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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21<sup>st</sup> JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 5426/2023**

ST STEPHENS COLLEGE

..... Petitioner

Through: Mr. A. Mariarputham, Senior Advocate with Mr. Romy Chacko, Mr. Prashant Kumar, Mr. Ankit Sharma, Mr. Sachin Singh, Ms. Anuradha Arutham, Advocates

versus

UNIVERSITY OF DELHI AND ANR

..... Respondents

Through: Mr. Mohinder J.S. Rupal & Mr. Hardik Rupal, Advocates for University of Delhi.

Mr. Chetan Sharma, ASG and Mr. Apoorv Kurup, CGSC with Mr. Ojaswa Pathak, Ms. Apoorva Jha, Mr. Akhil Hasija, Mr. Shivansh Dwivedi, Ms. Kirti, Advocates for Respondent/UGC.

+ **W.P.(C) 6481/2023**

JESUS AND MARY COLLEGE

..... Petitioner

Through: Mr. Romy Chacko, Mr. Sachin Singh & Mr. Prashant Kumar, Advocates.

versus

UNIVERSITY OF DELHI

..... Respondent

Through: Mr. Mohinder J.S. Rupal & Mr. Hardik Rupal, Advocates for University of Delhi.

Mr. Chetan Sharma, ASG and Mr. Apoorv Kurup, CGSC with Mr.



Ojaswa Pathak, Ms. APoorva Jha, Mr. Akhil Hasija, Mr. Shivansh Dwivedi, Ms. Kirti, Advocates for Respondent/ UGC.

Mr. Ravikesh K. Sinha, Advocate  
Ms. Avnish Ahlawat, Standing Counsel with Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik & Ms. Aliza Alam, Advocats for Respondents/ GNCTD.

+ **W.P.(C) 7155/2023**

SHARON ANN GEORGE

..... Petitioner

Through:

Mr. Arun Bhardwaj, Senior Advocate with Mr. Akash Vajpai, Mr. Abhishek Sharma, Ms. Sakshi Raghav, Advocates.

versus

ST STEPHENS COLLEGE & ORS.

..... Respondents

Through:

Mr. A. Mariarputham, Senior Advocate with Mr. Romy Chacko, Mr. Prashant Kumar, Mr. Ankit Sharma, Mr. SACHIN Singh, Ms. Anuradha Arutham, Advocates for Respondent No.1.

Mr. Chetan Sharma, ASG and Mr. Apoorv Kurup, CGSC with Mr. Ojaswa Pathak, Ms. APoorva Jha, Mr. Akhil Hasija, Mr. Shivansh Dwivedi, Ms. Kirti, Advocates for Respondent/ UGC.

Mr. Mohinder J.S. Rupal & Mr. Hardik Rupal, Advocates for University of Delhi.



**CORAM:  
HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT (ORAL)**

**CM APPL. 25497/2023 (Exemption) in W.P.(C) 6481/2023  
CM APPL.27889/2023 (Exemption) in W.P.(C) 7155/2023**

Allowed, subject to all just exceptions.

**CM APPL. 28075/2023 in W.P.(C) 5426/2023**

1. This is an application on behalf of Respondent No.2 for condonation of delay in filing counter affidavit.
2. For the reasons stated in the application, the delay of four days in filing the counter affidavit is condoned.
3. The application is disposed of.

**W.P. (C) 5426/2023&C.M. APPL. 21227/2023 (Stay)  
W.P. (C) 6481/2023 &C.M. APPL. 25496/2023 (Stay)  
W.P.(C) 7155/2023&CM APPL. 27890/2023 (Interim directions) &CM  
APPL.36834/2023 (Early hearing)**

1. The Petitioners in W.P.(C) 5426/2023 and W.P.(C) 6481/2023 seeks to challenge the decision dated 08.12.2022 of the Executive Council of the University of Delhi and the Notification dated 31.12.2022 insisting on 100% weightage for CUET score for admission to minority quota in the St. Stephens College and declare them ultra vires to the Constitution of India.
2. According to the Petitioner, the impugned decision of the University of Delhi and the Notification dated 30.12.2022 is contrary to the decision dated 12.09.2022 passed by this Court in W.P.(C)8814/2022, i.e.,St.Stephens College v. University of Delhi &Anr., 2022 SCC OnLine Del 2893.



