St. Stephen's College

Vs

University of Delhi

W.P. (C) No. 1868 of 1980 Etc. Etc., D/-6-12-1991

(M.H. Kania, K. Jagannatha Shetty, N.M. Kasliwal, Ms. M. S. Fathima Beevi, Yogeshwar Dayal JJ)

06.12.1991

JUDGEMENT

K. JAGANNATHA SHETTY, J.

(For himself and M. H. Kania, Fathima Beevi and Yogeshwar Dayal, JJ.):-

INTRODUCTION:

1. St. Stephen's College at New Delhi and Allahabad Agricultural Institute at Naini are two of our premier and renowned institutions. The former has been affiliated to the Delhi University and the latter to the U. P. University. Both are aided educational institutions and getting grant from the State funds. They have their own admission programme which they follow every academic year. The admission programme provides for giving preference in favour of Christian students. It is claimed that they are entitled to have their own admission programme since they are religious minority institutions. The validity of the admission programme and the preference given to Christian students are the issues that need to be resolved in these cases. The questions are of great constitutional importance and consequence to all minority institutions in the country.

THE FACTS IN GENERAL

ST.STEPHEN'S COLLEGE

2. St. Stephen's College was founded on February 1, 1881. It is the oldest College in Delhi. It was first affiliated to Calcutta University and then to Punjab University and thereafter to Delhi University. Upon affiliation to the Delhi University it became one of its three original constituent colleges. The College offers three years' degree course in B.A./B.Sc. (Hons.), B.A. (Pass) and B..Sc. General as well as two years' Post-graduate degree course in M.A. and M.Sc. For the academic year 1980-81, the College published "Admissions Prospectus" on May 25, 1980, inter alia, providing that applications for admission for the first year course must be received in the College office on or before June 20, 1980. In the same prospectus, it was also provided that there would be interview prior to final selection of students for admission to the College. It appears that on May 22, 1980 the Vice-Chancellor of the Delhi University in exercise of his emergency powers under Statute 11 -G(4) of the Statutes of the University, constituted an Advisory committee to consider and recommend the dates for admission/ registration to various under-graduate / post-graduate courses in the Faculties of Arts and Social Sciences/ Mathematics and Science for the academic session 1980-81 and for other related matters concerning admissions. The constitution of the Advisory Committee was approved by the Academic Council in its meeting held on May 29, 1980 and the Academic Council also

authorised the Vice-Chancellor to accept the recommendations of the Advisory Committee for implementation. The Advisory Committee, inter alia, laid down as follows:

> "(i) Admission to B.A. (Pass)/ B.A. Vocational Studies Courses be based on the merit of the percentage of marks secured by students in qualifying examination.
>
> (ii) The admission to B.Com (Pass), B.A. (Hons.) and B.Com. (Hons.) Courses be also on the basis of marks. However, the College may give weightage to marks obtained in one or more individual subjects in addition to the aggregate marks of the qualifying examination. But whenever weightage is proposed to be given to individual subject (s) by the College, it should be notified in advance to the students through the College Prospectus/Notice Board so that applicants seeking -admission know in advance the basis of admission.
>
> (iii) That last date for receipt of applications to all the under-graduate courses will be June 30, 1980 and this would be uniformly adhered to by all the Colleges."

3. These recommendations were accepted by the Central Admission Committee and also by the Vice-Chancellor.

THE CIRCULARS OF THE UNIVERSITY

4. That on June 5, 1980 the University issued circular to all affiliated Colleges prescribing the last date for the receipt of applications as June 30, 1980. The circular also provided phased programme of admission as follows:

(See circular below)

> "A. First phase of admission For Students securing 45% of marks or above.
>
> i) Notification of First Admission List by the Colleges Wednesday 2nd July, 1980

Payment of fees (up to) Friday 4th July 1980 up to 4 p.m.

General Note :

The number of names in all admission lists shall correspond to the number of seats available in the courses concerned. No student whose name appears in an admission list (or who qualifies on the basis of the percentage indicated in the list) shall be denied admission provided he/she pays the fees by the date and time stipulated.

ii) Notification of Second Admission List by the Colleges Friday 4th July 1980, 6 p.m.

Payment of fees Saturday 5th - Monday 7th July 1980 up to 4 p.m.

B. Second phase of admission For students securing below 45% but above 40% marks

Notification of Third Admission List by the Colleges Tuesday 8th July 1980, 12.00 Noon

Payment of fees (up to) Thursday 10th July 1980, 4.00 p.m.

5. On June 9, 1980, the University issuedanother circular to Principals of all Colleges intimating inter alia, that Admission to B.A. (Pass)/B.A. Vocational study courses be based on the merit of the percentage of marks secured by students in the qualifying examination. The admission to B.Com. (Pass), B.A. (Hons.) and B.Com. (Hons.) courses shall be on the basis of marks. However, the College may give weightage to marks obtained in one or more individual subjects in addition to the aggregate marks of the qualifying examination. But whenever, weightage is proposed to be given to individual subject(s) by the College, it should be notified in advance to the students through the College Prospectus/Notice Board so that applicants seeking admission know in advance the basis of admission. This circular also provides certain guidelines for admission to sportsmen and persons with other distinctions.

6. The Delhi University Students Union had complained to the University authorities that the College was violating the University Statutes and Ordinances by fixing its own time schedule for receipt of applications as well as by stipulating interview before admission. On the basis of this complaint, the Registrar of the University wrote a letter dated June 9, 1980 requesting the Principal of the College to conform to the University schedule communicated to the College by the circular dated June 5, 1980. This was followed by some more correspondence between the College management and the Vice-Chancellor. The College management pointed out that at that late stage, it would not be possible to make any changes in their admission programme. There then the Vice-Chancellor addressed a letter dated 7/9th June 1980 to the Chairman of the Governing Body of the College stating that as per the decision of the Central Admission Committee, the last date for receipt of admission forms for undergraduate courses should be June 30, 1980 and the stipulation of the College as June 20, 1980 for that purpose would be very embar rassine to the University authorities. The Vice-Chancellor again asked the Collge Management to conform to the dates prescribed by the University.

7. The Principal of the College was not available at that time and in his absence, the Vice-Chairman of the College replied by letter dated June 12, 1980 to the Vice-Chancellor stating that "the interview of prospective students by a competent body is an integral part of admission procedure at St. Stephen's College and this policy has been followed and highly valued throughout the history of the college..... He thus indirectly pointed out that it was not possible for the College to adhere to the University Circulars. He, however, assured the Vice-Chancellor that no admission list would be put up before July 2, 1980,the date prescribed by the University for publishing the first admission list.

A STUDENT MOVES THE DELHI HIGH COURT

8. When the matter thus stood, a student by name Rahul Kapoor seeking admission to the College for under-graduate course filed a Writ Petition No. 790/ 80 in the High Court of Delhi under Article 226 of the Constitution, challenging the admission schedule of St. Stephen's College and the interview test prescribed for candidates. The Writ Petition was filed on June 16, 1980. On June 30, 1980 the High Court passed an order directing the College, to receive the applications for admission till June 30, 1980 and also prohibiting the College from announcing the admission list, for which the prescribed date was 2nd July 1980 till the disposal of the Writ Petition. Incidentally, the High Court also observed that it had no option but to issue such an, order since St. Stephen's College had not challenged the validity of the University circulars dated 5th and 9th June 1980. This Writ Petition has been the subject matter in the Transferred Case No. 3 of 1980.

ST. STEPHEN'S COLLEGE MOVES THE SUPREME COURT

9. That in pursuance of these events, St. Stephen's College moved this Court by means of a Writ Petition under Article 32 of the Constitution. We are primarily concerned with this Writ Petition (Civil) No. 1868 of 1980. The averments in the writ petition are these: that St. Stephen's College is a religious minority-run institution. It is a constituent College, like an affiliated college admitted to the privileges of the University, but not a maintained college. From the very beginning, the College has been exercising certain obvious and inherent managerial powers: one of them was to fix reasonable dates for admission and the other was for an interview of the candidates. These managerial functions have never been questioned or interfered with by the University. That even assuming, without conceding, that within the general power of the regulations, the University has power to prescribe the date for admission, this would be ex facie violative of the fundamental right of the college as fixing of this schedule is ex facie managerial. The management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

10. It is further alleged that approximately 6000 applications are received by the College as against its 300 available seats. Because of its pre-eminent position, applications come from every part of the country. In subsequent years, more than 12000 applications were received. It would, therefore, be humanly impossible to process those applications within a day and to select 300 of the most suitable candidates with any semblance of fairness. Usually about 40% of the applicants are from outside; of the 300 to be admitted 100 are for admission to the hostel. The provision for the interview, which has been the procedure followed by the College since its inception, is an integral part of administration of the College. It is a part of its managerial function and it cannot be taken away by the University. The selection on the basis of only marks obtained by the candidates on the face of it would be unreasonable and violative of the fundamental right of the College guaranteed under Article.30 of the Constitution. With these and other contentions, the College prayed for a declaration that the circulars dated 5th and 9th June, 1980 issued by the University are void qua the College in view of its minority status.

11. This Court while issuing Rule Nisi in the said Writ Petition has stayed the operation of the circulars. In view of the stay granted by this Court, the College continued to follow its own admission policy, modality and schedule in the succeeding years.

THE DELHI UNIVERSITY STUDENTS' UNION APPROACHES THE SUPREME COURT

12. The Delhi University Students'Union is an intervenor in the Writ Petition No. 1868 of 1980 filed by St. Stephen's College. That subsequently for the admission year 1984-85, the Delhi University Students Union and Dr. Mahesh C: Jain filed W. P. Nos. 13213-14/84 under Article 32 of the Constitution seeking a direction to St. Stephen's College to follow all University policies, rules, regulations, ordinances regarding admissions etc. and further for a direction restraining the College from giving preference in favour of Christian students in the matter of admission to the College. It was alleged in the Writ Petition that the College has not been declared to be a minority college by any Court nor it is recognised as a minority college by the University. It was alternatively contended that even assuming that it is a minority college, it is not entitled to discriminate students on grounds of religion as the College is receiving maintenance grant from the Government. The discrimination of students for admission to the College based only on religion is contrary to the provisions of Article 29(2) of the Constitution.

THE CASE OF'THE DELHI UNIVERSITY

13. The Delhi University in its affidavit-in-opposition has justified the issuance of the aforesaid circulars with reference to the provisions of the Delhi University Act, the Ordinance 11 and the relevant Statutes of the University. Reference is made to Statute 30 and the terms and conditions of Government grant to Colleges. It is said that every college shall comply with the Statutes, Ordinances and Regulations of the University. The College is required to comply with the directions given by the University regarding admission of students. Reliance is also placed on Ordinance XVIII which provides for constitution of a Staff Council in every college. All the members of the Teaching Staff, Librarian and the Director of Physical Education constitute the Staff Council. The Principal is the ex-officio Chairman of the Staff Council. The functions of the Staff Council are provided in sub-clause (5) of Clause 6-A of Ordinance XVIII. One of the functions assigned to the Staff Council is to make recommendations regarding formulation of admission policy within the framework of the policy laid down by the University. The College, however, cannot lay down its own admission policy so as to be in conflict with the policy laid down by the University. Like all other colleges admitted to the privileges of the University, St. Stephen's College is also in receipt of maintenance grant from the University Grants Commission. Since the College is receiving aid out of State funds, it is not entitled to practise discrimination in the matter of admission on the ground of religion and/ or language. This is plainly contrary to the mandate of Article 29(2) of the Constitution. The circulars of the University containing directions as to admission of students to affiliated colleges do not infringe in any manner the fundamental rights of the body administering the College, assuming without admitting that such a body is entitled to claim a fundamental right under Article 30 of the Constitution. The College, therefore, is bound to follow the two directions in question which have been given by the University to all colleges alike in exercise of its statutory power under the relevant Ordinances of the University.

THE ALLAHABAD AGRICULTURAL INSTITUTE

14. This is a professional college which offers several courses of study in Agricultural Sciences. It is undisputedly an institution established and administered by the Christian religious minority. In 1911, it was founded by Christians under the leadership of Dr. Sam Higginbothom. It is now located on the right bank of Jamuna river at a tiny place called Naini in the famous pilgrimage and education centre of Allahabad. It has 600 acres campus including staff quarters, men's and women's hostels, library and administration buildings with ten departments and auxiliary units of the Institute. The Institution imparts education in several courses of study, like Inter Agriculture, Inter Home Science, Indian Diary Diploma (IDD), B.Sc. in Agriculture, B.Sc. Home Economics, B.Tech. in Agricultural Engineering, M.Sc. in Agricultural Engineering. It claims to be a national institute and every year it holds entrance test at different centres. It has prescribed the rules of admission to 1st year of each degree/diploma programme as follows :-

1. Church Sponsored students from the whole country of which at least 1/5th shall be from U.P. Minimum 50%.

2. Students of U.P. Domicile including Church sponsored coming on merit ranking 40%.

3. Students from other States including foreign students but excluding U.P. and Church-sponsored, students 5%.

4. Tribals 5%.

15. In order to strengthen the spirit of national integration and to bring about the All India character,of Institute, the distribution of the seats will be as follows:

Zones:

North : Himachal Pradesh, Jammu & Kashmir, Punjab, - Haryana, Rajasthan,Bihar, Bengal and Delhi 40%

South : Orissa, Andhra, Tamil Nadu, Kerala, Karnataka, Pondicherry, Goa, Andaman & Nicobar 30%

West : Gujarat, Maharashtra, Madhya Pradesh 10%

North-West : Assam, Arunachal, Mizoram,Nagaland, Manipur, Meghalaya, Tripura and Sikkim 20%

(2) Scheduled Caste students who qualify the Entrance Test and old students will be adjusted in each of respective quota and zones first.

(3) In each of the categories only those who will be have qualified in the entrance test will considered and admitted strictly in order of merit within each list,

(4) Disciplinary action - Any student who has a disciplinary action taken against him/ her will not be admitted to any course in this Institute.

(5) Not less than 25% of the enrolment shall be women students."

16. The student who have been denied admission by this institute filed writ petition under Article 226 of the Constitution in the Allahadabad High Court challenging the reservation and admission of Church sponsored Christian students. The High Court has allowed the writ petitions declaring that the policy of reservation for Christian students is contrary to the equality guaranteed to citizens under Article 29(2) of the Constitution.

17. Being aggrieved by the decision of the High Court, the Institute by obtaining certificate under Article 133(1)(a) of the Constitution has preferred Civil Appeals Nos. 1831-41 of 1989. Civil Appeals Nos. 1786/89 and 2829 / 89 are by some of the students. They are connected appeals against the same judgment of the Allahabad High Court.

QUESTION OF LAW

18. A great many questions were debated before us in the course of hearing. The important issues can be grouped under three main heads:

First : Whether St. Stephen's College is a minority-run institution?

Second :Whether St. Stephen's College as minority institution is bound by the University eirculars dated June 5, 1980 and June 9, 1980 directing that the College shall admit students on the basis of merit of the percentage of marks secured by the students in the qualifying examinations?

Third : Whether St. Stephen's College and the Allahabad Agricultural Institute are entitled to accord

preference to or reserve seats for students of their own community and whether such preference or reservation would be invalid under Article 29(2) of the Constitution?

19. The first two questions are relevant only to St. Stephen's College and they do not arise in the case of Allahabad Agricultural Institute since there is no dispute as to the minority character of that institute. There is also no grievance by the U.P. University with the procedure of selection of candidates followed by the institute. The third question, of course, is relevant to common problems of both the institutions.

20. We may take up these questions in turn, but before doing so, we may briefly refer to some of the cases where similar problem came up for consideration.

