

The Gandhi Faiz-E-Am College, Shahjahanpur

Vs

University of Agra and Another

Civil Appeal No. 1611 of 1969

(K. K. Mathew, V. R. Krishna Iyer, A. C. Gupta JJ)

03.03.1975

JUDGMENT

KRISHNA IYER, J-

1. Our essay in this appeal is to interpret and apply Article 30 of the Constitution, illumined by the ratio of the recent leading case on the constitutional rights of minorities vis-a-vis educational institutions where a Bench of 11 Judges handed down six opinions on the thorny issue. As we proceed to judgment, we are reminded of two famous American observations. Chief Justice Marshall, while deciding the celebrated McCulloch v. Maryland case (4 Wheaton 316, 407 : 4 L Ed 579 (1819)) made the pregnant remark : 'We must never forget that it is the Constitution we are expounding'. Governor Hughes, soon to ascend the U.S. Supreme Court, said : 'We are under a Constitution, but the Constitution is what the Judges say it is'. Reverentially guided and bound by great precedents but mindful of the luminous texts and goals of the Constitution itself, we have to attempt the task.
2. The facts of the present case are virtually admitted, the precedent that binds us is of fresh vintage but the legal test when applied to this concrete case-situation is fine, if not baffling. Of course, the only area of judicial exploration is to decoct the rule from the ruling and fit it to the admitted facts.
3. The appellant is a registered society formed by the members of the Muslim community at Shahjahanpur. Indubitably, the community ranks as a minority in the country and the educational institution run by it has been found to be what may loosely be called a 'minority institution', within the constitutional compass of Article 30. The earlier history of the institution need not detain us and a rapid glance at its evolution is enough. The A. V. Middle School was the offspring of the effort of the Muslim minority resident in Shahjahanpur district. It later became a high school and afterwards attained the status of an Intermediate college. Eventually it blossomed into a degree college affiliated to the University of Agra. In 1948, on the assassination of the Father of the Nation, this college was commemoratively renamed as Gandhi Faiz-e-am College. In August 1964, an application was made on behalf of the college management to the University for permission to start teaching in courses of study including Sociology, Sanskrit, Arabic, Military Studies, Drawing and Painting. The University entertained the thought that a new organisational discipline must be brought into the institution and insisted, as a condition of recognition of these additional subjects as course of study, on certain mutations in the administrative body of the college. The bone of contention before us, as was before the High Court, is that this prescription by the University, in tune with Statute 14-A framed by it, is an invasion of the fundamental right guaranteed to the minority community under Article 30 of the Constitution of India. The High Court has negatived the plea of the management and the appeal issues from that decision.

4. What is the core of the restriction clamped down by Statute 14-A ? What is the conscience and tongue of Article 30 ? If the former is incongruous with the latter, it withers as void; otherwise, it prevails and binds. That is the crux of the controversy.

5. The minority college is administered by a three-tier body organised intra-murally by the society. No outsider has entered the precincts of management which has all along remained with the members only. The General Council with plenary powers, the governing body more circumscribed yet effective as policy-maker and the Managing Committee, the day-to-day administrative sub-agency - these are the organs vested with controlling power, under the relevant rules of the Society. The essential point is that the society is autonomous and its organs administer the institution.

6. The University directive backed by Statute 14-A, it is contended, forces two persons on the area of administration. This is argued to be a serious erosion of the great right guaranteed to cultural and religious minorities. Statute 14-A may, at the outset, be reproduced :

14-A. Each college, already affiliated or when affiliated, which is not maintained exclusively by Government must be under the Management of a regular constituted Governing body (which term includes Managing Committee) on which the staff of the college shall be represented by the Principal of the college and at least one representative of the teachers of the college to be appointed by rotation in order of seniority determined by length of service in the college, who shall hold office for one academic year.

Emboldened by this provision, the Registrar of the Agra University has made the impugned demand which runs thus :

Agra University

From Sri R. N. Pathak,

Asst. Registrar (Affiliation),

Agra University,

Agra

To The Principal, G.F. College,

Shahjahanpur

No. Affl/7965

Dated : Agra, 24 April, 1965

Sir,

With reference to your application dated December 1, 1964 recognition in certain subjects upto the B.A. standard, I am to inform you that the Executive Counsel at its meeting held on April 10, 1965

after considering the report of the Inspectors on the inspection of your college and the recommendations of the relevant committee thereon decided that recognition applied for upto the B.A. standard be not granted to the college unless provisions is made in the constitution for representation of the Principal and one Head of Department to be chosen in order of seniority every year on the Managing Committee of the college and other conditions have been fulfilled. I am therefore to request you to take immediate steps to implement the aforesaid decision of the Council and let me know that you have done so. On receipt of your reply the matter will be further considered.

Yours faithfully,

Sd/- R. N. Pathak,

Asst. Registrar (Affl.)

7. Maybe, we may as well mention the stand taken by the management of the College in the correspondence with the Registrar. In one reply it was represented :

From

The President,

Managing Committee,

G.F. College,

Shahjahanpur.

To The Deputy Registrar (Affl),

Agra University.

No. 660 Dated,

Shahjahanpur,

Nov. 22, 1965.

