Christian Medical College Hospital Employees' Union and Another

Vs

Christian Medical College Vellore Association and Others

State of Tamil Nadu

Vs

Christian Medical College and Others

Civil Appeal No. 8818 of 1983 and Special Leave Petition (Civil) Nos. 5523-25 of 1986

(E. S. Venkataramiah, K. N. Singh JJ)

20.10.1987

JUDGMENT

VENKATARAMIAH, J. -

1. The important question which arises for determination in this appeal by special leave is whether Sections 9-A, 10, 11-A, 12 and 33 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') are applicable to educational institutions established and administered by minorities which are protected by clause (1) of Article 30 of the Constitution of India.

2. The first respondent - Christian Medical College Vellore Association, Vellore, is an association registered under the Societies Registered Act, 1860. The object of the association is "the establishment, maintenance and development of Christian Medical Colleges and Hospitals in India where women and men shall receive an education of the highest grade in the art and science of Medicine and Nursing or in one of other of the related professions to equip them, in the spirit of Christ, for service in the relief of suffering and the promotion of health". Dr. Ida Scudder, a daughter of an American medical missionary in India, realising the need for more women doctors in India to give relief to the suffering women, in particular stated a one-bed clinic in 1900 at Vellore in the State of Tamil Nadu, Within two years she set up a 40-bed hospital with the assistance of a group of medical women. Since her main desire was to train women as nurses and doctors who should go out to serve suffering women and children she started the training courses for nurses in 1906 and a medical school for women in 1918. The hospital and the medical school grew in their stature in course of time. The medical school was converted into a medical college with degree courses in 1942. In the year 1947 even men were admitted to the medical college as students. The hospital has since become an important medical institution in South India. The hospital is being used for training the students of the medical college by providing clinical facilities. The medical college and the college of nursing in Vellore are affiliated to the University of Madras and they both go by the name, the Christian Medical College. In the medical college the post-graduate degree courses have also been started. In additional thereto post-graduate diploma courses in different specialities have also been started. In the year 1982, when the common judgment of the High Court of Madras in the three writ petitions, out of which this appeal arises, was delivered, there were about 500 students including post-graduate students in the medical college, 400 in college of nursing and

about 164 in para medical courses. The medical college also conducts research into the fundamental causes of diseases, their prevention and treatment. It is also claimed that the medical college is a pioneer in the development of higher specialities like Cardiology, Neuro Surgery, Psychiatry, Thoracic Surgery, Urology, Gastro-Enterology etc. The hospital in which the clinical facilities are provided to the students of the medical college is also a very big hospital which attracts large number of patients, many of whom are treated as in-patients. The college and the hospital are now being managed by respondent 1 Association. In view of the heavy responsibilities undertaken by the college and the hospital it has become necessary to employ a large number of persons as teachers, doctors, nurses and other staff for running the college and the hospital, and also administrative staff for the purposes of managing their affairs. The employees of the college and the hospital are paid salaries and allowances and are entitled to the usual conditions of service as are applicable to such employees in other medical colleges and hospitals in India. It is natural that in a big establishment like the one under consideration between the management and its employees there would be disputes with regard to the security of employment and other conditions of service.

3. Some time during the period 1975-1978, three employees, namely, Mr Gilbert Samuel, a clerk in the Microbiology Department of the Christian Medical College and Hospital, Mr. M. Devadoss, a packer in the Central Sterile Supply Department of the Hospital and Mrs Yesudial, a cook in the Staff and Student Nurses; Hostel of the Rural Health Center attached to the Hospital, were dismissed from service by the management. On an industrial dispute being raised by the Christian Medical College Hospital Employees' Union in respect of the dismissal of the above three persons, the Government of Madras by its order dated February 19, 1979 referred the following question to the Labour Court for adjudication :

> Whether the non-employment of Thiruvalargal Gilbert Samuel M. Devadoss and Smt. Yesudial is justified, and if not, to what relief each of them would be entitled; to compute the relief, if any awarded, in terms of money, if it could be so computed.

This reference was numbered as I. D, No. 52 of 1979 on the file of the Labour Court.

4. One R. Subramaniam, a probationer Stenographer of the above institution, whose services had been terminated in 1975 at the end of the probationary period also raised an industrial dispute in 1978 and that case was also referred to the Labour Court by the State Government on April 11, 1979. The question refereed to the Labour Court read as Follows :

> Whether the non-employment of Thiru R, Subramaniam is justified, if not to what relief he is entitled; to compute the relief, if any awarded, in terms of money, if it could be so computed.

This reference was numbered as I.D. No. 84 of 1979 on the file of the Labour Court.

5. Questioning the validity of the above two references the first respondent-Association filed Writ Petition Nos. 221 and 222 of 1980 on the file of the High Court of Madras for quashing the said references. The first respondent-Association also filed Writ Petition No 220 of 1980 on the file of the High Court of Madras praying for a declaration that the provisions of the Act were unconstitutional and ultra vires and were inapplicable in entirely to the minority educational institutions protected by Article 30(1) of the Constitution of India, like the Christian Medical College and the hospital attached thereto at Vellore.