21. In State of Bombay v. Bombay Education Society, 1955 (1) SCR 568, the concerned school known as Berries High School at Deolali at Nasik District in the State of Bombay was recognised as that of belonging to Anglo-Indian community whose mother tongue is English. There was thus little difficulty for the Court to accept the claim of the Anglo-Indian School that it was a linguistic minority institution entitled to protection under Art. 30(1) of the Constitution. In Sidhajbhai Sabhal v. State of Bombay, 1963 (3) SCR 837, this Court was concerned with a Training College for teachers, known as the "Mary Brown Memorial Training College", at Borsad, District Kaira. The cost of maintaining the training college was met out of donations received from the Irish Presbyterian Mission, fee from scholars and grant-in-aid under the Education Code of the State Government. The College and other forty-two primary schools are run for the benefit of the religious denomination of the United Church of Northern India and Indian Christians generally, though admission is not denied to students belonging to other communities. The Training College was, therefore, held to have been established and administered by the Christian minority. In Rev. Father W. Proost v. State of Bihar, 1969 (2) SCR 73, there was again no serious dispute that the institution concerned i.e. St. Xavier's College was founded by Jesuits of Ranchi, who were a Christian minority. In Gandhi Faiz-Am-College, Shahjahanpur v. University of Agra, 1975 (2) SCC 283, the appellant was a registered society formed by the members of the Muslim community at Shahjahanpur. It was running the G.F. College. The management claimed protection of Artlcle30(1) against interference by the Agra University. The Court proceeded on the basis that 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 Art. 30. This conclusion was reached on a rapid glance at the evolution of the Institution. In D.A.V. College, Jullundur v. State of Punjab, 1971 (2) SCC 269, the College established by Arya Samaj in the State of Punjab claimed protection under Articles 29(1) and 30(1) of the Constitution. It was conceded by the State of Punjab that the Hindus of Punjab are a religious minority in the State though they may not be so in relation to the entire country. The claim of Arya Samaj to be a linguistic minority was, however, contested. This Court observed that linguistic minority for the purpose,6f Article 30(1) is one which must at least have a separate spoken language, but it is not necessary that that language should also have a distinct script of its own. The Sections of people who speak a language which has no script will also be a linguistic minority entitled to protection of Article30(1). Since Arya Samaj have a distinct script of their own, namely Devnagri, this Court held that they are entitled to invoke the right guaranteed under Article 29(1) because they are a section of citizens having a distinct script. They are also held entitled to the right under Article 30(1) because of their being a religious minority in the State of Punjab. It was also observed that the religious or linguistic minorities need not be so in relation to the entire population of the country and it is enough if they are so in relation to the particular legislation or the State concerned. After referring to the history of Arya Samaj, it was stated that though the Hindu Community is a majority community in the whole.

of India, the Arya Samaj which comprises of members of the Hindu Community is a religious minority in Punjab and that they are entitled to claim the right under Articles 29(1) and 30(1) since the College was established and administered by that religious minority with a script of its own.

22. In a more recent case A. P. Christian Medical Educational Society v. Government of Andhra Pradesh, 1986 (2) SCR 749, the appellant was a registered society. It claimed to have established and administered a medical college as a Christian Minorities Educational Institution. It went on admitting students for the medical college and claimed protection under Article 30(1). The State Government refused permission to establish the College. The University also refused affiliation. When the matter came before this Court, it was observed that the Government, the University and ultimately the Court have the undoubted right to pierce the 'minority veil' and discover whether there is lurking behind it no minority at all and in any case no minority institution. The minority institutions must be educational institutions of the minorities in truth and in reality and not mere masked phantoms. It was emphasized that what is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities.

23. In Chikkala Samuel v. District Educational Officer, Hyderabad, AIR 1982 Andh Pra 64, the Andhra Pradesh High Court observed that minority institution imparting general secular education in order to claim the benefit of Article 30(1) must show that it serves or promotes in some manner, the interest of the minority community or a considerable section thereof. Without such proof, it was said that there would be no nexus between the institution and the minority as such.

24. In Rajershi Memorial Basic Training School v. The State of Kerala, AIR 1973 Ker 89, the Kerala High Court said that the mere fact that the school was founded by a person belonging to a particular religious persuasion is not at all conclusive on the question. The petitioner has to prove by production of satisfactory evidence that the school in question was one established and administered by a minority whether based on religion or language.

25. In Azeez Basha v. Union of India 1968 (1) SCR 833, the challenge was mainly directed to certain amendments made in the Aligarh Muslim University Act, 1920 by the Ainendment Act of 1951 and also of 1965., The petitioners took the plea that by the amendments made in 1965, the management was deprived of the right to administer Aligarh Muslim University and that this deprivation was in violation of Article 30(1) of the Constitution. Having regard to the nature of the contention raised, it was found necessary for this Court to make a detailed study of the history of the Aligarh Muslim University in the light of the provisions of the University Act, 1920. The Court observed that although the nucleus of Aligarh Muslim University was the Mohammadan Anglo-Oriental College which was till 1920 a teaching institution, the conversion of that College into the University was not by the Muslim minority but it took place by virtue of the Act of 1920,which was passed by the then Central Legislature. As there was no Aligarh Muslim University existing till the Act of 1920 and since it was brought into being by the Act of Central Legislature, the Court refused to hold that it was established by the Muslim minority. It was also concluded that there is no proof to justify the claim that the Aligarh Muslim University owed its establishment to the Muslim minority and they, therefore, have no right to administer the University by virtue of the fundamental right guaranteed under Article 30(1).

26. A couple of years after the Azeez Basha, 1968 (1) SCR 833 decision, this Court had another occasion to determine the nature of an ancient institution claiming to he a minority institution. The decision has been reported in S. K. Patro v. State of Bihar, 1970 (1) SCR 172. Since it appears to be

in close parallel with the case on hand, it will be useful to have the consideration of rival contentions raised therein. There the Education Department directed the C.M.S. School to reconstitute the Managing Committee and that direction was challenged before the High Court of Patna on the ground that the school was a Christian minority institution and entitled to have its own management body without interference by the State. The High Court did not accept that claim of the institution and rounded off its conclusion:

> "Nowhere in the petition or in the affidavit in reply it is asserted by the petitioners that the School was opened, started, founded or brought into existence, and thus estalished by Indian Church. Surprisingly enough even in regard to the present ownership and administration, nowhere it is stated by the petitioners that it is the Christian minority of the Indian Citizens who are seeking protection of their School under Article 30 of the Constitution. It is not the case of the petitioners anywhere that the Indian Christians were members of the Church Missionary Society, London, or the Christians residing or domiciled in India had any hand in the establishment of the educational institution.... In such a situation it has got to be held that the petitioners have failed to prove that C.M.S. School was established by the minority, which is entitled to protection under Article 30 of the Constitution.

27. The High Court further observed that the word 'minority'in Article 30 did not mean a minority with reference to the world population but had reference to the population of the Indian Citizens. If aliens residing in India claiming to constitute a minority on the basis of religion or language want to establish and administer an educational institution, they cannot claim protection under Article 30, for the benefit of Article 30 was confined to persons of Indian origin. It was noted that the school was started in 1854 by the Church Missionary Society, London, and such a Society could not be said to be a citizen of India and that in any event the persons who constituted the society being aliens, the C.M.S. School established by them could not get the benefit of Article 30(1).

28. On appeal, the Judgment of the High Courtwas reversed by this Court mainly on two grounds: (i) the High Court did not pay sufficient attention to that part of the evidence supplied by the petitioners which was Isufficient to justify their claim that the local citizens had participated in the establishment of the school in question, and (ii) Indian Citizenship not being a condition for the application of Article 30, the protection thereunder could not be denied on that basis. Regarding the first ground, the Court examined the material on record and found it sufficient to prove that the local Christians of Bhagalpur took a leading role in establishing and maintaining the school. Record book of the Church Missionary Association at Bhagalpur, the copies of letters written to the Church Missionary Society by the Calcutta Corresponding Committee (of the Church Missionary Society) at Bhagalpur, minutes of the meetings held and the resolutions passed by the Local Council of Bhagalpur were all relied upon in support of the conclusion. It was also found that the assistance for establishing the institution was obtained from other bodies including the Church Missionary Society, London. On this material, it was held that the school was set up by the Christian Missionaries and the local residents of Bhagalpur with the aid of funds part of which were contributed by them. On the second ground this Court observed (at 179):

> "It is unnecessary to enter upon an enquiry whether all the persons who took part in establishing the school in 1854 were 'Indian citizens'. Prior to the enactment of the Constitution there was no settled concept of Indian citizenship, and it cannot be said that Christian Missionaries who had settled in India and the local Christian residents Of Bhagalpur did not form a minority community. It is true that the minority

> competent to claim the protection of Article 30(1) and on that account the privilege of establishing and maintaining educational institutions of their choice must be a minority of persons resicing in India. It does not confer upon foreigners not resident in India the right to set up educational institutions of their choice. Persons setting up educational institutions must be resident in India and they must form a well-defined religious or linguistic minority.It is not, however, predicated that protection of the right guaranteed under Article 30 may be availed of only in respect of an institution established before the Constitution by persons born and resident in British India.

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> "Article 30 guarantees the right of minorities to establish and administer educational institutions: the article does not expressly refer to citizenship as a qualification for the members of the minorities."

And later (at 180):

> "We are also unable to agree with the High Court that before any protection can be claimed under Article 30(1) in respect of the Church Missionary Society High Secondary School it was required to be proved that all persons or a majority of them who established the institution were "Indian Citizens' in the year 1854. There being no Indian citizenship in the year 1854 independently of the citizenship of the British Empire, to incorporate in the interpretation of Article 30 in respect of an institution established by a minority the condition that it must in additon be proved to have been established by persons who would, if the institution had been set up after the Constitution, have claimed Indian citizenship, is to whittle down the protection of Article 30 in a manner not warranted by the provisions of the Constitution."

29. There is by now fairly abundant case law on the questions as to "minority"; the minority's right to-"establish", and their right to "administer" educational institutions. These questions have arisen in regard to a variety of institutions all over the country. They have arisen in regard to Christians, Muslims and in regard to certain sects of Hindus and linguistic groups. The Courts in certain cases have accepted without much scrutiny the version of the claimant that the institution in question was founded by a minority community while in some cases the Courts have examined very minutely the proof of the establishment of the institution. It should be borne in mind that the words "establish" and "administer" used in Article 30(1) are to be read conjunctively. The right claimed by a minority community to administer the educational institution depends upon the proof of establishment of the institution. The proof of establishmentof the institution, is thus a condition precedent for claiming the right to administer the institution. Prior to the commencement of the Constitution of India, there was no settled concept of Indian citizenship. This Court, however, did reiterate that the minority competent to claim the protection of Article30(1) of the Constitution, and on that account the privilege of establishing and maintaining educational institutions of its choice, must be a minority of persons residing in India. They must have formed a welldefined religious or linguistic minority. It does not envisage the rights of the foreign missionary or institution, however laudable their objects might be. After the Constitution, the minority under Article 30 must necessarily mean those who form a distinct and identifiable group of citizens of India, Whether it is "old stuff" or "new product", the object of the institute should be genuine, and not devices or dubious. There should be nexus between the means employed and the ends desired. As pointed out in A.P. Christian Educational Society case, 1986 (2) SCR 749, there must exist some positive index to enable the educational

institution to be identified with religious or linguistic minorities. Article 30(1) is a protective measure only for the benefit of religious and linguistic minorites and it is essential to make it absolutely clear that no ill-fit or camouflaged institution should get away with the constitutional protection.

30. With these prefatory remarks, we may now examine the claim of St. Stephen's College in the light of the submissions made by the parties.

FIRST QUESTION

ORIGIN AND PURPOSE OF ST. STEPHEN'S COLLEGE

31. Surprisingly, the Delhi University in the pleading has neither denied nor admitted the minority character of the College. But the counsel for the University have many things to contend which will be presently considered. Mr. Gupta, counsel for the petitioner in T.C. No. 3/1980 has specifically urged that the College was established not by Indian residents, but by foreign Mission from the Cambridge and, therefore, it is not entitled to claim the benefit of Article 30(1) From the counter-affidavit filed by Dr. J. H. Hala -the Principal of the College in W. P. Nos. 13213-14 of 1994 and from the publication of "The History of the College" the following facts and circumstances could be noted: The College was founded in 1881 as a Christian Missionary College by the Cambridge Mission in Delhi in collaboration with the society for the propagation of the gospel (SPG) whose members were residents in India. The College was founded in order to impart Christian religious instruction and education based on Christian values to Christian students as well as others who may opt for the said education. The Cambridge Brotherhood with the plans of establishing the Christian College in Delhi sent the Cambridge Mission whose members were: Rev. J. D. Murray, Rev. E. Bickarsteth, Rev. G. A. Lafroy, Rev. H. T. Blackett, Rev. H. C. Carlyon and Rev. S. S. Allnutt. Of the said members of the Cambridge Mission, Rev. Allnutt, Rev. Blackett and Rev. Lefroy teamed up with Rev. R. R. Winter of the SPG to establish the College. It will be seen that Cambridge Mission alone did not establish the College. The Cambridge mission with the assistance of the members of the SPG who were residents in India established the College. The contention to the contrary urged by Mr. Gupta, counsel for the petitioner in, T. C. No. 3 of 1980 is, therefore, incorrect. The purpose of starting the College could be seen from the Report of 1878 to Cambridge Brotherhood and it states "the students after leaving St. Stephen's Mission School joined non-Christian Colleges and lost touch with Christian teachings.... the case would be otherwise if we were able to send them from our school to a College, where the teachings would be given by Christian Professors and be permeated with Christian ideas". (F. F. Monk in "A history of St. Stephen's College, Delhi, Calcutta, 1935, p. 3). In October, 1879 the Cambridge Committee expressed the desirability of imparting instruction also in secular subjects. "It was also felt that the influence of the missionaries would be greatly increased if they held classes in some secular subjects and did not conform their teachings to strict religious instruction". (Ibid p. 5)

BUILDING

32. Originally, the College building was housed in hired premises paid for by the SPG. A new building was eventually constructed by the Society for the propagation of gospel wherein the foundation stone bore the following inscription: To the Glory of God

And the Advancement of Sound

Learning

And Religious Education

The new building of the College was eventually opened on 8th December, 1881, by Rev. Allnutt. On the said building on the front of the porch, at the top of the parapet, a 'CROSS' in bas-relief was placed and immediately under the bracket the words "Ad Del Gloriam" had been inscribed which have since been adopted as the College Moto.

33. Today the new College building in the University campus has also a large 'Cross' at the top of the main tower and in the front porch is inscribed the St. Stephen's Moto "Ad Dei Gloriam" to perpetuate and remind the students the motive and objective of the College, namely, "The Glory of God".

34. There is also a Chapel in the College campus where religious instruction in the Christian Gospel is imparted for religious assembly in the morning.

35. It would thus appear that since its foundation in 1881, St. Stephen's College has apparently maintained its Christian character and that would be evident from its very name, emblem, moto, the establishment of a Chapel and its religious instruction in the Chrstian Gospel for religious assembly. These are beyond the pale of controversy.

CONSTITUTION OF THE COLLEGE

36. It is said that during the early part of the College history, it was managed bv the Mission Council - a totally Christian body. Late in 1913 it was registered as a society and a Constitution was formulated on Nov. 6, 1913 which was adopted by the SPG Standing Committee and by the Cambridge Committee. The Constitution as it stands today again maintains the essential character of the College as a Christian College without compromising the right to administer it as an educational institution of its choice. The Constitution of the College consists of Memorandum of the Society and Rules. Clause 2 of Memorandum states that , the object is to prepare students of the College for University degrees and examinations and to offer instruction in doctrines of Christianity which instruction must be in accordance with the teachings of the Church of North India". Clause 4 sets out the original members of the Society who were mostly Christians. The composition of the Society also reflects its Christian character in as much as the Bishop of the Diocese of Delhi is the airman of the society (Rule 1(a)). Further, two persons appointed by the Bishop of the Diocese of Delhi, one of whom shall be a senior Presbyter of the Diocese, shall be members of the Society (Rule 1(b)). One person to be appointed by the Church of North India Synodical Board of Higher Education shall also be a member of the Society (Rule 1 (g)). Similar is the position of a person to be appointed by the Diocesan Board of Education (Rule 1(h)). Two persons to be appointed by the Executive Committee of the Diocese, one of whom shall be a Presbyter, shall also be members of the Society (Rule 1(i)). The composition of the Society, therefore, indicates the presence of a large number of Christian members of the Church of North India on it.

MANAGEMENT

37. The management of the College is being looked after by the Supreme Council and the Governing Body. The Supreme Council consists of some members of the society, all of whom must be members of the Church of North India or some other Church in communion therewith, or any other duly constituted Christian Church. They are:

(a) The Bishop of the Diocese of Delhi, who shall be the Chairman.

(b) Two persons appointed by the Bishop of the Diocese (under Rule 1-b).

(c) The person appointed by the Church of North India Synodical Board of Higher P-oucation (under Rule 1-g).

(d) The person appointed by the Diocese Board of Education (under Rule 1-h).

(e) ThePrincipal of the College (Member-Secetary).

38. Rule 3 of the Society provides that the Supreme Council mostly looks after the religious and moral instruction to students and matters affecting the religious character of the College.The Principal of the College is the Member-Secretary of the Supreme Council. Rule 4 provides that the Principal shall be a member of the Church of North India or of a Church that is in communion with the Church of India. The Vice-Principal shall be appointed annually by the Principal. He shall also be a member of the Church of North India or of some Church in communion therewith.