3. W.P.(C) 8814/2022 was filed by the St. Stephens College for quashing of letter dated 09.05.2022, which reads as under:-

*“This is with reference to your e-mail dated 20th April, 2022 regarding admission process for the session 2022-2023 at St. Stephen's College. In this regard, I am to inform that the admission policy, as approved by the Academic Council of University of Delhi, is applicable on all colleges (Constituent/Affiliated) of University of Delhi.*

*2. As per the admission policy, except wherever specified, the admissions for the session 2022-2023 shall be on the basis of the merit of Common University Entrance Test (CUET)-2022 scores. It shall be conducted by the National Testing Agency, Government of India.*

*3. With regard to your college, taking note of the fact that it is a Minority institution (for candidates belonging to Christian community), the University has decided that 50% of the open seats shall 'be filled solely on the basis of merit of the CUET score. However, remaining 50% seats for minority candidates shall be filled on the basis of combined merit of 85% weightage to the CUET score and 15% weightage to the interview to be conducted by St. Stephen's College.*

*4. There must be a single merit list for the admission of candidates belonging to Christian community regardless of any denominations/sub-sects/sub-categories within the Christian minority community.*

*5. In view of the above, you are required to abide by the admission policy as detailed in Point 3 & 4 above, which is applicable for admission of students in St. Stephen's College for the session 2022-2023.”*

4. The writ petition also challenged the Communication dated



24.05.2022 directing the St. Stephens College to withdraw its Admission Prospectus-Undergraduate (UG) Programmes, 2021-22, and to issue a Public Notice stating that University of Delhi's admission policies shall be applicable to the St. Stephens College for UG Programmes for the Session 2022-23.

5. At this juncture, it is pertinent to mention that in the year 1980, a Circular had been issued by the University of Delhi directing all its Affiliated/Constituent colleges to admit students for UG Courses solely on the basis of the marks obtained in the qualifying examination. Aggrieved by the said Circular, St. Stephens College approached the Apex Court by filing a writ petition under Article 32 of the Constitution of India contending that, being a minority run institution under Article 30(1) of the Constitution of India, the minority institution can devise its own admission process.

6. The Apex Court vide its judgment rendered by five Judges Bench in St. Stephen's College v. University of Delhi, (1992) 1 SCC 558, held that being a minority institution, the Circular dated 09.06.1980 will not be applicable to the St. Stephens College and it would be entitled to have its own procedure for admitting students in order to maintain the minority character of the institution.

7. In accordance with the said decision, St. Stephens College had brought out a unique procedure for conducting an interview for both General category and Minority category after short-listing the candidates who had achieved cut-off marks in the qualifying examination, which was the 12th Standard Examination. The Apex Court was of the opinion that merit judging on the basis of scores obtained by students in different qualifying examinations adopting different standards may not be fair and proper and, therefore, the procedure adopted by the minority institution is permissible.



8. After the advent of the Common University Entrance Test (CUET), a decision was taken to conduct a single competitive examination at the national level to ascertain the merit of the candidates who have come from various State Boards and a Notification dated 20.12.2021 was issued by University of Delhi whereby University of Delhi stated that admission in the UG Courses for the Academic Session 2022-23 onwards would be made through Common University Entrance Test (CUET). Thereafter, by way of a Public Notice dated 21.03.2022, the University Grants Commission (UGC) announced details of the Common University Entrance Test (CUET) which was to be conducted by the National Testing Agency (NTA).

9. The Petitioner College, in response to the aforesaid, communicated to Respondent No. 1 that while CUET was an acceptable procedure for ascertaining merit, the Petitioner-College being a minority Christian institution, would be entitled to continue “*with its time honoured and proven admission process involving an interview to select candidates*”. Further, the email noted that the interview process would be offered with a weightage of 15%, and the final selection to the College would be based on both CUET (85%) and the interview (15%).

