

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP (C) 6715/2019 & CM APPL.28233/2019, CM**
APPL.28385/2019

Judgment reserved on : 05.07.2019

Date of decision : 11.07.2019

N P ASHLEY & ORS. Petitioners
Through: Mr. Jayant Bhushan, Sr. Adv.
with Mr. Sunil J Mathews,
Advocate

versus

THE UNIVERSITY OF DELHI AND ORS. Respondents
Through: Mr. Mohinder JS Rupal, Adv.
for R-1.
Mr. A. Mariarputham, Sr. Adv.
with Mr. Rajesh Roshan, Mr.
Rahat Bansal, Advs. For R-2 &
3.
Mr. Romy Chacko, Adv. for R-
4.
Mr. Apoorv Kurup, Adv. for R-
5.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners vide this petition challenge the decision of the respondent nos.2 & 3 i.e. the Supreme Council of the St. Stephen's College (hereinafter referred to as the '**College**') and the Governing Body & Society of the '**College**' through its Chairman, St. Stephen's College, University Enclave, North Campus, New Delhi, vide which it

was reflected on the website of the '**College**' to the effect that all Christian candidates aspiring to be students of the '**College**', would be interviewed by a board comprising one Christian member nominated by the Supreme Council from the Supreme Council or the Governing Body.

2. A further prayer that has been made by the petitioners is to the effect that no member of the respondent no.2 i.e. the Supreme Council of the '**College**' apart from the respondent no.4 i.e. the Principal of the '**College**' be allowed to be a member of the interview panel for admissions for the academic year 2019-20 to the St. Stephen's College.

3. During the course of submissions that had been made on 12.06.2019 qua CM APPL.28231/2019, which was a prayer seeking an interim restraint for any persons other than the Principal of the '**College**' as a member of the Supreme Council of the respondent no.2 being restrained from being in any interview panel for the admission of the students, reference had been made to the message from the Chairman of the '**College**' annexed as Annexure P-5 to the petition, with which the petitioner was aggrieved, which was to the effect:

*"The Supreme Council had taken a decision at its meeting held on 12th March, 2019 to take steps to ensure that the right of the Christian minority for 50% seats in admissions to the College was safeguarded. The Supreme Council has the power to address and oversee all matters affecting the Christian character of the college. In keeping with this the Supreme Council decided that for the admissions for the academic year 2019-2020 to the College, **there would be a member of***

the Governing Body nominated by the Supreme Council to oversee the admission process. This in no way would impact the standard of education or of the students who would be admitted to college. The Supreme Council wishes to reiterate the fact that the high academic standards of the College continue to remain pre-eminent and to this end the Supreme Council remains committed.

This communication is made in clarification of the misrepresentation of the Principal's Report which was reported in the media."

4. During the course of the proceedings on 12.06.2019, it was submitted on behalf of the respondent nos.2 & 3 and the respondent no.4 that the said message dated 12.05.2019 was sought to be confined to the extent of the details in the '**College**' Prospectus, 2019-2020 which as per the reply on behalf of the respondent nos.2 & 3 and the respondent no.4 is stated to be dated 22.05.2019. As per averments made in para 7 of the reply of the respondent nos.2 & 3 and the respondent no.4, which is stated to be vide Clause-7 of the said prospectus to be confined to the Christian candidates only in as much as Clause 7 of the prospectus reads to the effect:

"All Christian candidates will be interviewed by a Board comprising one Christian member nominated by the Supreme Council from the Supreme Council or the Governing Body."

5. During the course of the proceedings on 12.06.2019, it was also submitted on behalf of the respondent nos.2 & 3 and the respondent no.4 that the Christian member to be nominated by the Supreme

Council for interviewing of the Christian candidates would be only a member of the Governing Body of the '**College**' in terms of its Constitution with reliance having been placed on Clause 6 of the said Constitution which describes the Governing Body of the said college which reads to the effect:

“The Governing Body of the College shall normally consist of 18 persons. These shall be members of the Society as mentioned in subparagraphs a, b, c, d, e, f, g, h, i, j, k, l, m of rule 1. The procedure of their appointment or election and the duration of their term as members of the Governing Body shall be the same as laid down for their membership of the Society.

