D. A. V. College, Etc. Etc.

Vs

State of Punjab and Others

Writ Petitions Nos. 256-268 and 271 of 1970, with C.M.Ps. Nos. 4547-4559, 4076-4088 of 1970

(G. K. Mitter, K. S. Hegde, A. N. Grover JJ)

05.05.1971

JUDGMENT

REDDY, J. –

1. These are fourteen Writ Petition by various Colleges managed and administered by Dayanand Anglo Vedic College (D.A.V. College) Trust and the Managing Society, against the Respondents challenging the constitutional validity of certain provisions of Guru Nanak University, Amritsar, Act 21 of 1969 (hereinafter called the 'University' or the 'Act', as the context may permit) and in particular Sections 4, 4(2), 4(3) and 5 of the Act as being violative of Articles 14, 19(1)(c) and (f), 26, 29 (1) and 30(1) of the Constitution of India. There was also a prayer for quashing the Notification No. 2201-4-RDI-70/7147, dated March 16, 1970, issued under sub-section (1) of section 5, by the first Respondent, the State of Punjab as being illegal, unconstitutional and void. As all these petitions raised common question as to the validity of the provisions of the Act, the Notification issued by the Government pursuant to that Act and certain provisions of the statutes made thereunder it would be sufficient if facts in Writ petition No. 256 are set out.

2. The Managing Committee of the D.A.V. Collage is composed of 24 members and manages a score of other D.A.V. Institutions established in the country. The D.A.V. Collage Trust and the Managing Society was formed to perpetuate the memory of Swami Dayanand Saraswati who was the founder of an organisation known as Arya Samaj, which organisation it is claimed has a fixed religious programme and its constitution is designed to perpetuate the religious teaching and philosophy of its founder. The Arya Samaj it is stated has its own philosophy conception of God worship, religious tenets, rituals, social work, educational work etc., as would appear from the constitution of the Arya Samaj. It is, therefore, claimed that it being a religious sect and denomination, is a minority within the meaning of Article 50(1) of the Constitution. The Schools and Collages were established 'on the lines, teachings and principles of Arya Samaj' in which 'the imparting of the Vedic culture and religious instruction and worship based on the concept of Vedas, was and has its essential ingredient.'

3. The Institutions which have filed the Writ Petitions were before the Punjab Reorganisation Act (hereinafter called the 'Reorganisation Act') affiliated to the Punjab University constituted under the East Punjab Act, 7 of 1947 (hereinafter called the 'Punjab University' or 'the Punjab University Act' as the context admits). Before the partition of India some of these Institutions were affiliated to the Punjab University, Lahore. After the partition other Universities were set up in Punjab State like the Punjab University, the Kurukshetra University, the Agricultural University etc., each of which had its own territorial jurisdiction.

4. There being a strong movement in the state of Punjab by the Sikhs to have a State of their own and others who did not want it, the Government of India being faced with this problem ultimately decided to reorganise the State of Punjab on linguistic basis. A Boundary Commission was appointed under the Chairmanship of Shah, J. as he then was, and on the basis of that report Parliament ultimately passed the Reorganisation Act by and under which the State of Punjab and the State of Haryana were formed and certain other territories were added to Himachal Pradesh. Chandigarh, the erstwhile capital was to be a Union territory and was to serve as capital of both these States. A provision was made in this Act for the continuance of certain Corporations and Institutions which had served the needs of the people of both areas to continue as heretofore subject to the special provisions enacted in the Act. Three of such institutions were the Punjab University, the Punjab Agricultural University and the Board constituted under the provisions of Part III of Sikh Gurdwaras Act, 1925. The continuance of the aforementioned two Universities was dealt alongwith other statutory Corporation under the general provisions contained in Section 72 of the Reorganisation Act. As already pointed out at the time of the reorganisation of the State other Universities other than the University of Punjab were in existence namely the Punjab University in Punjab, and Kurukshetra University in Haryana. After the reorganisation the various Colleges which were in the State of Punjab other than those over which the Punjab University had jurisdiction were continued to be affiliated to the Punjab University. While this was the position till 1969 the Punjab Legislature in order to mark the 500th Birth anniversary of Shri Guru Nanak Devji established a University to perpetuate his name. The Act received the assent of the Governor on November 28, 1969. On March 16, 1970 the first Respondent in exercise of the powers conferred on it by sub-section (1) of Section 5 of the Act specified the districts of Amritsar, Gurdaspur, Jullundur and Kapurthala in the State of Punjab as the area in which the University shall exercise its power and perform its duties. It further notified on March 16, 1970, in exercise of the powers under sub-section (3) of section 5, June 30, 1970, as the date for the purpose of the said sub-section in respect of the educational institutions situated within the limits of the aforesaid area, which meant that as and from that date the colleges in the areas specified above which were affiliated to the Punjab University ceased to be affiliated to that University and were deemed to be associated with and admitted to the privileges of the University.

5. The contentions urged before us are that the main purpose and object of the University as constituted by the University Act is to propagate Sikh religion and promote Punjabi language in Gurmukhi script, that since the petitioners institutions belong to minority based on religion and language in that they being adherents of Arya Samaj sect and denomination their compulsory affiliation to the University violates Article 29(1) and 30(1) of the Constitution of India. In support of this main contention it is submitted that section 5(3) of the Act and also Clauses 2(1)(a), 17 and 18 of the statutes in Chapter V which inter alia interfere with the management of the minority institutions are ultra vires being violative of the guarantee under Article 30(1). It is also contended that the minority educational institutions have the freedom to chose to which University they will be affiliated and that the Legislature cannot compel affiliation to any particular University. In any case in view of Section 72 of the Reorganisation Act it is the Central Government which must determine whether Colleges affiliated to the Punjab University can be disaffiliated before any Notification under the Act can be issued specifying the areas in which educational institutions are to be affiliated and admitted to the privileges of the University as from date notified. On this view it is submitted that the notification of March 16, 1970, is bad and must be struck down. It is also submitted that this statutory affiliation being compulsory affects the petitioners right of association guaranteed under Article 19(1)(c) and that Article 14 is contravened because Section 4(2) and 4(3) discriminate against the Hindus, for while providing for the study of the teachings of Guru Nanak and the

encouragement of the Punjabi language no provision is made for the study of the religion or teachings of the Hindus or for their language - the Hindi.

