

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3847 of 2016

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1. St. Xaviers College of Education, Digha Ghat, Patna, through its Principal cum Secretary of the Governing Body, Fr Thomas Perumalil, S.J., resident of St. Micheal's High School, Jesuit Residence, Digha Ghat, P.S. Digha, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. Aryabhatta Knowledge University, Patna through its Vice Chancellor.
3. Vice Chancellor, Aryabhatta Knowledge University, Patna.
4. Registrar, Aryabhatta Knowledge University, Patna.
5. National Council for Teacher Education through Regional Director, Eastern Regional Committee, Bhubaneswar, Odisha.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. K. M. Joseph, Advocate

For the Respondent/s : Mr. P.N. SHAHI- AAG10

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CORAM: HONOURABLE THE CHIEF JUSTICE

&

HONOURABLE JUSTICE SMT. ANJANA MISHRA

JUDGMENT AND ORDER

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(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-10-2016

"The history shows that there can be no stable equilibrium in any country so long as an attempt is made to crush a minority or to force it to conform to the ways of the majority. The largest democracy of the world is also said to be the house of the most diverse societies in the world. It has people from all the major religions. Although the Hindus constitutes an overwhelming majority, but there is a considerable number of Muslims, Christians, Parsees, Buddhist and Jains religions too. The diversity in India is noticed on various fronts other than religion and culture such as language. Diversity is coupled with linguistic diversity. In

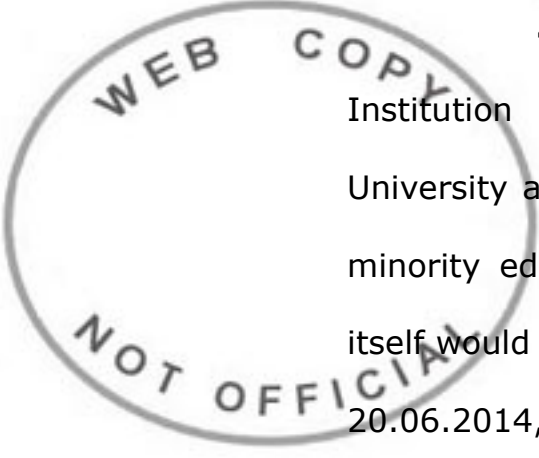
addition to that there are also a number of Scheduled tribes and certain unidentified communities which are internally heterogeneous. All these make India a country which has not only religious but also linguistic and cultural diversity."

Jawaharlal Nehru

2. The present application, under Article 226 of the Constitution (hereinafter referred to as 'the Constitution') is filed by St. Xavier College of Education, Digha Ghat, Patna, Bihar, which is a Minority Educational Institution, challenging the validity of the Statutes of the Aryabhatt Knowledge University, i.e., "Statute regarding Governing Body", which came to be framed by the appropriate authority, under the power conferred by Section 27(1) of Aryabhatt Knowledge University Act, 2008 (hereinafter referred to as the "the Act"), alleging violation of their fundamental right under Article 30 of the Constitution.

3. The statute of the Aryabhatt Knowledge University, i.e., '*Statutes for constitution of Governing Body for Colleges and institutions admitted to the privileges of the University other than colleges owned and maintained by the State Government or constituent colleges*' (hereinafter referred to as 'the statutes'). The Registrar of the Aryabhatt Knowledge University (hereinafter referred to as 'the University'), the respondent No. 4 herein, by letter, dated 20.06.2014, directed the petitioner Institution to constitute the governing body of the college in accordance with

the provisions of sub-rule (iv) under paragraph 3.1.1 of the statute of the University.



4. By its letter, dated 03.07.2014, the petitioner Institution replied to the direction of the Registrar of the University and submitted that the right of the petitioner, i.e., the minority educational institution, to constitute governing body in itself would be infringed, if directions contained in the letter, dated 20.06.2014, were to be followed. Therefore, the petitioner stated that directions of the Registrar of the University, to constitute the governing body for the petitioner institution as per the Rules, is violative of Article 30 of the Constitution of India and, therefore, violates the fundamental right of the petitioner. The petitioner prays to quash the statute so far as they apply to the minority educational institution for being violative of Article 30 of the Constitution of India.

5. The history of the institution runs as follows:-

(i) St. Xavier College of Education, i.e., the petitioner Institution was established on 24.03.1994 and the petitioner was granted recognition of teaching B. Ed course by the State Government vide its letter No. 119 dated 24.03.1994.