The Chairman of the Society (Bishop of the Diocese of Delhi) shall be the Chairman of the Governing Body. The Governing Body may also from among its own members elect a Vice-Chairman if it deems necessary. The Governing Body shall appoint a Recording Secretary on the recommendation of the Principal, who shall issue notices of the

meetings, maintain proper records of the proceedings and perform such other secretarial functions as the Governing Body may direct. The Principal shall be the Member-Secretary of the Governing Body.

The Chairman and the Vice-Chairman shall be members of the Church of North India.”

6. A submission was made on behalf of the petitioner nos. 1, 2 & 3 on 12.06.2019 to the effect that they fear induction of the management quota through induction of a Christian member nominated by the

Supreme Council from the Supreme Council or the Governing Body as per Clause 7 of the prospectus dated 22.05.2019, qua which it has already been submitted on behalf of the respondent no.4 **that the Christian member so nominated would be only one who is the member of the Governing Body alone** and that in terms of Clause 5 of the Constitution of the '**College**' it has been categorically stipulated thereby to the effect:

"The Supreme Council of the College shall have no jurisdiction over the administration of the College."

The Supreme Council of the College shall meet at such times not being less than once annually, and either at the College or elsewhere, as the Bishop of the Diocese or the Chairman of the Governing Body shall appoint, notice thereof being given in such manner as shall be deemed sufficient. At the annual meeting of the Supreme Council, the Principal of the College shall submit a report of all matters affecting the religious and moral instruction of the students of the College and of matters affecting its religious character as a Christian College of the Church of North India and shall state for consideration any changes which may be contemplated."

7. Reliance was placed on behalf of the petitioners then on 12.06.2019 and now on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***St. Stephen's College Vs. Union of India (1992) 1 SCC 558*** with specific reference to observations in para 60 of the said verdict which reads to the effect:

"60. The right to select students for admission is a part of administration. It is indeed an important facet of administration. This power also could be regulated but the regulation must be reasonable just like any other regulation. It should be conducive to the welfare of the minority institution or for the betterment of those who

resort to it. The Bombay Government order which prevented the schools using English as the medium of instruction from admitting students who have a mother-tongue other than English was held to be invalid since it restricted the admission pattern of the schools. The Gujarat Government direction to the minority run college to reserve 80 per cent of seats for Government selected candidates with a threat to withdraw the grant-in-aid and recognition was struck down as infringing the fundamental right guaranteed to minorities under Article 30(1) of the Constitution. In *Rt. Rev. Msgr. Mark Netto v. Government of Kerala* the denial of permission to the management of a minority school to admit girl students was held to be bad. The Regional Deputy Director in that case refused to give sanction for admission of girl students on two grounds; (i) that the school was not open as a mixed school and that the school has been run purely as a boys school for 25 years; and (ii) that there was facility for the education of girls of the locality in a nearby girl school which was established by the Muslims and was also a minority institution. This Court noted that the Christian community in the locality wanted their girls also to receive education in the school maintained specially by their own community. They did not think it in their interest to send their children to the Muslim girls school run by other minority community. The withholding of permission for admission of girl students in the boys minority school was violative of Article 30(1). It was also observed that the rule sanctioning such

refusal of permission crosses the barrier of regulatory measures and comes in the region of interference with the administration of the institution, a right which is guaranteed to the minority under Article 30(1). The Court restricted the operation of the rule and made it inapplicable to the minority educational institution. In *Director of School Education Government of Tamil Nadu v. Rev. Brother G. Arogiasamy*, the Madras High Court had an occasion to consider the validity of an uniform procedure prescribed by the State Government for

admission of candidates to the aided training schools. The Government directed that the candidates should be selected by the school authorities by interviewing every candidate eligible for admission and assessing and awarding marks in the interview. The marks awarded to each candidate in the interview will be added to the marks secured by the candidate in the S.S.L.C. public examination. On the basis of the aggregate of marks in the S.S.L.C. examination and those obtained at the interview the selection was to be made without any further discretion. The High Court held that the method of selection placed serious restrictions on the freedom of the minority institution to admit their own students. It was found that the students of the minority community could not compete with the students belonging to other communities. The applications of students from other communities could not be restricted under law. The result was that the students of minority community for whose benefit the institution was founded, had little chance of getting admission. The High Court held that the Government order prescribing the uniform method of selection could not be applied to minority institutions."