6. Now the question is, have the petitioners been established and administered by a religious or linguistic minority, having a district script or culture of its own within the meaning of Articles 29(1) and 30(1) of the Constitution and do the provisions of the Act or any statute or ordinance or notification made thereunder offend any of the rights guaranteed to them. This in turn leads to an enquiry whether the Arya Samaj sect is a religious or linguistic minority. Articles 29(1) and 30(1) are as follows :

> 29. (1) 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.
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> 30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

It will be observed that Article 29(1) is wider then Article 30(1), in that, while any section of the citizens including the minorities, can invoke the rights guaranteed under Article 29(1), the rights guaranteed under Article 30(1) are only available to the minorities based on religion or language. It is not necessary for Article 30(1) that the minority should be both a religious minority as well as a linguistic minority. It is sufficient if it is one or the other or both. A reading of these two articles together would lead us to conclude that a religious or linguistic minority has a right to establish and administer educational institutions of its choice for effectively conserving its distinctive language, script or culture, which right however is subject to the regulatory power of the State for maintaining and facilitating the excellence of its standards. This right is further subject to clause (2) of Article 29 which provides that no citizen shall be denied admission into any educational institution which is maintained by the state or receives aid out of State funds, on grounds only of religion, race, casts, language or any of them. While this is so these two articles are not inter-linked nor does it permit of their being always read together.

7. In Rev. Father W. Proost and Others v. State of Bihar and Others (1969 (2) SCR 73 : AIR 1969 SC 465 : (1969) 1 SCJ 700), where while conceding that the Jesuits of Ranchi who were a religious minority established the petitioner Institution the St. Xaviers College which was admitting students of other communities also, the Attorney General had contended that as the protection to minorities in Article 29(1) is only a right to conserve a distinct language, script or culture of its own the College did not qualify for the protection of Article 30(1) because (i) it was not founded to conserve them, and (ii) it was open to all sections of people. An attempt was made to read into the protection granted by Article 30(1) a corollary taken from Article 29(1). While conceding that the Jesuit community is a minority community based on religion and therefore it has a right to establish and administer educational institutions of its choice, it was contended that as the protection to minorities in Article 29(1) is only a right to conserve the distinct language, script or culture of its own, the College does not qualify for the protection of Article 30(1) because it is not founded to conserve them. Hidayatullah, C.J., rejected the interpretation sought to be placed on Articles 29(1) and 30(1) as if they have to be read together. At Page 60 he said :

> "In our opinion, the width of Article 30(1) cannot be cut down by introducing in it considerations on which Article 29(1) is based. The latter article is a general protection which is given to minorities to conserve their language, script or culture.

> The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstances irrelevant for the application of Article 30(1) since no such limitation is expressed and none can be implied. The two articles create two separate rights, although it is possible that they may meet in a given case."

8. The next question is what constitutes a religious or linguistic minority and how is it to be determined ? It was submitted that in re Kerala Education Bill, 1957 (1959 SCR 995 : AIR 1958 SC 956 : (1959) SCJ 321) this court did not in fact lay down any test for ascertaining what is meant by minority community or how it is to be ascertained because in that case it had assumed that question (2) itself proceeded on the footing that there were minorities in Kerala who are entitled to the rights conferred under Article 30(1). No doubt to some extent this is true. Das, C.J., had observed at Page 1050 that "strictly speaking for answering question (2) they need not enquire as to what a minority community means or how is it to be ascertained". Nonetheless earlier he did consider these matters (vide Page 1047-1050) and laid down the principles which govern it, including an examination of the figures relating to the total population of the Kerala State and the population of the minorities, the Christians, the Muslims and the Anglo Indians.

9. Though there was a faint attempt to canvas the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view they are to be determined only in relation to the particular legislation which is sought to be impugned, namely that if it is the State Legislature these minorities have to be determined in relation to the population of the state. On this aspect Das, C.J., in Kerala Education Bill case speaking for the majority thought that there was a fallacy in the suggestion that a minority or section envisaged by Article 30(1) and Article 29(1) could mean only such persons as constitute numerically, minority in the particular region where the educational institution was situated or resided under local authority. He however, thought, it was not necessary to express a final opinion as to whether education being the subject-matter of Item 11 of the State list, subject only to the provisions of Entries 62, 63, 64 and 66 of List I and Entry 25 of List III, the existence of a minority community should in all circumstances and for purposes of all laws of that State be determined on the basis of the population of the whole State or whether it should be determined on the said basis only when the validity of a law extending to the whole State is in question or whether it should be determined on the basis of a population of a locality when the law under that Act applies only to that locality, because in that case the Bill before the Court extended to the whole of the State of Kerala and consequently the minority must be determined by reference to the entire population of that State.

10. It is undisputed, and it was also conceded by the State of Punjab, that the Hindus of Punjab are a religious minority in the State though they may not be so in relation to the entire country. The claim of Arya Samaj to be a linguistic minority was however contested. A linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language. It is not necessary that language should also have a distinct script for those who speak it to be a linguistic minority. There are this country some languages which have no script of their own, but nonetheless those sections of the people who speak that language will be a linguistic minority entitled to the protection of Article 30(1).