10. Thereafter, in April 2022, Respondent No. 1 published a Bulletin of Information noting that admission to the Petitioner-College for the unreserved category would solely be on the basis of merit of CUET score, while 85% weightage of CUET score in addition to 15% weightage of interviews would be applicable to Christian candidates.

11. On 20.04.2022, the Petitioner College issued a Press Release stating that it would follow the CUET mandate of Respondent No. 1, but would also conduct interviews for all applicants shortlisted by the Petitioner-College from the CUET list as per their admission criteria. In response to the



same, the Respondent No. 1 issued a letter dated 09.05.2022 to the Petitioner-College reiterating that 50% of the open seats would be filled solely on the basis of merit of the CUET however the remaining 50% seats for minority candidates would be filled on the basis of combined merit of 85% the CUET score and 15% weight to the interview to be conducted by the Petitioner-College.

12. The Petitioner college on 23.05.2022, released its Admission Prospectus which stated that it would adopt the CUET as the eligibility criteria with 85% weightage and 15% weightage for interviews of shortlisted candidates, for both Unreserved and minority categories. In response, Respondent No. 1 issued a letter to the Petitioner College, directing them to withdraw the Admission Prospectus immediately and to issue a Public Notice stating that the approved admission policies of Respondent No. 1 would be applicable to the admissions to various courses offered by the Petitioner-College for UG programmes for the 2022-2023 Session. The Petitioner college responded to the same, stating that it would continue with its own admission process as per the prospectus issued by it. It is in this background the Petitioner College approached the Delhi High Court praying for the following prayers, which have been reproduced in paragraph 2 of the judgment in St. Stephens College v. University of Delhi &Anr., 2022 SCC

**OnLine Del 2893:**

*“2. The Petitioner in W.P.(C) 8814/2022 had thereafter also filed an application, being C.M. APPL.30972/2022, seeking permission to incorporate the following additional prayers in the Writ Petition:*

*“a) Issue appropriate writ, direction or order quashing the decision of the Academic Council of the Respondent University dt. 10.12.2021 approving*



*the recommendation of the Committee constituted by the Vice Chancellor to conduct admission to undergraduate courses through a common entrance test to the extent it is applicable to Petitioner college*

*b) Issue appropriate writ, direction or order quashing the decision of the Executive Council of the Respondent University dt. 17.12.2021 approving the recommendation of the Committee constituted by the Vice Chancellor to conduct admission to undergraduate courses through a common entrance test to the extent it is applicable to Petitioner college*

*c) Issue appropriate writ, direction or order quashing the notification of the Respondent University dt. 20.12.2021 to conduct admission to undergraduate courses through a Central University Common Entrance Test (CUCET) Delhi University Common Entrance Test ( DUCET) to the extent it applies to Petitioner St. Stephen's College, New Delhi*

*d) Issue appropriate writ, direction or order quashing the public notice issued by UGC dt. 21.3.2022 to conduct admission to undergraduate courses through a Common University Entrance Test (CUET) to the extent it applies to Petitioner St. Stephen's College, New Delhi.*

*e) Issue appropriate writ, direction or order quashing Annexure R5 letter issued by UGC dt. 27.3.2022 to conduct admission to undergraduate courses through a Common University Entrance Test (CUET) to the extent it applies to Petitioner St. Stephen's College, New Delhi*

*f) Issue appropriate writ, direction or order quashing the recommendations of the standing*





*committee of the Academic Council of the Respondent University under clause 5 of ordinance – II of the Ordinances of the University held on 17.3.2022 providing that admission to all minority colleges (including St. Stephens college and Jesus and Mary college) will be done only through CUET and that during centralised counselling, separate merit list will be generated for UR and minority candidates.*