8. It was submitted on behalf of the petitioners that in terms of Clause 5 of the Constitution of the '**College**' and in view of the verdict of the Hon'ble Supreme Court in **St. Stephen's College Vs. Union of India (supra)**, the induction of a Christian member nominated by the Supreme Council from the Governing Body as sought to be submitted on behalf of the respondent no.4 is in violation of the terms of the Constitution of the '**College**' itself.

9. On behalf of the respondent nos.2 & 3 and the respondent no.4 it was submitted in relation to the said aspect that the Constitution of the '**College**' set forth along with the petition has to be read in a composite form and that Clause 5 thereof cannot be read in isolation to

the other contents of the Constitution of the '**College**' itself with specific reference also to Clause 11 of the said Constitution which reads to the effect:

“All matters pertaining to religious instruction or the religious character of the College shall be the sole concern of the Supreme Council and any decision of the Supreme Council on these matters shall be binding on the Governing Body.”

10. Reference was also made on behalf of the respondent nos.2 & 3 and the respondent no.4 to Clauses 3 & 4 of the Constitution of the '**College**' which read to the effect:

“3. The religious and moral instruction of the students of the College and all matters affecting its religious character as a Christian College of the Church of North India shall be under the control of the Supreme Council of the College, consisting of the following members of the Society, all of whom must be members of the Church of North India, or of some other Church in communion therewith, or of any other duly constituted Christian Church, viz:

(a) The Bishop of the Diocese of Delhi, CNI, who shall be the Chairman

(b) Two persons appointed by the Bishop of the Diocese (under Rule 1-b) (c) The person appointed by the Church of North India Synodical Board of Higher Education (under Rule 1-g)

(d) The person appointed by the Diocesan Board of Education (under Rule 1-h)

(e) The Principal of the College (Member-Secretary).

4. The Supreme Council of the College shall have the control of the religious and moral instruction of students

of the College and of all matters affecting its religious character as a Christian College of the Church of North India; and, in addition, shall appoint, after proper advertisement, the Principal of the College who shall be a member of the Church of North India or of a Church that is in communion with the Church of North India.”

to thus submit that for the religious and moral instruction of the students of the ‘**College**’ in relation to matters affecting its religious character in terms of Clause 11 of the Constitution itself, the religious instruction and the religious character of the College has essentially to be the sole concern of the Supreme Council and any decision of the Supreme Council on these matters would be binding on the Governing Body and it has thus been submitted on behalf of the respondent nos.2 & 3 and the respondent no.4 that the Clause 7 of the prospectus of the respondent no.2, which is sought to be confined to the extent that the nominated Christian member for the interview board would be only a person from the Governing Body does not in any manner violate the terms of the Constitution of the St. Stephen’s College i.e. specifically Clause 5 thereof.

11. Reliance was also placed on behalf of the respondent nos.2 & 3 and the respondent no.4 on the verdict of the Hon’ble Supreme Court in **St. Stephen’s College** (supra) with specific reference to the observations in para 49 thereof, which read to the effect:

“49. The applications are sorted out for each course of study under the direct supervision of the Tutor of admission, and are then sent to two teachers of the department concerned for scrutiny. These applications

are then further scrutinised in relation to the combination of subjects taken by the students at his last examination and the order of preference indicated by him regarding the course in which admission is sought by him. At this stage in accordance with the cut-off percentage given by the departments for different combination of subjects, the two teachers of the department concerned, out of whom one is the Head of the Department and the other is a nominee of the Department, prepare a list of potential

to contend that the said observations of the Hon'ble Apex Court in the case of the ***St. Stephen's College*** (supra) itself do not bring forth that there can be none other than those mentioned in the Clause 3 of the Constitution of the St. Stephen's College in the interview panel.

12. It was submitted on behalf of the respondent no.4 whilst placing reliance on the verdict of the Hon'ble Supreme Court in ***The Ahmedabad St. Xavier's College Society and Ors. vs. State of Gujarat and Ors. (1974) 1 SCC 717*** with specific observations in para 182 of the said verdict which read to the effect:

“182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. We can perceive no reason why a representative of the University nominated by the Vice

Chancellor should be on the Selection Committee for recruiting the Principal or for the insistence of head of the department besides the representative of the University being on the Selection Committee for recruiting the members of the teaching staff. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them.”

to submit that the tone and temper in relation to its outlook and philosophy is the most important facet of the right to administer the education of the ‘**College**’, which is a minority institution and that for the maintenance of Christian philosophies, the induction of a Christian member nominated by the Governing Body into the interview panel for selection of Christian candidates alone, is essential for the maintenance of the tenets of Christianity.