11. The Punjab Boundary Commission Report under the Chairmanship of Shah, J., as he then was dealt not only with the several scripts in use but also the language of the dominant sections residing

in Punjab. Earlier the States Reorganisation Report also went into the question and noted the controversies between Akali Dal sponsoring Punjabi with Gurmukhi script and Hindus who while at home they speak Punjabi asserted that in their religious ceremonies and festivals, in their Schools and Colleges they use Hindi. In any case they never accepted Gurmukhi script. At Page 143 it was observed "The problem of language in the Punjab is therefore primarily on of scripts; and in this battle of scripts; sentiment is arrayed against sentiment". This matter was dealt with in somewhat great detail in Shah's report at Pages 2 and 3 :

> "History of the language controversy in the Punjab is over fifty years old. In the Punjab of pre-British days, the Court language was Persian, the Punjabi was almost invariably written in the Persian scrip. Under the British rule, Urdu was the language of the Courts and of district administration in addition to English. During the last decades of the 19th Century two important social reform movements gained strong foothold in the Punjab. The Arya Samaj movement took hold among the urban Hindu population and use of Hindi in the Devnagri script was propagated. After Swami Dayanand, founder of the Arya Samaj movement, published his 'Satyarath Prakash' in the eyes of a section of the Hindus the Hindi language and the Devnagri script acquired religious significance. During the same period, the cause of Punjabi was espoused by the Chief Khalsa Dewan. They published a large number of books and pamphlets dealing with the lives of Gurus and diverse facets of the Sikh religion. These books were written in Punjabi Gurmukhi script, which had been given its present form by the second Guru of the Sikhs, and in which the holy Granth is written. The language issue in course of time got linked up with the politics of the province. Demands for giving better status in the administrative scheme to Punjabi in Gurmukhi script and Hindi in Devnagri script gained strength, and the Government of the day agreed to accede to these demands and recognised the status, of both Punjabi and Hindi in the educational curricula."

In our view it is unnecessary to consider whether Arya Samajis are a linguistic minority, because if they can be considered to be a religious minority they will be entitled to invoke the protection under Article 30(1).

12. For the purposes of Article 29(1) even though it may not be necessary to enquire whether all the Hindus of Punjab as also the Arya Samajis speak Hindi as a spoken language, nonetheless there can be no doubt that the script of the Arya Samaj is distinct from that of the Sikhs who form the majority. It is claimed that while the Sikhs have Gurmukhi as their script the Arya Samajis have their own script which is the Devnagri script. Their claim to be a religious minority with distinct script of their own seems to us to be justified as would appear from the following.

13. The Arya Samaj is a reformist movement, believes in one God and in the Vedas as the books of true knowledge. It holds that it is the duty of every Arya Samaji to read the Vedas and have them read, to teach or preach them to others. It has a distinct organisation, the membership of which is open to all those who subscribe to its aims and objects. The Arya Samajis worship before the Vedic fire and it begins with the burning of incence (the homa 'sacrifice') accompanied by the chanting of the Vedic verses.

14. Encyclopaedia Britannica - (Vol. II-1968) has this to say about Arya Samaj at Page 558 :

> "Arya Samaj, a vigorously reforming Sect of modern Hinduism, founded in 1875, by

> Swami Dayanand Saraswati (1824-83) at Bombay .... The Vedas as interpreted by the method laid down by Dayanand may be said to be the theology of the Arya Samaj and are held to contain all truth and all knowledge, including the basis of modern science. The Arya Samaj is completely opposed to idolatry, is sternly monotheistic and denies the efficacy of priestly intervention. Its organization and services are strongly reminiscent of Protestantism ..... The Arya Samaj opposes the caste system based upon birth, as un-vedic and insists that casts should reflect merit ..... The Arya Samaj has sought to revitalize Hindu life and to instill self-confidence and national pride among Hindus. It has established a network of excellent Schools and Colleges, including the Dayanand Anglo-Vedic College in Lahore, which teach rigorously in the Vedas and in modern science ....."

To show the affinity between Arya Samaj and Protestantism a comparison is made in the Encyclopaedia of Religion and Ethics between Dayanand Saraswati and Martin Luther. In Volume 2 at pages 58-59, it is said :

> "As Luther the German monk was a child of the European Renaissance, so Dayanand the Gujrati monk was a child of the Indian Renaissance ..... Luther attacked indulgences, while Dayanand attacked idolatry. Luther appealed from the Roman church and the authority of tradition to the scriptures of the Old and New Testaments. Swami Dayanand appealed from the Brahmanical Church and the authority of Smrti to the earliest and most sacred of Indian scriptures. The watchword of Luther was 'Back to the Bible'; the watchword of Dayanand was 'Back to the Vedas'..... but it noted to the Vedas as interpreted, not by the traditional scholarship of Indian orthodoxy or by the critical scholarship of the West, but by the scholarship of the Arya Samaj alone .... The scripture basis of the Arya Samaj then, while formally the Vedas, is in reality a certain interpretation of the Vedas, which is not recognized as legitimate by a single Sanskrit scholar, either Indian or European, outside of the Arya Samaj."

15. Shri Motilal Setalvad, learned Advocate for the Respondents contends that there is nothing to indicate that the Arya Samajis should be Hindus. This argument however overlooks the basis tents of the sect in that it admits to membership only those Hindus who subscribe to the decalogue and its beliefs in the canons of Vedic interpretation laid down by Swami Dayanand but all outsiders who are non-Hindus such as Muslims and Christians must undergo a ceremony of purification or Shudhi.

16. The passages read above show beyond doubt that the Arya Samaj by "rejecting the manifold absurdities found in Smrti and tradition and in seeking a basis in the early literature for a purer and more rational faith" can be considered to be a religious minority, at any rate as part of the Hindu religious minority in the State of Punjab.