(ii) The National Council of Teachers' Education (hereinafter referred to as 'the NCTE') also granted recognition for imparting B. Ed. level teacher training course vide its order dated 11.02.1997.

(iii) The National Commission for Minority Education Institutions, vide its order, dated 28.11.2007, declared the St. Xavier College of Education, a minority institution covered by Article 30 of the constitution of India.

(iv) The NCTE by its order EERRCC/7-92.6(1)/11/2009/16280(1) further granted the petitioner institution recognition for imparting M. Ed course from the year 2000-1010.

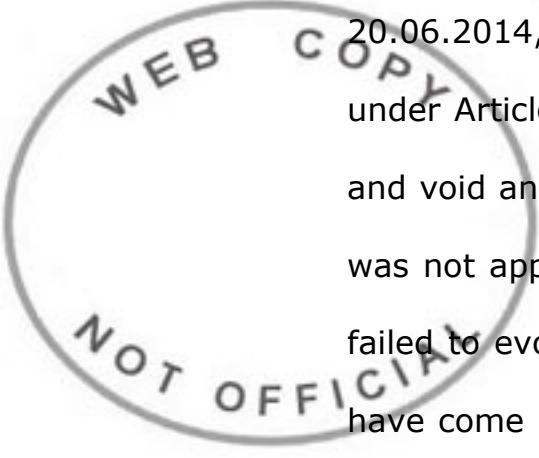
(v) The National Assessment and Accreditation Council granted a certificate of accreditation to the petitioner as a Grade 'A' institution vide its letter, dated 04.09.2010 (Annexure-7).

(vi) The Aryabhatt Knowledge University, Patna hereinafter referred as AKU, Patna, granted permanent affiliation to St. Xavier college of Education for B. Ed and M. Ed courses vide its letter dated 18.07.2012.

(vii) In the year 2014, the Nation Council for the Teachers Education Regulation, 2014 directed that B. Ed course would be of two years duration with at least 230 working days per annum.

(viii) The Vice Chancellor vide its letter No. 1347/AKU/2014 directed the constitution of the Governing Body of the College as per the statutes of the University.

(ix) Realizing the effects of the aforementioned order, the petitioner vide letter No. SXCE/154/2014, dated 03.04.2014, drew the attention of the University to the rights of the minority to



constitute Governing Body for the minority institution and pointed out that the letter issued under letter No. 1347, dated 20.06.2014, would infringe the right of the minority institution under Article 30 of the Constitution of India and as such was null and void and fit to be declared as such and also that such a letter was not applicable to the petitioner's minority institution. Having failed to evoke any response from the Authorities, the petitioners have come before this Court for setting aside the said notification and for a declaration from this Court that such Notification would not be applicable in the case of Minority Institution.

6. On the other hand the respondents contends that the writ petitioner is wholly misconceived as the impugned notifications have been issued under the statutes regarding governing body made under the provisions of Section 27(11) of the AKU Act, called as statutes for constitution of Governing Body for colleges and institutions maintained by the State Government or constituent colleges and applies to every college and institutions admitted to the privileges of the university other than those owned and maintained by the Government or constituent colleges of the university. It is also stated that Clause 3.1 of the statute, which relates to composition of the governing body, clearly prescribes about the members who shall consist the governing body of the college and the said provision is wholly in consonance with Article 30 (1) of the Constitution of India and the same is reasonable and regulates of the education character of

the institution. It is also contended that the said clause is aimed towards making an institution an effective vehicle of education for the minority/community or other persons who seek to take advantage from the same.

7. We have heard Mr. K. M. Joseph, learned Counsel, appearing for the petitioner, and Mr. P.N. Shahi, learned Additional Advocate General No.10, for the respondents. We have also heard Mr. Piyush Lal, learned amicus curie.

8. Mr. K. M. Joseph, learned Counsel, appearing for the petitioner, has drawn our attention to Rule 3 of the Rules, which deals with the composition of the governing body of the petitioner institution and, submitted that these provisions interfere with the right of a minority educational institution, under Article 30 of the Constitution, to administer the educational institution of their choice, so far as the right of Christian minority, by imposing the choice of the state in the composition of the Governing Body of the minority-college, is abridged and taken away.