6. The first respondent-Association pleaded that the hospital attached to the Christian Medical College formed an integral part of the college which was an educational institution established and administered by a minority and thus was also entitled to the protection of Article 30(1) of the Constitution of India. Secondly, it was urged that the college and the hospital being minority institutions entitled to the protection of Article 30(1) of the Constitutions of India any industrial dispute arising between the management and employees of the college and the hospital could not be adjudicated upon under the provisions of the Act as such adjudication amounted to interference with the right of the minority to administer the college and the hospital which together constituted an educational institution. It was also contended that the Act was not applicable to educational institutions generally irrespective of their being minority institutions or not. The petitions were contested by the Union of India, the State of Tamil Nadu, the Christian Medical College and Hospital Employees' Union and the workmen concerned. The High Court after hearing the parties recorded the following findings :

> (1) The Christian Medical College Hospital which was attached to the Christian Medical College was an educational institution;
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> (2) The Christian Medical College Hospital even though it was an educational institution was an industry within the meaning of the expression 'industry' given in the Act; and
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> (3) Even though the Christian Medical College and the hospital attached thereto constituted an industry, they together constituting an educational institution established and administered by a minority, Sections 9-A, 10, 11-A, 12 and 33 of the Act would not be applicable to them by virtue of Article 30(1) of the Constitution of India.

Accordingly, the High Court quashed the references made under Section 10(1)(c) of the Act to the Labour Court. Aggrieved by the judgment of the High Court the Christian Medical College Hospital Employees' Union and one of its workmen have filed this appeal by special leave.

7. The principal question which arises for determination in this case is whether the Act which is passed with the twin object of preventing industrial disputes and the settlement of such disputes between employers and employees is applicable to educational institutions which are protected by Article 30(1) of the Constitution of India. Article 30(1) of the Constitution of India provides as follows :

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

8. In In re the Kerala Educational Bill, 1957 (1959 SCR 995 : AIR 1958 SC 956) this Court construed Article 30(1) of the Constitution of India and held thus :

> The first point to note is that the article gives certain rights not only to religions minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the article says and

> means is that the religions and the linguistic minorities should have the right to establish educational institutions of their choice. ... The next thing to note is that the article, in terms, gives all minorities, whether based on religions or language, two rights, namely, the right to establish and the right to administer educational institutions of their choice. (pp. 1052-53).

The right to administer cannot obviously include the right to mal-administer. (p. 1062).

9. The meaning of Article 30(1) of the Constitution of India was again considered by a Constitution Bench of this Court in the Ahmedabad St. Xavier's College Society v. State of Gujarat ((1975)1 SCR 173, 196-97 and 200 : (1974) 1 SCC 717). Ray, C. J. observed in the above decision thus : (SCC pp. 748 and 752. paras 30-31 and 47)

The minority institutions have the right to administer institutions. This right implies the obligation and duly of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. 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 electism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character.

Regulations which will serve the interest 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.

In the field of administration it is not reasonable to claim that minority institutions will have autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration.

10. Mathew, J discussing what type of action by the State would amount to the abridgment of the right guaranteed under Article 30(1) of the Constitution of India observed at pages 265-266 thus : (SCC p. 811, para 173)

The application of the term 'abridge' may to be difficult in many case but the problem arise acutely in certain types of situations. The important ones are where a law is not a direct restriction of the right but is designed to accomplish another objective and the impact upon the right is secondary or indirect. Measures which are directed at other forms of activities but which have a secondary or indirect or incidental effect upon the right do not generally abridge a right unless the content of the right is regulated. As we have already said, such measures would include various types of taxes, economic regulations, laws regulating the wages, measures to promote health and to preserve hygiene and other laws of general application. By hypothesis, the law, taken by itself, is a legitimate one, aimed directly at the control of some other activity. The question is about its secondary impact upon the admitted area of administration of educational institutions. This especially a problem of determining when the regulation in issue has an effect which constitutes an abridgment of the constitutional right within the meaning of Article 13(2). In other words, in every case, the court

must undertake to define and give content to the word 'abridge'in Article 13(2). The question to be asked and answered is whether the particular measure is regulatory or whether it crosses the zone of permissible regulations and enters the forbidden territory of restrictions or abridgment. So, even if an educational institution established by a religions or linguistic minority does not seek recognition, affiliation or aid, its activity can be regulated in various ways provided the regulations do not take away or abridge the guaranteed right. Regular tax measures, economic regulations, social welfare legislation, wage and hour legislation and similar measures may, of courses have some effect upon the right under Article 30(1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgment. If an educational institution established by a religious minority seeks no recognition, affiliation or aid, the State may have no right to prescribe the curriculum, syllabi or the qualification of the teachers.

