statutes that an express mention of a thing includes the exclusion of something else (*expressio unius est exclusio alterius*) or to put it differently: when clause 22 of the Ordinance XXI is thus construed in the light of the above maxim, then the only conclusion that can be arrived at is that acting under clause 22 above the University could neither take over the management nor could cancel the selection of the students made by the management for admission to the College, otherwise, if the intention had been that the University could temporarily or permanently take over the management of the affiliated College, then the same would have been expressly mentioned therein.

(29) We are, therefore, clearly of the opinion that the University, respondent No. 1, had no power or authority to take over the management of the College in question on account of the failure of the management to comply with the instructions issued by the University in regard to the postponement of the last date of submission of the application forms from 10th July, 1975, to 22nd July, 1975, and then finally to 30th July, 1975, and the consequent postponement of date of interview from the date earlier fixed i.e. 28th July, 1975 to a future date.

(30) Mr. J. L. Gupta, learned counsel for the respondents, in the alternative argued that the action of the University in appointing Mr. S. S. Bali, respondent No. 2, as the Principal and the finalisation of selection of the students for admission to the College did not tantamount to the taking over of the Management of the College. We do not think there is even the least merit in the contention advanced by the learned counsel. Surely, appointment of the staff of the College is the primary function of the Management and, therefore, none but the Management or any one acting for it could effect

the appointment of the Principal, whether for temporary purpose or permanently. We, therefore, have no doubt in our mind that the action of the respondent-University in appointing Mr. S. S. Bali as the Principal of the College was clearly without authority.

(31) Now, coming to the alternative submission put forward by Mr. J. L. Gupta, learned counsel for the respondents, that if it was within the power of the University to refuse to accept a student for the University examination, then surely it should be understood that the University had the power to do anything short of that, i.e. of deciding as to who is to be admitted to the College and if admitted, then whether he is to continue on the roll of the College.

(32) We are afraid, here again the learned counsel has sought to mix up two aspects, one that surely lies within the power of the University as the affiliating body and the other within that of the Management of the College. It is for the Management of the College to admit students to the courses conducted by the institution managed by it and expel a student from the College and it is not for the University to take the administrative action in this regard. What it could do was to lay down the guidelines, principles and qualifications for admission and where the Management of the College did not abide by them, then to take action as envisaged under clause 22 of the Ordinance 21 of 1974.

(33) As regards the right of the Sub-Divisional Officer (Civil), Kaithal, respondent No. 2, to act as the Administrator of the College, it rests on the order of the District Magistrate dated 29th July, 1975 passed in exercise of power conferred on him by section 144 of the Code of Criminal Procedure, 1973. The relevant part of section 144, Criminal Procedure Code reads:—

“144. (1) In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order

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stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

- (2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex-parte*.
- (3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.
- (4) No order under this section shall remain in force for more than two months from the making thereof :

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) * * * * *

(6) * * * * *

(7) * * * * *

A perusal of sub-section (1) of section 144, Cr. P.C., would show that the District Magistrate could give only two types of directions to any person : (1) to abstain from a certain act, and (2) to receive certain order with respect to certain property in his possession or under his management.

(34) For the moment, accepting as to what it stated in the order which necessitated the passing thereof is all true, it has to be seen as to whether the order passed by the District Magistrate could be passed. The operative part of the order is in the following terms :—

“Whereas it has been made to appear to me that you have the management of the Rural College of Education, Kaithal, District Kurukshetra, and that complaints have been received regarding adoption of dubious means for extortion of money over and above the prescribed fees from candidates seeking admission to the College for the B. Ed. course. Admission forms are only supplied to such candidates as are in a position to make the payment demanded and as such a large number of prospective candidates, otherwise eligible, have been denied an opportunity to apply for admission. A case F.I.R. No. 166, dated 24th July, 1975 under sections 420/384 I.P.C. has already been registered against Shri Mahinder Singh, the Chairman, which is still under investigation, and that due to above mentioned mal-practices the members stand divided and there is a dispute over distribution of the illegally accepted money. There is also great discontentment among the public and student community and all this is likely to occasion in a disturbance of public tranquillity or an affray.

And whereas, I am satisfied that there are sufficient grounds as enumerated above for an immediate action and that directions are necessary for a smooth working of the College administration and to prevent a disturbance of the public tranquillity or an affray.

Now, therefore, in exercise of the powers conferred on me by section 144 of the Code of Criminal Procedure, 1973, I,

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Deepak Das Gupta District Magistrate, Kurukshetra, do hereby order that the Sub-Divisional Magistrate, Kaithal, shall administer the College and shall exercise all the powers in this behalf and that further you are prevented from interfering in the discharge of his duties in this respect."