13. Vide order dated 12.06.2019 qua CM APPL.28231/2019, the application made by the petitioner seeking an interim restraint against the presence of any other member of the Supreme Council i.e. the respondent no.2 apart from the respondent no.4 in the interview panel for conducting of the interview for Christian candidates alone, it was held that there appears to be nothing discrepant in the said submission made on behalf of the respondents that the induction of a Christian member nominated by the Governing Body for selection of Christian candidates, *alone* was essential for maintenance of the tenets of Christianity nor does it appear in any manner that the induction of a

Christian member to the Governing Body for interviewing only Christian candidates for admission to the St. Stephen's College can in any manner be termed to be in violation of Clause 5 of the Constitution of the '*College*' and the prayer seeking grant of an interim restraint against the induction of a Christian member who essentially as per the submission of the respondent no.4 itself has to be one forming the part of the Governing Body for interviewing of Christian candidates **alone** through the respondent no.2, cannot be granted and the said application was thus declined.

14. **It is significant to observe that the petitioners assailed the said order dated 12.06.2019 vide LPA 418/2019 before the Hon'ble Division Bench of this Court and vide order dated 26.6.2019 therein the said appeal was disposed of as withdrawn along with pending applications indicating thereby that the petitioners had withdrawn the challenge to the interim order dated 12.06.2019 whereby the prayer made by the petitioners seeking a restraint against any other member of the Supreme Council than the respondent no.4 being present in the interview panel for conducting of the interview of Christian candidates alone, - was declined.**

15. Submissions that have now been made qua the petition have been in addition to the submissions that were made on 12.06.2019 and *inter alia* reliance was placed on behalf of the petitioners on the verdict of the Hon'ble Supreme Court in *T.M.A. Pai Foundation and Ors. Vs. State of Karnataka and Ors. (2002) 8 SCC 481* with specific

reference to observations in para 152 of the said verdict which read to the effect:

“152. At the same time, the admissions to aided institutions, whether awarded to minority or non-minority students, cannot be at the absolute sweet will and pleasure of the management of minority educational institutions. As the regulations to promote academic excellence and standards do not encroach upon the guaranteed rights under Article 30, the aided minority educational institutions can be required to observe inter se merit amongst the eligible minority applicants and passage of common entrance test by the candidates, where there is one, with regard to admissions in professional and non-professional colleges. If there is no such test, a rational method of assessing comparative merit has to be evolved. As regards the non-minority segment, admission may be on the basis of the common entrance test and counselling by a state agency. In the courses for which such a test and counselling are not in vogue, admission can be on the basis of relevant criteria for the determination of merit. It would be open to the state authorities to insist on allocating a certain percentage of seats to those belonging to weaker sections of society, from amongst the non-minority seats.”

to contend that the presence of a member of the Supreme Council of the respondent no.2 in the interview panel for Christian candidates alone apart from the Principal of the college i.e. the respondent no.4 would detract from the observance of the *inter se* merit amongst the eligible minority applicants and passage of common entrance test and would be violative of the Constitution of India.

16. Vide para 450 of the said verdict, the Hon'ble Apex Court had deliberated upon question no.4, which was to the effect:

“Q.4. Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated?”

and the same was answered to the effect:

A. Admission of students to unaided minority educational institutions, viz., Schools where scope for merit based selection is practically nil, cannot be regulated by the State or the University (except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards).

Right to admit students being an essential facet of right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the University may not be entitled to interfere with that right in respect of unaided minority institutions provided however that the admission to the unaided educational institutions is on transparent basis and the merit is the criteria. The right to administer, not being an absolute one, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof and it is more so, in the matter of admission to undergraduate Colleges and professional institutions.

The moment aid is received or taken by a minority educational institution it would be governed by Article 29(2) and would then not be able to refuse admission on grounds of religion, race, caste, language or any of them. In other words it cannot then give preference to students of its own community. Observance of inter se merit amongst the applicants must be ensured. In the case of aided

professional institutions, it can also be stipulated that passing of common entrance test held by the State agency is necessary to seek admission.”

17. The petitioners thus submit that the decision of the respondent nos.2 & 3 and the respondent no.4 dated 12.05.2019 is unprecedented and violates Clause 5 of the Constitution of the ‘**College**’. It is however submitted on behalf of the petitioners that no minority institute in exercise of its rights under Article 30 of the Constitution of India can indulge in maladministration.