39. True, Rule 5 provides that the Supreme Council of the College has no jurisdiction over the administration of the College and it shall be looked after by the Governing Body. But the Governing Body is not a secular body as argued by learned Counsel for the University. Rule 6 provides that the Chairman of the Society (Bishop of Diocese of Delhi) shall be the Chairman of the Governing Body. The Members of the Society as set out in categories a, b, c, d, e, f, g, h, i, j, k, 1 and m of Clause (1) shall be the members of the Governing Body. The Chairman and the Vice-Chairman of the Governing Body shall be the members of the Church of North India. Out of Categories (a) to (m) in clause (1), only category (k) may be a member of the teaching staff who may not be a Christian. Two members referred under category (1) to be appointed by the Delhi University may not be Christian and likewise, under the category (n) may not be Christian. But the remaining members shall be Christians. Out of thirteen categories, only three categories might be non-Christians and, therefore, it makes little difference in the Christian character of the Governing Body of the College. A comparison of Statute 30(c) of the Delhi University at pages 127-128 of Calendar Volume 1 will show the difference between the Governing Body of other Colleges under the Statute as contrasted with St. Stephen's College.

PRINCIPAL

40. It is again significant to note the difference between the method of appointmerit of the Principal of St. Stephen's College and all other Colleges. The Principal of St. Stephen's College is appointed by the Supreme Council and he must be a Christian belonging to Church of North India (Rule 4). He will exercise control, and maintain discipline and regulation of the College. He will be in complete charge of the admissions in the College assisted by admission committee. But the Principals of other affiliated colleges. under Ordinance XVIII, Cl. 7(2) (page 335 Calendar Volume I) are to be appointed by the Governing Body of the College.

41. The immovable property of the College shall be vested in the Indian Church trustees, who shall merely act as Trustees, and shall have no power of management whatsoever. All other property connected with the College shall be vested in the Society (Rule 2 1).

DELHI UNIVERSITY ACT AND ORDINANCE

42. It was contended that St. Stephen's College after being affiliated to the Delhi University has lost its minority character. The argument was based on some of the provisions in the Delhi University Act and the Ordinances made thereunder. It was said that the students are admitted to the University and not to the College as such. But we find no substance in the contention. In the first place, it may be stated that the State or any instrumentality of the State cannot deprive the character of the institution, founded by a minority community by compulsory affiliation since Article 30(1) is a special right to minorities to establish educational institutions of their choice. The minority institution has a distinct identity and the right to administer with continuance of such identity cannot be denied by coercive action. Any such coercive action would be void being contrary to the constitutional guarantee. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised by a body of persons in whom the founders have faith and confidence. Such a management body of the- institution cannot be displaced or reorganised if the right is to be recognised and maintained. Reasonable regulations, however, are permissible but regulations should be of regulatory nature and not of abridgment of the right guaranteed under Article 30(1).

43. Secondly, we find no provision in ttie Delhi University Act with overriding powers precluding the management of the College from exercising its right to administer the College as a minority institution. Section 2(a) of the Delhi University Act defines 'college' to mean 'an institution maintained or admitted to its privilege by the University and includes an affiliated college and a Constituent College'. Under Section 4, the University has powers to hold examinations and to grant to, and confer degrees and other academic distinctions on, persons who have perused a course of study in the University or in any college. Section 6 provides that the University shall be open to all persons of either sex and of whatever race, creed, caste or class. Under Section 7 it is necessary that all recognised teaching in connection with the University Courses shall be conducted under the control of the Academic Council. By Section 23, the Academic Council has been constituted as the Academic Body of the University, and it shall, subject to the provisions of the Act, Statutes and Ordinance, have the control and general regulations, and be responsible for the maintenance of standards of instruction etc. .

44. Section 30 provides power to promulgate Ordinances which may provide procedure for the admission of students to the University and their enrolment as such. Ordinance 1 prescribes qualification for admission. Clause 4 of Ordinance 1 states that the candidates seeking admission to a course of study must satisfy the rules and conditions made in that behalf.

45. Ordinance II provides for constitution of Admission Committees and procedure for admission for different courses. Clause 2(ii) of this Ordinance is important and so far is relevant reads:

> "Applications for admission/registration shall be made on a prescribed form. Applications by students seeking admission to Master's courses in Faculties of Arts,Mathematical Sciences, Social Sciences, Music and Science shall be sent to the Deans of Faculties, concerned direct. Applications for admission to courses other than those mentioned above shall be made to the Principal of the College concerned."

xxxxx xxxxx xxxxx

Clause (3) of the Ordinance II is equally relevant and it provides:

> "Admissions shall be finalised by the Principals of Colleges and Deans of Faculties

concerned, as the case may be, not later than such last date as may be prescribed by the Academic Council from time to time.

Provided that the Vice-Chancellor may, at his discretion, allow admission to any courses alter the prescribed date as aforesaid, for every exceptional reasons, such as late declaration of results or such other reasons considered satisfactory by the Vice-Chancellor up to the dates thought reasonable by him in each case:

Provided further that no admissions will be made by a College prior to the date to be fixed by the Academic Council each year:

xxxxx xxxxx xxxxx

Ordinance XVIII, Clause 6-A(I) provides that there shall be a Staff Council in every College. Subject to the provisions of the Act, the Statutes and the Ordinances of the University, the Staff Council shall take a decision in respect of matters, among others, organising admission of students."

46. From these and other relevant provisions of the Act and Ordinances, we have not been able to find any indications either in the general scheme or in other specific provisions which would enable us to say that the College is legally precluded from maintaining its minority character. That in matters of admission of students to Degree courses including Honours courses, the candidates have to apply to the College of their choice and not to the University and it is for the Principal of the College or Dean of Faculties concerned to take decision and make final admission. It is, therefore, wrong to state that there is no admission to the College but only for the University. The procedure for admission to Post-Graduate courses is of course, different but we are not concerned with that matter in these cases.

47. It is equally important to note that under Rule (8) of the Rules of the College Society, the management has not accepted all rules and regulations relating to composition of Governing Bodies, management of colleges, appointment of 'Principals etc. as prescribed by the relevant Statutes, Ordinances and Regulations of the University but has reserved its rights to accept only such directions which are not contrary to its Constitution, and which it has found suitable for the better management of the College and improvements of academic standards. The College has been constituted as a self-contained and autonomous institution. It has preserved the right to choose its own Governing Body, and select and appoint its own Principal both of which have a great contributing factor to maintain the minority character of the institution. It may also be noted that the Constitution of the College has been duly registered with the Registrar of Joint Stock Companies, Delhi Province, as also the University of Delhi. It is not disputed that the University has at no stage raised any objection about any of the provisions of the Constitution of the College. From these facts and circumstances it becomes abundantly clear that St. Stephen's College was established and administered by a minority community, viz., the Christian community which is indisputably a religious minority in India as well as in the Union Territory of Delhi where the College is located.

Second Question

48. Whether St. Stephen's College as minority institution was bound by the University circulars dated June 5, 1980 and June 9, 1980?

49. The first circular of the University dated June 5, 1980 has prescribed the last date for receipt of applications for admission. By the second circular dated June 9, 1980 all the Colleges of Delhi

University were directed toadmit students solely on the basis of merit determined by the percentage of marks secured by the students in the qualifying examinations. The first circular left by itself could not have been complained of, but it is so closely connected with the directive in the second circular. If the last date fixed in the first circular for receipt of applications was followed, then the College could not have selected applicants by following its own admission programme. It is the case of the College that it has been following its own admission programme for more than 100 years and over the years it has built up a corporate image in a number of distinctive activities. The admission programme of the College has become a crucial instrument to promote the excellence of the institution and it forms part of the administration which the College is entitled to have as a minority institution under Article 30(1) of the Constitution. The University cannot direct the College to dispense with its admission programme in the absence of proof of maladministration of the College. The circulars have been challenged also on the ground that they are not regulative in nature. It is said that if students are admitted purely on the basis of marks obtained by them in the qualifying examination it would be not possible for any Christian student to get admission. It has been found that unless concession is afforded, the Christian students cannot be brought within the zone of consideration. They generally lack merit when compared with the other applicants.

Admission Programme of St. Stephen's College

50. The applications are sorted out for each course of study under the direct supervision of the Tutor of admission, and are then sent to two teachers of the department concerned for scrutiny. These applications are then further scrutinised in relation to the combination of subjects taken by the students at his last examination and the order of nreference indicated by him regarding the course in which admission is sought by him. At this stage in accordance with the cut-off percentage given by the departments for different combination of subjects, the two teachers of the department concerned, out of whom one is the Head of the Department and the other is a nominee of the Department, prepare a list of potential suitable candidates which is normally on the basis of 1:4 or 1:5 for Arts and Science students respectively. The lists of names of the applicants called for interview for each subject is put upon the notice board separately with the date and time at which they would be interviewed. Those living outside the Union Territory of Delhi are informed by post. The applicant selected for the interview has to appear before a Selection Committee normally consisting of the Principal, the Tutor for admissions, two members of the department concerned, and the President of Games (a senior member of the faculty). Each member of the Committee has a complete list of the candidates invited for interview with their aggregate percentage of marks, marks obtained in individual subjects, interests and proficiency in sports and extracurricular activities etc. Questions are asked to test the candidate's knowledge of the subject together with his general awareness of the current problems. The interview is conducted orally but if and when necessary, problems are given to be solved in writing. Each application form has also space provided where the applicant is required to write about his interest, hobbies, values, career plan etc. This is carefully studied while determining the suitability of a candidate for a particular course. Each member of the Committee grades the performance of.. the candidates and at the end of the interview for each course of study, the opinion of all the members is taken into account,and by the consensus the final list of candidates selected for admission is put up.

Concession to Christian Students and others

51. To Christian students, relaxation up to 10 per cent is given. The Scheduled Castes/ Scheduled Tribes candidates who are having a minimum of 50 per cent of marks are called for interview for selection to honours courses. For B.A. pass course, a further concession to them is granted and the

qualifying marks are reduced even below 50 per cent. As far as sportsmen and sports-women are concerned, national or State level players are given concession normally up to 10 per cent and in exceptional cases up to 15 per cent or even more. However, a Christian student, who is below the cut-off percentage by more than 10 per cent is never called for interview.

52. The actual working of the concession given by the College and the result achieved thereon in several years are set out in Annexure-I to Writ Petition No. 1868 of 1980. The Christian students who get concession , up to 10 per cent and thereby get preferential admission are only 6 per cent to 10 per cent. They are also admitted in accordance with the standard prescribed by the University and none who falls below the standard has ever been admitted to the College.

The Contentions of Delhi University and Students'Union

53. On behalf of the Delhi University and the Students' Union the impugned circulars were sought to be justified on several grounds. The first circular fixing the date for receipt of applications for admission was sought to be justified on the ground that it was intended to ensure uniformity in the admission dates in all colleges and it would be beneficial to and in tiie interests of students who are seeking admission in different colleges. With regard to the second circular of the University it was contended that the admission based on the merit determined by the marks secured by the applicants in the qualifying examinations world exclude arbitrariness in the selection and ensure fairness to all applicants. It was also submitted that the circulars are regulative in character and do not impinge upon the fundamental rights guaranteed under Article 30(1) to St. Stephen's College as a minority institution.

54. Article 30(1) provides:

"30. Right of minorities to establish and administer educational institutions-

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

55. The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institution.' This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standards of education are not a part of the management as such.The standard concerns the body politic and is governed by considerations or the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The State, therefore, has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the -guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others. There is a wealth of authority on these principles. See State of Bombay v. Bombay Education Society, (1955) 1 SCR 568; Re Kerala Education Bill 1957; 1959 SCR 995; Sidhajbhai Sabhai v. State of Bombay; (1963) 3 SCR 837; Rev. Father Proost v. State of Bihar, 1969 (2) SCR 734 and State of Kerala v. Mother Provincial, (1971) 1 SCR 734.

56. Though Article 30(1) is couched in absolute terms in marked contrast with other fundamental rights in Part 111 of the Constitution, it has to be read subject to the power of the State to regulate education, educational standards and allied matters. In Ahmedabad St. Xaviers College Society v. State of Gujarat, 1975 (1) SCR 173 which was the decision of a nine-Judge Bench, Ray, C.J. with whom Palekar, J., concurred, observed (at pp. 197, 200) that upon affiliation to a University, the minority and non-minority institutions must agree in the pattern and standards of education. 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. It was further observed:

> "That the ultimate goal of minority institutions too imparting general secular education is advancement of learning. This Court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.

57. In the same case Khanna, J., put the principles with a different emphasis (at 234-35);

> "The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for mparting education. The right to administer educational institutions can plainly not include the right to maladminister. Regulations can be made to prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of an educational institution without qualified teachers. The State can ,prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations made in the true interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed; they secure the proper functioning of the institution, in matters educational."

58. Mathew, J., had this to state (at 267):

> "The heart of the matter is that no educational institution established by a religious or linguistic minority can claim total immunity from regulations by the legislature or the University if it wants affiliation or recognition; but the character of the permissible regulations must depend upon their purpose. As we said such regulations will be permissible if they are relevant to the purpose of securing or promoting the object of recognition or affiliation. There will be borderline cases where it is difficult to decide whether a regulation really subserves the purpose of recognition or affiliation. But that does not affect the question of principle. In every case when the reasonableness of a regulation comes up for consideration before the court, the question to be asked and answered is whether the regulation is calculated to subserve or will in effect subserve the purpose of recognition or affiliation, namely the excellence of the institution as a vehicle for general secular education to the minority community and to other persons who resort to it. The question whether a regulation

> is in the general interest of the public has no relevance, if it does not advance the excellence of the institution as a vehicle for general secular education as, exhypothesi, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards. This is the reason why this Court has time and again said that the quest'o whether a particular regulation is calculated to advance the general public interest is of no consequences if it is not conducive to the interest of the minority community and those persons who resort to it."

59. In Lily Kurian v. Lewina, 1979 (2) SCC 124 it was pointed out (at 137):

> "Protection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minority's choice enshrined in Article 30(1) means 'management of the affairs' of the institution. This right is, however, subject to the regulatory power of the State. Article 30(1) is not a charter for maladministration; regulation, so that the right to administer may be better exercised for the benefit of the institution is permissible; but the moment one goes beyond that and imposes, what is in truth, not a mere regulation but an impairment of the right to administer, the Article comes into play and the interference cannot be justified by pleading the interests of the general public; the interests justifying interference can.only be the interests of the minority concerned."

60. The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to mal-administer. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations, contracts, torts etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. that is a privilege which is implied in the right conferred by Article 30(1).

61. The right to select students for admission is a part of administration. It is indeed an important facet of administration. This power also could be regulated but the regulation must be reasonable just like any other regulation. It should be conducive to the welfare of the minority institution or for the betterment of those who resort to it. The Bombay Government order which prevented the schools using English as the medium of instruction from admitting students who have a mother-tongue other than English was held to be invalid since it restricted the admission pattern of the schools (1955) 1 SCR 568. The Gujarat Government direction to the minority run college to reserve 80 per cent of seats for Government selected candidates with a threat to withdraw the grant-in-aid and recognition was struck down as infringing the fundamental right guaranteed to minorities under Article 30(1) of the Constitution (1963) 3 SCR 837. In Rt. Rev. Magr. Mark Netto v. Government of Kerala 1979 (1) SCR 609 the denial of permission to the management of a minority school to admit girl students was held to be bad. The Regional Deputy Director in that case refused to give sanction

for admission of girl students on two grounds; (i) that the school was not open as a mixed school and that the school has been run purely as a boys school for 25 years; and (ii) that there was facility for the education of girls of the locality in a nearby girl school which was established by the Muslims and was also a minority institution. This Court noted that the Christian community in the locality wanted their girls also to receive education in the school maintained specially by their own community. They did not think it in their interest to send their children to the Muslim girls school run by other minority community. The withholding of permission for admission of girl students in the boys minority school was violative of Article 30(1). It was also observed that the rule sanctioning such refusal of permission crosses the barrier of regulatory measures and comes in the region of interference with,the administration of the institution, a right which is guaranteed to the minority under Article 30(1). The Court restricted the operation of the rule and made it inapplicable to the minority eductional institution, In Director of School Education Government of Tamil Nadu v. Rev. Brother G. Arogiasamy, AIR 1971 Mad 440, the Madras High Court had an occasion to consider the validity of an uniform procedure prescribed by the State Government f6r admission of candidates to the aided training schools. The Government directed that the candidates should be selected by the school authorities by interviewing every candidate eligible for admission and assessing and awarding marks in the interview. The marks awarded to each candidate in the interview will be added to the marks secured by the candidate in the S.S.L.C. public examination. On the basis of the aggregate of marks in the S.S.L.C. examination and those obtained at the interview the selection was to be made without any further discretion. The High Court held that the method of selection placed serious restrictions on the freedom of the minority institution to admit their own students. It was found that the students of the minority community could not compete with the students belonging to other communities. The applications of students from other communities could not be restricted under law. The result was that the students of minority community for whose benefit the institution was founded, had little chance of getting admission. The High Court held that the Government order prescribing the uniform method of selection could not be applied to minority institutions.