*g) Issue appropriate writ, direction or order quashing the decision of the Academic Council dt. 22.3.2022 approving the recommendations of the standing committee of the Academic Council of the Respondent University under clause 5 of ordinance – II of the Ordinances of the University held on 17.3.2022 providing that admission to all minority colleges (including St. Stephens college and Jesus and Mary college) will be done only through CUET and that during centralised counselling, separate merit list will be generated for UR and minority candidates.””*

13. The issues that arose for the consideration of the Court in St. Stephens College v. University of Delhi &Anr., 2022 SCC OnLine Del 2893, are reproduced as under:

*“29. At the outset, this Court observes that three-broad questions arise for consideration in the instant matter:*

*i. Whether the right to administer under Article 30(1) accorded to a minority-run aided educational institution extends to its non-minority students?*

*ii. Whether the admission policies of Respondent No.1, i.e. the University of Delhi, pertaining to the*



*matter at hand, would be applicable to the Petitioner-College, being a minority institution?*

*iii. Whether a minority-run institution under Article 30 has the right to sub-classify the reservation accorded to the minority category? ”*

14. The first issue was answered by the Court as under:

*“51. Consequently, this Court is of the opinion that while the Petitioner-College retains its authority to conduct interviews in addition to the CUET for the admission of students belonging to the minority community, it cannot devise a policy that forces the non-minority community to undergo an interview as well. Therefore, the right of the Petitioner-College to conduct interviews and accord to them 15% weightage for the purposes of admitting students does not extend to non-minority students, and solely pertains to its minority students.”*

15. The second issue has been answered by the Court in the following terms:

*“61. In the instant case, with the advent of CUET, it cannot be said that inter se merit will not be observed. The concept of merit itself is contentious and convoluted, and is premised on the philosophy that “we get what we deserve”. Michael Sandel, an American political philosopher, in his book titled, “The Tyranny of Merit: What’s Become of the Common Good?”, has observed how embedded in the principle of merit lies the dark side of the promise of mastery and self-making, which fails to take into consideration the surrounding factors, such as generational wealth, social capital, access to better educational resources, etc. When we perceive merit as a standalone concept premised on an individual’s capabilities, we fail to delve into the background of the individual which goes beyond merit and choice into the realm of luck and*



*chance. The CUET implemented by the Respondents is an attempt to level the playing field and remove aberrations that have arisen due to the varying standards of evaluation of different State Boards. In view of this, this Court is of the opinion that the conduct of an interview over and above the CUET has the potential of introducing subjectivity and bias into the admission process, thereby eroding the very purpose for which CUET is being brought into play.*

*62. It is the contention of Mr. Vikramjit Banerjee, learned ASG appearing for Respondent No.2, that even for seats reserved for minority community, the selection must be made solely from the merit list, cannot be accepted. The UGC has not chosen to challenge the University directives in the instant Writ Petitions. It is, therefore, not open to Mr. Banerjee to contend beyond the scope of the same. Further, such restrictions would take away the very important right of the minority institutions to administer the said institution. It is for the institution to decide as to what would be best for the minority community and, for that purpose conducting an interview, which has been held to be free and transparent by the Apex Court in *St. Stephen's College v. University of Delhi (supra)*, cannot be said to be contrary to the interest of the minority institution. As stated earlier, the process of conducting an interview imparts an element of subjectivity which, in this case, i.e. for the purposed of inducting students from the minority community, would be best for furthering their interest.*

*63. Therefore, even though there exist limitations to the regulations of the State when it comes to interfering in the admission process instituted by the Petitioner-College under its fundamental right as per Article 30(1) for the minority community, it emerges before this Court that the Respondent No.1 is well within its right to formulate policies regulating the right of the Petitioner-College, which is an aided educational*



*institution, to admit students if it is of the opinion that the admission policies of the Petitioner-College may potentially lead to maladministration and lower the standard of excellence of the institution. Accordingly, the policies of Respondent No.1 that is under consideration in the instant matter do not traverse beyond reasonability and do not impinge upon the rights of the Petitioner-College under Article 30(1).”*

