S. Azeez Basha and Anr.

Vs

Union of India (with connected writ petitions)

Writ Petitions Nos. 84, 174, 188, 241 and 242 of 1966

(K. N. Wanchoo, V. Bhargva, C. A. Vadialingam, R. S. Bachawat, G. K. Mitter, V. Ramswami JJ)

20.10.1967

JUDGMENT

WANCHOO, C.J. -

These five writ petitions raise common questions and will be dealt with together. They attack the constitutionality of the Aligarh Muslim University (Amendment) Act, No. 62 of 1951 (hereinafter referred to as the 1951-Act) and the Aligarh Muslim University (Amendment) Act, No. 19 of 1965, (hereinafter referred to as the 1965-Act). The principal attack is based on the provisions of Art. 30(1) which lays down that "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice". The case of all the petitioners is that the Aligarh Muslim University (hereinafter referred to as the Aligarh University) was established by the Muslim minority and therefore the Muslims had the right to administer it and in so far as the Acts of 1951 and 1965 take away or abridge any part of that right they are ultra vires Art. 30(1). Besides this principal attack, the two Acts are also subsidiarily attacked for violating the fundamental rights guaranteed under Articles 14, 19, 25, 26, 29 and 31 of the Constitution. It is unnecessary to set out the nature of the attack under these Articles for that will appear when we deal with the matter in detail later; suffice it to say that all the petitions do not make the attack under all these Articles, but the sum total of the subsidiary attack in all these petitions takes in its sweep all these six Articles.

The petitions have been opposed on behalf of the Union of India and its main contention is that the Aligarh University was established in 1920 by the Aligarh Muslim University Act, No. XL of 1920, (hereinafter refereed to as the 1920-Act) and that this establishment was not by the Muslim minority but by the Government of India by virtue of a statute namely, the 1920-Act and therefore the Muslim minority could not claim any fundamental right to administer the Aligarh University under Art. 30(1). It was further contended that as the Aligarh University was established by the 1920-Act by the Government of India, Parliament had the right to amend that statute as it thought fit in the interest of education and the amendments made by the Acts of 1951 and 1965 were perfectly valid as there was no question of their taking away the right of the Muslim minority to administer the Aligarh University, for the minority not having established the University could not claim the right to administer it. It was further contended that the fact that under the provisions of the 1920-Act the Court of the Aligarh University was to be composed entirely of Muslims, did not give any right to the Muslim community as such to administer the University when had been administered by the authorities established by the 1920-Act. It was further contended that the attack based on the six Articles of the Constitution to which we have referred already had no substance and did not in any manner make the Acts of 1951 and 1965 unconstitutional. We do not think it necessary at this stage to give in detail the reply of the Government of India on these points and shall refer to it as and

when the occasion arises.

It is necessary to refer to the history previous to the establishment of the Aligarh University in 1920 in order to understand the contentions raised on either side. It appears that as far back as 1870 Sir Syed Ahmed Khan thought that the backwardness of the Muslim community was due to their neglect of modern education. He therefore conceived the idea of imparting liberal education to Muslims in literature and science while at the same time instruction was to be given in Muslim religion and traditions also. With this object in mind, he organised a Committee to devise ways and means for educational regeneration of Muslims and in May 1872 a society called the Muhammadan Anglo-Oriental College Fund Committee was started for collecting subscriptions to realise the goal that Sir Syed Ahead khan had conceived. In consequence of the activities of the committee a school was opened in May 1873. In 1876, the school become a High School and in 1877 Lord Lytton, then Viceroy of India, laid the foundation stone for he establishments of a college. The Muhammadan Anglo Oriental College. Aligarh (hereinafter referred to as the M.A.O. College) was established thereafter and was, it is said a flourishing institution by the time sir Syed Ahmed Khan died in 1898.

It is said that thereafter the idea of establishing a Muslim University gathered strength from year to year at the turn of the century and by 1911 some funds were collected and a Muslim University Association was established for the purpose of establishing a teaching University at Aligarh. Long negotiations took place between the Association and the Government of India, which eventually resulted in the establishment of the Aligarh University in 1920 by the 1920-Act. It may be mentioned that before that a large sum of money was collected by the Association for the University as the Government of India had made it a condition that rupees thirty lakhs must be collected for University before it could be established. Further it seems that the existing M.A.O. College was made the basis of the University and was made over to the authorities established by the 1920-Act for the administration of the University along with the properties and funds attached to the college, the major part of which had been contributed by Muslims though some contritions were made by other communities as well.

It is necessary now to refer in some detail to the provisions of the 1920-Act to see how the Aligarh University came to be established. The long title of the 1920-Act is in these words :

> "An Act to establish and incorporate a teaching and residential Muslim University at Aligarh".

The preamble says that "it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh, and to dissolve the Societies registered under the Societies Registration Act, 1860, which are respectively known as the Muhammadan Anglo-Oriental College, Aligarh and the Muslim University Association, and to transfer and vest in the said University all properties and rights of the said Societies and the Muslim University Foundation Committee". It will be seen from this that the two earlier societies, one of which was connected with the M.A.O. College and the other had been formed for collecting funds for the establishment of the University at Aligarh, were dissolved and all their properties and rights and also of the Muslim University Foundation Committee, which presumably collected funds for the proposed University were transferred and vested in the University established by the 1920-Act.