62. In the instant case also the impugned directives of the University to select students on the uniform basis of marks secured in the qualifying examinations would deny the right of St. Stephen's College to admit students belonging to Christian community. It has been the experience of the College as seen from the chart of selection produced in the case that unless some concession is provided to Christian students they will have no chance of getting into the college. If they are thrown into the competition with the generality of students belonging to other communities, they cannot even be brought within the zone of consideration for the interview. Even after giving concession to a certain extent, only a tiny number of minority applicants would gain admission. This is beyond the pale of controversy.

63. The grievance of the University and the Students' Union is that the College Admission Programme is a device to manipulate the merits and not a scientific test to assess performance of candidates. The selection is made by judging the candidates at the interview and the marks secured in the qualifying examinations are not taken into account for selection. The marks are only relevant for calling the candidates for interview. We have carefully examined the College Admission Programme and in our opinion, the contention urged for the University and students union is misconceived. The purpose of the interview is not to reassess or remeasure the merits of the applicants in the qualifying examinations. The marks secured in the qualifying examinations are indeed relevant for selection and the interview is only supplementary test. The College fixes different cutoff percentage of marks in different subjects. The candidates are called for interview in the ratio of 1 : 4 or 1 : 5 depending upon the candidates choice of selection of courses of study. The

interview is conducted by men of high integrity, calibre and qualification. They are men who deal with education and the students. During the interview, questions are asked to test the candidate's knowledge of the subject and his general awareness of the current problems. The student is also required to furnish in the application form his interest, hobbies, values, career plan etc. Each member of the Interview Committee grades the performance of the candidates and the selection is made for each course of study by taking into consideration the opinion expressed by all the members of the Interview Committee. Bv consensus the final list of candidates is prepared. The selection is thus made on the basis of the candidate's academic record and performance at the interview keeping in mind his/her all round competence, capacity to benefit from being in the College as well as potential to contribute to the life of College. Judging the performance by grading is a well known method followed in the academic field.

64. The oral interview as a supplementary test and not as exclusive test for assessing the suitability of candidates for college admission has been recognised by this Court. But at the same time, to avoid arbitrariness in the selection it has been repeatedly held that there shall not be allocation of high percentage of marks for oral interview test. Where candidate's personality is yet to develop, it has been emphasised that greater weight has per force to be given to performance in the written examination and the importance to be attached to the interview test must be minimal. The Court has generally indicated that interview marks should not be more than 15 per cent of the total marks. (See R. Chitralekha v. State of Mysore, 1964 (6) SCR 368; A. Peeriakaruppan v. State of Tamil Nadu, 1971 (2) SCR 430; Miss Nishi Maghu v. State of Jammu & Kashmir, 1980 (4) SCC 95; Ajay Hasia etc. v. V. Khalid Mujib Sehravardi, 1981 (2) SCR 79; Lila Dhar v. State of Rajasthan, 1982 (1) SCR 320; and Koshal Kumar Gupta v. State of Jammu and Kashmir, 1984 (3) SCR 407).

65. There is nothing on record to suggest that the interview conducted by the Selection Committee was contrary to the principles laid down by this Court in the aforesaid decisions. We see neither any arbitrariness nor any vice or iacic of scientific basis in the interview or in the selection. The interview confers no wide discretion to the Selection Committee to pick and choose any candidate of their choice. They have to select the best among those who are called for interview and the discretion is narrowly limited to select one out of every 4 or 5. In these premises, we would defer to the choice and discretion of the Selection Committee so long as they act properly and not arbitrarily and act within the recognised principles.

66. The College seems to have compelling reasons to follow its own admission programme. The College receives applications from students all over the country. The applications ranging from 12000 to 20000 are received every year as against a limited number of 400 seats available for admission. The applicants come from different institutions with diverse standards. The merit judging by percentage of marks secured by applicants in different qualifying examinations with different standards may not lead to proper and fair selection. It may not also have any relevance to maintain the standards of excellence of education. As observed by this Court in D. N. Chanchala v. State of Mysore, 1971 Supp SCR 608 the result obtained by a student in an examination held by one University cannot be comparable with the result obtained by another candidate in an examination of another University. Such standards depend on several human factors, method of teaching, examining and evaluation of answer papers. The subjects taught and examined may be the same, but the standard of examination and evaluation may vary, and the variations are inevitable. In the premises, the admission solely determined by the marks obtained by students, cannot be the best available objective guide to future academic performance. The College Admission Programme on the other hand, based on the test of promise and accomplishment of candidates seems to be better than the blind method of selection based on the marks secured in the qualifying examinations. We are,

therefore, unable to accept the submission that the College Admission Programme is arbitrary and the University criteria for selection is objective.

67. So in the end we are driven to conelude that St. Stephen's College is not bound by the impugned circulars of the University.

Third Question

68. Whether St. Stephen's College and the Allahabad Agricultural Institute as minority institutions are entitled to accord preference in favour of or reserve seats for candidates belonging to their own community and whether such preference or reservation would be invalid under Article 29(2) of the Constitution?

69. It is not in dispute that St. Stephen's College and Allahabad Agricultural Institute are receiving grant-in-aid from the Government. St. Stephen's College gives preference to Christian Students. The Allahabad Agricultural Institute reserves fifty per cent of the seats for Christian students. The Christian students admitted by preference or against the quota reserved are having less merit in the qualifying examination than the other candidates. The other candidates with more merit are.denied admission on the ground that they are not Christians.

70. It was argued for the University and the Students Union that since both the institutions are receiving State aid, the institutional preference for admission based on religion is violative of Article 29(2) of the Constitution. The institutions shall not prefer or deny admission to candidates on ground of religion. For institutions, on the other hand, it was claimed that any preference given to the religious minority candidates in their own institutions cannot be a discrimination falling under Art. 29(2). The institutions are established for the benefit of their community and if they are prevented from admitting their community candidates, the purpose of establishing the institutions would be defeated. The minorities are entitlld to admit their candidates by preference or by reservation. They are also entitled to admit them to the exclusion of all others and that right flows from the right to establish and administer educational institutions guaranteed under Article 30(1).

71. We are concerned in this question with discrimination, and mainly with discrimination on ground of religion in the aided educational institutions. The issue involves the citizen's entitlement as a part of his personal liberty not to be discriminated on the ground of religion as against the minority's right in their own educational institution. This is the most difficult and complicated issue and is seemingly not covered by any authority of this Court. The determination of the issue mainly depends upon the constitutional compass of Articles 29(2) and 30(1) of the Constitution.

The Views Expressed by the Allahabad High Court

72. Before grappling with the issue, we may turn to the decision of the High Court of Allahabad which is under appeal before us. The students were denied admission though they had secured a high percentage of marks in the competitive test held by the Institute. The denial was in view of the fact that a large number of seats had been reserved for Church sponsored candidates and tribals. The contention of the petitioners was that the reservation was violative of Article 29(2) since it was based on religion. The High Court accepted the contention and inter alia, held that the denial of admission to more merited candidates on the ground of religion was impermissible. The institution also could not -reserve seats for members of its community. The constitutional concept of religious autonomy in education in Art. 30(1) has to be balanced with the constitutional guarantee under

Article 29(2). Both the Articles operate in the same field namely; educational institutions. The right guaranteed to minorities under Art. 30(1) to establish and administer educational institutions of their choice cannot be read in isolation, and it has to be interpreted in a manner that it does not destroy the right in Art. 29(2). The High Court has finally observed that the right of admission which vests in an institution by virtue of the power of administration under Article 30(1) cannot be in violation of Art. 29(2).

73. It seems to us that the High Court has followed the liberal individualist theory. The liberal individualist theory is generally the Western political theory since the period of the American and French revolutions. The High Court gave little or no attention to the positive minority rights with respect to language, religion, education and cultural rights guaranteed under the Constitution. It has failed to consider the predominating emphasis expressed in Article 30(1). It has overlooked the difference in perspective underlying in Articles 29(2) and 30(1).

Pre-Natal History of Minority Rights

74. The minorities do not stand to gain much from the general Bill of Rights or Fundamental Rights which are available only to individuals. The minorities require positive safeguards to preserve their minority interests which are also termed as group rights. The safeguards and group rights have been the part of our Constitution making. It is interesting to observe the history perspective of Articles 29 and 30. The Advisory Committee constituted by the Constituent Assembly dealing with the question of minorities made the following recommendations:

> "(i) Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect."
>
> (ii) No minority whether based on religion, community or language - shall be discriminated against in regard to admission into State educational institutions, nor shall any religion, instruction be compulsorily imposed on them.
>
> (a) All minorities whether based on religion, community or language - shall be free in any unit to establish and administer educational institutions of their own choice; and
>
> (b) The State shall not, while providing State aid to schools discriminate against schools under the management of minorities whether based on religion, community or language. "

75. At the drafting stage, these recommendations were finally reformulated as draft Article 23 with certain crucial changes. The Drafting Committee itself sought to make a distinction between the right of any section of the citizens to conserve its language, script or culture, and the right of minorities based on religion or language to establish and administer institution of their choice. With this distinction in view, the word 'minority' had been replaced with the termany section of the citizens', in the earlier part of the draft Article 23 corresponding to the present Article 29(1). The Drafting Committee, however, had retained the word 'minority' in the latter part of draft Article, which later became the present Article 30(1) (CAD Vol. VII 1949 P. 895).

76. With regard to prohibition of discrimination against minorities in admission, it was all along felt that the right should extend to State-aided institutions as well. But the Drafting Committee here also

made changes and substituted draft clause (2) of Article 23 with the present Article 29(2) and that was accepted (CAD Vol. VII 1949 p. 925).

77. Dr. Ambedkar explained the reasons for this change, while replying in the debate dealing with-some of the amendments. He said that the term 'minority'was used in the earlier draft not merely to indicate the minorities in the technical sense of the word but were minorities nonetheless. Since the word 'minority' was capable of a narrow interpretation and the intention was to provide protection in the matter of culture, language and script in a wider sense, the Drarting Committee had dropped the word 'minority, and used instead the term 'any section ot the citizens'. He pointed out (The Framing of India's Constitution - A Study by B. Shiva Rao, 1968 Ed. p. 280):

> "That the Article was an improvement on the draft Article. The original provision only cast a duty upon the State to protect the culture, script and language of the minorities. It gave no fundamental right to these communities. "It only imposed the duty and added a clause that while the State may have the right to impose limitations upon these rights of language, culture and script, the State shall not make any law which may be called oppressive; not that the State has no right to make a law affecting these matters, but that the law shall not be oppressive.... the protection granted in the original article was very insecure. It depended upon the goodwill of the State. The present situation as you find it.... is that we have converted that into a fundamental right, so that if a State make any law which was inconsistent with the provisions of this Article, then that..... law would be invalid."

78. These are the reasons that prompted the incorporation of measures of fundamental rights for protection of interests of minorities.

Articles 29(1) and 30(1) of the Constitution

79. Having set the scene, we can deal with the provisions of Articles 29(1) and 30(1) relatively quickly. Under Article 29(1) every section of the citizens having a distinct language, script or culture of its own has the right to conserve the same. Under Article 29(1), the minorities - religious or linguistic - are entitled to establish and administer educational institutions to conserve their distinct language, script or culture. However, it has been consistently held by the Courts that the right to establish an educational institution is not confined to purposes of conservation of language, script or culture. The rights in Article 30(1) are of wider amplitude. The width of article30(1) can not be cut down by the considerations on which Article 29(1) is based. The words "of their choice" in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes. (See Father W. Proost v. State of Bihar; Ahmedabad St. Xavier's College v. State of Gujarat; and Re : Kerala Education Bill case).

Articles 29(2) and 30(1) of the Constitution

80. Indeed, we should steer clear of the two extreme arguments urged for the institutions. Counsel for the institutions contended that the preference given to minority candidates in their own educational institut'on is not violative of Article 29(2). Such preference is not solely on the basis of religion but on the ground that the candidate belongs to a minority community. It was also urged that the minorities in the exercise of their right in Article 30(1) are entitled to establish and

administer educational institutions for the exclusive advantage of their own community candidates. So far as the first point is concerned, it may be noted that the institutional preference to minority candidates based on religion is apparently an institutional discrimination on the forbidden ground of religion. It operates to stigmatise or single out candidates from non-minority communities on the ground only of religion. If an educational institution says "yes" to one candidate but says "no" to another candidate on ground of religion, it amounts to discrimination on ground of religion. The mandate of Article 29(2) is that there shall not be any such discrimination.

81. Equally,lt would be difficult to accept the second submission that the minorities are entitled to establish and administer educational institutions for their exclusive benefit. The choice of institution provided in Article 30(1) does not mean that the minorities could establish educational institution for the benefit of their own community people. Indeed, they cannot. It was pointed out in Re: Kerala Eduction Bill that the minorities cannot establish educational institution only for the benefit of their community. If such was the aim, Article 30(1) would have been differently worded and it would have contained the words "for their own community". In the absence of such words it is legally impermissible to construe the Article as conferring the right on the minorities to establish educational institution for their own benefit.

82. Even in practice, such claims are likely to be met with considerable hostility. it may not be conducive to have related by a homogenous society. It may lead to religious bigotry which is the bane of mankind. in the nation building with secular character sectarian schools or colleges; segregated faculties or universities for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a 'melting-pot' in our national life. The students and teachers are the critical ingredients. It is there they develope respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions.

83. The core of the argument of counsel for the University and Students Union is that the minority institutions getting Government aid are bound by the mandate of Article 29(2) and they cannot prefer their own candidates. We may start with Article 29 (2).

Article 29 (2) provides:

> "29 (2). No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

84. The access to academic institutions maintaned or aided by the State funds special concern of Article 29(2). It recognises the right of an individual not to be aiscrinunated under the aegis of religion, race, caste, language or any of them. This is one of the basic principles of a secular State. The discrimination based solely on the ground of a citizen's particular religion, race, caste, or having any particular language is absolutely prohibited in educational institutions maintained by the State or receiving aid out of State funds. It applies to minorities as well as to non-minorities. When other qualifications being equal the religion, race, caste, language of a citizen shall not be a ground of preference or disability. Similarly, the words, "any of them" as used in Article 29 (2) are intended to give further emphasis that none of the grounds mentioned in the Article can be made the sole basis of discrimination. (See: State of Madras v. Champakam Dorairajan (1951 (2) SCR 525) and

Bombay Education Society case.

85. The fact that Article 29(2) applies to minorities as well as non-minorities does not mean that it was intended to nullify the special right guaranteed to minorities in Article 30 (1). Article 29 (2) deals with non-discrimination and it is available only to individuals. The general equality by non-discrimination is not the only goal of minorities. The minorities rights under the majority rule implies more than non-discrimination and indeed, it begins with non-discrimination. Protection of interests and institutions and advancement of opportunity are just as important. Differential treatment that distinguishes them from he majority is a must to preserve their basic characteristics. To be blunt, black men do not, wish to be white. Jews do not wish to be Protestants. Serbs do not want to be Croats. French Canadians do not want to lose their French heritage. There are many other instances, including the Corsicans in France, the Irish Catholics in Ulster, the French Canadians in Quebec, the Albanians in Kosovo Yogoslavia, the Tamils in Sri Lanka, the Islamic separatists in the Phillipines, and the Animist and Christian minorities in southern Sudan. The problem in India is not quite different. India is a multi-cultural and multi-religious society. It is an extraordinary pluralistic and complex society with different religious minorities. Besides there are linguistic aspirations and caste considerations. There may be individuals in the minority group who want to assimilate into the majority, but the group itself has a collective interest for non-assimilation. It is interested in the preservation and promotion as a community. This appears to be the chief reason for which Article 30 (1) was incorporated as a fundamental right. Article 27 of the International Covenant on Civil and Political Rights (1966) also lays a foundation in this regard. It states : "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".

86. Yet another submission which counsel argued is that in a secular democracy the Government fund cannot be utilised to promote the interests of any particular community and Article 29 (2) interdicts only when the minority institution seeks and gets State financial aid and the minority institution is not entitled to State aid as of right.