16. The third issue was decided by the Court as follows:

*“68. Flowing from the above, this Court respectfully disagrees with the contention of the learned ASG that a single merit list for the candidates belonging to the Christian community, regardless of any denominations/sub-sects/sub-categories within the Christian minority community must be given. Any such protection would fall foul of the judicial pronouncements on the instant subject and would not be within the four corners of reasonableness and would not be furthering the right of the minority community itself as it would alter the right of a minority institution under Article 30(1)”*

17. In conclusion, the Court held as under:

*“69. In view of the above, this Court has arrived at the following conclusions:*

*i. The fundamental right under Article 30(1) accorded to a minority institution cannot be extended to non-minority members.*

*ii. Article 30(1) is not absolute and the State has the right to formulate regulations concerning the administration of a minority institution to the extent that it is for the furtherance of the interest of the minority community and is in a bid to prevent maladministration of the minority institution. Aided minority educational institutions that are affiliated with a University must follow the norms and procedure of the said University.*

*iii. Protection under Article 30(1) can be extended*



*to the extent that it allows a minority institution to sub-classify the reservation accorded to the minority community.*

*70. Consequently, the communication dated 09.05.2022 issued by Respondent No.1 is liable to be set aside to the extent that it mandates a single merit list for admission of candidates belonging to the Christian community regardless of any denominations/sub-sects/sub-categories within the Christian community. The Petitioner-College is, therefore, directed to follow the admission policies for the year 2022-2023 as formulated by Respondent No.1. Further, in accordance with the subsequent communication dated 24.05.2022, the Petitioner-College must withdraw its Admission Prospectus and issue a Public Notice declaring the amended admission procedure.”*

18. It is in the background of the aforesaid case that the present dispute arises. Mr. Mariarputham submits that both, Respondent Nos. 1 & 2 were party to the dispute that arose in 2022, and thus St. Stephens College v. University of Delhi &Anr., 2022 SCC OnLine Del 2893, is binding on all the parties. He submits that while the Petitioner has preferred a Special Leave Petition bearing SLP (C) No. 17295-96/2022 before the Hon’ble Supreme Court challenging St. Stephens College v. University of Delhi &Anr., 2022 SCC OnLine Del 2893. The Hon’ble Supreme Court by its order dated 17.10.2022 has granted leave, however, the same is pending adjudication and the judgment passed by this Court in St. Stephens College v. University of Delhi &Anr., 2022 SCC OnLine Del 2893 has not been stayed. He further submits that neither of the Respondents have preferred a challenge to the said judgment and therefore, the judgment is binding *inter parties*.



19. Mr. Mariarputham takes this Court through a copy of the Minutes of the Meeting of the Executive Council of Respondent No. 1, held on 08.12.2022, wherein the Executive Council resolved that for the academic session 2023-24, the admissions in the Under Graduate Programmes shall be solely on the basis of marks obtained in CUET for minority seats also. The relevant extracts of the Minutes of the Meeting are reproduced as under:

“52-45/

*1. The St. Stephen's College filed the WPC NO. 8814/2022 ST. STEPHEN'S COLLEGE VS. UNIVERSITY OF DELHI & ORS. before the Hon'ble High Court of Delhi, seeking quashing of two communications issued by the University of Delhi dated 09.05.2022 & 24.05.2022:*

*a) by which the College was informed and asked that the admission policy as approved by the Academic Council shall be applicable to all Colleges under the University of Delhi, and that the College must not only fill 50% of its unreserved seats solely on the basis of the Common University Entrance Test (CUET)-2022 scores, but shall also employ a single merit list for admission of candidates belonging to the Christian community.*

*b) The second Communication dated 24.05.2022 was sent to the College to withdraw its Admission Prospectus — Undergraduate (UG) Programmes (2021-2022) and to issue a Public Notice iterating that Colleges admission policies shall be applicable to the College for UG Programmes for the Session 2022-2023.*

*2. That an another WPC NO. 8869/ 2022 KONIKA PODDAR VERSUS ST. STEPHEN'S COLLEGE & ORS (PIL) was filed by a law student on behalf of aspirants seeking admission in St. Stephen's College,*