> Section 3 of the 1920-Act laid down that "the First Chancellor, Pro-Chancellor and Vice-Chancellor shall be the persons appointed in this behalf by a notification of the Governor General in Council in the Gazette of India and the persons specified in the

schedule [shall be] the first members of the Court" and they happened to be all Muslim. Further s. 3 constituted a body corporate by the name of the Aligarh Muslim University and this body corporate was to have perpetual succession and a Common Seal and could sue and be sued by that name. Section 4 dissolved that M.A.O. College and the Muslim University Association and all property, movable and immovable, and all rights, powers and privileges of the two said societies, and all property, movable and immovable, and all rights, powers and privileges of the Muslim University Foundation Committee were transferred and vested in the Aligarh University and were to be applied to the object and purposes for which the Aligarh University was incorporated. All dates, liabilities and obligations of the said societies and Committee were transferred to the University, which was made responsible for discharging and satisfying them. All references in any enactment to either of the societies or to the said Committee were to be construed as references to the University. It was further provided that any will, deed or other documents, whether made or executed before or after the commencement of the 1920-Act, which contained any bequest, gift or trust in favor of any of the said societies or of the said Committee would, on the commencement of the 1920-Act be construed as if the University had been named therein instead of such society or Committee. The effect of this provision was that the properties endowed for the purpose of the M.A.O. College were to be used for the Aligarh University after it came into existence. These provisions will show that the three previous bodies legally came to an end and every thing that they were possessed of was vested in the University as established by the 1920-Act. Section 5 provides for the powers of the University including the power to hold examinations and to grant and confer degrees and other academic distinctions.

Section 6 is important. It laid down that "the degrees, diplomas and other academic distinctions granted or conferred to or on person by the University shall be recognised by the Government as are the corresponding degrees, diplomas and other academic distinctions granted by any other University incorporated under any enactment". Section 7 provided for reserve funds including the sum of rupees thirty lakhs. Section 8 provided that "the University shall, subject to the provisions of this Act and the Ordinances, be open to all persons of either sex and of whatever race, creed or class", which shows that the University was not established for Muslim alone. Under section 9 the Court was given the power to make Statutes providing that instruction in the Muslim religion would be compulsory in the case of Muslim students. Sections 10, 11 and 12 made other provisions necessary for the functioning of a University but they are not material for our purpose.

Section 13 is another important section. It provided that "the Governor General shall be the Lord Rector of the University". Further sub-s. (2) of s. 13 provided that "the Lord Rector shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, and equipment, and of and institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the University. The Lord Rector shall in every case give notice to the University of his intention to cause an inspection or inquiry." After the enquiry, the Lord Rector had the power to address the Vice-Chancellor with reference to the result of such inspection and inquiry and the Vice-Chancellor was bound to communicate to the

Court the views of the Lord Rector with such advice as the Lord Rector might offer upon the action to be taken thereon. The Court was then required to communicate through the Vice-Chancellor to the Lord Rector such action if any as was proposed to be taken or was taken upon the result of such inspection or inquiry. Finally the Lord Rector was given the power where the Court did not, within reasonable time, take action to the satisfaction of the Lord Rector to issue such directions as he thought fit after considering any explanation furnished or representation made by the Court and the Court was bound to comply with such directions. There provisions clearly bring out that the final control in the matter was with the Lord Rector who was the Governor-General of India.

Then comes s. 14 which is again an important provision, which provided for the Visiting Board of the University, which consisted of the Governor, the members of the Executive Council the Ministers, one member nominated by the Governor and one member nominated by the Minister in charge of Education. The Visiting Board had the power to inspect the University and to satisfy itself that the proceedings of the University were in conformity with the Act, Statutes and Ordinances, after giving notice to the University of its intention to do so. The Visiting Board was also given the power, by order in writing, to annul any proceedings not in conformity with the Act, Statutes and Ordinances, provided that before making such and order, the Board had to call upon the University to show cause why such an order should not be made, and to consider such cause if shown within reasonable time. This provision, though not so all - pervasive as the provision in s. 13 of the 1920-Act, shows that the Visiting Board had also certain over-riding power in case the University authorities acted against the Act, Statutes and Ordinances. There is no condition that the Lord Rector and the members of the Visiting Board must belong to the Muslim community.

Sections 15 to 21 are not material for our purposes. They made provisions for officers of the University and Rectors and laid down that "the Powers of officers of the University other than the Chancellor, the Pro-Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor shall be prescribed by the Statutes and the Ordinances". Section 22 provided for the authorities of the University, namely, the Court, the Executive Council and the Academic Council and such other authorities as might be declared by the Statutes to be authorities of the University. Section 23 provided for the constitution of the Court, and the proviso to sub-section (1) has been greatly stressed on behalf of the petitioners which laid down that "no person other than a Muslim shall be a member thereof". It may be added here that the Select Committee which went into the Bill before the 1920-Act was passed was not very happy about this proviso and observed that :

"In reference to the constitution of the Court we have retained the provision that no person other than Muslim shall be a member thereof. We have done this as we understand that such a provision is in accordance with the preponderance of Muslim feeling though some of us are by no means satisfied that such a provision is necessary."

By section 23(2), the Court was to be the supreme governing body of the University and would exercise all the powers of the University, not otherwise provided for by the 1920-Act, the Statutes, the Ordinances and the Regulations. It was given the power to review the acts of the Executive and the Academic Councils, save where such Councils had acted in accordance with powers conferred on them under the Act,

the Statutes or the Ordinances and to direct that necessary action be taken by the Executive or the Academic Council, as the case might be, on any recommendation of the Lord Rector. The power of making Statutes was also conferred on the Court along with other powers necessary for the functioning of the University.