A perusal of the aforesaid operative part of the order would show that what the District Magistrate has done is that it had appointed Sub-Divisional Officer (Civil), Kaithal, as the Administrator of the College to run the same and has further ordered that the persons named in the order shall not interfere with the action of the Sub-Divisional Officer (Civil), Kaithal, in the running of the College.

(35) In our opinion, the language of sub-section (1) of section 144, Cr. P.C., does not admit of any other construction but that the District Magistrate was competent only to direct the persons named in his order constituting the Management to refrain from a certain act or acts, which act, in the light of the grounds mentioned in the order, necessitated the passing of that order *viz.* to refrain from holding of the College or dealing with its finances or in the alternative to take orders from the District Magistrate in regard to the property, in the possession of the Management regarding which the dispute, if any, existed between the members of the Management of the College as mentioned in the order which was the alleged illegally accepted amount from the students in the form of donations for the College.

(36) There is no mention that any dispute in the Management existed regarding the College premises or regarding the appointment of the staff or regarding the manner of interviewing the students or the date thereof. Surely, the provisions of section 144, Criminal Procedure Code, by no stretch of imagination, can be construed either to mean that the District Magistrate could himself or authorise any other person to take possession of the property in dispute (in this case the entire management of the College and its premises and assets and the duty of running the College) regarding the possession whereof any dispute existed which was likely to lead to breach of peace or to public disturbance. For the view that the

District Magistrate does not have any such power, we draw sustenance from the following observations of Reuben, J. in *Rupan Singh and others v. Emperor*, (6) with which we are in respectful agreement :

“On a perusal of section 144, Cr. P.C., there is not the slightest doubt that the discretion to the Sub-Inspector to harvest the crop was without jurisdiction. The powers of a Magistrate under section 144 extend to a direction, in the proper circumstances, to any person ‘to abstain from a certain act or to take certain order with certain property in his possession or under his management.’ Here the property was not in the possession or under the management of the Sub-Inspector of Police. The Magistrate had no authority to put him in possession of that property and direct him to harvest the crop.”

(37) Since the direction to the members constituting the management was merely to refrain from interfering with the acts of Sub-Divisional Officer (Civil), Kaithal, in his capacity as the Administrator of the College, whose appointment as such was itself clearly illegal, as already held. so such a direction not to interfere with the acts and actions of the Sub-Divisional Officer which were themselves illegal and unauthorised, was clearly beyond the pale of the authority of the District Magistrate to issue.

(38) It has been urged on behalf of respondent No. 3 that the illegality of the order of the District Magistrate is neither under challenge in the writ petition nor could it be gone into by the Court without impleading the District Magistrate as respondent to the writ petition. In this regard learned counsel for respondent No. 3, Mr. R. P. Dahya, placed reliance on the following observations of Subha Rao, J. in *Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar and another* (7) :

“To summarize in a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties.”

(6) AIR 1944 Patna 213.

(7) A.I.R. 1963 S.C. 786.

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There is no dispute with the proposition enunciated by their Lordships, but the ratio of the aforesaid observation is attracted only when the order is sought to be quashed. In the present case, the order has not been sought to be quashed by the petitioners. However, the fact that the order is not sought to be quashed cannot prevent the Court from going into its legality when the legality of an act of a person who is a party to the petition depends on a finding as to whether the order to which such a party traces its power to act is a legal or an illegal one. In this regard, one can fall back upon an analogy from a criminal case reported as *Waryam Singh v. The State*, (8), wherein the question arose in the High Court as to whether in such a case it is open to the appellate Court to find, there being no Government appeal against the acquittal of such acquitted persons, that, although it cannot interfere with such acquittal, such persons or some of them had been wrongly acquitted and had in fact taken part in the commission of the alleged act in association with the appellant and on this ground hold that the appellant was rightly convicted. A Division Bench of this Court, to which I was a party and delivered the opinion, held, following a Full Bench of the Allahabad High Court in *Gulab v. State*, (9), that it is open to the Court, while dealing with the case of an appellant as to whether he had common intention with his co-accused and while considering his guilt a finding could be given that the finding of the trial Court acquitting the co-accused was not legal, though there being no appeal against order of acquittal, and the same could not be reversed; but the finding that the co-accused were, in fact, guilty, could be used to convict the appellant with the aid of section 34 IPC. In view of the above, it was not necessary for the petitioners to implead the District Magistrate as one of the respondents to the writ petition. Nor for that matter, it was even necessary for their purpose to directly impugn the order of the District Magistrate in this writ petition. It was enough for them to challenge the act of the Sub-Divisional Officer (Civil), Kaithal, in the running of the administration of the College and preventing them from joining the college as illegal and without authority.

(8) 1972 P.L.R. 687.

(9) A.I.R. 1951 All. 660.