17. It was also sought to be contended by the petitioners Advocate that they are a religious denomination for the purposes of protection under Article 26(a). It is true that Mukherjea, J., as he then was in The Commissioner of Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt (1954 SCR 1005 : AIR 1954 SC 282 : 1954 SCJ 335) after referring to Oxford Dictionary for the meaning of religious denomination as "a collection of individuals classed together under the same name - a religious sect or body having a common faith and organisation and designated by a distinctive name" held that different sects or sub-castes can certainly be called a religious denomination as it is designated by distinctive name - has a common

faith and common spiritual organization. This may be so but in the view we have taken that the Arya Samaj is a religious minority, we find it unnecessary to determine whether it is also a religious denomination, as it does not arise for consideration under Article 30 (1).

18. Now coming to the question whether the Arya Samajis have a distinct script of their own bye-law 32 of their constitution shows that the proceeding of all meetings and sub-committees will have to be written in Arya Bhasha - in Hindi language and Devnagri character. All Aryas and Arya Sabhasads should know Arya Bhasha, Hindi or Sanskrit. The belief is that the name of the script Devnagri is derived from Deva and therefore has divine origin. From what has been stated it is clear that the Arya Samajis have a distinct script of their own, namely Devnagri. They are therefore entitled to invoke the right guaranteed under Article 29(1) because they are a section of citizens having a distinct script and under Article 30(1) because of their being a religious minority.

19. It is now to be ascertained whether any of the provisions of the Act, statutes or Ordinances offend the guaranteed rights of the petitioners. The petitioners contend that sub-sections (2) and (3) of Section 4 directly infringe the fundamental rights guaranteed under Articles 29(1) and 30(1) of the Constitution. Under these provisions the Arya Samaj through its educational institutions have the right to conserve its script, culture and its language.

20. Sub-section (2) of the Act, it is submitted enacts a provision for making it imperative to study and conduct research on the life and teachings of Guru Nanak and their cultural and religious impact on Indian and World civilizations while sub-section (3) contemplates the adopting of measure for the study of Punjabi language, literature and culture which provisions according to the petitioners directly aim at strangulating the growth of Hindi while encouraging the growth of Punjabi. Their apprehension is that Punjabi with Gurmukhi script will be made the sole medium of instruction in the University and that all Colleges affiliated to this University may be forced to impart education through that medium.

21. The State of Punjab in its counter denied that the provisions of sub-sections (2) and (3) of Section 4 seek to strangulate the development and growth of Hindi language. It is stated that there is nothing in these provisions which offends the religious susceptibilities of the petitioners nor can the provisions for the promotion of and research in Punjabi language, literature and culture in the State of Punjab, which has as its declared policy the adoption of Punjabi as the sole language of the Punjabi-speaking area, be construed as offending the rights of the minorities.

22. The second Respondent the University traversed the petitioners allegations on grounds similar to those taken by the State of Punjab except that it was further stated that Respondent 3 the University of Punjab has also set up a Guru Nanak Chair and that the Punjab Government has offered to set up Guru Nanak Chairs in the Universities of Calcutta, Dharwar, Madras, Kurukshetra, Bombay as also in the Khalsa College, Amritsar.

23. Assuming for the moment that the Punjab Legislature had the competence to enact the Act, about which considerable argument was addressed before us, particularly in respect of the scope and ambit of Section 72 of the Reorganisation Act - sub-section (2) and (3) of Section 4 do not in our view offend by themselves any of the rights of the petitioners either under Article 29(1) or Article 30(1) of the Constitution. Sub-sections (2) and (3) of Section 4 are as follows :

> Section 4. - The University shall exercise the following power and perform the following duties :

#(1) X X X X##

(2) To make provision for study and research on the life and teachings of Guru Nanak and their cultural and religious impact in the context of Indian and World Civilizations;

(3) To promote studies to provide for research in Punjabi language and literature and to undertake measures for the development of Punjabi language, literature and culture.

It will be seen from the language of sub-section (2) that nowhere is there a mandate for compelling Colleges affiliated to it either to study the religious teachings of Guru Nanak or to adopt in any way the culture of the Sikhs.

24. Guru Nanak is the founder of the Sikh religion. His teachings were inspired by a need to synthesise the essentials of the Hindu and Mohamadan faith which were always irreconcilable, by preaching that in no essentials of faith did they differ. His was intersely a monotheistic philosophy of the unity of God largely directed against idolatory hypocracy, distinction of castes, creeds and the pretentions of priestcraft. He was an inspired soul from his very childhood, travelled widely and his pilgrimages extended to Mecca and Madina. If the University makes provision for an academic study and research of the life and teachings of any saint it cannot on any reasonable view be considered to require Colleges affiliated to the University to compulsorily study his life and teachings or to do research in them. The impugned provision would merely indicate that the University can institute courses of study or provide research facilities for any student of the University whether he belongs to the majority or the minority community to engage himself in such study or research but be it remembered that this study and research on the life and teachings of the Guru Nanak must be a study in relation to their culture and religious impact in the context of Indian and world civilizations which is mostly an academic and philosophical study.

25. It is however contended that as the Guru Nanak University is wholly maintained out of the State funds the provision under Section 4(2) offends Article 28(1) which is not saved by clause (2) thereof. The petitioners pointed out that Section 23 (1) of the act enjoins on the State Government to provide from time to time 'such amounts by way of grants for meeting the capital, recurring or other expenditure of the University as it may deem fit' and at any rate require it to provide a minimum annual grant of Rs. 50 lakhs to the University for meeting its recurring expenditure, provided that if during any financial year the entire amount of the aforesaid grant is not utilized for meeting the recurring expenditure the unutilized balance may with the previous consent of the State Government be utilized for meeting capital expenditure of the University. Neither the State Government nor the University in their counter denied this allegation and even in the counter filed during the course of the hearing by the State of Punjab nothing was stated to controvert the assertion that the University is wholly maintained out of State funds. During the course of the arguments however learned Advocate appearing on behalf of the state and the University suggested that this was not so because the University gets income from affiliation fees and examination fees as such it cannot be said that the University is wholly maintained out of State funds. We can only say that this was not a serious attempt to deny the averment. The income from affiliation fees and the examination fees as the term 'fee' itself indicates is something that is charged for rendering the service in respect of those two items which is a sort of quid pro quo and could hardly be said to be an income for the purposes of running the University.