9. Learned Counsel for the petitioner has also drawn our attention to Rule 2 of the Rules, which makes the Rules applicable to every college and institution admitted to the privileges of the University, other than those owned and maintained by the Government or constituent colleges of the University. Learned counsel for the petitioner has referred to the decision of the Supreme in ***T.M.A. Pai Foundation and Ors. Vs. State of Karnataka and Ors***, reported in ***(2002) 8 SCC 481***

and, relying upon paragraph 50 of **T.M.A. Pai Foundation** (supra), learned counsel has submitted that the fundamental right of a minority educational institution under Article 30 of the Constitution has two fold protection, firstly, right to establish an educational institution of their choice and, secondly, right to administer the educational institution so established by the minority, linguistic or religious. The contention forwarded for the petitioner minority-institution is, that the effect of interference, by the impugned provisions, in the matters of appointment of members of the governing council of the petitioner's institution, violates the fundamental right of the petitioner minority to administer their educational institution, guaranteed under Article 30(1) of the Constitution.

10. Learned counsel for the petitioner has also relied on the cases of **State of Kerala vs. V.R.M. Provincial**, reported in **(1970) 2 SCC 417**, and **Ahmadabad St. Xavier's College Vs. State of Gujarat**, reported in **(AIR 1974 SC 1389)**, and contended that, no part of the management of the affairs of a minority educational institution can be taken away and vested in another body by virtue of the statutes under challenge, as such, intrusion into the administrative affairs of minority educational institutions would amount to violation of the fundamental right of a minority educational institution under Article 30 of the Constitution.

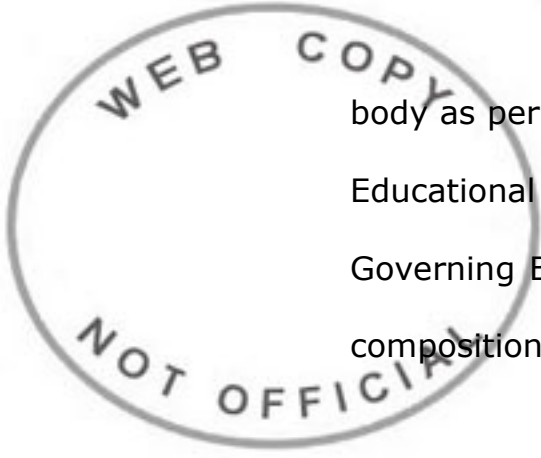
11. The arguments of the petitioner may be summarized as follows;:-

i. In the event of constitution of the Governing body as per the statue, the management of the petitioner minority Educational institution will remain entrusted in the hands of the Governing Body formed as per the statute in the constitution and composition of which the minority community has no say; and

ii. In the event of non constitution of the Governing Body as per the statute for any reason, the management of the college will be placed in the hand of an *ad hoc* Committee constituted by the Vice Chancellor.

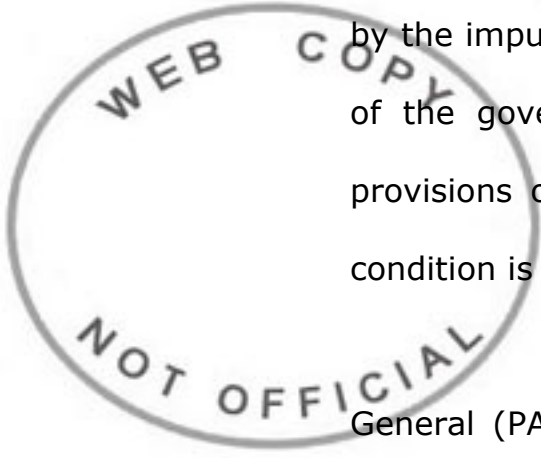
iii. In either case the Minority Community which established the minority education institution in exercise of its right under article 30 of the constitution will have no say in its day to day Administration and would be deprived of its fundamental right of administration over its minority education institution guaranteed to the minorities under clause (1) of Article 30 of the constitution of India.

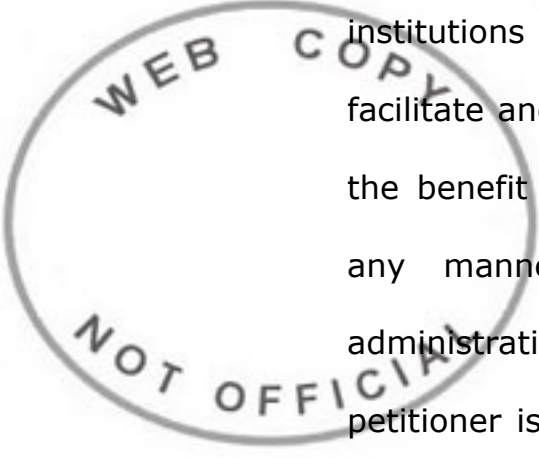
12. Strenuously reference has been made to the decision in ***State of Kerala vs. Very Rev. Mother Provincial reported in 1970(2) SCC 417***, wherein, the Supreme Court dealt with a similar situation as, in the case in hand, and elaborate reference has been made to Paragraphs 8, 9 and 14 of the judgment, which would be considered in later part of this judgment.