(39) Learned counsel for the respondents, however, contended that the legality of the acts of respondents 1 and 2 has been challenged on certain specified grounds in the writ petition, and that a ground that the S.D.O. (Civil), respondent No. 3, did not have the authority to act as the administrator of the College because he could not be so appointed by the District Magistrate has not been taken therein.

(40) It is no doubt true that in the petition an express ground to the above effect has not been taken, but the petitioners have in general terms called in question the acts of the respondents as illegal and without authority. So it was incumbent on the S.D.O. (Civil) as also on respondent No. 2 Shri Bali, to show that they had the legal authority to act in the manner they did. In view of the above, we rule that neither respondent No. 2 had any legal authority to act as the Principal of the College nor had respondent No. 3 such authority to act as the administrator of the said College.

(41) Once that is held, then they are nobody in their aforesaid capacity to call in question the selection of the petitioners for admission to the College or prevent them from joining the classes, if the management of the College is satisfied that the petitioners have been duly selected for admission. While saying so, we should not be understood to mean that the University is precluded to see when the time comes for the acceptance of the students to the examination held by it as to whether the management has been conducting itself in accordance with the provisions of the Act, statute, ordinance, regulations and the instructions issued by the University. In case it finds that the College management has not been so acting, then it would be open to it to take action against them as envisaged in clause (22) or Ordinance 21 aforesaid.

(42) It must further be clearly understood that we are not even for a moment assuming that either the University, respondent No. 1, or the District Magistrate acted in any *mala fide* manner in passing the orders for the appointment of respondent No. 2 as the Principal and respondent No. 3 as the administrator of the College respectively. We are even prepared to concede that assumptions regarding the conduct of the management and the truth of the allegations against it may be well-founded and the

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motive underlying their actions may well be laudable, but the Court while considering the legality of an act of a party is only concerned as to whether the law permits that person to act in the manner he has and not as to whether the motive that prompted the authority to act in the manner it did was good or laudable. Even in the case of outlaws and desperadoes, the law does not permit their out right liquidation though this may have been intended to serve the laudable purpose of saving the society from harassment at their hands.

(43) Before parting with the judgment, we may observe that none of the respondents has disputed the allegations in the petition that the petitioners had been selected strictly on merit in accordance with the marks obtained by them and according to the criteria of eligibility notified by the University nor has it been disputed that the petitioners had gone to the College on 4th August, 1975 to join classes and they had been prevented from doing so by Shri Bali, respondent No. 2, even when they had told him that they had receipts and they had paid their College dues after due selection; that he in the end, when the petitioners insisted on joining the College, informed them that he would admit them only after they get permission from the S.D.O. (Civil); and that when they approached S.D.O. (Civil), he even refused to meet them and conveyed to them that they should approach the Court for redress.

(44) The legality of the interview has been assailed by the respondents only on the ground that, in fact, no proper interview took place on 28th July, 1975, as the students had not been called in by the Selection Committee and a prepared list had been forced upon it to adopt. It is, however, not their case that the candidates, included in the list of the selected candidates, were either not eligible for admission or that the selection was not strictly in accordance with the marks obtained by them.

(45) The second attack against the validity of the selection made on 28th July, 1975 was that the University had already extended the date for the submission of the application-forms to 30th July, 1975 and thus no interview could be held by the Selection Committee of the management of the College on 28th July, 1975 and that, in any case, the Selection Committee, which held the

interview and finalised the list on 28th July, 1975, was incomplete inasmuch as neither the nominee of the University nor that of the Government was present as the time of interview nor did they sign the list of the selected candidates.

(46) Needless to say that these are the matters about which the College Management will have to satisfy the University at the relevant time and in case the University, respondent No. 1, holds on to the view that the College management had been flouting the instructions of the University or had not been complying with the provisions of the Act, ordinance, rules and regulations or the conditions of affiliation, it would be open to it to take any appropriate action, after giving due opportunity to the management, in accordance with law.

(47) In the result, we allow the petitions with costs and commend the respondents, more particularly respondents Nos. 1, 2 and 3, to allow the petitioners to join the College and attend the classes.

Pritam Singh Pattar, J.

N. K. S.

FULL BENCH

Before O. Chinnappa Reddy, Acting Chief Justice, Bhopinder Singh

Dhillon and Surinder Singh, JJ.

GANDA SINGH,—*Petitioner.*

versus

THE STATE OF HARYANA, ETC.,—*Respondents.*

Civil Writ No. 3521 of 1972.

August 2, 1976.

Constitution of India 1950—Articles 19, 352 and 359(1)—Presidential Order suspending during emergency enforcement of rights under Article 19—Pending proceedings involving enforcement of such rights—Whether to be suspended and kept pending—Interim orders passed in such proceedings—Whether can be modified or vacated.