Section 24 dealt with the Executive Council, s. 25 with the Academic Council and s. 26 with other authorities of the University. Section 27 laid down what the Statues might provide. Section 28 dealt with the question of the first Statutes and how they were to be amended, repealed and added to. There is an important provision in s. 28 which laid down that "no new Statute or amendment or repeal of an existing Statute shall have any validity, until it has been submitted through the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has been approved by the latter, who may sanction, disallow or remit it for further consideration." This provision clearly shows that the final power over the administration of the University rested with the Governor General in Council. Section 29 dealt with Ordinances and what they could provide and s. 30 provided which authorities of the University could make Ordinances. Section 30(2) provided that "the first Ordinances shall be framed as directed by the Governor General in Council....." and sub-s. (3) thereof laid down that "no new Ordinances, or amendment or repeal of an existing Ordinance shall have any validity until it has been submitted through the Court and the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has obtained the approval of the latter, who may sanction, disallow or remit it for further consideration". This again shows that even Ordinances could not be made by the University with out the approval of the Governor General in Council. If any dispute arose between the Executive and the Academic Council as to which had the power to make an Ordinance, either Council could represent the matter to the Visiting Board and the Visiting Board had to refer the same to a tribunal consisting of three members, one of whom was to be nominated by the Executive Council, one by the Academic Council, and one was to be a Judge of the High Court nominated by the Lord Rector. This again shows that in the matter of such disputes, the Court which is called the supreme governing body of the University, did not have the power to resolve it. Section 31 provided for the making of Regulations, which had to be consistent with the Statutes and Ordinances. It is only the Regulations which did not require the approval of the Governor General before they came into force. Section 32 provided for admission of students to the University and sub-s. (4) thereof provided that "the University shall not save with the previous sanction of the Governor General in Council recognise (for the purpose of admission to a course of study for a degree) as equivalent to its own degrees, any degree conferred by any other University or as equivalent to the Intermediate Examination of an Indian University, any examination conducted by any other authority". This shows that in the matter of admission the University could not admit students of other institutions unless the Governor General in Council approved the degree or any other examination of the institutions other than Indian Universities established by law. Section 33 provided for examinations, s. 34 for annual report and s. 35 for annual accounts. Section 36 to 38 provided for supplementary matters like conditions of service of officers and teachers, provident and pension funds, filling of casual vacancies and are not material for our purposes. Section 39 laid down that "no act or proceeding of any authority of the University

shall be invalidated merely by reason of the existence of vacancy or vacancies among its members". Section 40 is important and laid down that "if any difficulty arises with respect to the establishment of the University or any authority of the University or in connection with the first meeting of any authority of the University, the Governor General in Council may by order make any appointment or do anything which appears to him necessary or expedient for the proper establishment of the University or any authority thereof or for the first meeting of any authority of the University." This again shows the power of the Governor General in Council in the matter of establishment of the University.

This brings us to the end of the sections of the 1920-Act. There is nothing anywhere in any section of the Act which vests the administration of the University in the Muslim community. The fact that in the proviso to s. 23(1) it is provided that the Court of the University shall consist only of Muslims does not necessarily mean that the administration of the University was vested or was intended to be vested in the Muslim minority. If anything, some of the important provisions to which we have already referred show that the final power in almost every matter of importance was in the Lord Rector, who was the Governor General or in the Governor General in Council.

Then follows the schedule which provided for the first Statutes of the Aligarh University. These Statutes provided for the Rectors of the University, the Vice-Chancellor, Pro-Vice-Chancellor, Treasurer, Register, Proctor and Librarian, the Court, constitution of the Court, the first Court, meetings of the Court and the powers of the Court, the Executive Council, the powers of the Executive Council, the Academic Council and its powers, departments of studies, appointments, register of graduates, convocations, Committees and so on. The Annexure to the 1920-Act gave the names of the Foundation Members of the Court numbering 124 who were all Muslims and who were to hold office for five years from the commencement of the Court.

Such were the provisions of the 1920-Act. They continued in force till 1951 without any substantial amendment. In 1951, the 1951-Act was passed. It made certain changes in the 1920-Act mainly on account of the coming into force of the Constitution. We shall refer only to such changes as are material for our purposes. The first material change was the deletion of s. 9 of the 1920-Act which gave power to the Court to make Statutes providing for compulsory religious instruction in the case of Muslim students. This amendment was presumably made in the interest of the University in view of Art. 28(3) of the Constitution which lays down that "no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto." It was necessary to delete s. 9 as otherwise the University might have lost the grant which was given to it by the Government of India. Further s. 8 of the 1920-Act was amended and the new section provided that "the University shall be open to persons of either sex and of whatever race, creed, caste, or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by any testamentary or other instrument creating such benefaction." The new s. 8 had also a proviso laying down that "nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it". Clearly section 9 was deleted and s. 8 was amended in this manner to bring the law into conformity

with the provisions of the Constitution and for the benefit of the University so that it could continue to receive aid from the Government. Some amendment was also made in s. 13 in view of the changed constitutional set-up and in place of the Lord Rector, the University was to have a Visitor. Section 14 was also amended and the power of the Visiting Board was conferred on the Visitor by addition of a new sub-s. (6).

The next substantial change was that the proviso to s. 23(1) which required that all members of the Court would only be Muslims was deleted. Other amendments are not material for our purpose as they merely relate to administrative details concerning the University.