87. It is quite true that there is no entitlemerit to State grant for minority educational institutions. There was only a stop-gap arrangement under Article 337 for the AngloIndian community to receive State grants. There is no similar provision for other minorities to get grant from the State. But under Article 30 (2), the State is under an obligation to maintain equality of treatment in granting aid to educational institutions. Minority institutions are not to be treated differently while giving financial assistance. They are entitled to get the financial assistance much the same way as the institutions of the majority communities.

88. Second, the receipt of State aid does not impair the rights in Article 30 (1). The State can lay down reasonable conditions for obtaining grant-in-aid and for its proper utilisation. The State has no power to compel minority institutions to give up their rights under Article 30 (1). (See : Re : Kerala Education Bill case, and Sidhajbhai case). In the latter case, this Court observed (at 856-857) that the regulation which may lawfully be imposed as a condition of receiving grant must be directed in making the institution an effective minority educational institution. The regulation cannot change the cha racter of the minority institution. Such regulations must satisfy a dual test; the test of reasonableness, and the test that it is regulative of the educational character of the institution. It must be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. It is thus evident that the rights under Article 30 (1) remain unaffected even after securing financial assistance from the Government.

89. The educational institutions are not business houses. They do not generate wealth. They cannot survive without public funds or private aid. It is said that there is also restraint on collection of students fees. With the restraint on collection of fees, the minorities cannot be saddled with the burden of maintaining educational institutions without grant-in-aid. They do not have economic advantage over others. It Is not possible to have educational institutions without State aid. This was also the view expressed by Das, C. J., in Re: Kerala Education Bill case. The minorities cannot, therefore, be asked to maintain educational institutions on their own.

90. It was argued that Article 30 (1) is subject to Article 29 (2) and in support thereof, the observations in DAV College and Re: Kerala Education cases were relied upon. In DAV College case this Court explained the respective scopes of Articles 29 (1) and 30 1) and said (at 273) that Article 29 (1) is wider than Article 30 (1). Rights guaranteed under Article 29 (1) are available to any section of the citizens including the minorities while the rights guaranteed under Article 30 (1) are only available to the minorities based on religion or language. The right of a religious or linguistic minority to establish and administer educational institutions of its choice under Article 30 (1) is subject to the regulatory power of the State for maintaining and facilitating the excellence of its standards. This right is further subject to Article 29 (2) which provides that no citizen shall be denied admission into any educational institution which is maintained by the State or receives aid out of State funds, on grounds only of religion, race, caste, language or any of them. In Re : Kerala Education Bill case, it was pointed out (at 1047) that the right in Article 30 (1) is subject to Article 29 (2) which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

91. The Court, however, was not deciding the question that has now arisen before us. The Court only made a passing reference to the right in Article 30 (1). The aspects which now presented were never considered by the Court. In fact the issue which we are called upon to consider as to the right of minorities to prefer their community candidates in their educational institutions did not come up for consideration before the Court. We are on virgin soil, not on trodden ground.

92. The minorities cannot be treated in a religious neutral way in the educational institutions established and administered by them. Clearly that was not the aim of Article30 (1). Article 30 (1) was incorporated to secure to the minorities a fair deal in the name of religion only. It was guaranteed to them as a fundamental right after a great deal of deliberation by the Framers. It should not be nullified by narrow judicial interpretation or crabbed pedantry. There must be a broad approach and the Statesman-like vision. The catholic approach that led to the drafting of the provisions dealing with the minority rights, as discussed earlier, should not be set at naught. It must be ensured that nothing is done to deprive the minorities of a sense of belonging and of a feeling of security. [(See : the observations of Khanna, J., in St. Xavier's case (at 234)]

93. India is very much a Nation in tie making. There are linkages and connections in the multilayered mix up. There are concern and considerations underlying the provisions relating to minority rights. There are shared understanding and expectations of the founding fathers. The constitutional construction without such concern and consideration and without such shared understanding and expectations is bound to be, inadequate. It would be profoundly antihistoric and likely to produce constitutional nihilism with calamitous consequences. "We must never forget" said the Chief Justice Marshal "that it is a Constitution we are expounding" (Mc. Cullock v. Marryland, 4 Wheat 316 at 407), an instrument "framed for ages to come, and.... designed to approach immortality as nearly as human institution can approach". (Cohens v. Virginia, 6 Wheat 264 at 387).

94. We have been referred to the decision of the American Supreme Court in University of California v. Allen Bakke, (438 US 265), where the claim of Bakke for regular admission was rejected by California Medical School, in view of the preference shown in favour of certain disadvantaged candidates who were admitted under the Special Admission Programme. The American Supreme Court struck down the special Admission Programme as unconstitutional since it was based on race as a determining factor in admission. The decision in Bakke's case rested on the Civil Rights Act of 1964 and the Fourteenth Amendment to the American Constitution. The decision, however, is of little assistance to the case before us since the Constitution of the United States contains no provision similar to Article 30 (1) of our Constitution.

THE MINORITY RIGHTS AND BALANCING INTERESTS

95. We have elsehwere pointed out that the minorities have the right to admit their own candidates to maintain the minority character of their institutions. That is a necessary concomitant right which flows from the right to establish and administer'educational institution in Article 30 (1). There is also a related right to the parents in the minority communities. The parents are entitled to have their children educated in institutions having an atmosphere congenial to their own religion (See : the observations of Methew, J., at 253 in St. Xavier's case).

96. The collective minority right is required quired to be made functional and is not to be reduced to useless lumber. A meaningful right must be shaped, moulded and created under Article 30 (1), while at the same time affirming the right of individuals 'under Article 29 (2). There is need to strike a balance between the two competing rights. It is necessary to mediate between Article 29 (2) and Article 30 (1), between letter and spirit of these Articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change.

97. The Constitution establishes secular democracy. The animating principle of any democracy is the equality of the people. But the idea that all people are equal is profoundly speculative. It is well said that in order to treat Isome persons equally, we must treat them differently. We have to recognise a fair degree of discrimination in favour of minorities. But it is impossible to have an affirmative action for religious minorities in religious neutral way. In order to get beyond religion, we cannot ignore religion. We must first take account of religion. It is exactly in the spirit of these considerations that this Court in its advisory opinion in Re : Kerala Education Bill case, recognised a fair degree of discrimination in favour of religious minorities. In this respect the Court seems to have acted on the same principle which is applied to socially and educationally backward classes, that is the principle of protective discrimination. In Balaji v. State of Mysore, (1963 (1) Supp 43), while examining the validity of reservation to socially and educationally backward classes under Article 15 (4) Gajendragadkar, J., as he then was,. pointed out that the reservation to socially and educationally backward classes would serve the interests of the society at large by promoting the advancement of the weaker elements in the society.

98. In State of Kerala v. N. M. Thomas (1976) 1 SCR 906, 933, Ray, C. J., while dealing with the concept of equality guaranteed by Articles 14, 15(1) and 16 (1) with reference to the preferential treatment for backward classes observed that preferenclasses with due regard to administrative efficiency alone can mean equality of opportunity for all citizens. Equality for opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason. Discrimination with reasons means rational classification for differential treatment having nexus to the constitutionally permissible objects. Preferential representation for the backward classes in services with due regard to administrative

efficiency is permissible object and backward classes are a rational classification recognised by our Constitution. Therefore, differential treatment in standards of selection are within the concept of equality.

99. In Akhil Bhartiya Soshit Karamchari Sangh (Railway) v. Union of India, 1981 (2) SCR 185, Chinnappa Reddy, J., while explaining the inter-relationship of Articles 16 (1) and 16(4) said that Article 16 (4) is not in the nature of an exception to Article 16 (1). It is a facet of Article 16 (1) which fosters and furthers the idea of equality of opportunity with special reference to an under-privileged and deprived classes of citizens. lustrative of what the State must do to wipe out the distinction between egalite to droit and egalite de fait. It recognises that the right to equality of opportunity includes the right of the under-privileged to conditions comparable to or compensatory of those enjoyed by the privileged. Equality of opportunity must be such as to yield equality of results and not that which simply enables people, socially and economically better placed to win against the less fortunate, even when the competition is itself otherwise inequitable.

100. It is now an accepted jurisprudence and practice that the concept of equality before the law and the prohibition of certain kinds of discrimination do not require identical treatment. The equality means the relative equality, namely the principle to treat equally what are equal and unequally what are unequal. To treat unequals differently according to their inequality is not only permitted but required.

101. Laws carving out the rights of minorities in Article 30 (1), however, must not be arbitrary, invidious or unjustified; they must have a reasonable relation between the aim and the means employed. The individual rights will necessarily have to be balanced with competing minority interests. In Sidhajbhai case, the Government order directing the minority run college to reserve 80 per cent. of seats for Government nominees and permitting only 20 per cent. of seats for the management with a threat to withhold the grant-in-aid and recognition was struck down by the Court as infringing the fundamental freedom guaranteed by Article 30 (1). Attention may also be drawn to Article 337 of the Constitution which provided a special concession to Anglo-Indian community for ten years from the commencement of the Constitution. Unlike Article 30 (2) it conferred a positive right on the Anglo-Indian community to get grants from the Government for their educational institutions, but subject to the condition that at least forty per cent. of annual admission were made available to members of other communities.

102. In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Art. 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course in conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed fifty per cent. of the annual admission. The minority institutions shall make available at least fifty per cent. of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.

103. In the result and for the reasons stated, the Writ Petition (Civil) No. 1868 of 1980 filed by St. Stephen's College is allowed. The W. P. Nos. 13213-14 of 1984 and T.C. No. 3 of 1980 are dismissed. The appeals against the judgment of the Allahabad High Court are allowed modifying the judgment of the High Court to the extent indicated above. However, the admissions made hitherto by Allahabad Agricultural Institute shall not be disturbed. The students who have been

admitted pursuant to the direction issued by this Court or the High Court shall be allowed to complete their courses.

104. In the circumstances of the case, we make no order as to costs.

105. I had the advantage of going through the Judgment of my learned brother K. J. Shetty, J.with due deference I am unable to agree.

106. In view of the fact that Shetty, J. in his Judgment has set out the facts in detail, I am mentioning such facts which are necessary in order to grapple with the questions raised in these cases.

W. P. No. 1868 of 1980, W. P. Nos. 13213-14 of 1984 and Transferred Case No. 3 of 1980.

107-108. All these cases relate to St. Stephen's College (in short 'College') and the facts of these cases are stated in short as under:-

St. Stephen's College is affiliated to Delhi University and is one of its three original constituent colleges. For the academic year 1980-81, the College published 'Admissions prospectus' which inter alia provided that applications for admission to the first year must be received in the college office on or before 20th June, 1980. It was also mentioned in the prospectus that there would be interview prior to final selection for admission to the college. The Vice-Chancellor of the Delhi University on May 22, 1980 constituted an Advisory Committee to consider and recommend the dates for admission/ registration to various courses for the academic session 1980-81 and for other related matters concerning admissions. The constitution of the Advisory Committee was also approved by the Academic Council. Advisory Committee constituted by the Vice-Chancellor, Delhi University laid down as follows:-

109. For matters concerning admissions for the academic session 1980-81.

> "(i) Admission to B. A. (Pass)/ B. A. Vocational Studies Courses be based on the merit of the percentage of marks secured by students in qualifying examination.
>
> (ii) The admission to B.Com (Pass), B.A. (Hons) and B.Com (Hons.) courses be also on the basis of marks. However, the College may give weightage to marks obtained in one or more individual subjects in addition to the aggregate marks of the qualifying examination. But whenever weightage is proposed to be given to individual subject(s) by the college, it should be notified in advance to the students through the college Prospectus/ Notice Board so that applicants seeking admission know in advance the basis of admission.
>
> (iii) That last date for receipt of applications to all the under-graduate courses will be June 30, 1980 and this would be uniformly adhered to by all the colleges."

110. The above recommendations were accepted by the Central Admission Committee and also by the Vice-Chancellor.

111. On June 5, 1980 the University issued Circular to all affiliated colleges prescribing the last date for the receipt of applications as June 30, 1980. The Circular also provided phased programme of admission. On June 9, 1980 the University issued another Circular to Principals of all the colleges

stating inter alia, that admission to B.A. (Pass)/B.A. Vocational Study Courses be based on the merit of percentage of marks secured by student in the qualifying examination. The admission to B. Com (Pass)/ B. A. (Hons.) and B.Com. (Hons.) Courses shall be on the basis of marks. However, the College may give weightage to marks obtained in one or more individual subject(s) in addition to the aggregate marks of the qualifying examination. But whenever the weightage is proposed to be given to individual subject(s) by the College, it should be notified in advance to the students through the college Prospectus/Notice Board so that applicants seeking admission know in advance the basis of admission. This Circular also provided certain guidelines for admission to sportsmen and co-curricular distinctions.

112. On a complaint made by the Delhi University Students Union that the college was violating the University's Statutes and Ordinances by fixing its own time Schedule for receipt of applications as well as by stipulating interview before admission, some correspondence took place between the University and the College, but the College authorities did not agree to adhere to the University's Circular. At this stage Rahul Kapoor a student seeking admission to the college filed a Writ Petition No. 790 of 1980 in the Delhi High Court challenging the admission schedule prescribed by the College as well as the policy of interview test prescribed by the college. This Writ Petition is the subject matter of the Transferred Case No. 3 of 1980. The St. Stephen's College filed a Writ Petition No. 1868 of 1980 before this Court under Art. 32 of the Constitution. The college in substance took the stand that it was a religious minority-run institution and the Circulars dated 5th and 9th June, 1980 issued by the University were violative of the fundamental right guaranteed under Art. 30 of the Constitution. The Delhi University Students Union became an intervener in the Writ Petition No. 1868 of 1980 filed by the College. Subsequently for the admission year 1984-85, the Delhi University Students Union and Dr. Mahesh C. Jain filed Writ Petitions Nos. 13213-14 of 1984 under Art. 32 of the Constitution against the College. It was maintained in these Writ Petitions that the College was bound to follow all University policies, rules, regulations, Ordinances regarding admission and that the College be restrained from giving preference in favour of Christian students in the matter of admission to the College. It was alleged that the college is not a minority institution and in the alternative it was further pleaded that even assuming that the College was a minority institution, it was not entitled to discriminate students on grounds of religion as the college was receiving grant in aid from the Government. Such discrimination was violative of Art. 29(2) of the Constitution.

113. A Bench of two Judges of this Court by order dated 9th December, 1987 held that the St. Stephen's College, Delhi being a religious minority educational institution, the right to administer the institution guaranteed under Art. 30(1) of the Constitution carries with it the right to regulate the admission of students of its own choice, involves a substantial question of law as to the interpretation of the Constitution, and, therefore, the petitions be laid before the Hon'ble the Chief Justice of ,India for being placed for hearing before a Constitution Bench. In view of the above order these matters were placed for hearing before the Constitution Bench. So far as the question whether St. Stephen's College is a minority run institution Hon'ble Shetty, J, after considering the pleadings as well as the various factors has held that St. Stephen's College was established and administered by a minority community, viz. the Christian Community which is indisputably a religious minority in India as well as in the Union Territory of Delhi where the College is located. I am in full agreement with the above conclusion and have nothing to add.

114. The next question which calls for consideration is whether the College was bound by the University's Circulars dated 5th and 9th June, 1980? The College has challenged these notifications as infringing the rights of the College of administering and managing the affairs as being violative

of their right conferred under Art. 30(1) of the Constitution. The first objection relates to the Circular of University dated June 6, 1980 which prescribed the last date for receipt of applications as June 30, 1980 instead of June 20, 1980 prescribed by the College. The second relates to Circular dated June 9, 1980 by which the University had given a direction to all the Colleges to admit students solely on the basis of merit to be determined on the basis of the percentage of marks secured in the qualifying examination. According to the College they were entitled to hold interview and thereby select candidates for admission to the college. So far as the first controversy relating to fixing of last date for receipt of applications for admission to the College is concerned, it does not appear to be of much consequence as the same can be regulated by adjustment with the University. In any case the fate of the first question is dependent on the second question of interview inasmuch as if the college is held entitled to hold interviews before admission, then the last date for receipt of the applications has to be kept early giving sufficient time for interviews before finalising the admission, as schedule by the college.

115. The contention on behalf of the college in this regard is that it has been following its own admission programme for more than 100 years and the method of interview has been followed without any objection from any quarter and this has resulted in promoting the all round image and excellence of the institution. There is no allegation of any mala fides in holding interviews and it is done to test the candidate's knowledge of the subject together with his general awareness of the current problems. According to the College such interview fulfils its twin objects of giving preference to Christian students by granting relaxation up to 10% which subserves the interest of the minority community of Christians for whose benefit the College has been established and secondly, to select the best talent for future academic performance. It has been further contended in this regard that the right to select students for admission is a part of administration. The management of the College has the full say in the admission of students and it should be left free from control so that the minority institutions may admit the students in accordance with their ideas as to how the interests of the community in general and the institution in particular will be best served. The interview is also necessary because of fantastically high marking given by some examining Boards and it would not be in the interest of the College to admit students solely on the basis of marks secured by the candidates in the qualifying examination.