13. Learned counsel for the petitioner submits that the University, to which the petitioner's colleges is affiliated, has by the impugned order dated 20.06.2016 directed the constitution of the governing body for the college in accordance with the provisions of the impugned statutes of the university, and such condition is violative of Article 30(1) of the constitution.

14. Shri Lalit Kishore, Principal Additional Advocate General (PAAG), appearing on behalf of the State, submits that the contentions of the writ petitioner are wholly misconceived as the impugned notifications have been issued under the statutes regarding governing body made under the provisions of Section 27(11) of the AKU Act, called as statutes for constitution of Governing Body for colleges and institutions maintained by the State Government or constituent colleges and applies to every college and institutions admitted to the privileges of the university other than those owned and maintained by the Government or constituent colleges of the university. Referring to Clause 3.1 of the statutes which relates to composition of the governing body, it was submitted that the said clause clearly prescribed with regard to members who shall consist the governing body of the college and the said provision is wholly in consonance with Article 30 (1) of the Constitution of India and the same is reasonable and regulates of the education character of the institution. It was asserted, that the said clause is aimed towards making an institution an effective vehicle of education for the





minority/community or other persons who seek to take advantage from the same. The statutes, do not in any manner deny the institutions its right to retain its minority character, but in fact, facilitate and ensure better and effective exercise of that right for the benefit of the institution. Moreover, the statute does not in any manner have the effect of displacing the minority administration of its autonomy. It was also asserted that the petitioner is mistaken into the relief that the right granted under Article 30 is not an absolute right as the statute and the impugned clause is aimed to reconcile and secure reasonable balance between the twin objective of ensuring a standard of excellence and of preserving the right of minority to administer the institution as a minority institution. As such the statute as well as the impugned clause is neither unreasonable nor repugnant to the right as is not guaranteed under Article 30 of the constitution of India nor is the same infringement of the right of the minorities to administer its educational institutions, and as such, cannot be faulted and declared ultra vires.

15. It appears from the rival contentions that the present writ petition throws the following issues for consideration:

(1) What is the nature of the right of a minority educational institution to constitute a governing body/a management council, to govern day-to-day matters of the educational institution and to take various decisions with regard to governance of such educational institution?

(2) *Whether the mandatory imposition upon the management of the minority college of the petitioner, to obtain affiliation from the University, to constitute the governing body as provided under the statutes (rules) framed under Section 37(11) of the Act, amounted to violation of fundamental right to constitute a governing body for the minority college under Article 30(1) of the Constitution?*

16. The principle claim of the petitioner to constitute a Governing Body of its own choice, is based on the assumption that so far as constitution of the governing body of such institution is concerned, no interference and structure of a governing body can be imposed on a minority educational institution. We must now peruse Statutes 3 of the impugned statutes, which lays down specific directions with regard to the composition of the governing body which are detailed hereunder:-

"Clause 3.1 directs inclusion in the governing body as follows:

Principal of the college (ii) one teachers' representative, (iii) one representative of non-teaching staff, (iv) one representative of the university, (v) one officer of State Government (vi) five persons nominated by Trust/Society establishing the college of whom one is to be from Scheduled Caste and from women, and (vi) a person to be co-opted by Governing Body.

Clause 3.2 vests in the Vice Chancellor the power to appoint an ad hoc



committee to administer the college in the event a governing Body is not set up as per the statutes.

Clause 3.3 vests in the Executive Council of the University power to decide all ;question of dispute with regard to composition and membership of the Governing Body.

Clause 4.1. Proviso vests in the Executive Council of the University power to terminate the membership of any non-ex officio member of Governing Body of

Clause 7.1 deals with powers of the Governing Body constituted under the statute.

Clause 7.1.i. vests the Governing body with power to pass with or without modification the annual accounts and the budget prepared by the Trust/Society.