Sir,

With reference to your letter No. Affl/1338, dated August 31, 1965 and subsequent reminder dated October 20, 1965, I have the honour to say that we are very grateful to the University for its acceptance of the minority status of our college.

While mentioning that the University has no legal power to interfere in our right to administer the institution, we are willing to make the inclusion of the Principal and one Head of Department by rotation obligatory in the Governing Body as proposed in the written legal opinion of our counsel, (relevant extract of which has been forwarded to us along with your letter under reference), simply for the reason that we are very anxious to keep up smooth and cordial relations with the University.

The learned Vice-Chancellor is, therefore, requested to grant us affiliation in all the new subjects in

respect of which our applications are pending, at a very early date, to enable us to make the necessary preparations, which are likely to take sufficient time, to start the classes in those subjects from the beginning of the next session.

We undertake to amend our constitution suitably to give the proposal a practical shape within three months after the receipt of your kind reply.

An early disposal of this letter is solicited.

Yours faithfully,

Sd/-

President,

Managing Committee,

G.F. College,

Shahjahanpur

This concession was retracted allegedly because the University took no steps accepting it and a writ petition was filed challenging the vires of Statute 14-A and legality of the directive.

8. If reliance had been placed by the University on this concession of the management as amounting to a waiver of the fundamental right, thereby making short shrift of the dispute, it would have been difficult for us to accede to the plea. Indeed, wisely no plea of waiver of the fundamental right has been put forward and perhaps none can be, in this branch of constitutional jurisprudence. We are therefore concerned with discerning the parameter of 'minority' right in Article 30.

9. A stream of Supreme Court rulings commencing with the Kerala Education Bill case (In re the Kerala Education Bill, 1957, 1959 SCR 995 : AIR 1958 SC 956) and climaxed by St. Xavier's College case (Ahmedabad St. Xavier's College Society v. State of Gujarat, AIR 1974 SC 1389 : (1974) 1 SCC 717) has settled the law for the present, and the last refers to the precedential past. We will confine ourselves largely to the currently final pronouncement; but where did the Court draw the delicate line between unconstitutional conditions and constitutional regulations ? A certain thread of unanimity exists among the many opinions and that common ground - not individual deviations and differences - must be the basis of our judgment. Right at the beginning we must observe that the whole edifice of case law on Article 30 has been bed-rocked on the Kerala Education Bill case (supra).

10. The greatest common measure of agreement among the various opinions in that case [St. Xavier's College case (supra)] will have to be ascertained. Ray, C.J. following Das, C.J. (in the First Kerala case), has taken middle view, if one may say so with great respect. 'Hands-off administration altogether' is a tall call today : but 'hand-cuff managements into uniformity' is also not the correct rule. A benignantly regulated liberty which neither abridges nor exaggerates autonomy but promotes better performance is the right construction of the constitutional provision. Such an approach enables the fundamental right meaningfully to fulfil its trust with the minorities' destiny in a pluralist polity. That is the authentic voice of Indian democracy. To regulate, it be noted, is not to restrict, but to facilitate effective exercise of the very right. The constitutional estate of the

minorities should not be encroached upon, neither allowed to be neglected nor maladministered. This quintessence of the decision may now be aptly born out by pertinent excerpts from the various judgments.

The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclecticism in the administration of the institution. [St. Xavier's College case at AIR p. 1398, SCC p. 748, para 30].

Regulations which will serve the interests of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions. [St. Xavier's College case, at p. 1398, SCC p. 748, para 31]

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions The university will always have a right to see that there is no maladministration. If there is maladministration, the university will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students. [St. Xavier's College case, at p. 1399. SCC p. 750, para 41]

The 'inner voice' of the whole pronouncement should not be muffled while reading the particular result in the case and that is happily expressed thus :

The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration. Das, C.J. in the Kerala Education Bill case (supra) summed up in one sentence the true meaning of the administer by saying that the right to administer is not right to maladminister. [St. Xavier's College case, at p. 1396, SCC p. 746, para 20]

11. Mr. Justice Jaganmohan Reddy summed up the law at the threshold :

The right of a linguistic or religious minority to administer educational institutions of their choice, though couched in absolute terms had been held by this Court to be subject to regulatory measures which the State might impose for furthering the excellence of the standards of education. [St. Xavier's College case, at p. 1401, SCC p. 753, para 51]

12. Mr. Justice Khanna stressed what is sometimes ill-remembered :

The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give the minorities a sense of security and a feeling of confidence. [St. Xavier's College case, at p. 1415, SCC p. 772, para 77]

The learned Judge, after visualising the abundant catholicity of the guarantee is favour of minorities in our multi-cultural country, insisted that regulations for the welfare of the institution were not

constitutional anathema :

It is, in my opinion, permissible to make regulations for ensuring the regular payment of salaries before a particular date of the month. Regulations may well provide that the funds of the institution should be spent for the purposes of education or for the betterment of the institution and not for extraneous purposes. [St. Xavier's College case, at p. 1422, SCC p. 782, para 91]

And, after itemising, illustratively, other permissible constraints, observed :