26. Even so the petitioners have still to make out that Section 4(2) implies that religious instruction will be given. We think that such a contention is too remote and divorced from the object of the provision. Religious instruction is that which is imparted for inculcating the tenets, the rituals, the observances, ceremonies and modes of worship of a particular set or denomination. To provide for academic study of life and teaching or the philosophy and culture of any great saint of India in relation to or the impact on the Indian and world civilizations cannot be considered as making provision for religious instructions.

27. Sub-section (3) of section 4 also does not in our view transgress the guarantee under Article 29(1). Whether one may like it or not, linguistic State in this country have come to stay. The purpose and object of these linguistic states is to provide with grater facility the development of the people of that area educationally, socially and culturally, in the language of that region but while the State or the University has every right to provide for the education of the majority in the regional medium, it is subject to the restrictions contained in Articles 25 to 30. Neither the University nor the State can provide for imparting education in a medium of instruction in a language and script which stifles the language and script of any section of the citizens. Such a course will trespass on the rights of those sections of the citizens which have a distinct language or script and which they have a right to conserve through educational institutions of their own. In our view Section 4(3) does not lend itself to the interpretation that the medium of instruction of all affiliated colleges has to be Punjabi. The provision, as we construe it, is for the promotion of Punjabi studies and research in and the development of the Punjabi language, literature and culture which is far from saying that the University can under that provision compel the affiliated colleges particularly those of the minority to give instruction in the Punjabi language or in any way impede the right to conserve their language, script and culture.

28. It is again contended that while provision is made in Section 4(2) and 4(3) for the study and research of the life and teachings of Guru Nanak and for the study of Punjabi language, script and literature, no similar provision is made for the study of religious Heads of Hindus or for the study of Hindi and Devnagri script though Hindus form a substantial portion of the population of the State. These provisions therefore and discriminatory and violative of Article 14 of the Constitution. This argument in our view is devoid of merit. The State of Punjab is created as a unilingual State with Punjabi as its language and if provision is made for study of Punjabi language that does not furnish a ground for discrimination nor can the provision for study of the life and teachings of Guru Nanak afford any cause for complaint as in neither case as we have noticed, is there any compulsion on any person to undertake such studies nor is any of the communities prohibited from persuing studies in respect of either Hindi or of the life and teachings of any Hindu saint. The facts of the case in our view do not attract Article 14.

29. It is contended that the compulsory affiliation of the petitioners to the University affects their fundamental right of freedom of association as guaranteed under Article 19(1)(c), therefore the notification under Section 5(3) affiliating them to the University is bad. It is also urged that since the words "associated with and admitted to any privileges" are used in Section 5 of the Act, it would mean that petitioners are compulsorily formed into an Association with the University. This contention however is countered by the respondents who point out that the freedom of association under article 19(1)(c) implies association between citizens while in the case of the petitioners what is sought to be affected is an affiliation with the University which is a corporate body.

30. The right to form an association implies that several individuals get together and form voluntarily an association with a common aim, legitimate purpose and having a community of

interests. It was sought to be suggested that the compulsory affiliation with the University affects the aims and objects of the association, as such its freedom is infringed. There is in our view a fallacy in this argument which on earlier occasions had also been repelled. In the All India Bank Employees Association v. National Industrial Tribunal and Others, (1962 (2) SCR 269) it was observed that the right guaranteed under Article 19(1)(c) does not carry with it a concomitant right that the Associations shall achieve their object such that any interference in such achievement by any law would be unconstitutional unless it could be justified under Article 19(4) is being in the interests of public order or morality. The right under Article 19(1)(c) extends inter alia to the formation of an Association or Union.

31. In Raghubar Dayal Jai Prakash v. Union of India and Others, (1963 (2) SCR 547) it was held that if the statute imposes conditions subject to which alone recognition could be accorded or continued, it is a little difficult to see how the freedom to form the Association is affected unless, of course, that freedom implies or involves a guaranteed right to recognition also which it did not."

32. A reference has been made to a recent case of Smt. Damayanti Narang v. Union of India and Others, (1971 (1) SCC 678) that a compulsory affiliation by statute would interfere with the right of association. This argument in our view is untenable because in that case Parliament passed a law under Entry 63 of List II of Schedule VII to the Constitution under which a Hindi Sammelan was to be constituted which was to consist of the first members of the Hindi Sammelan registered under the Societies Registration Act and all persons who become members thereof in accordance with the rules in that behalf. This statutory Sammelan was constituted as a body corporate the first members of which were to consist of persons who immediately before the appointed day were life members of the Society, had been Presidents of the Society or were awarded the Mangla Prasad Paritoshik by the Society. There were also other provisions by which the Hindi Sammelan Society, its constitution as well as its property was affected. In those circumstances it was held that the Act in so far as it interferes with the composition of the Society in constituting the Sammelan violated the rights of the original members of the Society to form an association guaranteed under article 19(1)(c). No such thing was intended or effected by Section 5 of the Act. At any rate the D.A.V. College Trust and Management Society is not being interfered with, by any attempt to form an Association with the University. We can see no infringement of article 19(1)(c).