11. The question now is whether the Act, if it is made applicable to minority institutions protected by Article 30(1) of the Constitution of India, would in any way abridge the right of the minority concerned to establish or administer an educational institution. The Act came to be passed in the year 1947 with the object of bringing into existence a machinery for investigation and settlement of industrial disputes between employers and workmen in accordance with the decisions of the International Labour Organisation. The Act provides for a machinery for collective bargaining. The object of industrial adjudication has, therefore, been to be a countervailing force to counteract the inequalities of bargaining power which is inherent in the employment relationship. In one of the commentaries on the Act the need for and the character of industrial adjudication is described as follows :

> The law governing industrial relations is one of the vitally important branches of the law - the legal system on which depends the social and economic security of a very large majority. "The parties to the industrial disputes present and infinite permutations of attitudes" on economics, politics and human relations. General consensus on the methods of resolving them is beyond reach. The core of modern industrial law, therefore, consists of the problems dealing with the conflict arising between the industrial employers and their employees relating to employment and social security. The study of industrial law, therefore, necessarily concerns itself with the struggle of industrial workmen foe security. It is the security of job, the minimum standard of living, of his future and that of his children and conversely the fear of insecurity which bedevil the worker. In other words, security is the keystone in dealing with the industrial relations between the industrial employers and their workers. The industrial worker, therefore, is the 'local point' of any legal enquiry in the industrial relations. In the words of Prof. Forkosch, "the sociologist may see the worker as a human being caught in congeries of frustrations, complexes and urges - a mind that cannot cope with the baffling contradictions of the modern society". "There is", therefore, as Prof. Otto Kahn-Freund points out "everywhere a constant need for finding a judicium finium regundorum between collective bargaining and legislative of all kinds as instruments for the regulation of conditions of employment - wages and hours, holidays and pensions, health, safety and welfare, and even, increasingly, social security". [See O. P. Malhotra : The Law of Industrial Disputes Fourth Edn., Vol. I, (1985) - Introduction, page XX.]

12. Section 2(k) of the Act defines an 'industrial dispute' as any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen

which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The Act provides for the constitution of works committees in industrial establishments employing 100 workmen or more and they are charged with the duty of removing causes of friction between the employer and workmen in the day-to-day working of the establishment and promoting measures for securing amity and good relations between them. Industrial peace is most enduring where it is founded on voluntary settlement, and the works committees are entrusted with the duty of providing a machinery for the settlement of disputes. Section 12 of the Act provides for the appointment of Conciliation Officers in order to negotiate between the managements and their workmen and to bring about settlement if possible. If the conciliation proceedings fail, the Conciliation Officer has to make a report to the appropriate government accordingly. A reference to an Industrial Tribunal of a dispute under Section 10 of the Act is made where both parties to an industrial dispute apply for such reference or where the appropriate government considers it expedient so to do. An award of a Tribunal may be in operation for a period of one year subject to the provisions of Section 19 of the Act. The power refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the rights of strike and lock-out, which must remain inviolate except where considerations of public interest override such rights. The Industrial Tribunals or Labour Courts constituted under the Act are presided over by persons having judicial experience such as a person who is or has been a judge of the High Court or who has been for a period not less than three years a District Judge or an Additional District Judge or a person who has not less than five years, service as Presiding Officer of a Labour Court constituted under any law for the time being in force or who holds a degree in law of University established by law in any part of India and is holding or has held an office not lower in rank than that of Assistant Commissioner of Labour under the State Government for not less than ten years. The Presiding Officer of a Labour Court should also process substantially the same qualifications and they are set out in Section 7 of the Act. Section 9-A of the Act, which is one of the sections the applicability of which to a minority educational institution is questioned, provides that no employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to the Act shall effect such change without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or within twenty-one days of giving such notice, except in certain cases which are mentioned in the proviso thereto. This section was introduced since there was a persistent demand that notice should be given whenever it was proposed to make any change in the conditions of service of the workmen. Section 11-A of the Act confers powers on the Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal or workmen. It provides that where an industrial dispute relating to the dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudicational proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. On the basis of the materials on record, the Tribunal is empowered to pass an appropriate order under Section 11-A of the Act. Section 33 of the Act provides that the conditions of service etc. of the employees should remain unchanged under certain circumstances during pendency of proceedings before an arbitrator or a conciliation officer or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an

industrial dispute. It further provides that no employer shall in regard to any matter connected in such dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. If the conditions of service relate to any matter not connected with the dispute of if the misconduct of the workman is not connected with the dispute the management should seek the approval of the authority concerned and comply with the other conditions mentioned in the proviso to Section 33(2) of the Act. Section 33(3) of the Act provides that in the case of protected workmen the express permission of the authority concerned should be obtained before any such action is taken. Section 33-A of the Act provides for the making of an application before a conciliation officer, Board an arbitrator, a Labour Court Tribunal or National Tribunal for appropriate relief if Section 33 of the Act is contravened. Thus it is seen that the Act is one which is enacted as a social security measure in order to ensure welfare of labour and it falls within one or the other of Entry 22 - Trade Unions; industrial and labour disputes. Entry 23 - social security and social insurance; employment and unemployment and Entry 24 - welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits in the List III of the Seventh Schedule to the Constitution of India. The Act generally applies to all industries irrespective of the religion or caste to which the parties belong. It applies to industries owned by the Central and the State Governments too. Any decisions given by the Industrial Tribunal or a Labour Court under the Act is subject to judicial review by the High Court under Article 226 of the Constitution of India and an appeal to this Court under Article 136 of the Constitution of India. The Labour Court, the Industrial Tribunal, the High Court and this Court while dealing with matters arising out of the Act have to deal with them objectively. The smooth running of an educational institution depends upon the employment of workmen who are not subjected to victimisation or any other kind of maltreatment. The conditions of service of workmen in all institutions including minority educational institutions have to be protected in the interest of the entire society and any unfair labour practice, such as 'hiring and firing', termination or retrenchment of the service of a workman on irrational grounds will have to be checked. The Act makes provisions in respect of these matters. The Act being a general law for prevention and settlement of industrial disputes cannot be construed as a law which directly interferes with the right of administration of a minority educational institution guaranteed under Article 30(1) of the Constitution of India. The law is not enacted with the object of interfering with such any right. It clearly falls within the observation of Mathew, J in St. Xavier's College case ((1975)1 SCR 173, 196-97 and 200 : (1974) 1 SCC 717) that (SCC p. 811, para 173) "regular tax measures, economic regulations. Social welfare legislation, wage and hour legislation and similar measures may, of course have some effect upon the right under Article 30(1). But where the burden is the same as that borne by other engaged in different forms of activity the similar impact on the right seems clearly insufficient to constitute an abridgment".