A regulation which is designed to prevent maladministration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutional of their choice. [St. Xavier's College case, at p. 1422, SCC p. 783, para 92]

As observed by this Court in the case of Rev. Sidhajibhai Sabhai (Rev. Sidhajibhai Sabhai v. State of Bombay, ((1963) 3 SCR 837 : AIR 1963 SC 540), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution effective as an educational institution. Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. [St. Xavier's College case, at p. 1422, SCC p. 783, para 92]

In the context of affiliation of colleges, the learned Judge concertised the law thus :

The said authority can always can always prescribe regulations and insist that they should be complied with before it would grant affiliation or recognition to an educational institution. To deny the power of making regulations to the authority concerned would result in robbing the concept the affiliation or recognition of its real essence. [St. Xavier's College case, at p. 1423, SCC p. 784, para 94]

It would be wrong to assume that an unrestricted right as in Article 30 postulates absence of regulations. Regulations can be prescribed in spite of the unrestricted nature of the right. [St. Xavier's College case, at p. 1423, SCC p. 784, para 95]

13. In short, the view which appealed to Khanna, J. shows that the law, to be constitutional, should not impair the minorities' right but may be promotional in the sense of making the purpose of the institution more productive.

14. One of us, sitting on that Bench (Mr. Justice Mathew) has illumined the amplitude of the right under Article 30 but has not dissented from the validity of putting on that right regulatory harness. In a pithy statement, this point has been made by the learned Judge : 'No right, however absolute, can be free from regulation' [St. Xavier's College case, at p. 1441, SCC p. 810, para 172]. The spiritual seed of this thought is found in the Holmesian observation extracted by him :

All rights tend to declare themselves absolute to their logical extreme. Yet all in fact

are limited by the neighbourhood of principles of policy which are other than those on than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached. [St. Xavier's College case, at p. 1441, SCC p. 810, para 172]

With specific reference to 'affiliation' these guidelines fell from the learned Judge :

Recognition or affiliation creates an interest in the university to ensure that the educational is maintained for the purpose intended and any regulation which will subserve or advance that purpose will be reasonable and no educational institution established and administered by a religious or linguistic minority can claim recognition or affiliation without submitting to those regulations. That is the price of recognition or affiliation In other words recognition or affiliation is a facility which the university grants to an educational institution. [St. Xavier's College case, at p. 1442, SCC p. 812, para 176]

15. Justices Beg and Dwivedi have stretched the regulatory power further than majority, holding that it is an illusion for a minority to claim absolute immunity. The thrust of the case is that real regulations are desirable, necessary and constitutional but, when they operate on the 'administration' part of the right, must be confined to chiselling into shape, not cutting down out of shape, the individual personality of the minority.

16. The discussion throws us back to a closer study of Statute 14-A to see if it cuts into the flesh of the management's right or merely tones up its health and habits. The two requirements the University asks for are that the managing body (whatever its name) must take in (a) the Principal of the College; (b) its seniormost teacher. Is this desideratum dismissible as biting into the autonomy of management or tenable as ensuring the excellence of the institution without injuring the essence of the right ? On a careful reflection and conscious of the constitutional dilemma, we are inclined to the view that this case falls on the valid side of the delicate line. Regulation which restricts is bad; but regulation which facilitates is good. Where does this fine distinction lie ? No rigid formula is possible but a flexible test is feasible. Where the object and effect is to improve the tone and temper of the administration without forcing on it to a stronger, however superb his virtues be, where the directive is not to restructure the governing body but to better its performance by a marginal catalytic induction, where no external authority's fiat or approval or outside nominee is made compulsory to validate the Management Board but inclusion of an internal key functionary appointed by the autonomous management alone is asked for, the provision is salutary and saved, being not a diktat eroding the freedom of the freedom.

17. A dichotomy is sometimes drawn in this branch of juridical discussion. More plainly, the difference drawn is between creating a managing body by the minority community and regulation of the manner of its functioning to obviate maladministration. The former is ordinarily beyond the pale of legislative prescription while the latter is permissible as a preservative. Broadly, this is sound, but as a rigid logical formula, it breaks down. For, some regulations may impinge marginally upon the composition of the administrative organ though manifestly meant to save the institution from mismanagement. Just one or two examples. If the law says that a person sentenced for a prescribed period of imprisonment for breach of trust or an undischarged insolvent would be disqualified to be the treasurer or one who has been removed from public office or moral delinquency or has been punished for outraging the religious feelings of the very minority under Section 295-A, I.P.C. should not hold office on the governing body, such a regulation affects the structure of the

governing body but is indubitably a protection against likely maladministration. Likewise, supposing the management has to award scholarships to students of merit, decide on courses of study to be undertaken, regulate teacher-students comity and discipline, who but the Principal chose by the minority itself will be better on the Committee to guide it in these vital affairs ? These fine but real lines cannot be obfuscated by excessive emphasis on the character of the organ as against its method of working. Men matter in extreme situation.