33. The next ground of attack is in respect of the statutes made in exercise of the powers conferred under sub-section (1) of section 19 of the University Act which according to the petitioners interferes with the management of their institutions, as such violates Article 30(1) of the Constitution. The relevant impugned statutes are contained in Chapter V relating to admission to colleges. These are Sections 2(1)(a), 17 and 18 read with clause 1(2) and (3) which are as follows :

> #"1. (1) X X X X##
>
> 1. (2) Colleges shall be of two types namely University Colleges and affiliated Colleges.
>
> 1. (3) The educational institutions and Colleges situated in the Districts of Amritsar, Jullundur, Gurdaspur and Kapurthala are deemed to be associated with and admitted to the privileges of the University with effect from 30th day of June 1970. These institutions shall observe the conditions for admission to the privileges of the University failing which the rights conferred may be withdrawn.

> 2. (1)(a) A college applying for admission to the privileges of the University shall send a letter of application to the Registrar and shall satisfy the Senate :
>
> (a) that the College shall have a regularly constituted governing body consisting of not more than 20 persons approved by the Senate and including, among others, two representatives of the University and the Principal of the College ex-officio :
>
> Provided that the said conditions shall not apply in the case of colleges maintained by Government which shall however, have an Advisory Committee consisting of among others the principal of the college (ex-office) and two representatives of the University.
>
> 17. The staff initially appointed shall be approved by the Vice-Chancellor. All subsequent changes shall be reported to the University for Vice-Chancellor's approval. In the case of training institutions, the teacher-pupil ratio shall not be less than 1 : 12. Non-Government colleges shall comply with the requirements laid down in the ordinance governing service and conduct of teachers in non-Government colleges as may be framed by the University.
>
> 18. Non-Government colleges shall comply with the requirements laid down in the ordinances governing service and conduct of teachers in non-Government colleges as may be framed by the University."

34. It is contended that these provisions interfere with the petitioners in the management of their institutions, in that the Colleges are required to constitute a regular governing body for each of them of not more than 20 persons to be approved by the University Senate. Of these two representatives of the University and the Principal of the College are to be ex-officio members. According to the petitioners the Managing Committee of their institution is composed of 24 members under the D.A.V. College Trust and Management Society registered under the Societies Registration Act (Act 21 of 1860). It will be observed that under clause 1(3) if the petitioners do not comply with the requirements under Section 1(a) their affiliation is liable to be withdrawn. Similarly it is stated that Clause 17 also interferes with the petitioners right to administer their college as the appointment of all the staff has to be approved by Vice-Chancellor and that subsequent changes will also have to be reported to the University for Vice-Chancellor's approval. We have already held that the petitioners institutions are established by a religious minority and therefore under Article 30 this minority has the right to administer their educational institutions according to their choice, clauses 2(1)(a) and 17 of Chapter V in our view certainly interferes with that right.

35. In the case of Kerala Education Bill (1959 SCR 995 : AIR 1958 SC 956 : 1959 : SCJ 321) dealing with Article 30(1) this Court observed at page 1053 :

> "The key to the understanding of the true meaning and implication of the Article under consideration are the words 'of their own choice' It is said that the dominant word is 'choice' and the content of that Article is as wide as the choice of the particular minority community may make it. The ambit of the rights conferred by Article 30(1) has therefore to be determined on a consideration of the matter from the points of view of the educational institutions themselves".

While so stating it was nonetheless observed :

> "that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institution to be aided."

Similarly in Rev. Sidhajbhai Sabhai and Others v. State of Bombay and Others, (1963 (3) SCR 837 : AIR 1963 SC 540 : (1963) 2 SCA 394) it was held that :

> "Unlike Article 19 the fundamental freedom under clause (1) of Article 30 is absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Article 19 may be subjected to. All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right ..... Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed; they secure the proper functioning of the institution, in matters educational".

36. We have already seen that in Re : Father W. Proost and Others v. The State of Bihar and Others, (1969 (2) SCR 73 : AIR 1969 SC 466 : (1969) 1 SCJ 700) the provisions of Section 48(A) which required the selection of the teachers of all affiliated colleges including the colleges established by the minorities, to be made by the University Service Commission, was held to interfere with the rights of the petitioners in that case. In that case, while the petition was pending in the Court, Section 48(A) was added to the Bihar State University Act whereby notwithstanding the provisions of Section 48(A) exemption was given to the minority institutions to make appointments with the approval of the Commission and the Syndicate, the petitioners claimed exemption under Section 48(B) and submitted that as an affiliated college established by a minority based on religion or language they are exempted from Section 48(A) and that if this petition was accepted they will withdraw the petition which had become superfluous. Even this prayer was not acceded to by the State and consequently it was held that they were entitled to the exemption clauses. This decision is not therefore an authority for the proposition that even the requirement that the staff of a minority education institution be appointed, dismissed or removed only with the approval of the University or the State does not infringe the right to administer the institution guaranteed under Article 30(1).

37. In our view there is no possible justification for the provisions contained in Clauses 2(1)(a) and 17 of Chapter V of the statutes which decidedly interfere with the rights of management of the petitioners colleges. These provisions cannot therefore be made as conditions of affiliation, the non-compliance of which would involve disaffiliation and consequently they will have to be struck done as offending Article 30(1).

38. Clause 18 however in our view does not suffer from the same vice as Clause 17 because that provision in so far as it is applicable to the minority institution empowers the University to prescribe by regulations governing the service and conduct of teachers which is enacted in the larger interests of the institutions to ensure their efficiency and excellence. It may for instance issue an ordinance in respect of age of superannuation or prescribe minimum qualifications for teachers to be employed by such institutions either generally or in particular subjects. Uniformity in the conditions of service

and conduct of teachers in all non-Government colleges would make for harmony and avoid frustration. Of course while the power to make ordinances in respect of the matters referred to is unexceptional the nature of the infringement of the right, if any, under Article 30(1) will depend on the actual purpose and import of the ordinance when made and the manner in which it is likely to affect the administration of the educational institution, about which it is not possible now to predicate.