It will thus be seen that by virtue of the 1951-Act non-Muslims could also be members of the Court. But the Court still remained the supreme governing body of the University as provided by s. 23(1) of the 1920-Act. It is remarkable that though the proviso to s. 23(1) was deleted as far back as 1951, there was no challenge to the 1951 Act till after Ordinance No. II of 1965 was passed. The reason for this might be that there was practically no substantial change in the administrative set-up of the 1920-Act and it was only when a drastic change was made by the Ordinance of 1965, followed by the 1965-Act, that challenge was made not only to the 1965 Act but also to the 1951 Act in so far as it did away with the proviso to s. 23(1). It is not our function in the present petitions to consider the policy underlying the amendments made by the 1965 Act; nor do we propose to go into the merits of the amendments made by the 1965-Act. We are in the present petitions concerned only with the constitutionality of the provisions of the 1965-Act. If the provisions are constitutional, they were within the legislative competence of Parliament.

This brings us to the changes made in the 1965-Act which have occasioned the present challenge. The main amendment in the 1965-Act was in s. 23 of the 1920-Act with respect to the composition and the powers of the Court of the University. Sub-sections (2) and (3) of the 1920-Act were deleted, with the result that the Court no longer remained the supreme governing body and could no longer exercise the powers conferred on it by Sub-ss. (2) and (3) of s. 23. In place of these two sub-sections, a new sub-section (2) was put in which reduced the functions of the Court to three only, namely, "(a) to advise the Visitor in respect of any matter which may be referred to the Court for advise; (b) to advise any other authority of the University in respect of any matter which may be referred to the Court for advise; and (c) to perform such other powers as may be assigned to it by the Visitor or under this Act". It further appears from the amendments of ss. 28, 29, 34 and 38 that the powers of the Executive Council were correspondingly increased. The Statutes were also amended and many of the powers of the Court were transferred by the amendment to the Executive Council. Further the constitution of the Court was drastically changes by the amendment of the 8th Statute and it practically became a body nominated by the Visitor except for the Chancellor, the Pro-Chancellor, the members of the Executive Council who were exofficio members and three members of Parliament, two to be nominated by the speaker of the House of the People and one by the Chairman of the Council of States. Changes were also made in the constitution of the Executive Council. Finally the 1965-Act provided that "every person holding office as a member of the Court or the Executive Council, as the case may be, immediately before the 20th day of May 1965 (on which date Ordinance No. II of 1965 was promulgated) shall on and from the said date cease to hold office as such". It was also provided that until the Court or the Executive Council was reconstituted, the Visitor might by general or special order direct any officer of the University to exercise the powers and perform the duties conferred or imposed by or under the 1920-Act as amended by the 1965-Act on the Court or the Executive Council as the case may be.

The contention of the petitioners is that by these drastic amendments in 1965 the Muslim minority

was deprived of the right to administer the Aligarh University and that this deprivation was in violation of Art. 30(1) of the Constitution; and it is to this question we turn now.

Under Article 30(1), "all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice". We shall proceed on the assumption in the present petitions that Muslims are a minority based on religion. What then is the scope of Art. 30(1) and what exactly is the right conferred therein on the religious minorities. It is to our mind quite clear that Art. 30(1) postulates that the religious community will have the right to establish and administer educational institutions of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. An argument has been raised to the effect that even though the religious minority may out have established the educational institution, it will have the right to administer it, if by some process it had been administering the same before the Constitution came into force. We are not prepared to accept this argument. The Article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The worse "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it. In this connection our attention was drawn to in re; The Kerala Education Bill, 1957 ([1959] S.C.R. 995) where, it is argued, this Court had held that the minority can administer an educational institution even though it might not have established it. In that case an argument was raised that under Art. 30(1) protection was given only to educational institutions established after the Constitution came into force. That argument was turned down by this Court for the obvious reason that if that interpretation was given to Art. 30(1) it would be robbed of much of its content. But that case in our opinion did not lay down that the words "establish and administer" in Art. 30(1) should be read disjunctively, so that though a minority might not have established an educational institution it had the right to administer it. It is true that at p. 1062 the Court spoke of Art. 30(1) giving two right to a minority i.e. (i) to establish and (ii) to administer. But that was said only in the context of meeting the argument that educational institutions established by minorities before the Constitution came into force did not have the protection of Art. 30(1). We are of opinion that nothing in that case justifies the contention raised on behalf of the petitioners that the minorities would have the right to administer an educational institution even thought the institution may not have been established by them. The two words in Art. 30(1) must be read together and so read the Article gives the right to the minority to administer institutions established by it. If the educational institution has not been established by a minority it cannot claim the right to administer it under Art. 30(1). We have therefore to consider whether the Aligarh University was established by the Muslim minority; and if it was so established, the minority would certainly have the right to administer it.

We should also like to refer to the observations in The Durgah Committee, Ajmer v. Syed Hussain Ali ([1962] 1 S.C.R. 383). In that case this Court observed while dealing with Art. 26(a) and (d) of the Constitution that even if it be assumed that a certain religious institution was established by a minority community it may lose the right to administer it in certain circumstances. We may in this connection refer to the following observations at p. 414 for they apply equally to Art. 30(1) :

> "If the right to administer the properties never vested in the denomination or had been validly surrendered by it or had otherwise been effectively and irretrievably lost to it, Art. 26 cannot be successfully invoked".