*and directions to admit students in its unreserved seats solely on the basis of the Common University Entrance Test (CUET) scores as mandated by the University of Delhi. In addition the petitioner in the present WPC has sought directions to University of Delhi to implement its admission policy vis-à-vis the non-minority seats in the UG courses at minority Colleges.*

*3. The Hon'ble High Court of Delhi pronounced the common judgment dated 12.09.2022 in above two Writ Petitions, taking into consideration and the discussion held earlier by the Hon'ble Supreme Court of India, in the matters related to the minority Institutions as following: (Para 68-69, Pg. No. 94-95)*

*“ 68. In view of the above, this Court has arrived at the following conclusions:*

*i. The fundamental right under Article 30(1) accorded to a minority institution cannot be extended to non-minority members.*

*ii. Article 30(1) is not absolute and the State has the right to formulate regulations concerning the administration of a minority institution to the extent that it is for the furtherance of the interest of the minority community and is in a bid to prevent maladministration of the minority institution. Aided minority educational institutions that are affiliated with a University must follow the norms and procedure of the said University.*

*iii. Protection under Article 30(1) can be extended to the extent that it allows a minority institution to sub-classify the reservation accorded to the minority community.*

*“69. Consequently, the communication dated 09.05.2022 issued by Respondent No.1 is liable to*



*be set aside to the extent that it mandates a single merit list for admission of candidates belonging to the Christian community regardless of any denominations/sub-sects/sub-categories within the Christian community. The Petitioner-College is, therefore, directed to follow the admission policies for the year 2022-2023 as formulated by Respondent No. 1. Further, in accordance with the subsequent communication dated 24.05.2022, the Petitioner-College must withdraw its Admission Prospectus and issue a Public Notice declaring the amended admission procedure.”*

4. *That after the judgment dated 12.09.2022 passed by the Hon 'ble High Court of Delhi, St. Stephen's College filed an Special Leave Petition (SLP) No. 17295-96/2022 ST.STEPHEN'S COLLEGE VS. UNIVERSITY OF DELHI & ORS. seeking/ praying stay of operation of the said judgment dated 12.09.2022.*

5. *That the said SLP was heard by the Hon'ble Supreme Court of India on 19.10.2022 and vide the said order/ proceedings denied any interim relief in favour of the St. Stephen's College as prayed for. The following order has been passed:*

*“We have heard the learned counsel for the parties for quite some time for grant of interim relief, as prayed for by the appellant and after going through the Judgment in St. Stephen's College Vs. University of Delhi (1992) 1 SCC 558 and the fact that it is the first time when Entrance Test (CUET) has been introduced by the University of Delhi for the purpose of admission to various colleges for undergraduate courses, including the petitioner-institution, protecting their rights as a minority institution under Article 30 of the Constitution of India, a question raised for consideration is as to whether the admissions to the open category seats could be made purely*





*on the basis of CUET qualifying test or in addition to it, a discretion has to be left with the college/institution for conducting interviews for the purposes of preparing the final list for admission against the open category seats in an aided minority institution (petitioner).*

*After taking into consideration the Judgment impugned before us, we find no reason at this stage to stay the operation of the impugned Judgment. Consequently, the prayer for interim relief, as prayed for, is rejected. However, the admission process shall remain subject to the final outcome of the appeals. “*

*6. The copy of the judgment dated 12.09.2022 passed by the Hon'ble High Court and order/ proceedings dated 19.10.2022 passed by Hon'ble Supreme Court of India are enclosed vide Appendix-153.*

*The Council applauded the efforts of the University and resolved that for academic session 2023-24, the admissions in the Under Graduate Programmes shall be solely on the basis of marks obtained in CUET for minority seats also.”*

20. In view of the aforesaid decision of its Executive Council, Respondent No. 1 issued the impugned notification dated 30.12.2022 which reads as follows :



## NOTIFICATION

The Executive Council of the University of Delhi at its meeting held on 08<sup>th</sup> December 2022 resolved that with effect from the Academic Session 2023-24, admissions, both at the Under-Graduate (UG) and Post-Graduate (PG) level, including those under reserved category and minority quota will be carried out centrally, solely on the basis of Common University Entrance Test (CUET) score.