39. There is then the larger question which has been urged at some length namely that having regard to Section 72 of the Reorganisation Act the State Legislature is not competent to enact Section 5 of the Act which empowers the State Government by notification to compulsorily disaffiliate from the Punjab University all colleges including the colleges of the minorities situated in the areas which are now in Punjab and affiliate them to the University. Section 72 of the Reorganisation Act and section 5 of the Act are as follows :

> "Section 72(1). - Save as otherwise expressly provide by the foregoing provisions of this part, where any body corporate constituted under a Central Act, State Act or provincial Act for the existing State of Punjab or any part thereof serves the needs of the successor States or has, by virtue of the provisions of Part II, became an inter-State body corporate, then the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Central Government until other provision is made by law in respect of the said body corporate.
>
> (2) Any direction issued by the Central Government under sub-section (1) in respect of any such body corporate may include a direction that any law by which the said body corporate is governed shall, in its application to that body corporate, have effect, subject to such exceptions and modifications as may be specified in the direction.
>
> (3) For the removal of doubt it is hereby declared that the provisions of this Section shall apply also to the Punjab University constituted under the Punjab University Act, 1947, the Punjab Agricultural University constituted under the Punjab Agricultural University Act, 1961 and the Board constituted under the provisions of Part III of the Sikh Gurdwaras Act, 1925.
>
> (4) For the purpose of giving effect to the provisions of this section in so far as it relates to the Punjab University and the Punjab Agricultural University referred to in sub-section (3) the successor State shall make such grants as the Central Government may, from time to time, by order determine.
>
> Section 5(1). - The State Government may, by notification, specify the limits of the area in which the University shall exercise its powers and perform its duties.
>
> (2) Notwithstanding anything contained in any other law for the time being in force, no educational institution beyond the limits of the area specified under sub-section (1) shall be associated with or admitted to any privileges of the University.
>
> (3) Notwithstanding anything contained in any other law for the time being in force,

any educational institution situated within the limits of the area specified under sub-section (1) shall, with effect from such date as may be notified in this behalf by the State Government be deemed to be associated with and admitted to the privileges of the University and shall cease to be associated in any way with, or be admitted to any privileges of the Punjab University; and different dates may be appointed for different institutions."

40. The provisions of sub-sections (1) and (2) of Section 72 of the Reorganisation act are similar to those contained in Section 109 of the states Reorganisation Act, 1956 except that for removal of doubts sub-section (3) has specified the institutions named therein as being governed by sub-sections (1) and (2). Sub-section (4) is consequential on the two Universities being made subject to the said provisions by requiring the successor State to make such grants to them as the Central Government may from time to time by order determine.

41. The State Government had by notification of March 16, under sub-section (1) of section 5 of the Act specified the districts as the areas in which the Universities shall exercise its powers and perform its duties and under sub-section (3) of the said Section, it further notified June 30, 1970 as the date from which the educational institutions situated within the limits of the areas so specified in the notification shall be deemed to be associated with and admitted to the privileges of the University.

42. The contention of the petitioners in that since under Section 72 of the Reorganisation Act it is the Central Government which is vested with the power to issue directions in respect of the Punjab University or the Punjab Agricultural University and/or to amend and alter the provisions of the Punjab University Act or the Punjab Agricultural University Act, the State Legislature is not competent to legislate in respect of the said University or Universities without the necessary directions of the Central Government. This is sought to be justified on the ground (a) that in respect of the Punjabi University the extension of jurisdiction of the University by a notification under the relevant provisions of the Punjabi University Act issued by the State Government, the Central Government had issued a direction disaffiliating the colleges situated in those areas which were affiliated to the Punjab University, (b) that as the Reorganisation of the State of Punjab itself involved various matters upon which the successor States may not be agreed Parliament by law had in exercise of the power vested in it, enacted provisions empowering the Central Government to give directions in the interests of both the States, which directions had the affect of making a change in the then existing law governing the corporate bodies till such time as both the State agreed. Though it is submitted that this power is transitory nonetheless it is effective till such time as the Central Government in agreement with the States concerned permits them to legislate in respect of the body corporate by giving necessary directions in that behalf.

43. On the other hand it is contended by the respondents inter alia (1) that under item 11 of list II of the Seventh Schedule to the Constitution education being a state subject the State Legislature alone and not parliament, is competent to legislate in respect of Universities, support being gathered for this submission from the provisions of Sections 88 and 89 of the Reorganisation Act under which the law in force immediately before the appointed day could be otherwise provided for, or altered, repealed or amended only "by a competent Legislature" which in the context is that Legislature which is competent to legislate under any of the entries in Lists I, II or under the concurrent List III of the Seventh Schedule; (2) that the law referred to in sub-section (1) of Section 72 of the states Reorganisation Act which could take away the power of the Central Government to give directions from time to time as may be necessary in respect of the 'functioning and operating' of corporations

including those in respect of the two Universities referred to in sub-section (3) is the State law, as it could not have been the intention of Parliament to deprive the States of their legislative powers by means of a law made under Article 4 of to give effect to the reorganisation of the States by having recourse to the power to make supplemental, incidental and consequential provision; (3) that Parliament itself understood that it has no power to legislate in respect of one of the two Universities namely the Punjab Agricultural University when it enacted the Haryana and Punjab Agricultural University Act 16 of 1970, pursuant to the resolution of the Legislatures of the States of Punjab and Haryana under clause (1) of Article 252 of the Constitution in which it was categorically stated, as is apparent from the resolution of the Legislature of Haryana before us, that as legislation had to be undertaken under Entries 11 and 32 of List II in the seventh Schedule and as "Parliament has no power to make a law for the State except as provided under Articles 249 and 250 thereof" it "shall by law make provision for the dissolution of the aforesaid Punjab Agricultural University .... for setting up a separate Agricultural University .... for vesting the rights and liabilities of the University so dissolved in the University to be so set up and for all matters connected therewith or incidental thereto"; and (4) that in any case in a petition under Article 32 this Court cannot go into the question of legislative competence if the law that is impugned does not in any way affect the fundamental rights of the petitioners.