18. This perspective helps us discern the points made by either side.

19. The pitch of Shri Frank Anthony's submission is that the command of the University to include even the Principal, the head appointed by that very management to be in plenary charge of the education imparted in college, is an invasion of the minority right. Freedom from any form of external pressure, however well-meant and beneficent, is the soul of the right to administer, if one may paraphrase his contention. This is simply countered by the words of Khanna, J. :

It would be wrong to assume that an unrestricted right as in Article 30 postulates absence of regulations. Regulations can be prescribed in spirit of the unrestricted nature of the right. [St. Xavier's College case, at p. 1423, SCC p. 784, para 95]

All the other learned Judges who are party to St. Xavier's College case (supra) and all the earlier rulings have negated the untouchable absoluteness urged by the managements. Equally fallacious is the simplistic submission which appears to have appealed to the High Court that Article 30 is disturbed only when the right is destroyed, not when it is damaged. St. Xavier's College case has dispelled doubts in this behalf : Abridgment of the constitutional right is as obnoxious as annihilation. To cripple is to kill.

20. Steering clear of these unconstitutional shoals let us again feel our way through the controversy. First, the principal. In the eloquent words of one of learned Judges (Mathew, J.) in St. Xavier's College case (supra) : [SCC pp. 815-816, para 182]

It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance to discipline and its efficiency in teaching. The right to choose the principal and to have teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution.

The strategic appointee must be chosen by the management with sedulous care and his choice should not be 'externalised' by regulations. All right. But for the excellent reason that the principal is the vital, vibrant and luscious presence within the educational campus, no administration can bring out its best in the service of the institution sans the principal. To alienate him is to self-inflict wounds; to associate him is to integrate the academic head into the administrative body for the obvious betterment of managerial insight and proficiency. He is not stranger to the college but the commander appointed by the management itself. A regulation which requires his inclusion in the governing council imposes no external element nor exposes the college to the espionage of one with dual loyalties. His membership on the Board is a blessing in many ways and not a curse in any conceivable way. After all, the functions of the Managing Committee, as set down in bye-law 15, are :

15. The Managing committee shall -

- (a) Dispose of applications for scholarships and concession, etc., received by the Secretary or any other person.
- (b) Check and pass account kept by the treasurer, Secretary or Principal.
- (c) Have powers to appoint, suspend, remove or otherwise punish or dismiss any servant of the school and college or give them promotion or make reductions in their salaries and grant them leave in accordance with the Agra University rules as the case may be :

Provided that in case of dismissal or removal or fine exceeding one month's pay or suspension for a period exceeding one month, an appeal shall lie to the governing Body whose decision shall be final. The period for filing the appeal shall be 15 days from the receipt of the order against which the appeal is to be preferred.
- (d) See that the property of the institution, whether movable or immovable, is properly managed and kept.
- (e) Generally supervise the work of all the Office-bearers.
- (f) To pass the annual budget, annual report and dispose of the audit note.
- (g) To sanction expenditure upto Rs. 25,000 in the course of one year, irrespective of the budget provision.
- (h) To acquire by purchase, mortgage or otherwise immovable or movable property for the institution and to sell or otherwise dispose of movable property.

21. An activist principal is an asset in discharging these duties which are inextricably interlaced with academic functions. The principal is an invaluable insider - the management's own choice - not an outsider answerable to the Vice-Chancellor. He brings into the work of the Managing Committee that intimate acquaintance with educational operations and that necessary expression of student-teacher aspirations and complaints which are so essential for the minority institution to achieve a happy marriage between individuality and excellence. And the role of the seniormost teacher, less striking may be and more unobtrusive, is a useful input managerial skills, representing as he does the teachers and being only a seasoned minion chosen by the management itself. After all, two creatures of the society on a 16-member Managing Committee can bring light, not tilt scales. Moreover, the Managing committee itself is subject to the hierarchical control of the governing body and the General Council.

22. We see no force in the objection to the two innocuous insiders being seated on the Managing Committee.

23. The various decisions of this Court where legislative fetters have been struck down are cases in contrast. There the rules maim; here they improve. There the input upsets the balance : here the addition is minimal and strengthens from within. There, are external mandates to approve; here an internal principal is proposed to be dovetailed to make administration more proficient without injury to independent action. In the Kerala University Act case (State Kerala v. Very Rev. Mother Provincial, ((1971) 1 SCR 734 : (1970) 2 SCC 417) the vice of Sections 48 and 49, summarised by Ray, C.J., in St. Xavier's College case (supra) was stated thus :

Those sections were found by this Court to have effect of displacing the administration of the college and giving it to a district corporate body which was in no way answerable to the institution. The minority community was found to lose the right to administer the institution it founded. The governing body contemplated in those sections was to administer the colleges in accordance with the provisions of the Act, statutes, ordinances, regulations, bye-laws and orders made thereunder. The powers and functions of the governing body, and removal of the members and the procedure to be followed by it were all to be prescribed by the statutes. These provisions amounted to vesting the management and administrations of the institution in the hands of bodies with mandates from the University. [St. Xavier's College case, at AIR p. 1397, SCC p. 747, para 27]

Likewise in Rev. Fr. W. Proost (Rev. Father W. Proost v. State of Bihar, ((1969) 2 SCR 73 : AIR 1969 SC 465) the mischief was summed up in the latest case [St. Xavier's College case (supra) by Ray, C.J. in these words :