13. It is, however, argued on behalf of the first respondent Association that the application of the provisions of the Act will result in the abridgment of the right of the management of minority educational institutions to administer such institution since there is always a chance in the course of an industrial adjudication that the Tribunal or the Labour Court as the case may be pass an order setting aside an order of dismissal or removal of a workman passed by the management and reinstating him in service or making an order altering the conditions of service of workmen contrary to the agreement entered into with them. It is urged that such adjudication results in the attenuation of the power of the management to dismiss or remove a workman as and when it likes. It is also

stated that the minority educational institutions is likely to be exposed to constant and endless litigation which would again adversely affect the right of the minority to establish and administer an educational institution guaranteed under Article 30(1) of the Constitution of India. Reliance is placed in support of the above propositions on the decision of this Court in the St. Xavier's College case ((1975)1 SCR 173, 196-97 and 200 : (1974) 1 SCC 717). In that case the court held that clause (b) of sub-section (1) and clause (b) of sub-section (2) of Section 51-A of the Gujarat University Act. 1949 were violative of Article 30(1) of the Constitution of India so far as the minority educational institutions were concerned. The court also held that Section 52-A of the Act was also violative of Article 30(1) of the Constitution of India. The contentions of the parties urged in that case and the conclusion reached by the Court are briefly stated in the judgment of Khanna, J at pages 243-244 which read thus : (SCC pp. 790-91. Para 106-07)

Clause (a) of sub-sections (1) and (2) of Section 51-A of the impugned Act which make provision for giving a reasonable opportunity of showing cause against a penalty to the purposed on a member of the staff of an educational institution would consequently be held to be valid. Clause (b) of those sub-sections which gives a power to the Vice-Chancellor and officer of the University authorised by him to veto the action of the managing body of an educational institution in awarding punishment to a member of the staff, in my opinion, interferes with disciplinary control of the managing body over its teachers. It is significant that the power of approval conferred by clauses (b) in each of the tow sub-sections of Section 51-A on the Vice-Chancellor or other officer authorised by him is a blanket power. No guidelines are laid down for the exercise of that power and it is not provided that the approval is to be withheld only in case the dismissal, removal, reduction in rank or termination of service is mala fide or by way of victimisation or other similar cause. The conferment of such blanket power on the Vice-Chancellor or other officer authorised by him for vetoing the disciplinary action of the managing body of an educational institution makes a serious inroad on the right of the managing body to administer an educational institution. Clause (b) of each of the two sub-sections of Section 51-A should, therefore, be held to be violative of Article 30(1) so far as minority educational institutions are concerned.

> Section 52-A of the Act relates to the reference of disputes between a governing body and any members of the teaching, other academic and non-teaching staff of an affiliated college or recognized or approved institution connected with the conditions of service of such member to a Tribunal of Arbitration, consisting of one nomination by the governing body of the college or, as the case may be, of the recognised or approved institution, one member nominated by the member of the staff involved in the dispute and a Umpire appointed by the Vice-Chancellor. Section 52-A is widely worded, and as it stands it would cover within its ambit every dispute connected with the conditions of service of a member of the staff of an educational institution, however, trivial or insignificant it may be, which arise between the governing body of a college and a member of the staff. The effect of this section would be that the managing committee of an educational institution would be embroiled by its employees in a series or arbitration proceedings. The provisions of Section 52-A would thus act as a spoke in the wheel of effective administration of an educational institution. It may also be stated that there is nothing objectionable to selecting the method of arbitration for settling major disputes connected with conditions of service of staff of educational institutions. It may indeed be a desideratum. What is objectionable, apart from what has been mentioned above, is the giving of the power to the Vice-Chancellor to nominate the Umpire. Normally in such disputes there would be hardly any agreement between the arbitrator nominated by the governing

body of the institution and the one nominated by the concerned member of the staff. The result would be that the power would vest for all intents and purposes in the nominee of the Vice-Chancellor to decide all dispute between the governing body and the member of the staff connected with the latter's conditions of service. The governing body would thus be hardly in a position to take any effective disciplinary action against a member of the staff. This must cause an inroad in the right of the governing body to administer the institution. Section 52-A should, therefore, be held to be violative of Article 30(1) so far as minority educational institutions are concerned.