This is issued with the approval of the Competent Authority.

21. It is submitted by Mr. Mariarputham that St. Stephens College v. University of Delhi &Anr., 2022 SCC OnLine Del 2893, recognises the Petitioner College's right to admit students of the minority community by conducting interviews, wherein 15% weightage is given to interviews and 85% weightage is given to their CUET score. He states that the impugned decision taken by the Respondents, which bars the Petitioner college from admitting students from the minority community by conducting interviews, runs contrary to the judgment of this Court in St. Stephens College v. University of Delhi &Anr., 2022 SCC OnLine Del 2893.

22. Mr. Mariarputham states that without prejudice to the Petitioner's rights in SLP (C) No. 17295-96/2022, which is pending final adjudication, the Petitioner College has decided to conduct admission for its undergraduate programmes for the academic year 2023-2024 in accordance with St. Stephens College v. University of Delhi &Anr., 2022 SCC OnLine Del 2893. That is, the admission for unreserved non-minority students will be based solely on the basis of their CUET scores whereas the admission for reserved minority category students will be done on the basis of their CUET scores and an interview, wherein 85% weightage is to be given to their



CUET scores and 15% weightage is given to the interview. He argues that the impugned decision of the Respondents would cause irreparable loss and injury to the Petitioner College and the applicants belonging to the minority community, depriving them of their fundamental rights as enshrined under Articles 25, 26, 29 & 30 of the Constitution of India.

23. Mr. Vikramjit Banerjee, Ld. ASG appearing on behalf of Respondent No.1 submits that this Court, while deciding St. Stephens College v. University of Delhi &Anr., **2022 SCC OnLine Del 2893**, was dealing with a challenge to Respondent No. 1's letter dated 09.05.2022, which was set aside to the extent that it mandates a single merit list for admission of candidates belonging to the Christian community regardless of any denominations/sub-sects/sub-categories within the Christian community. This Court in St. Stephens College v. University of Delhi &Anr., **2022 SCC OnLine Del 2893**, directed the Petitioner College to follow the admission policy formulated by Respondent No. 1 for the year 2022-23, which provided that the Petitioner College can conduct interviews for admitting students from the reserved minority category, but not for students belonging to the unreserved non-minority category. He submits that the Court in that case was not dealing with the communication issued by UGC dated 06.04.2022 based on which the Respondent University has taken the Impugned Decision on 08.12.2022 and 30.12.2022. As per the communication, it is stated that all UGC funded Central Universities should use only CUET scores while admitting students in UG programmes. The UGC communication dated 06.04.2022, is being reproduced hereunder:



No. F. 13-11/2020 (CU)

6<sup>th</sup> April, 2022

Respected Madam/Sir,

In continuation to our earlier letters regarding participation in the Common University Entrance Test (CUET) in all UGC funded Central Universities for admission of the students in UG programmes, it is clarified that all the central universities and their colleges should use only the scores of CUET while admitting the students in UG programmes. However, in some activity-based courses such as Fine Arts/Performing Arts/Sports/ Physical Education etc., additional criteria may be used.

24. Mr. Banerjee submits that this Court in St. Stephens College v. University of Delhi &Anr., 2022 SCC OnLine Del 2893 has not set aside the UGC communication dated 06.04.2022 and the same is still in effect. In this vein, he argues any observations made by the Court in the said judgment vis-à-vis the UGC communication are obiter at best and thus not binding. He further argues that as the Respondent No. 1's Executive Committee's decision dated 08.12.2022 and its notification dated 30.12.2022 are based on the aforesaid UGC communication, the decision in St. Stephens College v. University of Delhi &Anr., 2022 SCC OnLine Del 2893, will not be binding even in that regard. He therefore submits that for the session 2023-24, the Petitioner College should be mandated to follow the admission policy as decided by Respondent No. 1 for the year 2023-24.