116. It was contended on behalf of the University as well as the Students Union that the first Circular dated 5th June, 1980 fixing the last date for receipt of applications for admission was done in order to ensure uniformity in the admission dates in all the affiliated colleges of the University and it was considered beneficial in the interest of students community as a whole. So far as the second Circular dated 9th June, 1980 was concerned University was justified in applying- a uniform standard that the admission should be made on the basis of marks secured by the applicants in the qualifying examinations and this would exclude arbitrariness in the selection and ensure fairness to all the applicants. It has been submitted that the Circulars in question were regulatory in character and did not impinge upon any right guaranteed under Art. 30(1) of the Constitution to St. Stephen's College as a minority institution. It was further contended that once an educational institution is affiliated to the University or becomes a constituent of such University it has to abide by the regulations framed by the University relating to admissions in such institutions. irrespective of their being a minority or non-minority institution.The University has the right to regulate th standard of education and the admission of students in an educational institution is a part and parcel of such right. St. Stephen's College cannot adopt a different standard for admitting students, under the guise of exclusive right of management given to a minority institution. It has been contended that the uniformity in the matter of admission is a necessary concomitant of the right to seek higher education by joining a college and uniform pattern would better serve the interest of the student

community as a whole. The college has not pointed out as to which examining boards are giving fantastically high marks and it has not been shown by the college as to how and in what manner they are able to cope with such problem by resorting to the method, of interview. It has also not been shown by the,college as to how many percentage of marks have been kept for interview and whether it is in consonance with the norms and principles laid down by this Court in large number of cases restricting the maximum percentdge of marks for interview. It has been submitted that the aim of minority institutions is also to maintain uniformity in standards of education. To qualify for studies at graduate level the only relevant consideration should be the academic performance shown by the candidate in his qualifying examination. If the candidate has shown his ability and distinction in academic standards at the level of Higher Secondary or 10 + 2 examination, he cannot be denied the right of persuing higher studies by resorting to the method of interview. It has been further contended that once the St. Stephen's College, though being a minority institution, gets grant in aid from the State, it has to fall in line with the other non-minority institutions in the matter of admitting the students and has to abide by a uniform rule prescribed by the Delhi University.

117. The question of granting benefit or preference to the candidates belonging to Christian Community shall be examined separately while dealing with the provisions of Art. 29 (2) and Art. 30(1) of the Constitution. I would presently deal with the validity of interview kept as a rule for admission by the St. Stephen's College independently of the above articles of the Constitution.

118. The College in its counter-affidavit in Writ Petitions (Civil) Nos. 13213-14 of 1984 has justified the method of interview on grounds inter alia that there are more than 26 Higher Secondary Examining bodies with widely disparate standards of marking and different grading systems. Interview provides, a valuable method of equivalence in determining the real merit of students coming from different examining/ grading system. It has been further alleged that malpractices are adopted in examinations and taking of fake and forged certificates and mark-sheets are widely prevalent. The college by the method of interview provides an important corrective for assessing the real merit in place of paper merit of a candidate. Applicants have different. combination of subjects and though one may have secured very high percentage of marks in science subject but,may be seeking admission in subjects like History or English. A personal interview helps in finding out his interest and aptitude for such subject. By interview, it can be found out whether the applicant would be able to follow lectures through the medium of English. By interview, it is decided whether the candidate has an aptitude to contribute to the richness and variety of the corporate life of the academic community of the college. It has been further submitted that the Founders of the college never meant it to be a mere teaching shop but as an academic community based on faith, fellowship and fruitful studies, in an atmosphere in which the college could serve as a national microcosm and students of different caste and creed and belonging to all parts of the country could learn and live together interest together and thereby bring about a real national integration.

119. It has been further submitted on behalf of the college that the process of selection for admission by the college is not arbitrary. It is an extremely elaborate and carefully planned process, details of which have been given in the reply. In the selection process, each member of the Selection Committee grades performance of the candidates and after the end of the interview for such course of study, the opinion of the members is taken into account and by consensus the final list of candidates selected for admission is put up. The above procedure is applied, without any discrimination in case of Christian as well as non-Christian candidates or one who has stood first in the All India Examination or one who might be seeking admission on the basis of a sportsman. These modalities of admission in the college have been followed for more than 100 years and there is no reason to discontinue such a policy which has proved so valuable for such a long time and

have stood the test of time.

120. It cannot be disputed that the University can lay down regulatory measures in respect of colleges which are affiliated or constituent of such University. If such measures are reasonable and conducive to making the educational institution an effective vehicle for education, the same cannot be challenged. It may also be noted that the Delhi University is governed by the Delhi university Act, 1922, the Statutes and the Ordinances and the Rules and Regulations made thereunder. Ordinance XVIII of the University provides for a Staff Council in every college. The Principal is the ex-officio Chairman of the Staff Council. The functions of the Staff Council include making of recommendations regarding formulation of admission policy within the frame work of the policy laid down by the University. This shows that no college, can lay down its own admission policy so as to be in conflict with the policy laid down by the University. The University has issued a general direction to all the colleges to admit students on the basis of marks secured in the qualifying examination. In the present state of affairs existing in our country there is a great rush of students seeking admission to degree colleges after having passed the qualifying examination of Higher Secondary or 10 + 2. There is a paucity of such colleges and the number of students being large there is a tough competition for getting admission in the college for higher studies. In these circumstances if the Delhi University has laid down a uniform rule that the merit, for the purpose of admission in its affiliated and constituent colleges should be determined on the basis of marks secured in the qualifying examination, it cannot be challenged on the ground of being unreasonable. St. Stephen's College is not a professional college in the sense that it does not impart any technical education like engineering or medical. It is like all other Arts, Science and Commerce colleges which impart studies in these subjects up to graduate or post-graduate level and as such cannot claim a different treatment in the matter of admitting students in the college. In case the bodies like the academic council of the University has approved the rule for admission on the basis of marks obtained in the qualifying examination, it cannot be objected by taking the stand that it is against the Interest of the Christian Community for whose interest the College had been established. Though a detailed reply has been given, on behalf of the college justifying the method of interview, but, it would be important to note that it does not make a mention as to how much percentage of marks are kept for interview and how much for the qualifying examination. According to the reply submitted by the College in this regard a list of potential suitable candidates called for interview is prepared which is normally on the basis of 1 : 4 or 1 : 5 for Arts, and higher for Science students. Thus the criteria for basis for calling for interview is nothing else than marks secured in the qualifying examination. Thereafter each member of the Committee grades the performance of the candidates after the end of the interview for each course of study, the opinion of all the members is taken into account and by consensus the final list of candidates selected for admission is put up. This method of interview adopted by the -college goes to show that out of the candidates called for interview the final selection is based on hundred per cent i.e. solely on the basis of interview and at this stage it has not been shown as to how much weight/percentage is given to the marks secured in the qualifying examination and how much to the interview proportionately. In my humble opinion this method of selection is bound to result in arbitrary selection. According to the College cut-off marks are fixed for calling in interview and according to Annexure I dated 27th June, 1984 in W.P. No. 1868 of 1980 for Science Stream it is 83%, for Commerce Stream 80%, for humanities 77% and so on. Now for each one of these streams candidates are called for interview four or five times the number of available seats. Thereafter, if their selection is made dependent on interview then a highly meritorious student having secured even 90% or more marks may not get admission while a student just getting marks near the cut-off level can get admission in the college. To illustrate if there are 50 vacancies in the Science Stream and 200 candidates are called for interview who have

secured not less than 83% marks in the qualifying examination, students standing high in merit even at Nos. 1 to 50 may not be selected and those standing at Nos. 150 to 200 may get admission solely on the basis of interview. Admittedl by nothing has been said in the prospectus issued by the college as to what percentage of marks are kept for interview. It is totally silent in this regard. It has not been shown in the reply nor made clear during the course of arguments that any marks for interview are added to qualifying marks. The candidates who are not selected are not made aware of such marks. It has only been stated in the prospectus that final selection will be made after interview. This goes to show that the management or the selection body has a full control in admitting or refusing admission according to their own choice and out of the eligible candidates any candidate can be refused admission on the basis of interview.

121. In R. Chitralekha v. State of Mysore, (1964) 6 SCR 638 a Constitution Bench considered the question of selection by viva voce. The Government sent a letter to the Director of Technical Education, Mysore, Bangalore informing him that it had been decided that 25% of the maximum marks for the examination in the optional subjects taken into account for making the selection of candidates for admission to Engineering Colleges shall be fixed as interview marks; it also laid down the criteria for allotting marks in the interview. The Selection Committee converted the total of the marks in the optional subjects to a maximum of 300 marks and fixed the maximum marks for interview at 75. Some of the candidates whose applications for admission were rejected filed writ petitions under Art. 226 of the Constitution in the High Court of Mysore. The High Court after considering the various contentions raised by the.petitioners, held that the orders defining backwardness were valid and that the criteria laid down for interview of students were good; but it held that the Selection Committee had abused the powers conferred upon it and on. that finding set aside the interviews held and directed that the applicants shall be interviewed afresh in accordance with the scheme laid down by the Government. Two of the petitioners came to this Court by filing appeals by special leave before this Court. It was contended on behalf of the appellants that selection by interviews is inherently repugnant to the, doctrine of equality embodied in Art. 14 of the Constitution, for, whatever may be the objective test laid down, in the final analysis the award of marks is left to the subjective satisfaction of the selection committee and, therefore, it gives ample room for discrimination and manipulation. The Court did not accept such a wide contention. It was observed that without better and more scientific material placed before the Court it cannot be held that selection by interview in addition to the marks obtained in the written examination is itself bad offending Art. 14 of the Constitution.

122. The matter was again dealt with in detail by a Constitution Bench of this Court in Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 2 SCR 79. The question in this case was regarding admission to the Regional Engineering College, Srinagar. According to the rules of admission the comparative merit was to be determined by holding a written entrance test and a viva voce examination and the marks allocated for the written test in the subjects of English, Physics, Chemistry and Mathematics were 100, while for viva voce examination, the marks allocated were 50 divided as follows: (i) General Knowledge and Awareness -15; (ii) Broad understanding of Specific Phenomenon - 15; (iii) Extracurricular activities -10; and (iv) General Personality Trait -10, making up in the aggregate - 50. The Court considered the question regarding the validity of viva voce examination as a permissible test for selection of candidates for admission to college. It was contended on behalf of the petitioners that the viva voce examination does not afford a proper criteria of assessment of the suitability of the candidates for admission and it is highly subjective and impressionistic test where the result is likely to be influenced by many uncertain and imponderable factors such as predilections and prejudices of the interviewers, his attitudes and approaches, his preconceived notions and idiosyncrasies and it is also capable of abuse because it leaves scope for discrimination,

manipulation and nepotism which can remain undetected under the cover of an interview and moreover it is not possible to assess the capacity and calibre of a candidate in the course of an interview lasting only for a few minutes and, therefore, selections made on the basis of oral interview must be regarded as arbitrary and hence violative of Art. 14. The Court observed: That this criticism cannot be said to be wholly unfounded and it reflects a point of view which has certainly some validity. The Court then quoted the following passage from the book on "Public Administration in Theory and Practice" by M. P. Sharma:

"The oral test of the interview has been much criticised on the ground of its subjectivity and uncertainty. Different interviewers have their own notions,of good personality. For some, it consists more in attractive physical appearance and dress rather than anything else, and with them the breezy and shiny type of candidate scores highly while the rough uncut diamonds may go unappreciated. The atmosphere of the interview is artificw and prevents some candidates from appearing at their best. Its duration is short, the few questions of the hit-or-miss type, which are put, may fail to reveal the real worth of the candidate. It has been said that God takes a whole lifetime to judge a man's worth while interviewers have to do it in a quarter of an hour. Even at it's best, the common sort of interview reveals but the superficial aspects of the candidate's personality like, appearance, speaking power, and general address. Deeper traits of leadership, tact, forcefulness, etc., go. largely undetected. The interview is often in the nature of desultory conversation. Marking differs greatly from examiner to examiner. An analysis of the interview results show that the marks awarded to candidates who competed more than once for the same service vary surprisingly. All this shows that there is a great element of chance in the interview test. This becomes serious matter when the marks assigned to oral test constitute a high proportion of the total marks in the competition."

The Court further observed as under:

> "Ol Glenn Stahl points out in his book on "Public Personnel Administration" that there are three disadvantages from which the oral test method suffers, namely, "(1) the difficulty of developing valid and reliable oral tests; (2) the difficulty of securing a reviewable record on an oral test; and (3) public suspicion of the oral test as a channel for the exertion of political influence" and we may add, other corrupt, nepotistic or extraneous considerations. The learned author then proceeds to add in a highly perceptive and critical passage:
>
> "The oral examination has failed in the past in direct proportion to the extent of its misuse. It is a delicate instrument and, in inexpert hands, a dangerous one. The first condition of its successful use is the full recognition of-its limitations. One of the most prolific sources of error in the oral has been the failure on the part of examiners to understand the nature of evidence and to discriminate between that which was relevant, material and reliable and that which was not. It also must be remembered that the best oral interview provides opportunity for analysis of only a very small part of a person's total behaviour. Generalizations from a single interview regarding an individual's total personality pattern . have, been proved repeatedly to be wrong."

But, despite all this criticism, the oral interview continues to be very much in vogue as a supplementary test for assessing the suitability of candidates wherever test of personal traits is considered essential. Its relevance as a test for determining suitability based on personal characteristics has been recognised in a number of decisions of this Court which are binding upon us. In the first case. on the point which came before this Court, namely, R. Chitra Lekha v. State of

Mysore this Court pointed out:

> "In the field of education there are divergent views as regards the mode of testing the capacity and calibre of students in the matter of admissions to colleges. Orthodox educationists stand by the marks obtained by a student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance to extra-curricular activities, personality test, psychiatric tests etc. Obviously we are not in a position tojudge which method is preferable or which is the correct one..... The scheme of selection, however, perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for quashing it. So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, this Court cannot obviously have any say in the matter."

And on this view refused to hold the oral interview test as irrelevant or arbitrary. It was also pointed out by this Court in A. Peeriakaruppan v. State of Tamil Nadu:

> "In most cases, the first impression need not necessarily be the last impression, but under the existing conditions, we are unable to accede to the contentions of the petitioners that the system of interview as in vogue in this country is so defective as to make it useless."

It is, therefore, not possible to accept the contention of the petitioners that the oral interview test is so defective that selecting candidates for admission on the basis of oral interview in addition to written test must be regarded as arbitrary. The oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. We would, however, like to point out that in the matter of admission to college or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification.

123. The Court then examined the question that even if oral interview may be regarded in principle as a valid test for selection of candidates for admission to a college, whether it was arbitrary and unreasonable since the marks allocated for the oral interview were very much on the higher side as compared with the marks allocated for the written test. The marks allocated for the oral interview were 50 as against 100 allocated for the written test, so that the marks allocated for the oral interview came to 33 1/ 3 of the total number of marks taken into account for the purpose of making the selection. The Court in this regard held that there can be no doubt that, having regard to the drawbacks and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism, are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated in the written test, cannot be accepted by the Court as free from the vice of arbitrariness. The Court then took notice of the fact that even in case for selection of candidates for the IAS,. IFS and the IPS where the personality of the candidate and his personal characteristics and traits are extremely relevant for the purpose of selection, the marks allocated for oral interview, are

250 as against 1800 marks for the written examination constituting on 12.2% of the total marks taken into consideration for the purpose of making the seiection. The Court thus held that the allocation of as high percentage as 33 1/3 of the total marks for the oral interview as infecting the admission procedure suffered from the vice of arbitrariness. The Court was thus of the view that under the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be arbitrary an unreasonable and would be liable to be struck own as constitutionally invalid.

124. It would be important to note that even in Ajay Hasia's case (supra) their Lordships clearly took the view that having regard to the drawbacks and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated in the written test cannot be accepted by the Court as free from the vice of arbitrariness. It was then held that under the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be liable to be struck down as constitutionally invalid. It is further important to note that St. Stephen's College is a constituent college of Delhi University and the University has issued the impugned notification dated 9th June, 1981 by which a uniform rule has been made that admissions to all the affiliated and constituent colleges of the University should be made on the basis of marks secured in the qualifying examination. According to the stand taken by the College itself only 6 to 10% of the students belonging to Christian community get admission and rest are students belong non-Christian communities.