14. We are of the view that the decision in the St. Xavier's College case ((1975)1 SCR 173, 196-97 and 200 : (1974) 1 SCC 717) is distinguishable from the present one. Clause (b) of the two sub-sections of Section 51-A of the Gujarat University Act, 1949 conferred a blanket power on the Vice-Chancellor or other officer authorised by him to approve or not any recommendation made by the management regarding the dismissal, removal, reduction in rank or termination of service of a workman. The said Act did not furnish any guidelines regarding the exercise of that power which was in the nature of a 'veto' power. Secondly, Section 52-A of the Gujarat University Act, 1949 which required the disputes between the governing body and any member of the teaching staff, other academic and non-teaching staff of an affiliated college or recognized or approved institution connected with the conditions of service of such member to a Tribunal of Arbitration, consisting of one nominated by the governing body of the college or, as the case may be, of the recognised or approved institution, one member nominated by the member of the staff involved in the dispute and an Umpire approved by the Vice-Chancellor was held to be an unconstitutional interference with a right guaranteed under Article 30(1) of the Constitution of India as it was likely to involve the minority educational institutions in a series of arbitration proceedings and that the power vested in the Vice-Chancellor to nominate an Umpire to decided all disputes between the governing body and the members of the staff connected with the latter's conditions of service would make virtually the Vice-Chancellor the person who would have the ultimate voice in the decision of the Tribunal of Arbitration. There was also no check on the question whether the dispute was one which deserved to be considered by the Tribunal of Arbitration. In the instant case there is no room for such contingency to arise. A reference under the Act has to be made by the government either when both parties requested the government to refer an industrial dispute for adjudication or only when it is satisfied that there exists an industrial dispute. When an industrial dispute exists or is apprehended, the conciliation officer should first consider whether it can be settled after hearing both the parties and it is only when his efforts to bring about a settlement fail and makes a report accordingly to the appropriate government, the government is allied upon to take a decision on the question whether the case is a fit one for reference to the Industrial Tribunal or the Labour Court. It is only when a reference is made by the government the Industrial Tribunal or the Labour Court gets jurisdiction to decided a case. It cannot, therefore, be said that each and every dispute raised by a workman would automatically end up in a reference to the Industrial Tribunal or the Labour Court. Secondly, the circumstances in which the Industrial Tribunal or the Labour Court may set aside the decision arrived at by the management in the course of a domestic enquiry held by the management into an act of misconduct of a workman are evolved by a series of judicial decisions. In Indian Iron & Steel Co. Ltd. v. Workmen (1958 SCR 667 : AIR 1958 SC 130) this Court has observed that the powers of an industrial tribunal to interfere in cases of dismissal of a workman by the management are not unlimited and the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management. It will interfere (a) where there is want of good faith; (b) when there is victimisation or unfair labour practice; (c) when the management has been guilty of the basic error

or violation of the principles of natural justice; and (d) when on the materials before the court the finding is completely baseless or perverse. It cannot, therefore, be said that the Industrial Tribunal or the Labour Court will function arbitrarily and interfere with every decision of the management as regards dismissal or discharge of a workman arrived at in a disciplinary enquiry. The power exercisable by the Industrial Tribunal or the Labour Court cannot, therefore, be equated with the power of 'veto' conferred on the Vice-Chancellor under clause (b) of either of the two sub-sections of Section 51-A of the Gujarat University Act, 1949. As we have already said earlier the decision of the Industrial Tribunal or the Labour Court is open to judicial review by the High Court and by this Court on appeal. Section 11-A which has been introduced since then into the Act which confers the power on the Industrial Tribunal or the Labour Court to substitute lesser punishment in lieu of the order of discharge or dismissal passed by the management again cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfies that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision. The decision of the Industrial Tribunal or of the Labour Court is again, as already said, subject to judicial review by the High Court and this Court.

15. In Lilly Kurian v. Sr. Lewina ((1979) 1 SCR 820: (1979) 2 SCC 124 : 1979 SCC (L&S) 134 : AIR 1979 SC 52)this Court was required to consider a provision which was more or less similar to the provisions in St. Xavier's College case ((1975)1 SCR 173, 196-97 and 200 : (1974) 1 SCC 717). The court held that the conferment of a right of appeal to an outside authority like the Vice-Chancellor which took away the disciplinary power of a minority educational institution was violative of Article 30(1) of the Constitution of India since the said power was uncanalised and unguided in the sense that no restriction had been placed on the exercise of the power.

16. Explaining his own decision in Lilly Kurian case A. P. Sen, J. has observed recently in Mrs. Y. Theclamma v. Union of India ((1987) 2 SCC 516) that while the right of the minorities, religious or linguistic, to establish and administer educational institutions of their choice could not be interfered with, restrictions by way of regulations for the purpose of insuring educational standards and maintaining excellence thereof can validly be prescribed. He further held that regulations an be made for ensuring proper conditions of service for the teachers and also for ensuring a fair procedure in the matter of disciplinary action and that the endeavour of the court in all the cases had been to strike a balance between the constitutional obligation to protect what was secured to the minorities under Article 30(1) of the Constitution of India and the social necessity to protect the members of the staff against arbitrariness and victimisation. Accordingly, A. P. Sen, J. held that Section 8(4) of the Delhi School Education Act, 1973 was designed to afford some measure of protection to teachers of minority institutions without interfering with management's right to take disciplinary action. According to the learned Judge Section 8(4) which provided that where a management committee of a recognised school intended to suspend any of its employees such intention should be communicated to the Director and no such suspension should be made except with the prior permission of the Director was not invalid. The learned Judge emphasised his earlier view expressed in Lilly Kurian case ((1979) 1 SCR 820 : (1979) 2 SCC 124 : 1979 SCC (L&S) 134 : AIR 1979 SC 52) that the right guaranteed under Article 30(1) of the Constitution of India was subject to the regulatory power of the State and that Article 30(1) of the Constitution of India was not a charter for maladministration. In doing so the learned Judge followed the observation made by Chinnappa Reddy, J in Frank Anthony Public School Employees' Association v. Union of India ((1986) 4 SCC 707) which read as follows : (SCC p. 734, para 19)