This Court in Rev. Fr. W. Proost case held that Section 48-A of the Bihar Universities Act which came into force from March 1, 1962, completely took away the autonomy of the governing body of St. Xavier's College established by the Jesuits of Ranchi. Section 48-A of the said Act provided inter alia that appointments, dismissals, removals, termination of service by the governing body of the college were to be made on the recommendation of the University Service commission and subject to the approval of the University. There were other provisions in that section, viz., that the Commission would recommend to the governing body names of persons in order of preference and in no case could the governing body appoint a person who was not recommended by the University Service Commission. [St. Xavier's College case, at p. 1397, SCC PP. 746-747, para 24]

Again, the same judgment pinpoints in these brief words, the unconstitutional sting in the Bihar viz, Rt. Rev. Bishop Patro (Rt. Rev. Bishop S. K. Patro v. State of Bihar, ((1969) 1 SCC 863 : (1973) 1 SCR 172) :

In Rt. Rev. Bishop S. K. Patro v. State of Bihar the State of Bihar requested the Church Missionary Society School Bhagalpur to constitute a managing committee of the school in accordance with an order of the State. This Court held that the State authorities could not require the school to constitute a managing committee in accordance with their order. [St. Xavier's College case, at AIR p. 1397, SCC p. 747, para 25]

In Gujarat case of St. Xavier's College (supra) is a study in contrast, at stated earlier. Sections 40 and 41 and Section 38 shackled the management, trenching seriously upon the right to administer. The law, as now expounded, regards this excess as unconstitutional.

24. In all these cases administrative autonomy is imperilled transgressing purely regulatory limits. In our case autonomy is virtually left intact and refurbishing not restructuring, is prescribed. The core of the right is not gouged out at all and the regulation is at once reasonable and calculated to promote excellence of the institution - a text book instance of constitutional conditions.

25. To project in bold relief the intrusion into the administration of the provisions in the Second

Kerala case (State of Kerala v. Very Rev. Mother Provincial) (supra), and D.A.V. College case (D. A. V. College v. State of Punjab, ((1971) 2 SCC 269 : 1971 Supp SCR 688) and St. Xavier's College case (supra) as against the innocuous prescriptions bearing on management in the present case, we may make a vivid comparison of the clauses. A chart may speak with eloquent clarity :

Kerala University Act (State of Kerala Vs Very Rev. Mother Provincial)

S.48. Governing body for private college not under corporate management. - (1) The educational agency of a private college, other than a private college under a corporate management, shall constitute in accordance with the provisions of the statutes a governing body consisting of following members, namely :

- (a) the principal of the private college;
 - (b) the manager of private college;
 - (c) a person nominated by the university in accordance with the provisions in that behalf contained in the statutes;
 - (d) a person nominated by the Government;
 - (e) a person elected in accordance with such procedure as may be prescribed by the Statutes from among themselves by the permanent teachers of the private college; and
 - (f) not more than six persons nominated by the educational agency.
- (2) The governing body shall be a body corporate having perpetual succession and a common seal.
- (3) The manager of the private college shall be the chairman of the governing body.
- (4) A member of the governing body shall hold office for a period of four years from the date of its constitutions.
- (5) It shall be the duty of the governing body to administer the private college in accordance with the provisions of this Act and the statutes, Ordinances, Regulations, Rules, Bye-laws and Orders made thereunder.
- (6) The powers and functions of the governing body, the removal of members thereof and the procedure to be followed by it, including the delegation of its powers, shall be prescribed by the Statutes.
- (7) Notwithstanding anything contained in sub-section (6) decisions of the governing body shall be taken at meetings on the basis of simple majority of the members present and voting.

S.49. Managing council for private colleges under corporate management -

- (a) one principal by rotation in such manner as may be prescribed by the Statutes;

- (b) the manager of the private college;
 - (c) a person nominated by the University in accordance with the provisions in that behalf contained in the Statutes;
 - (d) a person nominated by the Government;
 - (e) two persons elected in accordance with such procedure as may be prescribed by the Statutes from among themselves by the permanent teachers of all the private colleges; and
 - (f) not more than fifteen persons nominated by the educational agency.
- (2) The managing council shall be a body corporate having perpetual succession and a common seal.
- (3) The manager of the private colleges shall be the chairman of the managing council.
- (4) A member of the managing council shall hold office for a period of four years from the date of the constitution.
- (5) It shall be the duty of the managing council to administer all the private colleges under the corporate management in accordance with provisions of this Act and the Statutes, Ordinances, Regulations, Bye-laws and Orders made thereunder.
- (6) The powers and functions of the managing council, the removal of members thereof and the procedure to be followed by it. Including the delegation of its powers, shall be prescribed by the Statutes.
- (7) Notwithstanding anything contained in sub-section (6), decisions of the managing council shall be taken at meetings on the basis of simple majority of the members present and voting.