125. Thus we have to examine whether this method of viva voce adopted by the college can be justified or not, which gives a clear free hand to the college management in admitting. the students of their own choice out of 90 to 94% belonging to non-Christian communities. As already mentioned above the college has neither mentioned- in the prospectus nor in any counter placed before she Court or even during the course of arguments as to how much percentage of marks are kept for interview in comparison to the marks obtained by the candidates in the qualifying examination. I am clearly of the view that action of the college in applying the method of interview contrary to the direction given by the University is wholly arbitrary, wrong and illegal and violative of Art. 14 of the Constitution. In short I formulate my reasons as under :-

(a) St. Stephen's college is a constituent of the Delhi University and is bound by the Statutes, Ordinances and other Rules and Regulations made by the University which apply equally to its affiliated and constituent colleges. It is the primary concern of the University to maintain standards of education and in this regard if the advisory corn mittee of the University has made the rule accepted by the Central Admission Cornmittee and the Vice-Chancellor that the admission to all the affiliated and constituent colleges shall be made -on the basis of marks secured in the qualifying examination, it is binding on St. Stephen's College also irrespective of its minority character.

(b) The primary concern of the University in the interest of student community as a whole is to afford equality of opportunity for studies at the graduate level. The method of interview in the present case results into discrimination and is violative of Art. 14 of the Constitution as it has no reasonable nexus with the object of affording an equality of opportunity of education at graduate level.

(c) The method of interview adopted by the College does not disclose as to how many percentage of marks are kept for interview in proportions to marks secured in qualifying examination. It is the right of every student to know in advance the basis of admission laid down by the College.

(d) It has not been shown as to how the minority character of the College will be affected or prejudiced if students belonging to non-Christian community are given admission solely on the basis of marks obtained in the qualifying examination and not by interview. It is understandable if some lee-way is given to the students of Christian Community in respect of marks secured in qualifying examination or to make reservation of some seats to a reasonable extent for them.

(e) Even in case of public employment where the method of interview may have some importance, this Court in series of cases has laid down that marks for interview should not exceed 15% of the total marks. In the present case we are concerned with the admission to graduate course in which teenagers seek admission after finishing their studies at the school level. So far as their academic performance is concerned it can only be judged on the basis of marks secured by them in qualifying examination. They are not being selected for any public employment, but are to be selected for pursuing higher studies in the college. It is the fundamental duty of every educational institution in our country to provide opportunity of education and the suitability for future academic performance can best be judged on fhe basis of marks secured in the qualifying examination and not by interview. It has not been shown by the College that the method of interview is adopted by any other educational institution affiliated to the Delhi University or in any part of the country at the stage of granting admission to the College in the first year of graduate course.

(f) The College in its counter has taken the stand that it is well known that malpractice in examinations including that of fake and forged certificates and mark-sheets are widely prevalent. Interview as conducted by the respondent-college provides an important corrective in the assessment of the real merit of a candidate, in place of what could be only paper merit of a candidate. The candidate has through oral question as well as in some subjects through solving problems in writing on spot, satisfy a board of experts, in person, of his academic capacity and potential. It has also been submitted in the reply that there are more than 26 Higher Secondary examining bodies with widely disparate standards of marking and different grading systems. According to the College Interview provides a valuable method of equivalence to determine the relative merit of student coming from different examining/ grading system.

The above grounds taken by the college for justifying the method of interview is neither here nor there. It has not shown as to how the interview provides a valuable method of equivalence in respect of marks awarded by different Higher Secondary examining bodies. This ground of justification is totally vague and carries no weight. The method of interview is no remedy of malpractices in examination or obtaining fake and forged certificates and mark-sheets. The College in this regard is entitled to refuse admission to any student in whose case such malpractices are detected.

(g) It is further important to note that according to its own showing the college

authorities call the candidates for interview on the basis of marks awarded in the qualifying examination conducted by the 26 Higher Secondary examining bodies. If the candidates are called for interview on that basis, it does not stand to reason as to how such marks are not treated as correct at the time of interview. It has nowhere been stated by the College authorities as to which Higher Secondary examining bodies are considered to be below standard by them. From the entire method of interview it appears that out of the candidates called for interview which is four or five times of the available seats, the college on the basis of interview can select anyone out of them irrespective of their marks secured in the qualifying examination. By this method .out of 200 candidates called for 40 seats, the college authorities can refuse to admit the candidate placed at No. 1 and admit a student placed at No. 200 and ignore the merit on the basis of marks secured in the qualifying examination.

(h) This Court in Ajay Hasia's case (supra) has not approved oral interview test as a satisfactory test specially when it can leave scope for discrimination, manipulation and nepotism which can remain undetected under the cover of an interview. It has allowed it as a supplementary test and that also wherever test of personal traits is considered essential.

The Court in this regard further held that there can be no doubt that, having regard to the drawbacks and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, the allocation of a high percentage of marks for the oral interview as compared to the marks allocated in the written test, cannot be accepted by the Court as free from the vice of arbitrariness. Thus the system of interview suffers from inherent weakness and if the Delhi University in its wisdom has arrived to the conclusion that admission should be granted on the basis of marks secured in qualifying examination such decision taken by the University cannot be challenged on the ground of being illegal or arbitrary.

(i) The right to seek higher education in the college is a right of every citizen of this country. Those neo rich or having political patronage or pull get preference in admission based on interview. Those students who come from rural background or belong to weaker section of the society though more meritorious in academic distinction, generally remain at disadvantage in the method of interview. But those having more attractive physical appearance and dress rather than anything else or those breezy and shiny type of candidate score highly in the interview while the rough uncut diamonds may go unappreciated as said by M. P. Sharma and quoted in Ajay Hasia's case.

(j) The primary aim of the St. Stephen's College as mentioned in the Memorandum of St. Stephen's College, Delhi, Society is to prepare students of the college for University agrees and examinations and to offer instruction in doctrines of Christianity, which instruction must be in accordance with the teaching of the Church of North India. This object is fully achieved by admitting students on the basis of marks in qualifying examination rather than by interviews

(k) The selection of students. out of the eligible candidates called for interview, is based hundred per cent i.e. solely on the basis of interview and this is clearly in

violation of the decision given by the Constitution Bench of this Court in Ajay Hasia's case which has been consistently followed by this Court in latter cases Ashok Kumar Yadav v. State of Haryana, (1985) Vol. IV SCC 417; Mohinder Singh Garg v. State of Punjab, (1991) 1 SCC 662 and Munindra Kumar v. Rajeev Govil, (1991) 3 SCC 368 also. The maximum marks for interview can be 15% and not more.

(l) The remedy of disparate marks, if any, given by various Boards in the qualifying examination lies in holding a written examination of its own by the St. Stephen's College and not by the method of interview. Even otherwise it has not been shown as to how this disparity is removed by resorting to interview.

(m) Though there is no allegation of any mala fides against the college in holding interview, but it cannot be forgotten that there is inherent weakness and infirmity in the system of interview itself in which subjective rather than objective satisfaction plays a major role. In this background the method of selection by interview alleged to be in vogue for a long period in St. Stephen's College cannot be considered as so sacrosanct that.the same cannot be annulled or changed even when such method does not find approval of the Delhi University. Admittedly the method of viva voce has no statutory or legislative sanction behind it nor is a method approved by any educational authorities at the stage of admitting students in the College after passing Higher Secondary or 10 + 2 examination. If all the other affiliated and constituent colleges of the Delhi University, except St. Stephen's College, are admitting students on the basis of marks secured in the qualifying examinations and the University in its wisdom seeks to abolish method of interview and adopt a uniform rule, St. Stephen's College is also bound to follow such rule and cannot object on the ground of long practice.

(n) The students who qualify for seeking admission in the degree course are generally of young age of 15 to 17 years and the personality of such students still remains to be developed and as such the only consideration for their admission to degree course should be their academic performance in the qualifying examination.

126. The next important question for consideration in this case is the validity of the college admission programme giving preference to Christian students or in other words whether the St. Stephen's College being a minority institution, in spite of receiving grant-in-aid from the Government, has any right to select students of Christian Community in exercise of its fundamental right conferred under Art. 30(1) or whether such perference or reservation would be invalid under Art. 29(2) of the Constitution? It is an admitted fact that St. Stephen's College is getting grant-in-aid to the extent of 95% of the annual deficit from the University Grants Commission. In order to consider the above controversy it would be necessary to refer to the provisions of Arts. 29 and 30 of the Constitution of India. The said Articles read as under:

Cultural and Educational Rights

Art. 29 Protection of Interests of Minorities:-

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Art. 30:- Right of Minorities to Establish and Administer Educational Institutions:-

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

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in Cl. (1) the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority,whether based on religion or language.

127. The right conferred on minority to establish and administer educational institutions under Art. 30(1) of the Constitution is not absolute and is always subject to reasonable regulations. If a minority had established and is administering educational institution without receiving any aid out of the State funds then Cl. (2) of Art. 29 will not come into play. However, if such educational institution is receiving aid out of the State funds then it would be subject to the rigour of Cl. (2) of Art. 29 and it cannot deny admission on grounds only of religion, race, caste, language or any of them. If such institution gives preference or makes reservations for the candidates belonging to its, own religion, then it is bound to cause inequality and discrimination with a candidate belonging to another religion and it would be a denial of Admission on the ground of religion and would be hit by Art. 29(2). The right conferred under Art. 30 is a general right granted to all minorities, but if any educational institution established and administered by such minority also gets the benefit of grant-in-aid out of the State funds then it has to fall in line equally with all other educational institutions in the matter of admitting students in such institution and cannot prefer or reserve any seats for students of its own religion.

128. Clause (2) of Art. 29 is a counter-part of the equality clause of Art. 15. There should be no discrimination against any citizen on the ground of religion, race, caste or language or any of them in the matter of admission into any educational institution maintained or aided by the State. While clause (1) of Art. 29 protects the rights of a section of the citizens having a distinct language, script or culture of its own, the right conferred by clause (2) is an individual right given to the citizen as such and not as a member of any community. This clause (2) offers protection to all citizens, whether they belong to majority or minority groups. It may be noted that compared with Art. 15(1), it appears that 'sex' and 'place of birth' are omitted from Article 29(2). Hence, educational institution intended exclusively for men or women could be maintained by the State without a violation of the Constitution.

129. So far as Clause (1) of Article 30 is concerned, it grants a right to minority community to impart instruction to the children of its own community in institutions run by it and in its own language. It confers two rights (a) the right to establish an institution, (b) the right to administer it. The right of establishment means the bringing into being of an institution by a minority community.

It matters not if a single philanthropic individual with his own means funds the institution or the community at large contributes the funds. The next part of right relates to the administration of such institution. Administration means management of the affairs of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the community in general and the institution in particular will be best served. There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are adopted by considerations of the advancement of the country and its people. Therefore, if University established syllabi for examination that must be followed, subject however, to special subjects which the institution may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management, although.they may indirectly affect it. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern while the management must be left to them, they may be compelled to keep in step with others. The above propositions,have been laid down in the following cases:State of Bombay v. Education Society, ((1955) 1 SCR 568); The State of Madras v. Shrimathi Champakam Dorairajan, (1951 SCR 525); in Re. Kerala Education Bill (AIR 1965 SC 956); Sidhrajbhai v. State of Gujarat ((1963) 3 SCR 837); Katra Education Society v. State of U.P., (1966) 3 SCR 328 and Gujarat University, Ahmedabad v. Ranganath Madholkar, (1963) Supp SCR 112.

130. Now, so far Clause (1) of Art. 29 is concerned, it is complementary to the right conferred by Clause (1) of Art. 30. A minority can effectively conserve its distinct language, script or culture only if it has the right to establish' educational institutions 'of its choice. However, the right under Article 30(1) is a separate right independent of the considerations under Art. 29(1).

131. The controversy involved in the cases in hand before us is between clause (2) of Art. 29 and clause (1) of Art. 30. The framers of the Constitution were fully knowing about the necessity of granting protection of interests of minorities but at the same time they wanted that if any educational institutions are run by receiving aid out of State funds then no citizen could be denied admission on grounds only of religion, race, caste, language or any of them. The rights conferred to the minorities under Art. 29(1) or Art. 30(1) are enabling ones while clause (2) of Art. 29 is a mandate that in the matter of admission in any educational institution maintained by the State or receiving aid all citizens would be treated equal and could not be denied admission on grounds only of religion, race, caste, language or any of them. The right guaranteed under Art. 29(2) is a special right which would prevail over the general right guaranteed to the minorities under Art. 30(1). It is a well-known rule of construction that special law prevails over the general law as contained in the maxim 'generalia specialibus non derogant'. It may also be noted that while interpreting a prdvision of the Constitution no words ean be imported or added. If the contention raised on behalf of the college is accepted then it would necessarily involve the importation of the words "for their own community" in Article 30(1). Clause (2) of Art. 29 does not make any exception to any educational institution established by the minorities and it clearly provides in unmistakable terms that it applies to any educational institution maintained by the State or receiving aid out of State funds whether run by a minority or majority. In The Ahmedabad St. Xaviers College Society v. State of Gujarat, (1975) 1 SCR 173 at p. 298, Dwivedi, J. observed as under:

> "A glance at the context and scheme of Part III of the Constitution would show that the Constitution makers did not intend to confer absolute rights on a religious or liguistic minority to establish and administer educational institutions. The associate

> Art. 29(2) imposes one restriction on the right in Art. 30(1). No religious or linguistic minority establishing, and administering an educational institution which receives aid from the State funds shall deny admission to any citizen to the institution on grounds only of religion, race, caste, language or any of them. The right to admit to an educational institution is admittedly comprised in the right to administer it. This right is partly curtailed by Art. 29(2).
>
> The right of admission is further curtailed by Art. 15(4) which provides an exception to Art. 29(2). Article 15(4) enables the State to make any special provision for any advancement of any socially and educationally backward class citizens or for the Scheduled Castes and Scheduled Tribes in the matter of admission in the educational institutions maintained by the State or receiving aid from the State.
>
> Art. 28(3) imposes a third restriction on the right in Art. 30(1). It provides that no person attending any educational institution recognised or receiving any aid by the State shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto. Obviously, Art. 28(3) prohibits a religious minority establishing and administering an educational institution which receives aid or is recognised by the State from compelling any citizen reading in the institution to receive religious instruction against his wishes or if minor against the wishes of his guardian. It cannot be disputed that the right of a religious minority to impart religious instruction in an educational institution forms part of the right to administer the institution. And yet Art. 28(2) curtails that right to a certain extent.
>
> To sum up, Articles 29(2), 15(4) and 28(3) place certain express limitations on the right in Art. 30(1). There are also certain implied limitations on this right. The right should be read subject to those implied limitations."

While dealing with the scope of Article 29(2) Das, J. (as he then was) in the State of Bombay v. Bombay Education Society, (1955) 1 SCR 568 observed as under:

> "The learned Attorney General then falls back upon two contentions to avoid the applicability of Art. 29(2). In the first place he contends that Article 29(2) does not confer any fundamental right on all citizens generally but guarantees the right of citizens of minority groups by providing that they must not be denied admission to educational institutions maintained by the State or receiving aid out of the State funds on grounds only of religion, race, caste, language or any of them and he refers us to the marginal note to the Article. This is certainly a new contention put forward before us for the first time. It does not appear to have been specifically taken in the affidavits in opposition filed in the High Court and there is no indication in the judgment under appeal that it was advanced in this form before the High Court. Nor was this point specifically made a ground of appeal, in the petition for leave to appeal to this Court. Apart from this, the contention appears to us to be devoid of merit. Art. 29(1) gives protection to any section of the citizens having a distinct language, script or culture by guaranteeing their right to conserve the same, Art. 30(1) secures to all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. Now suppose the

State maintains an educational institution to help conserving the distinct language, script or culture of a section of the, citizens or makes grant-in-aid to an educational institution established by a minority community based on religion or language to conserve their distinct language, script or culture, who can claim the protection of Art. 29(2) in the matter of admission into any such institution? Surely, the citizens of the very section whose language, script or culture is sought to be conserved by the institution or the citizens who belong to the very minority group which has established and is administering the institution, do not need any protection against themselves and, therefore, Article 29(2) is not designed for the protection of this section or this minority. Nor do we see any reason to limit Art. 29(2) to citizens belonging to a minority group other than the section or the minorities referred to in Art. 29(1) or Art. 30(i), for the citizens, who do not belong to any minority group, may quite conceivably need. this protection just as much as the citizens of other minority groups.If it is urged that the citizens of the majority groups are amply protected by Art. 15 and do not require the protection of Art. 29(2), then there are several obvious answers to that argument. The language of Art. 29(2) is wide and unqualified and may well cover all citizens whether they belong to the majority or minority group.Art. 15 protects all citizens against the State whereas the protection of Art. 29(2) extends,against the State or anybody who denies the right conferred by it. Further Article 15 protects all citizens against discrimination generally but Art. 29(2) is a protection against a particular species of wrong namely denial df admission into educational institutions of the specified kind. In the next place Art. 15 is quite general and wide in its terms and applies to all citizens, whether they belong to the majority or minority groups, and gives protection to all the citizens against discrimination by the State on certain specific grounds. Art. 29(2) confers a special right on citizens for admission to educational institutions maintained or aided by the State. To limit this right only to citizens belonging to minority groups will be to provide a double protection for such citizens and to hold that the citizens of the majority groups have no special educational right in the nature of a right to be admitted into an educational institution for the maintenance of which they make contributions by way of taxes. We see no cogent reason for such discrimination. The heading under which Articles 29 and 30) are grouped together - namely, "Cultural and Educational Rights" - is quite general and does not in terms contemplate such differentiation. If the fact that the institution is maintained or aided out of State funds is the basis of this guaranteed right then all citizens, irrespective of whether they belong to the majority or minority groups, are alike entitled to the protection of this fundamental right. In view of all these considerations the marginal note aione, on which the Attorney General relies, cannot be read as controlling the plain meaning of the language in which the Art. 29(2) has been couched. Indeed in The State of Madras v. Shrimathi Champakam Dorairajan, this Court has already held as follows:-

"It will be noticed that while Cl. (1) protects the language, script or culture of a section of the citizens, clause (2) guarantees the fundamental right of an individual citizen. The right to get admission into any educational institution of the kind mentioned in Cl. (2) is a right which an individual citizen has as a citizen and not as a member of any community or class of citizen.