> Section 8(4) would be inapplicable to minority institutions if it had conferred blanket power on the Director to grant or withhold prior approval in every case where a management proposed to suspend an employee but we see that it is not so. The management has the right to order immediate suspension of an employee in case of gross misconduct but in order to prevent an abuse of power by the management a safeguard is provided to the employee that approval should be obtained within 15 days. The Director is also bound to accord his approval if there are adequate and reasonable grounds for such suspension. The provision appears to be eminently reasonable and sound and the answer to the question in regard to this provision is directly covered by the decision in All Saints High School ((1980) 2SCR 924: (1980) 2 SCC 478 : AIR 1980 SC 1042), where Chandrachud, C. J. and Kailasam, J. upheld Section 3(3)(a) of the Act impugned therein.

17. In All Saints High School, Hyderabad v, Government of A.P. ((1980) 2SCR 924: (1980) 2 SCC 478 : AIR 1980 SC 1042) A provision imposing certain restrictions on the power of suspension of a teacher by a minority educational institution which was contained in clauses (a) and (b) of sub-section (3) of Section 3 of the Andhra Pradesh Recognised Private Educational Institutions Control Act, 1975 was upheld by Chandrachud, C.J. at pages 937-939 thus : (SCC pp. 488-89, paras 13 and 14)

> Section 3(3)(a) provides that no teacher employed in any private educational institution shall be placed under suspension except when an inquiry into the gross misconduct of such teacher is contemplated. Section 3(3)(b) provides that no such suspension shall remain in force for more than a period of two months and if the inquiry is not completed within that period the teacher shall, without prejudice to the inquiry, be deemed to have been restored as a teacher. The proviso to the sub-section confers upon the competent authority the power, for reasons to be recorded in writing, to extend the period of two months for a further period not exceeding two months if, in its opinion the inquiry could not be completed within the initial period of two months for reasons directly attributable to the teacher.

With respect, I find it difficult to agree with Brother Fazal Ali that these provisions are violative of Article 30(1). The question which one has to ask oneself is whether in the normal course of affairs, these provisions are likely to interfere with the freedom of minorities to administer and manage educational institutions of their choice. It is undoubtedly true that no educational institutions can function efficiently and effectively unless the teachers observe at least the commonly accepted norms of good behavior. Indisciplined teachers can hardly expected to impress upon the students the value of discipline, which is a sine qua non of educational excellence. They can cause incalculable harm not only to the cause of education but to the society at large by generating a wrong sense of values in the minds of young and impressionable students. But discipline is not to be equated with dictatorial methods in the treatment of teachers. The institutional code of discipline must therefore conform to acceptable norms of fairness and cannot be arbitrary or fanciful. I do not think that in the name of discipline and in the purported exercise of the fundamental right of administration and management, any educational institution can be given the right to 'hire and fire' its teachers. After all, though the management may be left free to evolve administrative policies of an institution, educational instruction has to be imparted through the instrumentality of the teachers; and unless, they have a constant assurance of justice, security and fair play it will be impossible for them to give of their best which alone can enable the institution to attain the ideal of educational excellence. Section 3(3) (a) contains but an elementary guarantee of freedom from arbitrariness to the teachers.

The provision is regulatory in character since it neither denies to the management the right to proceed against an erring teacher not indeed does it place an unreasonable restraint on its power to do so. It assumes the right of the management to suspend a teacher but regulates that right by directing that a teacher shall not be suspended unless an inquiry in to his conduct is contemplated and unless the inquiry is in respect of a charge of gross misconduct. Fortunately, suspension of teachers is not the order of the day, for which reason I do not think that these restraints which bear a reasonable nexus with attainment of educational excellence can be considered to be violative of the right given by Article 30(1). The limitation of the period of suspension initially of two months, which can in appropriate cases be extended by another two months, partakes of the same character as the provision contained in Section 3(3)(a). In the generality of cases, a domestic inquiry against a teacher ought to be completed within a period of two months or say, within another two months. A provision founded so patently on plain reason is difficult to construe as an invasion of the right to administer an institution, unless that right carried with it the right to maladminister. I therefore agree with Brother Kailasam that Sections 3(3)(a) and 3(3)(b) of the Act do not offend against the provisions of Article 30(1) and are valid.