We shall have to examine closely what happened in 1920 when the 1920-Act was passed to decide (firstly) whether in the face of that Act it could be said that the Aligarh University was established by the Muslim minority, (secondly) whether the right to administer it ever vested in the minority, and (thirdly) even if the right to administer some properties that came to the University vested in the minority before the establishment of the Aligarh University, whether it had been surrendered when the Aligarh University came to established.

Before we do so we should like to say that the words "educational institutions" are of very wide import and would include a university also. This was not disputed on behalf of the Union of India and therefore it may be accepted that a religious minority had the right to establish a university under Art. 30(1). The position with respect to the establishment of Universities before the Constitution came into force in 1950 was this. There was no law in India which prohibited any private individual or body from establishing a university and it was therefore open to a private individual or body to establish a university. There is a good deal in common between educational institutions which are not universities and those which are universities. Both teach students and both have teachers for the purpose. But what distinguished a university from any other educational institution is that a university grants degrees of its own while other educational institutions cannot. It is this granting of degrees by a university which distinguished it from the ordinary run of education institutions. [See St. David's College, Lampeter v. Ministry of Education ([1951] 1 All E.R. 559)]. Thus in law in India there was no prohibition against establishment of universities by private individuals or bodies and if any university was so established it must of necessity be granting degrees before it could be called a university. But though such a university might be granting degrees it did not follow that the Government of the country was bound to recognise those degrees. As a matter of fact as the laws stood up to the time the Constitution came into force, the Government was not bound to recognise degrees of universities established by private individuals or bodies and generally speaking the Government only recognised degrees of universities established by it by law. No private individual or body could before 1950 insist that the degrees of any university established by him or it must be recognised by Government. Such recognition depended upon the will of Government generally expressed through statue. The importance of the recognition of Government in matters of this kind cannot be minimised. This position continued even after the Constitution came into force. It was only in 1956 that by sub-s. (1) of s. 22 of University Grants Commission Act, (No. 3 of 1956) it was laid down that "the right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees". Sub-section (2) thereof further provided that "save as provided in sub-s. (1), no person or authority shall confer, or grant, or hold himself or itself as entitled to confer or grant any degree". Section 23 further prohibited the use of the word "university" by an educational institution unless it is established by law. It was only thereafter that no private individual or body could grant a degree in India. Therefore it was possible for the Muslim minority to establish a university before the Constitution came into force, though the degrees conferred by such a university were not bound to be recognised by Government.

There was nothing in 1920 to prevent the Muslim minority, if it so chose, to establish a university; but if it did so the degrees of such a university were not bound to be recognised by Government. It may be that in the absence of recognition of the degrees granted by a university, it may not have attracted many students, and that is why we find that before the Constitution came into force, most of the universities in India were established by legislation. The Aligarh University was also in the same way established by legislation and it provided under s. 6 of the 1920-Act that "the degrees,

diplomas and other academic distinctions granted or conferred to or on persons by the University shall be recognised by the Government as are the corresponding degrees, diplomas and other academic distinctions granted by any other university incorporated under any enactment." It is clear therefore that even though the Muslim minority could have established at Aligarh in 1920 a university, it could not insist that degrees granted by such a university should be recognised by Government. Therefore when the Aligarh university was established in 1920 and by s. 6 its degrees were recognised by Government, an institution was brought into existence which could not be brought into existence by any private individual or body for such individual or body could not insist upon the recognition of the degrees conferred by any university established by it. The enactment of s. 6 in the 1920-Act is a very important circumstance which shows that the Aligarh University when it came to be established in 1920 was not established by the Muslim minority, for the minority could not insist on the recognition by Government of the degrees conferred by any university established by it.

It is true, as is clear from the 1920-Act, that the nucleus of the Aligarh University was the M.A.O. College, which was till then a teaching institution under the Allahabad University. The conversion of that college (if we may use that expression) into a university was however not by the Muslim minority; it took place by virtue of the 1920-Act which was passed by the Central legislature. There was no Aligarh University existing till the 1920-Act was passed. It was brought into being by the 1920-Act and must therefore be held to have been established by the Central Legislature which by passing the 1920-Act incorporated it. The fact that it was based on the M.A.O. College, would make no difference to the question as to who established the Aligarh University. The answer to our mind as to who established the Aligarh University is clear and that is that it was the Central Legislature by enacting the 1920-Act that the established the said University. As we have said already, the Muslim minority could not establish a university whose degrees were bound to be recognised by Government as provide by s. 6 of 1920-Act; that one circumstance along with the fact that without the 1920-Act the University in the form that it had, could not come into existence shows clearly that the Aligarh University when it came into existence in 1920 was established by the Central Legislature by the 1920-Act. It may be that the 1920 Act was passed as a result of the efforts of the Muslim minority. But that does not mean that the Aligarh University when it came into being under the 1920-Act was established by the Muslim minority.

A good deal of argument was addressed to us on the nature of eleemosynary corporations and the difference between foundatio incipiens and fundatio perficiens and certain English cases were cited in support thereof. It was urged that the word "establish" in the 1920-Act amounted only to a case of fundatio incipiens and that so far as fundatio perficiens was concerned, that was the Muslim minority. We do not think it necessary to go into these distinctions of the English law; nor do we think it necessary to consider the nature of eleemosynary corporations. Suffice it to say that even if we assume that those who contributed money and property which was vested in the Aligarh University (and some of them were non-Muslims) were in the position of fundatio perficiens, they could only have visitorial rights under the English common law. But Muslim minority as such could not claim to be fundatio perficiens for that right would only be in the donors and no others. Further even these visitorial rights must be held to have been negatived by the 1920-Act for it specifically conferred such rights on the Lord Rector and the Visiting Board and no others. Some argument was also based on some cases of the Supreme Court of the United States of America which depended upon the provisions of the Constitution of that country which prohibits impairment of contracts. It is profitless to refer to the cases cited in that behalf for our Constitution has no such fundamental right. Further we cannot under any circumstance read the 1920-Act as a kind of contrast.