18. On behalf of the respondent nos.2 & 3 and the respondent no.4, the main contesting parties to the present petition, submissions that had been made on 12.06.2019 were reiterated in relation to the aspect that the Constitution of the ‘**College**’ has to be read in a composite form and that the Clause 5 thereof cannot be read in isolation to the other contents of the Constitution of the respondent no.2 itself with specific reference also to Clause 11 of the said Constitution which reads to the effect:

“All matters pertaining to religious instruction or the religious character of the College shall be the sole concern of the Supreme Council and any decision of the Supreme Council on these matters shall be binding on the Governing Body.”

Clauses 3 & 4 of the Constitution of the respondent no.2 were also relied upon which have already been adverted to hereinabove.

19. The respondent nos.2 & 3 and the respondent no.4 also placed reliance on the verdict of the Hon’ble Supreme Court in ***The Ahmedabad St. Xavier's College Society and Ors. vs. State of***

Gujarat and Ors. 1974) 1 SCC 717 with specific reference to the observations in para 182 which have already been adverted to hereinabove.

20. Reliance was also placed on behalf of the respondent nos.2 & 3 and the respondent no.4 on the verdict of the Hon'ble Supreme Court in ***Secretary, Malankara Syrian Catholic College Vs. T. Jose and Ors. (2007) 1 SCC 386*** elucidating the principles laid down in ***T.M.A. Pai (supra)*** reiterated in ***P.A. Inamdar Vs. State of Maharashtra*** whereby the Hon'ble Supreme Court laid down vide para 19 of the said verdict which reads to the effect:

“19. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights :

a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;

b) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;

c) To admit eligible students of their choice and to set up a reasonable fee structure;

d) To use its properties and assets for the benefit of the institution;

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not

intended to place the minorities in a more advantageous position vis-a-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/Lecturers by adopting any rational procedure of selection.

(v) Extention of aid by the State, does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).”

21. It is essential to advert to para 28 of the said verdict which reads to the effect:

“28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited, to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

22. The respondent nos.2 & 3 and the respondent no.4 have also placed reliance on the verdict of the Hon'ble Supreme Court in **St. Stephen's College (Supra)** with specific observations in para 30 thereof, which reads to the effect:

“30. Surprisingly, the Delhi University in the pleading, has neither denied nor admitted the minority character of the College. But the counsel for the University have many things to contend which will be presently considered. Mr. Gupta, counsel for the petitioner in T.C. No. 3 of 1980 has specifically urged that the College was established not by Indian residents, but by foreign Mission from Cambridge and therefore, it is not entitled to claim the benefit of Article 30(1). From the counter affidavit filed by Dr. J. H.

Hala - the Principle of the College in W. P. Nos. 13213-14 of 1984 and from the publication of "The History of the College" the following facts and circumstances could be noted : The College was founded in 1881 as a Christian Missionary College by the Cambridge Mission in Delhi in collaboration with the Society for the Propagation of the Gospel [SPG] whose members were residents in India. The College was found in order to impart Christian religious instruction and and education based on Christian values to Christian students as well as others who may opt for the said education. The Cambridge Brotherhood with plans of establishing the Christian College in Delhi sent the Cambridge Mission whose members were : Rev, J. D. Murray, Rev. E. Bickarsteth, Rev. G. A. Lefroy, Rev. H. T. Blackett, Rev. H. C. Carlyon and Rev. S. S. Allnutt, of the said members of the Cambridge Mission, Rev. Allnutt, Rev. Blackett and Rev. Lefroy teamed up with Rev. R. R. Winter of the SPG to establish the College. It will be seen that Cambridge Mission alone did not establish the College. The Cambridge Mission with the assistance of the members of the SPG who were residents in India established the College. The contention to the contrary urged by Mr. Gupta, counsel for the petitioner in T.C. No. 3 of 1980 is, therefore, incorrect. The purpose of starting the College could be seen from the Report of 1878 to the Cambridge Brotherhood and it states "the students after leaving St. Stephen's Mission School joined non Christian College and lost touch with Christian teachings the case would be otherwise if we were able to send them from our school to a College, where the teachings would be given by Christian professors and be permeated with Christian ideas." (F. F. Monk in A History of St. Stephen's College, Delhi, Calcutta, 1935, p. 3). In October 1879 the Cambridge Committee expressed the desirability of imparting instruction also in secular subjects."It was also felt that the influence of the missionaries would be greatly increased if they held classes in some secular subjects and

did not conform their teachings to strict religious instruction"