18. In view of the observations of this Court in All Saints High School case ((1980) 2SCR 924: (1980) 2 SCC 478 : AIR 1980 SC 1042), Frank Anthony Public School case ((1986) 4 SCC 707) and Y. Theclamma case ((1987) 2 SCC 516) it has to be held that the provisions of the Act which provide for the reference of an industrial dispute to an Industrial Tribunal or a Labour Court for a decision in accordance with judicial principles have to be declared as not being violative of Article 30(1) of the Constitution of India. It has to be borne in mind that these provisions have been conceived and enacted in accordance with the principles accepted by the International Labour Organisation and the United Nations Economic, Social and Cultural Organisation. The International Covenant on Economic, Social and Cultural Rights 1966 which is a basic document declaring certain specific human right in addition to proclaiming the right to work as a human right treats equitable conditions of work, prohibition of forced labour, provision for adequate remuneration, the right to a limitation of work hours, to rest and leisure, the right to a form and join trade unions of one's choice, the right to strike etc. also as human right. The Preamble to our Constitution says that our country is a socialist republic. Article 41 of the Constitution provides that the State shall make effective provision for securing right to work. Article 42 of the Constitution provides that the State shall make provision for securing just and humane conditions of work and for maternity relief. Article 43 of the Constitution states that the State shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. These rights which are enforced through the several pieces of labour legislation in India have got to be applied to every workman irrespective of the character of the management. Even the management of a minority educational institution has got to respect these rights and implement them. Implementation of these rights involves the obedience to several labour laws including the Act which is under consideration in this case which are brought into force in the country. Due obedience to those laws would assist in the smooth working of the educational institutions and would facilitate proper administration of such educational institutions. If such laws are made inapplicable to minority educational institutions, there is very likelihood of such institutions being subjected to maladministration. Merely because an impartial tribunal is entrusted with the duty of resolving disputes relating to employment, unemployment, security of work and other conditions of workmen it cannot be said that the right guaranteed under Article 30(1) of the Constitution of India is violated. If a creditor of a minority educational institution or a contractor who has built the building of such institution is permitted to file a suit for recovery of the money or

damages as the case may be due to him against such institution and bring the properties of such institution to sale to realise the decretal amount due order the decree passed in such suit is Article 30(1) violated ? Certainly not. Similarly the right guaranteed under Article 30(1) of the Constitution is not violated, if a minority school is ordered to be closed when an epidemic breaks out in the neighborhood, if a minority school building is ordered to be pulled down when it is constructed contrary to town planning law or if a decree for possession is passed in favour of the true owner of the land when a school is built on a land which is not owned by the management of a minority school. In the same way if a dispute is raised by an employee against the management of a minority educational institution such dispute will have necessarily to be resolved by providing appropriate machinery for that purpose. Laws are now passed by all the civilised countries providing for such a machinery. The Act with which we are concerned in this case is an Act which has been brought into force for resolving such industrial disputes. Section 10, 11-A, 12 and 33 of the Act cannot, therefore, be constructed as interfering with the right guaranteed under Article 30(1) of the Constitution of India. Similarly, Section 9-A of the Act, which requires the management to issue a notice in accordance with the said provision in order to make changes in the conditions of service which may include changes in the hours of work, leave rules, introduction of new rules of discipline etc., cannot be considered as violative of the right guaranteed under Article 30(1) of the Constitution of India. The High Court was in error in thinking that the power of the Industrial Tribunal or the Labour Court under the Act was uncanalised, unguided and unlimited and in thinking that the said power was equivalent to the power of the Vice-Chancellor or any other officer nominated by him functioning under the Gujarat University Act, 1949 which was the subject matter of decision in the St. Xavier's College case. Accordingly we are of the view that the provisions of Sections 9-A, 10, 11-A, 12 and 33 of the Act are applicable to the minority educational institutions like the Christian Medical College and Hospital at Vellore also.

19. Before concluding we feel that it is appropriate to refer to some decisions of the Supreme Court of the United States of America in which it has construed some of the provisions of the Constitution of the United States of America which appear to confer absolute rights. It is interesting to note that the right to enter into a contract which was considered to be an absolute right at one stage is no longer construed as a bar on the legislature making a law imposing restrictions on the managements in order to advance the welfare of the labour. The Fourteenth Amendment to the Constitution of the United States of America provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". The 'liberty' guaranteed by this clause was variously defined by the Supreme Court of America as will be seen hereinafter. In the early years it meant almost exclusively 'liberty of contract'. The concept of liberty of contract' was elevated to the status of an accepted doctrine in Allgeyer v. Louisiana (165 US 578). Applied repeatedly in subsequent cases as a restraint on state power, freedom of contract was also alluded to as a property right, as is evident in the language of the Court in Coppage v. Kansas (236 US 1 at 14 : 59 L ed 441 (1914) which said that

> [i] Included in the right of personal liberty and the right of private property - partaking of the nature of each - is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labour and other services are exchanged for money or other forms of property. It this right be struck down or arbitrarily interfered with, there is substantial impairment of liberty in the long-established constitutional sense.