What does the word "establish" used in Art. 30(1) mean ? In Bouvier's Law Dictionary, Third Edition, Vol. I, it has been said that the word "establish" occurs frequently in the Constitution of the United States and it is there used in different meanings; and five such meanings have been given, namely (1) to settle firmly, to fix unalterably, as to establish justice; (2) to make or form : as, to establish a uniform rule of naturalization; (3) to found, to create, to regulate; as, Congress shall have power to establish post offices; (4) to found, recognize, confirm or admit : as, Congress shall make no laws respecting an establishment of religion; (5) to create, to ratify, or confirm, as We, the people, etc., do ordain and establish this constitution. Thus it cannot be said that the only meaning of the word "establish" is to found in the sense in which an eleemosynary institution is founded and we shall have to see in what sense the ward has been used in our Constitution in the Article. In Shorter Oxford English Dictionary, Third Edition, the word "establish" has a number of meanings i.e. to ratify, confirm, settle, to found, to create. Here again founding is not the only meaning of the word "establish" and it includes creation also. In Webster' Third New International Dictionary, the word "establish" has been given a number of meanings, namely, to found or base squarely, to make firm or stable, to bring into assistance, create, make, start, originate. It will be seen that here also founding is not the only meaning; and the word also means "to bring into existence". We are of opinion that for the purpose of Art. 30(1) the word means "to bring into existence", and so the right given by Art. 30(1) to the minority is to bring into existence an educational institution, and if they do so, to administer it. We have therefore to see what happened in 1920 and who brought the Aligarh University into existence.

From the history we have set out above, it will be clear that those who were in-charge of the M.A.O. College, the Muslim University Association and the Muslim University Foundation Committee were keen to bring into existence a university at Aligarh. There was nothing in laws then to prevent them from doing so, if they so desired without asking Government to help them in the matter. But if they had brought into existence a university on their own, the degrees of that university were not bound to be recognised by Government. It seems to us that it must have been felt by the persons concerned that it would be no use bringing into existence a university, if the degrees conferred by the said university were not to be recognised by Government. That appears to be the reason why they approached the Government for bringing into existence a university at Aligarh, whose degrees would be recognised by Government and that is why we find s. 6 of the 1920-Act laying down that "the degrees, diplomas and other academic distinctions granted or conferred to or on persons by the university shall be recognised by the Government....." It may be accepted for present purposes that the M.A.O. College and the Muslim University Association and the Muslim University Foundation Committee were institutions established by the Muslim minority and two of them were administered by Societies registered under the Societies Registration Act, (No. 21 of 1860). But if the M.A.O. College was to be covered into a university of the kind whose degrees were bound to be recognised by Government, it would not be possible for those who were in-charge of the M.A.O. College to do so. That is why the three institutions to which we have already referred approached the Government to bring into existence a university whose degrees would be recognised by Government. The 1920-Act was then passed by the Central Legislature and the university of the type that was established thereunder, namely, one whose degrees would be recognised by Government, came to be established. It was clearly brought into existence by the 1920-Act for it could not have been brought into existence otherwise. It was thus the Central Legislature which brought into existence the Aligarh University and must be held to have established it. It would not be possible for the Muslim minority to establish a university of the kind whose degrees were bound to be recognised by Government and therefore it must be held that the Aligarh University was brought into existence by the Central Legislature and the Government of India. If that is so, the Muslim minority cannot claim

to administer it, for it was not brought into existence by it. Art. 30(1), which protects educational institutions brought into existence and administered by a minority, cannot help the petitioners and any amendment of the 1920-Act would not be ultra vires Art. 30(1) of the Constitution. The Aligarh University not having been established by the Muslim minority, any amendment of the 1920-Act by which it was established, would be within the legislative power of Parliament subject of course to the provisions of the Constitution. The Aligarh University not having been established by the Muslim minority, no amendment of the Act can be struck down as unconstitutional under Art. 30(1).

Nor do we think that the provisions of the Act can bear out the contention that it as the Muslim minority which was administering the Aligarh University, after it was brought into existence. It is true that the proviso to s. 23(1) of 1920-Act said that "no person other a Muslim shall be member of the Court", which was declared to be the supreme governing body of the Aligarh University and was to exercise all the powers of the University, not otherwise provided for by that Act. We have already referred to the fact that the Select Committee was not happy about this provision and only permitted it in the Act out of deference to the wishes of preponderating Muslim opinion.

It appears from paragraph 8 of the Schedule that even though the members of the Court had to be Muslims, the electorates were not exclusively Muslims. For example, sixty members of the Court had to be elected by persons who had made or would make donations of five hundred rupees and upwards to or for the purposes of the University. Some of these persons were and could be non-Muslims. Forty persons were to be elected by the Registered Graduates of the University, and some of the Registered Graduates were and could be non-Muslims, for the University was open to all persons of either sex and of whatever race, creed or class. Further fifteen members of the Court were to be elected by the Academic Council, the membership of which was not confined only to Muslims.