S.63. Power to regulate the management of private colleges -

- (4) If the governing body or managing council, as the case may be, disapproves any decision taken by the University in connection with the management of the private college the matter shall be referred by the governing body or managing council, as the case may be, to the Government, within one month of the date of receipt of the report under sub-section (3) who shall thereupon pass such order thereon as they think fit and communicate the same to the governing body or managing council and also to the University.
- (6) The manager appointed under sub-section (1) of Section 50 shall be bound to give effect to the decisions of the University and if at any time, it appears to the University that the manager is not carrying out its decisions, it may, for reasons to be recorded in writing and after giving the manager an opportunity of being heard, by order remove him from office and appoint another person to be the manager after consulting the educational agency.

#-----Guru Nanak Gujarat
 University Statute 14-A University Act (St. Xavier's (impugned in the Statutes College
 Case) instant case)(D.A.V.College case)-----
 ----- 2 3 4-----Status 2(1)(a)
 33A. (1) Every college 14A. Each college, A college applying (other than a Govern-
 already affiliated for admission to nment college which is not the privileges of or
 college maintained the University maintained exclusively shall send a by the
 Government) must be under letter of appli- affiliated before the Management cation to
 the the commencement of of a regular Registrar and the Gujarat Univer-
 constituted shall satisfy sity (Amendment) governing body (which the Senate : Act,
 1972 term includes Managing (hereinafter in Committee) on which (a) That the
 College this section he staff of the shall have a regula- referred to as college shall
 berly constituted 'such commencement') - represented by the governing body (a) shall
 be under Principal of the consisting of not the management of college and at more
 than 20 pers- a governing body least one repre- ons approved by the which shall
 ntative of the Senate and including, include amongst teachers of the among others, 2
 repr- its members the college to be sentatives of the Principal of the appointed by
 rotation University and the college, a repre- in order of seniority principal of the
 sentative of the determined by length College ex officio : University nominated of
 service in the he Vice-Chancellor college, who shall and three representatives hold
 office for one of the teachers of the academic year. College and at least one repre-
 ntative each of the members of the non-teaching staff and the students of the college,
 to be elected respect- ively from amongst such teachers, members of the non-
 teaching staff and students; and (b) that for recruitment of the Principal and members
 of the teaching staff of a college there is a selection committee of the college which
 shall include - (1) in the case of recruitment of the Principal, a representative of the
 University nominated by the Vice-Chancellor, and (2) in the case of recruitment of a
 member of the teaching staff of the college, a representative of the University
 nominated by the Vice-Chancellor and the Head of the Department, if any, concerned
 with the subject to be taught by such member. (2) Every college referred to in sub-
 section (1) shall, - (a) within a period of six months after such commencement,
 constitute or reconstitute its governing body in conformity with sub-section (1), and
 (b) as and when occasion first arises after such commencement, for recruitment of
 the Principal and teachers of the College, constitute or reconstitute its selection
 committee so as to be in conformity with sub-section (1). (3) The provisions of sub-
 section (1) shall be deemed to be a condition of affiliation of every college referred
 to in sub-section (1)##

In the chart aforesaid, we have confined our attention to the 'management' facet of
 the case but may mention that while in the earlier cases even the power to appoint the
 principal and staff was controlled, in the instant case it is a refreshing contrast.

26. First the D.A.V. College. He who runs and reads will discover that Statute 2(1) (a) insists upon
 (a) a limit to the strength of the governing body; (b) the approval of the Senate of the University for
 the constitution of the governing body; and (c) the inclusion of two representatives of the University
 as also the Principal of the college ex officio. To legislate for the governing body a rigid restriction
 on its numbers is to deprive the minority of its free play in organising its management. To compel
 approval by Senate - and outside instrumentality - before the governing body can have legal status,
 is a violent violation of Article 30. To foist two representatives of the University - rank outsiders - is

again an infringement of the autonomy of the minority institution. The Court, in that case [D.A.V. College case, (supra)], upheld the complaint of the college authorities thus : [SCC p. 283, para 37]

In our view there is not possible justification for the provisions contained in Clauses 2(1) (a) and 17 of Chapter V of the statues which decidedly interfere with the right 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 down as offending Article 30(1).

27. It is impossible to predicate from the above observations that this Court regarded as obnoxious the inclusion of the Principal of the very college. On the other hand, the more serious encroachment which caved into the independent management of the College consists in the first three provisions which are deprivatory in character. The present case is a graphic contrast. No ceiling on 'membership; no unbidden guests, nominees of the University, fobbed off on the Managing Committee. The solitary but inconsequential similarity of circumstance that there is reference to the Principal, there an here, cannot approximate the two cases from the constitutional angle at all, what with complete hold on staff appointment in the former and none in the latter.

28. The Second Kerala case [State of Kerala v. Very Rev. Mother Provincial (supra)], as the table (pp. 296-97) shows, insists on the appointment of the Principal himself being controlled, displaces the minority's Managing Committee by imposing an admixed governing agency of statutory concoction wresting authority from the minority. A different entity with legislatively limited functions robs the religious group of its right of administration. The distance between the Kerala University Act provisions and those of the Agra University Act is considerable and the constitutional import too obvious for argument.