44. We have already found that none of the provisions of the act offend any fundamental rights of the petitioners. But it is contended on behalf of the petitioners that in a petition under Article 32 once it is alleged and a prima facie case is made out that the fundamental rights of a citizen are threatened or violated this Court is not only bound to entertain it for determining to what extent the allegation is valid but is also bound to go into the question, if raised, that the law under which it is alleged that his fundamental right is infringed is invalid on the ground of want of legislative competence. There are two facets to the submission. Firstly, whether ultimately any fundamental right in fact is threatened or violated, so long as a prima facie case of such a threat or violation is made out a petition under Article 32 must be entertained. Secondly, once it is entertained irrespective of whether it is found ultimately that in fact no fundamental rights of the petitioners are invaded the vires of the legislation or the competence of the Legislature to enact the impugned legislation must be gone into and determined. While the first proposition is valid, the second is not.

45. Shri Tarkunde the learned Advocate for the respondents in Writ petitions Nos. 353 and 354 of 1970 which were heard immediately after these petitions has raised a contention similar to that raised in the second submission in support of which he referred to the case of Mohammad Yasin v. The town Area committee, Jalalabad and Another. (1952 SCR 572 : AIR 1952 SC 115 : 1952 SCJ 162) We do not think that this decision supports his contention because in that case it was held that in the absence of any valid law authorising the Town Committee to levy any fees otherwise than for the use of any immovable property vested in or entrusted to the management of the Town Committee such illegal imposition must undoubtedly operate as an illegal restraint and must infringe the unfettered right of the wholesale dealer to carry on his occupation, trade or business which is guaranteed to him by Article 19(1)(g) of the Constitution. In that case the levy on the petitioner as a wholesale dealer was held to be obviously ultra vires the powers of the Committee and therefore the bye-law under which such a fee was levied could not be said to constitute a valid law which alone may under Article 19(6) of the Constitution impose a restriction on the right conferred by Article 19 (1)(g). It is, therefor, clear that as long as the petitioner makes out a prima facie case that his fundamental rights are affected or threatened he cannot be prevented from challenging that the law complained of which affects or invades those rights is invalid because of want of legislative competence. In Chiranjitlal Chowdhuri v. The Union of India and Others, (1950 SCR 869 : AIR 1951 SC 41 : 1951 SCJ 29) Mukherjea, J. as he then was gave expression to a

similar view as to the maintainability of a petition under Article 32. At page 899 he said :

> "To make out a case under this Article, it is incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular Legislature as not being covered by any of the items in the legislative lists, but that it affects or invades his fundamental rights guaranteed by the Constitution, of which he could seek enforcement by an appropriate writ or order".

46. It is apparent therefore that the validity or the invalidity of the impugned law, on the ground of legislative competence should purport to infringe that fundamental rights of the petitioner as a necessary condition of its being adjudicated. But if in fact the law does not, even on the assumption that it is valid, infringe and fundamental rights, this Court will not decide that question in a petition under Article 32. The reason for it is obvious, namely that no petition under Article 32, will be entertained if fundamental rights are not affected and if the impugned law does not affect the fundamental rights it would be contrary to this principle to determine whether that law in fact has legislative competence or not.

47. Gajendragadkar, J. as he then was, in Khyerbari Tea Co. Ltd., and Another v. State of Assam, (1964 (5) SCR 975 : AIR 1964 SC 925 : (1964) 2 SCA 317) while dealing with a challenge to the validity of Section 24 of the Assam Taxation on Goods Act, 1961 said at page 1009 :

> "There may be some force in this contention, but we do not see how the petitioners can be permitted to challenge the validity of Section 24 when it is not alleged by them that any action is proposed to be taken against them under the said Section. In dealing with the petition under Article 32 this Court would naturally confine the petitioners to the provisions of the impugned Act by which their fundamental rights are either affected or threatened. That is why we are not satisfied that it is necessary to decide the question about the validity of Section 24 in the present proceeding".

48. In Saghir Ahmad v. State of U. P. (1955 SCR 707 at 726 : AIR 1954 SC 728 : 1954 SCJ 819) it was held that when the enactment on the face of it is found to violate the fundamental rights guaranteed under Article 19(1)(g) of the Constitution it must be held to be invalid unless those who support the legislation can bring it within the purview of the exception laid down in Clause 6 of the Article but if the respondents did not place any materials before the Court to establish that the legislation comes within the permissible limits of Clause 6, it is surely not for the appellants to prove negatively that the legislation was not reasonable and was not conducive to the welfare of the community. There are other such instances where this Court has drawn an initial presumption of constitutionality when a statute was impugned as being unconstitutional.

49. This being the legal position in our view when once an impugned law does not affect the fundamental rights of the petitioners as in this case we have founded it to be so, it is not necessary to go into the question of legislative competence or to decide on the validity of Section 5.

50. We have therefore no hesitation in holding that the notification under which the colleges have been affiliated to the Universities is legally valid and from the date specified therein petitioners colleges cease to be affiliated to the Punjab University. In the result these petitions are allowed to the extent that Clause 2(1)(a) and Clause 17 of Chapter V of the statutes are struck down as affecting the fundamental rights of the petitioners, but in the circumstances without costs.

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