Besides there were other bodies like the Executive Council and the Academic Council which were concerned with the administration of the Aligarh University and there was no provision in the constitution of these bodies which confined their members only to Muslims. It will thus be seen that beside the fact that the members of the Court had to be all Muslims, there was nothing in the Act to suggest that the administration of the Aligarh University was in the Muslim minority as such. Besides the above, we have already referred to s. 13 which showed how the Lord Rector, namely, the Governor General had overriding powers over all matters relating to the administration of the University. Then there was s. 14 which gave certain over-riding powers to the Visiting Board. The Lord Rector was then the Viceroy and the Visiting Board consisted of the Governor of the United Provinces, the members of his Executive Council, the Ministers, one member nominated by the Governor and one member nominated by the Minister in charge of Education. These people were not necessarily Muslims and they had over-riding powers over the administration of the University. Then reference may be made to s. 28(2)(c) which laid down that no new Statute or amendment or repeal of an existing Statute, made by the University, would have any validity until it had been approved by the Governor General in Council who had power to sanction, disallow or remit it for further consideration. Same powers existed in the Governor General in Council with respect to Ordinances. Lastly reference may be made to s. 40, which gave power to the Governor General in Council to remove any difficulty which might arise in the establishment of the University. These provisions in our opinion clearly show that the administration was also not vested in the Muslim minority; on the other hand it was vested in the statutory bodies created by the 1920-Act, and only in one of them, namely, the Court, there was a bar to the appointment of any one else except a Muslim, though even there some of the electors for some of the members included non-Muslims. We are therefore of opinion that the Aligarh University was neither established nor administered by

the Muslim minority and therefore there is no question of any amendment to the 1920-Act being unconstitutional under Art. 30(1) for that Article does not apply at all to the Aligarh University.

The next argument is based on Art. 26 of the Constitution. That Article provides that every religious denomination or any section thereof shall have the right (a) to establish and maintain institutions for religious and charitable purposes....(c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law. A question was raised whether Art. 26 would take in its sweep educational institutions on the ground that such institutions are institutions for charitable purposes. It was urged that Art. 26 will not apply to educational institutions for there is specific provision in Art. 30(1) with respect to educational institutions and therefore institutions for charitable purposes in cl. (a) of Art. 26 refer to institutions other than educational ones. There is much to be said in favor of this contention. But we do not purpose to decide this question for present purposes. We shall assume that educational institutions would also come within Art. 26(a) as institutions for charitable purposes. Even so we fail to see how Art. 26 helps the petitioners. Clause (a) of that Article gives the right to every religious denomination and the Muslim minority may for present purposes be assumed to be a religious denomination within the meaning of Art. 26 to establish and maintain institutions for religious and charitable purposes. What we have said with respect to Art. 30(1) which gives right to minorities to establish and administer educational institutions of their choice applies equally to cl. (a) of Art. 26 and therefore we are of opinion that the words," establish and maintain" must be read conjunctively and it is only institutions which a religious denomination establishes which it can claim to maintain. It is not necessary to go into all there implications of the word "maintain"; it is enough for present purposes to say that the right to maintain institutions for religious and charitable purposes would include the right to administer them. But the right under cl. (a) of Art. 26 will only arise where the institution is established by a religious denomination and it is in that event only that it can claim to maintain it. As we have already held, the Aligarh University was not established by the Muslim minority and therefore no question arises of its right to maintain it within the meaning of cl. (a) of Art. 26.

Reference is also made to Art. 26 clauses (c) and (d) which give the right to a religious denomination "(c) to own and acquire movable and immovable property, and (d) to administer such property in accordance with law". So far as that is concerned it is enough to say that Muslim minority does not own there movable and immovable property which was vested in the Aligarh University by virtue of the 1920-Act and therefore cannot claim to administer any such property. Clauses (c) and (d) give power to the religious denomination to own and acquire movable and immovable property and if it owns or acquires such movable or immovable property it can administer such property in accordance with law. But the Muslim minority did not own the property which was vested in the Aligarh University on the date the Constitution came into force, and it could not lay claim to administer that property by virtue of Art. 26(d). For the rest, there is nothing in the impugned amendment Acts which in any way bars the Muslim minority from owning or acquiring and administering movable or immovable property if it so desires for purposes of Art. 26. But it cannot lay claim under Art. 26(d) to administer the property which was vested in the Aligarh University by the 1920-Act, for it did not own that property when the Constitution came into force.

The next attack on the constitutionality of the 1965-Act is under Art. 25 of the Constitution. That Article provides that "subject to public order, morality and health and to the other provisions of this Part all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." We have not been able to understand how the amendment made by the 1965-Act in the 1920-Act in any way affects the right freely to profess, practise and propagate religion. It may be added that learned counsel for the petitioners did not seriously press the

contention that the 1965-Act was ultra vires as it violated Art. 25 of the Constitution.

The next Article of the Constitution on which reliance is placed is Art. 29. That Article provides that "any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same". We have not been able to understand how the amendments made by the 1965-Act in the 1920-Act in any way interfere with the right of the Muslim minority to conserve any distinct language, script or culture which they might have. Here again we may add that no serious argument was raised before us on the basis of Art. 29.