25. Though the matter was listed for final hearing today, this Court after hearing the Ld. Senior Counsels for the parties is inclined to pass the following interim order.

26. This Court *vide* its decision dated 12.09.2022 in St. Stephens College v. University of Delhi &Anr., 2022 SCC OnLine Del 2893, has recognised the right of the Petitioner College as envisaged under Article 30(1) of the Constitution of India. While doing so, it has observed that the said right,



which is accorded to a minority institution cannot be extended to non-minority members. It has observed that Article 30(1) of the Constitution of India is not absolute and the State has the right to formulate regulations concerning the administration of a minority institution to the extent that it is for the furtherance of the interest of the minority community and is in a bid to prevent maladministration of the minority institution. However, it also recognises that it is for the minority institution to decide what would be best for the minority community, and for that purpose conducting an interview, which has been held to be free and transparent by the Supreme Court in St. Stephen's College v. University of Delhi, (1992) 1 SCC 558, cannot be said to be contrary to the interest of the minority institution. Allowing the Petitioner college to admit students from the minority community, by giving 85% weightage to their CUET scores and 15% weightage to their interview would be best for furthering their interest. In view of the this, the impugned UGC communication dated 06.04.2022, *prima facie* is in conflict with the right of the Petitioner College under Article 30(1) of the Constitution of India and the decision in St. Stephens College v. University of Delhi & Anr., 2022 SCC OnLine Del 2893.

27. A perusal of the Minutes of the Meeting of the Executive Committee dated 08.12.2022 shows that the Executive Committee of Respondent No. 1 was apprised of the dispute arising in W.P(C) 8814/2022 and the judgment passed by this Court in St. Stephens College v. University of Delhi & Anr., 2022 SCC OnLine Del 2893 as well as the subsequent order dated 19.10.2022 passed by the Apex Court in SLP(C) No. 17295-96/2022, wherein the Court declined to grant interim stay on the judgment. The Executive Committee of Respondent No. 1, have quoted the concluding and operative paragraphs of the aforesaid judgment and order in the minutes of



the meeting, indicating that the Executive Committee has gone through the same. The Court in the aforesaid judgment frames an issue pertaining to the extent to which the Respondent University can regulate the admission of minority students of the Petitioner College and expressly answers that the Petitioner College has the right to conduct interviews with 15% weightage for minority students, but not for non-minority students. Despite this observation made by this Court in the aforesaid judgment, the Executive Committee in its meeting dated 08.12.2022 has decided that for the academic session 2023-24, admission to the Undergraduate Programmes shall solely be on the basis of CUET for minority seats also. A reading of the impugned notification dated 30.12.2022 shows that it is a mere repetition of the decision taken by the Executive Committee of Respondent No.1 *vide* its meeting dated 08.12.2022. A conjoint reading of the aforesaid judgment, the minutes of the meeting dated 08.12.2022 and the impugned notification dated 30.12.2022 *prima facie* shows a complete lack of reasoning as to why the judgment of this Court has been given a go-by by the Respondents and indicates non-application of mind on their part while making the impugned decision.

28. In view of the above, this Court is of the opinion that a *prima facie* case has been made that the Petitioner will suffer an irreparable loss if interim relief is not granted at this juncture. The balance of convenience also lies in favour of the Petitioner. Accordingly, as an interim measure, this Court directs that the admission policy as framed by this Court *vide* judgment dated 12.09.2022 shall be followed for the Academic Year 2023-24 and the St. Stephen's College will adopt the marks secured in the CUET with 85% weightage for CUET and the College's interview for shortlisted candidates with a weightage of 15% for Christian minority candidates. For



non-minority candidates, the College will adopt the marks secured in the CUET alone as the sole eligibility criteria. The admissions made in the College would be subject to the final outcome of the instant writ petitions.

29. The writ petitions are admitted.

30. List in due course.

**SATISH CHANDRA SHARMA, CJ**

**SUBRAMONIUM PRASAD, J**

**JULY 21, 2023**

*Arsh/Rahul*