31. Originally, the College building was housed in hired premises paid for by the SPG. A new building was eventually constructed by the Society for the Propagation of the Gospel wherein the foundation stone bore the following inscription To the Glory of God And the Advancement of Sound Learning And Religious Education The new building of the College was eventually opened on December 8, 1881, by Rev. Allnutt. On the said building on the front of the porch, at the top of the parapet, a 'cross' in bas - relief was placed and immediately under the bracket the words "Ad Dei Gloriam" had been inscribed which have since been adopted as the College motto

32. Today the new College building in the University campus has also a large 'cross' at the top of the main tower and in the front porch is inscribed the St. Stephen's motto "Ad Dei Gloriam" to perpetuate and remind the students the motive and objective of the College, namely, "The Glory of God."

33. There is also a chapel in the College campus where religious instruction in the Christian Gospel is imparted for religious assembly in the morning

34. It would thus appear that since its foundation in 1881, St. Stephen's College has apparently maintained its Christian character and that would be evident from its very name, emblem, motto, the establishment of a chapel and its religious instruction in the Christian Gospel for religious assembly. These are beyond the pale of controversy Constitution of the College

35. It is said that during the early part of the College history, it was managed by the Mission Council - a totally Christian body. Late in 1913 it was registered as a society and a Constitution was formulated on November

6, 1913 which was adopted by the SPG Standing Committee and by the Cambridge Committee. The Constitution as it stands today again maintains the essential character of the College as a Christian College without compromising the right to administer it as an educational institution of its choice. The Constitution of the College consists of Memorandum of the Society and Rules. Clause 2 of Memorandum states that "the object is to prepare students of the College for University degrees and examinations and to offer instruction in doctrines of christianity which instruction must be in accordance with the teachings of the Church of North India"

23. It has been submitted on behalf of the respondent nos.2 & 3 and the respondent no.4 that the management of the '**College**' as observed by the Hon'ble Supreme Court itself in *St. Stephen's College (supra)* is being looked after by the Supreme Council and the Governing Body and thus the presence of a person nominated from the Governing Body alone of the '**College**' by the Supreme Council in the interview panel for selection of **Christian candidates alone** does not in any manner detract from the merits of the candidature of a student to obtain admission to the '**College**' in any manner in as much as the admission programme of the '**College**' as observed in para 49 of the verdict of the Hon'ble Supreme Court in *St. Stephen's College (supra)* makes it very clear that the opinion of all the members is taken into account and the final list of candidates selected for admission is put up on the basis of consensus between all of them and thus the presence of a Christian member of the Governing Body alone as nominated by the Supreme Council would not in any manner detract from the fairness of the admission process.

24. The grievance of the petitioners is to the effect that in terms of the verdict of the Hon'ble Supreme Court in *T.M.A. Pai Foundation and Ors. Vs. State of Karnataka and Ors (supra)* itself *inter se* merit between the students of the Christian category in terms of para 152 of the said verdict has to be maintained.

25. **It is essential to observe that candidates called for the interview by the College are only after they have achieved the requisite cut off of the College even for the Christian category and thus as observed in para 50 of the verdict of the Hon'ble Supreme Court in *St. Stephen's College (supra)* which reads to the effect:**

“50. To Christian students, relaxation up to 10 per cent is given. The Scheduled Castes/Scheduled Tribes candidates who are having a minimum of 50 per cent of marks are called for interview for selection to Honours courses. For B.A. pass course, a further concession to them is granted and the qualifying marks are reduced even below 50 per cent. As far as sportsmen and sportswomen are concerned, national or State level players are given concession normally up to 10 per cent and in exceptional cases up to 15 per cent or even more. However, a Christian student, who is below the cut - off percentage by more than 10 per cent is never called for interview.”

makes it apparent that even the Christian candidate below the cut off of more than 10% is not called for the interview. The same thus itself makes it apparent that it cannot in any manner be contended that by the presence of Christian member of the Governing Body as nominated by the Supreme Council of the College in the interview panel for the interviewing Christian candidates alone would in any manner impinge on the education

standards of the institution and it was observed vide paras 53 & 54 of the said verdict by the Hon'ble Supreme Court to the effect:

"53. Article 30(1) provides"

30. Right of minorities to establish and administer educational institutions. - (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

*"54. The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institutions. **This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served.** But the standard of education are not a part of the management as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly of affect it. The state, therefore has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others. There is a wealth of authority on these principles. See : State of Bombay Education Society, (1955 (1) SCR 568 : 1954 AIR(SC) 561), .Kerala Education Bill, 1957, Re 1959 SCR 995 : 1958 AIR(SC) 956) Sidhrajibhai Sabhai v. State of Bombay (1963 (3) SCR 837 : 1963 AIR(SC) 540), Rev. Father Proost v. State of Bihar (1969 (2) SCR 73 : 1969 AIR(SC) 465), and*

State of Kerala v. Mother Provincial (1970 (2) SCC 417 : 1971 (1) SCR 734). ”

26. It is essential to observe that the oral interview which is a supplementary test and not an exclusive test for assessing the suitability of a candidate for college admission and even the interview confers no wide discretion to the Selection Committee to pick and choose any candidate of their choice and that they have to select the best among those who are called for the interview as observed vide paras 63 & 64 of the said verdict, which read to the effect:

“63. The oral interview as a supplementary test and not a exclusive test for assessing the suitability of candidates for college admission has been recognised by this Court. But at the same time, to avoid arbitrariness in the selection it has been repeatedly held that there shall not be allocation of high percentage of marks for oral interview test. Where candidate's personality is yet to develop, it has been emphasised that greater weight has per force to be given to performance in the written examination and the importance to be attached to the interview test must be minimal. The Court has generally indicated that interview marks should not be more than 15 per cent of the total marks. (See: R. Chitralkha and Ors. v. State of Mysore and Ors.; A. Peeriakaruppan v. State of Tamil Nadu; Miss Nishi Maghu and Ors. v. State of Jammu and Kashmir; Ajay Hasia etc. v. V. Khalid Mujib Sehravardi; Lila Dhar v. State of Rajasthan and Ors. and Koshal Kumar Gupta v. State of Jammu & Kashmir.

64. There is nothing on record to suggest that the interview conducted by the Selection Committee was contrary to the principles laid down by this Court in the aforesaid decisions. We see neither any arbitrariness nor any vice or lack of scientific basis in the interview or in the selection. The interview confers no wide discretion to

the Selection Committee to pick and choose any candidate of their choice. They have to select the best among those who are called for interview and the discretion is narrowly limited to select one out of every 4 or 5. In these premises, we would defer to the choice and discretion of the Selection Committee so long as they act properly and not arbitrarily and act within the recognised principles.”

27. During the course of the hearing vide order dated 05.07.2019, it was considered essential that the respondent nos.2 & 3 and the respondent no.4 placed on record on an affidavit of their authorized representatives, the list of the nominated Christian members of the interview board from the Governing Body for the interview to be conducted for the Christian candidates alone. The said list has been submitted as a true copy of the list of nominees on the interview panel with their qualifications in terms of the order dated 05.07.2019 on record by the respondent nos.2, 3 and the respondent no.4 on 06.07.2019 and the nominees on the interview panel are depicted as under:

S. No.	Subject	Nominee	Qualification
1.	Chemistry	Mr. Deepak Mukarji, Former Corporate Affairs Chief, Shell India.	B.A. Eco (H), Senior Management Development at IIMD Lausanne Switzerland, Henley Management School UK.
2.	Sanskrit	Dr. Renish	M.A., Ph.D.

		<i>Geevaghese Abraham, Bursar, College Faculty Member, Department of English</i>	
3.	<i>English</i>	<i>Rev. Dr. Monodeep Daniel Dean, College Head, Delhi Brotherhood Society</i>	<i>Ph.D</i>
4.	<i>Physics</i>	<i>Mrs. Anuradha Amos, Principal, St. Thomas School, Mandir Marg</i>	<i>M.A., M.Ed.</i>
5.	<i>History</i>	<i>Mr. Deepak Mukarji, Former Corporate Affairs Chief, Shell India</i>	<i>B.A. Eco (H), Senior Management Development at IIMD Lausanne Switzerland, Henley Management School UK.</i>
6.	<i>B.A. Prgramme</i>	<i>Dr. Renish Geevaghese Abraham, Bursar, College Faculty Member, Department of English</i>	<i>M.A., Ph.D.</i>
7.	<i>Philosophy</i>	<i>Rev. Dr. Monodeep Daniel Dean,</i>	<i>Ph.D.</i>