29. The manacle regulations of the Gujarat University Act are also tell-tale. Its metamorphic impact is best summed up in the terse words of Ray C.J. The minority character of the college is lost. Minority institutions became part and parcel of the University. Why ? Because :

The provisions contained in Section 33-A(1)(a) of the Act, state that every college shall be under the management of the governing body which shall include amongst its members, a representative of the university nominated by the Vice-Chancellor and representatives of teaches, non-teaching staff and students of the college

In State of Kerala v. Very Rev. Mother Provincial (supra) this Court said that if the administration goes to a body in the selection of whom the founders have no say, the administration would be displaced. This court also said that situations might be conceived when they might have a preponderating voice. That would also affect the autonomy in administration. The provisions contained in Section 33-A(1)(a) of the Act have the effect of displacing the management and entrusting it to a different agency. The autonomy in administration is lost. New elements in the shape of representatives of different types are brought in. The calm waters of an institution will not only be disturbed but also mixed. These provisions in Section 33-A(1)(a) cannot therefore apply to minority institutions. [St. Xavier's College case, at p. 1399, SCC pp. 750-51, paras 40-41].

The features of the Agra University Act vis-a-vis the minority institutions are conspicuously different and leave almost unaffected the total integrity of the administration by the religious group, save in minimal inclusion of two internal entities namely the principal of their own choice and the seniormost lecturer independently appointed by them.

30. We are satisfied that the regulatory clauses challenged before us improved the administration and do not inhibit its autonomy and are therefore good and valid.

31. We therefore hold that the statute impugned is not vulnerable nor void. The appeal has to be and is dismissed, but without costs in the circumstances of this case.

MATHEW, J. (dissenting) - The question is whether Statute 14-A framed by the University of Agra abridges the fundamental right guaranteed under Article 30(1) of the Constitution of the Muslim community of Shahjahanpur a religious minority, to administer the Gandhi Faiz-e-am College, Shahjahanpur, established by it.

33. In August, 1964, an application was made on behalf of the college management to the University for permission to start teaching in courses of study including Sociology, Sanskrit, Arabic, Military Studies, Drawing and Painting. The University insisted that as condition for recognition of these additional subjects as courses of study, the Managing Committee of the college must be reconstituted in conformity with Statute 14-A by including the Principal and the seniormost member of the staff in it. Statute 14-A provides :

14-A. Each college, already affiliated or when affiliated, which is not maintained exclusively by government must be under the Management of a regular constituted Governing Body (which term includes Managing Committee) on which the staff of the college shall be representative of the teachers of the college to be appointed by rotation in order of seniority determined by length of service in the college who shall hold office for one academic year.

34. In the writ petition filed before the High Court, the appellant contended that Statute 14-A abridged its fundamental right under Article 30(1). But the High court negated the contention holding that even in State 14-A is implemented by the religious minority, the right of the minority to administer the educational institution would not be taken away or destroyed and dismissed the writ petition.

35. I should have thought that the matter was concluded by the decision of this is Court in Ahmedabad St. Xavier's College Society v. State of Gujarat (supra). Section 33A(1)(a) of the Gujarat University Act, 1949, which fell for consideration in that case, among other matters, read :

33A (1). Every college (other than a Government college or a college maintained by the Government) affiliated before the commencement of the Gujarat University (Amendment) Act, 1972 (hereinafter in this section referred to as 'such commencement') -

(a) shall be under the management of a governing body which shall include amongst its members the Principal of the college, a representative of the University nominated by the Vice Chancellor, and three representatives of the teachers of the college and at least one representative each of the member of the non-teaching staff and the students of the college, to be elected respectively from amongst such teachers, members of the non-teaching staff and students.

This provision was challenged in that case as violating the fundamental right under Article 30(1) of the minority community in question there. This Court held by a majority that the provision was bad as it offended the fundamental right of the religious minority under Article 30(1) to administer educational institution. The

reason was that the provision required the inclusion, in the governing body of the college, of persons whom the religious minority did not want to include. When Article 30(1) speaks that a religious or linguistic minority has the right to administer educational institutions of its choice, it means that the right to carry on the administration of the institution must be left to the managing body consisting of person in whom the religious or linguistic minority has faith and confidence.

36. The learned Chief Justice, speaking for himself and Palekar, J. after referring to the provisions of Section 33A(1)(a) said in that case that the right to administer is the right to conduct and manage the affairs of the institution and that this right is exercised "through a body of persons in whom the founders of the institution have faith and confidence and who have full autonomy in that sphere". He further said that the right to administer is subject to permissible regulatory measures and that permissible regulatory measures are those which do not restrict the right of administration but facilitate it and ensure better and more effective exercise of the right for the benefit of the institution and through the instrumentality of the management of the institution and without displacing the management. He was of the view that if the administration has to be improved, it should be done through the agency or the instrumentality of the existing management and not by displacing it. The learned Chief Justice further observed that autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions, that the right of administration means day to day administration and that the choice in the personnel of management is a part of the administration. He concluded by saying : [SCC p. 751, para 41]

The provisions contained in Section 33A(1)(a) of the Act have the effect of displacing the management and entrusting it to a different agency. The autonomy in administration is lost. New elements in the shape of representatives of different types are brought in. The clam waters of an institution will not only be disturbed but also mixed. These provisions in Section 33A(1)(a) cannot therefore apply to minority institutions.