The next Article of the Constitution on which reliance is placed is Art. 14. Here again we are not able to appreciate what the discrimination is which has been brought about by the amendments of the 1965-Act. It seems that the charge of discrimination is based on the provisions of the Benaras Hindu University Act which University is established by an Act of its own. We do not think that Art. 14 requires that the provisions in every University Act must always be the same. Each University has problems of its own and it seems to us that it is for the legislature to decide what kind of constitution should be conferred on a particular university established by it. There can be no question of discrimination of the ground that some other University Acts provide for some different set up. Each university must be take to be class by itself and the legislature has a right to make such provision for its constitution as it thinks fit subject always to the provisions of the Constitution. The mere fact that certain provisions in a statute creating one university are different from provisions in another statute creating another university cannot mean that there is discrimination. It has been urged in this connection that other universities, such as Delhi, Agra, Allahabad, Patna and Benaras, have certain elective element while the amendment of 1965 has done away with the elective element so far as the Aligarh University is concerned. We have already said that we are not concerned with the policy of the legislature in enacting the 1965-Act; nor are we concerned with the merits of the provisions of the 1965-Act. All that we need say is that simply because there is no elective element in one university while there is such element in another university it cannot be said that there is discrimination, for, as we have said already, each universities is a class by itself and may require a different set up according to the requirements and needs of a particular situation. We therefore see no force in the attach on the constitutionality of the 1965-Act on the ground that it is hit by Art. 14 of the Constitution.

The next attach on the constitutionality of the 1965-Act is based on Art. 19 and the argument seems to be that the statute deprives Muslims of their right to acquire, hold and dispose of property and to form associations or unions. The argument has merely to be stated to deserve rejection. We cannot understand how the 1965-Act deprives the Muslim citizens of this country of the right to form associations or unions. There is nothing in the 1965-Act which takes away that right, nor is there anything in the 1965-Act which takes was the right of the Muslim citizens to acquire, hold and dispose of property. But it is said that the Muslim minority has been deprived of the right to manage the Aligarh University and the right to hold the property which was vested in the Aligarh University by the 1920-Act. There is no force in this contention either, for Art. 19(1)(c) does not give any right to any citizen to manage any particular educational institution. It only gives the right to a citizen to form associations or unions. That right has not been touched by the 1965-Act. Similarly, Art. 19(1)(f) does not give right to any citizen to hold property vested in a corporate body like the university. All that it provides is that all citizens have the right to acquire, hold and dispose of property of their own. There is nothing in the 1965-Act which in any way takes away the right of the Muslims of this country to acquire, hold and dispose of property of their own.

Lastly reliance is place on Art. 31(1) which provides that "no person shall be deprived of his property save by authority of law." We may assume that the "Muslim minority" is a person for purposes of Art. 31(1) and the petitioners have a right to file these writs on its behalf. It is urged that the Muslim minority has been deprived of their property, namely, the property vested in the Aligarh University, by the 1965-Act inasmuch as the Court now is a very different body from the Court as it was under the 1920-Act. It is difficult to understand this argument. It is clear from the history which we have set out above and from the provisions of the 1920-Act that the two societies which were registered under the Societies Registration Act, 1860, namely, the M.A.O. College, and the Muslim University Association, voluntary surrendered whatever property they had including the college buildings etc. to the corporate body created by the 1920-Act, namely, the Aligarh University. The third body, namely, Muslim University Foundation Committee also surrendered the money it had collected in pursuance of the Government direction that it will only established a university if rupees thirty lakhs were collected for the purpose. The same was apparently collected, the major part from Muslims but some contribution was made by non-Muslims also. That fund was also made over to the corporate body, namely, the Aligarh University which was brought into existence by the 1920-Act. This is clear from the preamble of the 1920-Act and also from the provisions contained in s. 4 and s. 7 thereof. Therefore when the Constitution came into force on January 26, 1950, there was no property which was held by the Muslim minority as such, for the property had already vested in the corporate body, namely the Aligarh University brought into existence by the 1920-Act. Even assuming that before 1920, the property which was surrendered to the Aligarh University was the property of the Muslim minority, what happened in 1920 put an end to the rights of the Muslim minority to hold the property and all that was done with the concept of those who can be said to have held the property on behalf of the Muslim minority before 1920. There is no attack on the 1920-Act and it is not urged that any part of that Act was in any way ultra virus the Constitution-Act which was then in force. Therefore, when the present Constitution came into force on January 26, 1950 the Muslim minority did not have any right in the property which was vested in the Aligarh University by the 1920-Act. The 1956-Act has made no change in the ownership of the property which was vested in the Aligarh University. Even after the 1965-Act came into force, the property still continues to be vested in the same corporate body, (namely the Aligarh University). In the circumstances, it cannot be said that the 1965-Act deprived the Aligarh University of the property vested in it. As for the Muslim minority they had already given up the property when the Aligarh University was brought into existence by the 1920-Act and that property was vested by the Act in the Aligarh University. The Muslim minority cannot now after the Constitution came into force on January 26, 1950 lay claim to that property which was vested in the Aligarh University by the 1920-Act and say that the 1965-Act merely because it made some change in the constitution of the Court of the Aligarh University deprived the Muslim minority of the property, for the simple reason that the property was not vested in the Muslim minority at any time after the 1920-Act came into force. The argument that there has been breach of Art. 31(1) has therefore no force.

We are therefore of opinion that there is no force in any of these petitions. It is not disputed that the 1951 and 1965 Acts are within the competence of Parliament unless they are hit by any of the constitutional provisions to which we have referred above. As they are not hit by any of these provision, these Acts are good and are not liable to be struck down as ultra vires the Constitution. The petitions therefore fail and hereby dismissed. In the circumstances we make no order as to costs.

Petitions dismissed.

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