		<i>College Head, Delhi Brotherhood Society</i>	
8.	<i>Economics</i>	<i>Mr. Deepak Mukarji, Former Corporate Affairs Chief, Shell India</i>	<i>B.A. Eco (H), Senior Management Development at IIMD Lausanne Switzerland, Henley Management School UK.</i>
9.	<i>B. Sc. Programme</i>	<i>Mr. Deepak Mukarji, Former Corporate Affairs Chief, Shell India</i>	<i>B.A. Eco (H), Senior Management Development at IIMD Lausanne Switzerland, Henley Management School UK.</i>
10.	<i>Mathematics</i>	<i>Mr. Deepak Mukarji, Former Corporate Affairs Chief, Shell India</i>	<i>B.A. Eco (H), Senior Management Development at IIMD Lausanne Switzerland, Henley Management School UK.</i>

It is apparent from the qualifications for the disciplines put forth that each of them on the interview panel is well educated.

28. A contention was sought to be raised during the course of submissions made on behalf of the petitioners that the Christian member of the Governing Body as nominated by the Supreme Council if he/she be an academic alone, the petitioners would have no grievance to the presence of such a Christian academic forming the part of the Governing Body as being nominated by the Supreme Council to the interview panel for the Christian members for the said interview panelists would be with the academic bent of mind.

29. **Chiefly, the contention sought to be raised was specifically to the effect that a priest of the Church ought not to be a member of the interview panel for the Christian candidates alone in as much as the aspect of determination of the measurement of the Christianity of a candidate cannot be determined through the interview panel at the sacrifice of the altar of the merits of the candidature of a candidate on the academic scale.**

30. At the outset, it is essential to observe as has repeatedly been observed hereinabove that as even the Christian candidates called for the interview of the *College* as observed by the Hon'ble Supreme Court in *St. Stephen's College (Supra)* cannot be those who have more than 10% less than the cut off score of the '*College*', the same itself is a measure of the academic excellence of the candidate. Apart from the same, as observed hereinabove, the names of the members of the Governing Body nominated on the interview panel as submitted on 06.07.2019 on behalf of the respondent nos.2 & 3 and the respondent no.4 are apparently well educated with seasoned qualifications in as much as their qualifications are as under:

<i>S. No.</i>	<i>Qualifications</i>
1.	<i>B.A. Eco (H), Senior Management Development at IIMD Lausanne Switzerland, Henley Management School UK.</i>
2.	<i>M.A., Ph.D.</i>
3.	<i>Ph.D</i>
4.	<i>M.A., M.Ed.</i>
5.	<i>B.A. Eco (H), Senior Management Development at IIMD Lausanne Switzerland, Henley Management School UK.</i>
6.	<i>M.A., Ph.D.</i>
7.	<i>Ph.D.</i>
8.	<i>B.A. Eco (H), Senior Management Development at IIMD Lausanne Switzerland, Henley Management School UK.</i>
9.	<i>B.A. Eco (H), Senior Management Development at IIMD Lausanne Switzerland, Henley Management School UK.</i>
10.	<i>B.A. Eco (H), Senior Management Development at IIMD Lausanne Switzerland, Henley Management School UK.</i>

they are all apparently post-graduates and seasoned scholars even having doctorates.

31. That the institute which is a minority institution seeks to maintain its Christian tenets and its Christian outlook and philosophy cannot be sought to be assailed by the petitioners on the anvil of

Article 14 of the Constitution which in no manner is infringed in the instant case. Furthermore, it is not the contention of the petitioners that a Christian member of the Governing Body has been nominated by the Supreme Council of the '*College*' to be a member of the interview panel **for candidates of all religions** to thereby take away from their rights for admission to the '*College*'.

32. Significantly, there has been no grievance put forth by any Christian student of being in any manner discriminated against by the decision of the respondent no.2 i.e. the Supreme Council of the '*College*' to put forth a Christian member of the Governing Body of the '*College*' as a member of the interview panel for the Christian candidates alone.

33. The petition is devoid of all merits and is thus dismissed.

JULY 11th, 2019/vm

ANU MALHOTRA, J.