37. Jaganmohan Reddy, J. speaking for himself and Alagiriswami, J. agreed with the view expressed by the learned Chief Justice on the question of the validity of Section 33A(1)(a) in its application to the minority.

38. Khanna, J. in his concurring judgment said that the argument that a law or regulation could not be deemed unreasonable unless it was totally destructive of the right of the minority to administer educational institutions was fallacious and was negated by this Court by its previous decisions and that a law which [SCC p. 788, para 101-102]

interferes with the minorities choice of a governing body or management council would be violative of the right guaranteed by Article 30(1). This view has been consistently taken by this Court in the cases of Rt. Rev. S. K. Patro, Mother Provincial and D.A.V. College (affiliated to the Guru Nanak University) (supra).

Section 33-A which provides for a new governing body for the management of the college and also for selection committees as well as the constitution thereof would consequently have to be quashed so far as the minority educational institutions are concerned because of the contravention of Article 30(1).

39. On behalf of Chandrachud, J. and myself, I said : [SCC p. 815, para 181]

The requirement that the college should have a governing body which shall include persons other than those who are members of the governing body of the Society of Jesus would take away the management of the college from the governing body constituted by the Society of Jesus and vest it in a different body. The right to administer the educational institution established by a religious minority is vested in it. It is in the governing body of the society of Jesus that the religious minority which established the college has vested the right to administer the institution and that body alone has the right to administer the same. The requirement that the college should have a governing body including persons other than those who constitute the governing body of the Society of Jesus has the effect of divesting that body of its exclusive right to manage the educational institution. That it is desirable in the opinion of the Legislature to associate the Principal of the college or the persons referred to in Section 33A(1)(a) in the management of the college is not a relevant consideration. The question is whether the provision has the effect of divesting the governing body as constituted by the religious minority of its exclusive right to administer the institution. Under the guise of preventing maladministration, the right of the governing body of the college constituted by the religious minority to administer the institution cannot be taken away.

40. In *State of Kerala v. Mother Provincial* (supra) this Court said that "Administration" means management of the affairs of the institution, that the management must be free of control so that the founders or their nominees can mould the institution according to their way of thinking and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served and that no part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right. Sections 48 and 49 of the Kerala University Act, 1969 which came up for consideration in that case respectively dealt with governing body of private colleges not under corporate management and the managing council for private colleges under corporate management. Under the provisions of these sections, the educational agency or the corporate management was to establish a governing body or a managing council respectively, The sections provided for the composition of the two bodies. It was held that the sections had the effect of abridging the right to administer the educational institution of the religious minority in question there. One of the grounds given in the judgment for upholding the decision of the High Court striking down the sections is that these bodies had a legal personality distinct from governing bodies set up by the educational agency or the corporate management and that they were not answerable to the founders in the matter of administration of the educational institution. The Court said that a law which interferes with the composition of the governing body or the managing council as constituted by the religious or linguistic minority is an abridgment of the right of the religious minorities to administer the educational institution established by them [see also *W. Proost v. Bihar* (supra) and *Rev. Bishop S. K. Patro v. Bihar* (supra)].

41. The determination of the composition of the body to administer the educational institution established by a religious minority must be left to the minority as that is the core of the right to administer. Regulations to prevent maladministration by that body are permissible. As the right to determine the composition of the body which will administer the educational institution is the very essence of the right to administer guaranteed to the religious or linguistic minority under Article 30(1), any interference in that area by an outside authority cannot be anything but an abridgment of that right. The religious or linguistic minority must be given the freedom to constitute the agency through which it proposes to administer the educational institution established by it as that is what Article 30(1) guarantees. The right to shape its creation is one thing : the right to regulate the manner in which it would function after it has come into being is another. Regulations are permissible to prevent maladministration but they can only relate to the manner of administration after the body which is to administer has come into being.

42. The provisions of Statute, 14-A are in pari materia with those of Section 33A(1)(a) of the Act which fell for consideration in Ahmedabad St. Xavier's College case (supra) except that only the principal and the seniormost member of the staff alone are required to be included in the managing committee of the college in question here. But, in principle, that makes no difference. The principle, as I said, is that the minority community has the exclusive right to vest the administration of the college in a body of its own choice, and any compulsion from an outside authority to include any other person in that body is an abridgment of its fundamental right to administer the educational institution.

43. It is, no doubt, true that it is upon the principal and the teachers that the whole temper and the tone of college depend. But that does not mean that the principal and the teachers should be members of the governing council of a college. It was only in the context of the right of the religious or linguistic minority to appoint the principal and teachers of the college established by it that we said in Ahmedabad St. Xavier's College case (supra) : [SCC pp. 815-816, para 182].

It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the 'right' to administer an educational institution. We can perceive no reason why a representative of the University nominated by the Vice-Chancellor should be on the Selection Committee for recruiting the Principal or for the insistence of head of the department besides the representative of the University being on the Selection committee for recruiting the members of the teaching staff. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them.

44. While affirming the correctness of the observation in the context in which it was made, I think it necessary to repudiate its relevance and application here.

45. I would, therefore, allow the appeal without any order as to costs.

ORDER

In accordance with the opinion of the majority, the appeal is dismissed without and order as to costs.

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