In our judgment this part of the contention of the learned Attorney General cannot be sustained."

132. A Constitution Bench of this Court in D.A.V. College v. State of Punjab (1971 Supp SCR 688 at p. 695) through Jaganmohan Reddy, J. for the Court observed as under:-

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

133. In Re: The Kerala Education Bill, 1957 (Reference case), (1959) SCR 995 at page 1047, E. R. Das, C. J. observed as under:

> "Under clause (1) of Article 29 any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve the same. It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Art. 30(1) which has hereinbefore been quoted in full. This right, however, is subject to clause (2) of Art. 29 which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds of religion, race, caste, language or any of them."

In the same case it was further held (pp. 1050-51):

> "The argument is sought to be reinforced by a reference to Art. 29(2). It is said that an educational institution established by a minority community which does not seek any aid from the funds of the State need not admit a single scholar belonging to a community other than that for whose benefit it was established but that as soon as such an educational institution seeks and gets aid from the State confers Art. 29(2) will preclude it from denying admission to members of the other communities on grounds only of religion, race, caste, language or any of them and consequently it will cease to be an educational institution of the choice of the minority community which established it. This argument does not appear to us to be warranted by the language of the Article itself. There is no such limitation in Art. 30(1) and to accept this limitation will necessarily involve the addition of the words "for their own community" in the Article which is ordinarily not permissible according to well established rules of interpretation. Nor is it reasonable to assume that the purpose of

> Art. 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which receives aid on account of its being a minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that, minority institutions will not, as minority institutions, be entitled to any aid. The real import of Art. 29(2) and Art. 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and. cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Art. 30(1) of the Constitution."

134. The framers of the Constitution were fully knowing the problems of various communities having different religions, distinct languages, and diverse cultures. The whole edifice of our Constitution is based on secularism and so far as the minorities are concerned it was considered necessary that they should be allowed some rights in respect of establishing and administering educational institutions of their choice. Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own were conferred the right to conserve the same. Education is a strong factor to unite the entire country and it was considered necessary that where any educational institution is maintained by the State or receives aid out of State funds then the right of equality was guaranteed to every citizen in the matter of admission in such institution. If the minorities, based on religion or language wanted to run any educational institution without any aid out of State funds, there was no restriction placed upon the minorities in the matter of admission in sue h educational institutions and they were free to admit students of their community. But in a case where they were receiving aid out of State funds which money comes from contributions by way of taxes from every citizen of this country, then such educational institutions run by the minorities had to fall in line with all other educational institutions and were not entitled to deny admission to any citizen on the ground of religion, race, caste, language or any of them.

135. We cannot overlook that religious fundamentalism and linguistic parochialism leads to fissiparous tendencies and obstructs the national unity as a whole. It is necessary that minorities should join and be part and arcel of common stream of the country. The framers of the Constitution provided to conserve the distinct language, script or culture of any section of citizens of this country and granted right to minorities to establish and administer educational institution of their choice. At the same time clearly provided in Art. 28 that no religious instruction shall be provided in any educational institution wholly maintained out of State funds. While in case of institution maintained or receiving aid out of State funds, no citizen shall be denied admission on grounds only of religion, race, caste, language or any of them under Clause (2) of Article 29. There is no impediment or obstruction in the right of minorities in imparting education in their own language and disseminating their culture by way of extra-curricular activities and thus to conserve their own culture. Clause (2) of Art. 29 does not take away any such right nor puts any restriction on the minorities in running the educational institutions of their choice. It would be rather in the interest of the minorities to admit students of other communities and to disseminate their own culture in a wider range of community. For example,if Christians are running an educational institution, they are free to have English as a medium of instruction. They can also teach the high ideals and values of

Christian religion. The only restriction is what is contained in Art. 28(3) which applies to any educational institution recognized by the State or receiving aid out of State funds irrespective of the same being minority or majority institution. The restriction under Art. 28(3) is that no person attending such educational institution shall be required to take, part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution without his consent and in case such a person is minor without the consent of his guardian.

136. The aim of our Constitution is unity in diversity. It is to enrich the unity by making it assimilate the diversities, it is not to encourage fissiparous tendencies. The fundamental right guaranteed by Art. 30(1) is not, therefore, to be extended so as to encroach upon other fundamental right or to go contrary to the intentions of the founding fathers. It would be useful to consider the debates of the Constituent Assembly while considering these Articles.

Articles 29 and 30 of the Constitution:-

137. These were Arts. 23(1) on the one hand and 23(3)(a) and 23(3)(b) on the other hand in the Draft Constitution. Firstly, Dr. B. R. Ambedkar said in relation to draft of Art. 23(2) corresponding to the present Art. 28 of the Constitution that even in relation to Arts. 30 and 29 the State was completely free to give or not to give aid to the educational institutions of the religious or linguistic minorities. He said:-

> "Now, with regard to the second clause I think it has not been sufficiently well understood. We have tried to reconcile the claim of a community which has started educational institutions for the advancement of its own children either in education or in cultural matters, to permit to give religious instruction in such institutions; notwithstanding the fact that it receives certain aid from the State. The State, of course, is free to give aid, is free not to give aid; the only limitation we have placed is this, that the State shall not debar the institution from claiming aid under its grant-in-aid code merely on the ground that it is run and maintained by a community and not maintained by a public body. We have there provided also a "further qualification, that while it is free to give religious instruction in the institution and the grant made by the State shall not be a bar to the giving of such institution, it shall not give instruction to, or make it compulsory upon, the children belonging to other communities unless and until the obtain the consent of the parents of these children. That, I think, is a salutary provision. It performs two functions:-
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> Shri H. V. Kamath - On a point of clarification what about institutions and schools run by a community or a minority for its own pupils - not a school where all communities are mixed but a school run by the community for its own pupils?
>
> The Hon'ble Dr. B. R. Ambedkar: If my friend, Mr. Kamath will read the other article he will see that once an institution; whether maintained by the community or not, gets a grant, the condition is that it shall keep the school open to all communities. That provision he has not read." (VII C.A.D. 884)

He reaffirmed the freedom of the State to give or not to give aid to these schools when directly referring to draft Art. 23 which is the precursor of the present Arts. 29 and 30 as follows:-

> "I think another thing which has to be borne in reading Art. 23 is that it does not impose any obligation or burden upon the State. It does not say that, when for instance he Madras people come to Bombay, the Bombay Government shall be required by law to finance any project of giving education either in "Tamil language or in Andhra language or any other language". There is no burden cast upon the State. The only limitation that is imposed by Art. 23 is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law impose upon it any other culture which may be either local or otherwise." (VII CAD. 923)

Secondly, the true object of draft Art. 23 now corresponding in Arts. 29 and 30 was brought out by Shri K. Santhanam, acknowledged to be one of the best informed and learned member of the Constituent Assembly, He said:-

"Sir, you will remember that throughout Europe, after the first world war; all that the minorities wanted was the right to have their own schools, and to conserve their own cultures which the Fascist and the Nazis refused them. In fact, they did not want State aid, or State assistance. They simply wanted that they should be allowed to pursue their own customs and to follow their own cultures and to establish and conduct and their own schools. Therefore, I do not think it is right on the part of any minority to depreciate the rights given in Art. 23(1)..... In this connection we have to hold the balance even between two different trends. First of all we have to give to a large linguistic minorities their right to be educated -especially in the primary stage - in their own language". At the same time we should not interfere with the historical process of assimilation. We ought not to think that for hundreds and thousands of years to come these linguistic minorities will perpetuate themselves as they are. The historical process should be allowed free play. These minorities should be helped to become assimilated with the people of the locality. They should gradually absorb the language of the locality and become merged with the people there, otherwise they will be aliens, as it were, in those provinces. Therefore, we should not have rigid provisions by which every child is automatically protected in what may be called his mother tongue. On the other hand, this process should not be sudden, it should not be forced. Wherever there are large number of children, they should be given education - primary education - in their mother-tongue. At the same time, they should be encouraged and assisted to go to ordinary schools of the provinces and to imbide the local tongue and get assimilated with the people. I feel this clause does provide for these contingencies in the most practicable fashion".

138. While dealing with the question of the right guaranteed to the minority under Art. 30(1) and restriction put on such right under Art. 29(2) it cannot be said that we are on virgin soil as we have enough guidance provided in number of earlier Constitution decisions. Those are Smt. Champakam Dorairaian's case, State of Bombay v. Bombay Education Society, Kerala Education Bill, 1957 reference case, DAV College v. State of Punjab and Ahmedabad St. Xaviers College Society. I have already quoted the relevant passages of these cases on the scope of Art. 29(2) and Art. 30(1). A conspectus of the entire scheme of Part (III) of the Constitution clearly goes to show that the Constitution makers did not intend to confer absolute rights on a religious or linguistic minority to establish and administer educational institutions. Right of admission is curtailed by Art. 15(4) which enables the State to make any special provision for any advancement of any socially and educationally backward class of citizens or for the Scheduled Castes and Scheduled Tribes in the matter of admission in the educational institutions receiving aid from the State. Art. 28(3) imposes other restriction according to which any person attending any educational institution recognized or receiving any aid by the State shall not be required to take part in any religious instruction or to

attend any religious worship imparted or conducted in such institution without the consent of such person or if such person is a minor without the consent of his guardian. Thus, even though a minority may have established and educational institution but if it receives aid or is recognized by the State, it is bound by the matter of Art. 28(3). The third restriction is put by Art. 29(2) according to which if such minority educational institution receives aid from the State funds then it cannot deny admission to any citizen on grounds only of religion, race, caste, language or any of them. Thus, Arts. 15(4), 28(3) and 29(2) place express limitations on the right given to minorities in Article 30(1). The principle of harmonious construction does not require a Court first to produce disharmony by construction in order to resolve it thereafter by harmonious construction. The golden rule of interpretation is that words snould be read in the ordinary, natural and gramma . tical meaning and the principle of harmonious construction merely applies the rule that where there is a general provision of law dealing with a subject, and a special provision dealing with the same subject, the special prevails over the general. If it is not constructed in that way the result would be that the special provision would be wholly defeated. The House of Lords observed in Warbruton v. Loveland, (1832) [2D. & Cl. 4001 as under:-

> "No rule of construction can require that when the words of one part of Statute convey a clear meaning..... It shall be necessary to introduce another part of statute which speaks when with less perspicuity and of which the words may be capable of such construction as by possibility to diminish the efficacy of the first part".

139. Thus in my humble view in the face of clear language of Art. 29(2), there is no scope for accepting the contention sought to be put on behalf of the college.

140. A.N.Ray,C.J.,intheAhmedabad St.Xeviers College Society case laid down in the context of the right of administration of the minority educational institutions that the best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclectism 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. Sh. K. Santhanam in his high sounding words of wisdom had told in the Constituent Assembly that first of all we have to give to a large linguistic minorities their right to be educated - especially in the primary state in their own language. At the same time we should not interfere with the historical process of assimilation. We ought not to think that for hundreds and thousands of years to come these linguistic minorities will perpetuate themselves as they are. The historical process should be allowed free play. These minorities should be helped to become assimilated with the people of the locality. They should gradually absorb the language of the locality and become merged with the people there otherwise they will be aliens, as it were, in those provinces. If we consider the case of St. Stephen's College which may have initially established to protect the interests of Christian Community in India feeling alien during British Rule, have now completely assimilated and merged with the people of the locality and there does not appear any ground or.justification to stay such process. According to the stand taken by the college itself more than 90% students belonging to non Christian Community are admitted in the college every year and this clearly shows that the college has already achieved the process of assimilation. In any view of the matter if the college is receiving aid out of State funds it has to abide by the rigour of Art. 29(2) in the matter of admission of students in thel College.

141. Another important question which arises for consideration is that if a minority educational institution getting grant-in-aid is held entitled to admit students of its own community then how much percentage can be consi 'dered as reasonable. Once we hold that 1 the minority is entitled to admit students of its own choice, the result would be that they would be entitled to admit students of

their own community cent per cent and the restriction of Art. 29(2) will be totally effaced. Learned counsel appearing for the college were enable to date as to what percentage would be reasonable. Even taking the facts of the cases before us St. Stephen's College is claiming 10% preference to the Christian Students while Allahabad Agricultural Institute seeks justification for 50% as provided in their prospectus. As already held by me St. Stephen's College and Allahabad Agricultural Institute are not entitled to claim any Preferential right or reservation in favour of students of Christian Community as they are getting grant-in-aid and as such 1 do not consider.it necessary to labour any more on the question of deciding as to what percentage can be considered as reasonable. Civil Appeals Nos. 1786 of 1989 & 1830-41 of 1989 filed by the Allahabad Agricultural Institute.

142. This Institution imparts education in several courses of study like Inter Agriculture, Inter Home Science ' Indian Dairy Diploma (IDD), B.Sc. in Agriculture, B.Sc. Home Economics. B. Tech. in Agricultural Engineering. This Institution grants reservation to the extent of 50% of the seats to students belonging to Christian Community. I do not consider it necessary to give details and break up of 50% students belonging to Christian Community as the details have already come in the judgment of Shetty, J.

143. The appellants Shashipal Singh and Tejpal Singh in Civil Appeal No. 2829 of 1989 were granted admission in the Agricultural Institute in the year 1988 by interim orders of the Allahabad High Court. After the final decision of the case their admission was cancelled by the Institute by order dated 3-4-1989. The appellants were then permitted to prosecute their studies in B.Tech. Agricultural Engineering course by an order of this Court dated 11-5-1989. In view of these circumstances the above appeal No. 2829 of 1989 is also allowed.

144. The students who were not granted admission by this institute filed writ petitions in the Allahabad High Court challenging the reservation for Church sponsored Christian students. The High Court allowed the writ petitions declaring that the policy of reservation for Christians was contrary to the right guaranteed under Art. 29(2) of the Constitution. The Allahabad Agricultural Institute of grant of certificate under Art. 133(1)(a) of the Constitution has filed Civil Appeals Nos. 1830-41 of 1989 and Civil Appeal No. 1786 of 1989 before this Court. The controversy arising in these cases is also the same as in St. Stephen's College case and the same reasoning applies to these appeals. In my view the High Court rightly decided the matter and the judgment of the High Court does not call for any interference. In the result I find no force in the appeals filed by the St. Stephen's College as well as Allahabad Agricultural Institute. The W.P. No. 1868 of 1980 filed by the St. Stephen's College, Civil Appeal No. 1786 of 1989 and Civil Appeal Nos. 1830-41 of 1989 filed by Allahabad Agricultural Institute are dismissed and the W.P. Nos. 13213-14 of 1984 filed by Delhi University Students Union, T.C. No. 3 of 1980 filed by Rahul Kapoor one of the students of the University and Civil Appeal No. 2829 of 1989 filed by some of the students of the University are allowed.

145. However, those students who had already been admitted persuant to the direction issued by this Court or the High Court shall be allowed to complete their courses and any admissions made hitherto by St. Stephen's College and Allahabad Agricultural Institute shall not be disturbed.

Order accordingly.

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