In Lochner v. New York (198 US 45 (1905) a law restricting employment in bakeries to ten hours per day and 60 hours per week was held to be an unconstitutional interference with the right of adult labourers to contract with respect to their means of livelihood. In Adair v. United States (208 US 161 (1908)) a statute attempting to outlaw 'yellow dog' contracts whereby, as a condition of obtaining employment, a worker had to agree not to join or to remain a member of a union, were voided on grounds of unconstitutional impairment of freedom of contract, or more particularly, of the unrestricted right of the employer to hire and fire. In this case the Supreme Court of the United States of America went to the extent of holding that it was a part of every man's civil rights that he should be left at liberty to refuse business relations with any person whomsoever whether the refusal rested upon reason, or was the result of whim, caprice, prejudice or malice and with his reasons neither the public nor third person had any legal concern. This was done during the first decade of this century. But during 1930s 'liberty' in the sense of freedom of contract, judicially translated into what Justice Black has lebelled the allgeyer-Lochner-Adair-Coppage constitutional doctrine, lost its potency as an obstacle to the enforcement of legislation calculated to enhance the bargaining capacity of workers as against the already possessed by their employers (vide Lincoln Federal Labour Union v. Northwestern Iron & Metal Co. (335 US 525 (1949))). It is now settled in the United States of America that neither the 'contract' clause nor the 'due process' clause had the effect of overriding the power of the State to established all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community and that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property or other vested rights are held subject to its fair exercise. In view of the change in the attitude of the court laws regulating hours of labour, labour in mines, employment of children in hazardous occupations, payment of wages, minimum wages laws, workmen's compensation laws and collective bargaining have been upheld in recent years even though the right guaranteed by the Fourteenth Amendment had been once construed as an absolute right nor alienable by any consideration of public weal.

20. Two other provisions of the Constitution of the United States of America which appear to confer absolute rights have also been construed as rights which may be regulated by the statute in the public interest in exercise of its police powers and they are the religious freedom and the freedom of expression. The relevant part of the First Amendment to the Constitution of the United States of America reads that "the Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press". In Reynolds v. United States (98 Us 145, 165-67 (1879)) the question for consideration was whether the conviction of a member of the Mormon faith under a law prohibiting polygamy despite the fact that an accepted doctrine of his church which then imposed on its male members the duty to practice polygamy was valid or not. The supreme Court of the United States of America rejecting the contention of the accused based on the right which guaranteed the free exercise of religion observed thus :

[T]here never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts and punishable with more or less severity. In the face of all this evidence, it is impossible to believe that the constitutional guarantee of religious freedom was intended to prohibit legislation in respect to this more important feature of social life. Marriage, while from its very nature a sacred obligation, is, nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. ... An exceptional colony of polygamists under an exceptional leadership may sometimes exist for a time without appearing to disturb the social condition of the people who

surround it; but there cannot be a doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life; under its dominion.

In our opinion the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice ? Or if a wife religiously believed it was her duty to burn herself upon the funeral pyre of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice ?

So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief ? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law into himself. Government could exist only in name under such circumstances.

21. More recent decisions of the Supreme court of America on the above question show that the said court has always balanced the interest asserted by the government against the claim of religious liberty accepted by the person affected and if the governmental interest is compelling and if no alternative forms of regulation would subserve that interest the claimant of the right is required to yield. Thus it is seen that the religious freedom guaranteed by the first Amendment is not absolute although the court has tried to protect substantially the exercise of religious freedom by the citizens of the United States of America.

22. Similarly as regards the right of free speech and expression the Supreme Court of the United States of America has observed in Whitney v. California (274 US 357, 373 (1927) : 71 L ed 1095, 1105 (Justice Brandeis' concurring judgment) thus :

> But, although the rights of speech and assembly are fundamental, they are not in their nature absolute. Their exercise is subject to restriction, if the particular restriction proposed is required in order to protect the State from destruction or from serious injury, political, economic or moral.

23. It may be noted that the Constitution of the United States of America does not contain any clauses corresponding to Article 25(1) of the Constitution of India which guarantees freedom of conscience and free profession, practice and propagation of religion, "subject of public order, morality and health and to the other provisions of" Part III of the Constitution of India and Article 25(2) of the Constitution which provides that "nothing in this article shall affect the operation of any existing law or prevent the State from making any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice .... ". The Constitution of the United States of America also does not contain a provision corresponding to

clause (2) of Article 19 of the Constitution of India which provides that "nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence". Yet, the right to liberty, the right to religious freedom and the right of free speech though they appear to be absolute, have been construed to be subject to regulation by the State in exercise of its legitimate police powers. We have set out in some detail these aspects of the constitutional law of the United states of America in order to facilitate the construction of and the meaning to be given to our own Constitution, though we need not be guided always by what the Supreme Court of the United States of America says about its own constitution.

24. Having given our very anxious consideration to the right of the minorities guaranteed under article 30(1) of the Constitution of India and the necessity for having a general law which regulates the relationship between employers and workmen and after balancing the two interests we have come to the conclusion that the decision of the High Court is liable to be set aside and the three writ petitions filed before the High Court should be dismissed. We, accordingly, allow this appeal, set aside the common judgment of the High Court in Writ Petition Nos. 220 to 222 of 1980 on the file of the High Court and dismiss the said writ petitions. The Labour Court to which the references have been made by the Government of Tamil Nadu shall now proceed to dispose of the said references in accordance with law. There shall be no order as to costs.

Order in SLP (Civil) Nos. 5523-25 of 1986

25. In view of our judgment in Christian Medical College Hospital Employees' Union v. Christian Medical College Vellore Association ((1987) 4 SCC 691) pronounced today, no separate orders are necessary on these special leave petitions and they also stand disposed of by the same judgment.

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