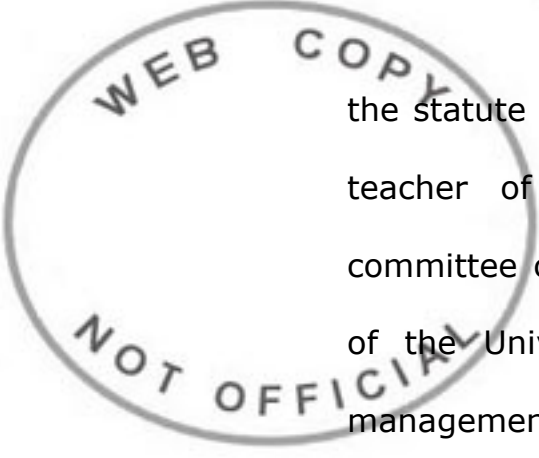
Clause 7.1.ii vests in the Governing Body to appoint Principal and Teachers recommended by the Selection committee appointed as per guidelines of the Executive council.

Clause 7.1iii vests in the Governing Body with power to appoint non-teaching staff as per prescribed procedure.

Clause 7.1v imposes on Governing Body set up under the Statutes duty to ensure compliance, enforcement and observance of all the orders and directions of the university.

Clause 7.1 vi-x directs that the Governing Body shall exercise general supervision and report to the university over the developmental,

financial and administrative matters of the college.”



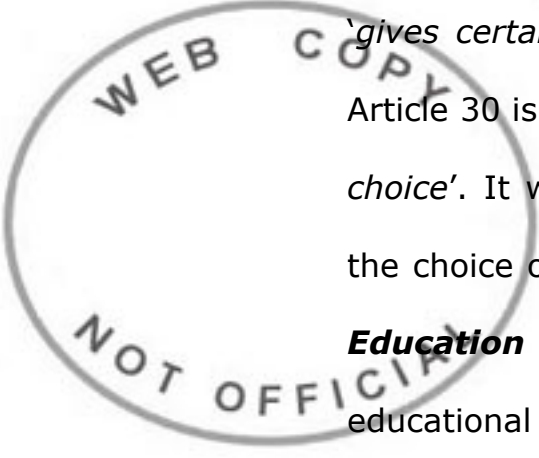
17. It appears that the Governing Body formed under the statute is also vested with power to appoint the principal and teacher of the college on recommendation of a selection committee constituted as per guidelines of the Executive Council of the University. It is the case of the Petitioner that the management of the institution has been always conducted by members and clerics of Christian community. The fundamental right of minorities, to establish and administer, an educational institution of its choice has been eruditely explained in a catena of authoritative decisions of the Supreme Court. A Constitution Bench of the Supreme Court, comprising seven judges, in ***Re Kerala Education Bill*** (supra), was called upon to interpret Article 29 and Article 30 of the Constitution, upon reference under Article 143 of the Constitution. The correctness of the law laid in ***Re Kerala Education Bill*** (supra) was examined by a larger bench comprising nine judges in ***St. Xaviers, Ahmedabad*** (supra), wherein, the majority agreed with the decision and interpretation of Articles 29, and 30 of the Constitution. Almost thirty years thereafter, the issue again developed certain doubts as to the correctness of law laid down, in ***St. Xaviers Ahmedabad*** (supra), and, a larger bench comprising eleven judges, was constituted to reconsider the issue again in ***T.M.A. Pai Foundation*** (supra). In ***T.M.A. Pai Foundation*** (supra), the

law has been settled and established by a majority of the Constitution Bench. However, the complexity of the issue i.e. contents of Article 30(1) and limitations of any nature, upon various components of the fundamental right under Article 30(1), had required a Constitution Bench of five judges, in **Islamic Academy**, and a larger bench comprising, seven judges, in **P.A. Inamdar**, to clarify the law.

18. We must now consider the law laid down in this regard. In re **Kerala Education Bill** (supra) reported in AIR 1958 SC 956, the issue with regard to the content of Article 30 of the Constitution, arose out of a reference made by the President of India to the Supreme Court, under Article 143(1) of the Constitution of India, for its opinion on certain provision of Kerala Education Bill, 1957. In the said case, the relevant questions presented for opinion read as follows:-

"2. Do sub-clause (5) of clause 3, sub-clause (3) of clause 8 and clauses 9 to 13 of the Kerala Education Bill, or any provisions thereof, offend clause (1) of Article 30 of the Constitution in any particulars or to any extent?"

19. Answering the above question the Supreme Court observed that Article 30 (1) of the Constitution gives the minorities two rights, namely, (a) to establish and (b) to administer, educational institution of their choice and then proceed to classify such educational institutions into three categories being (a) those which do not seek either aid or



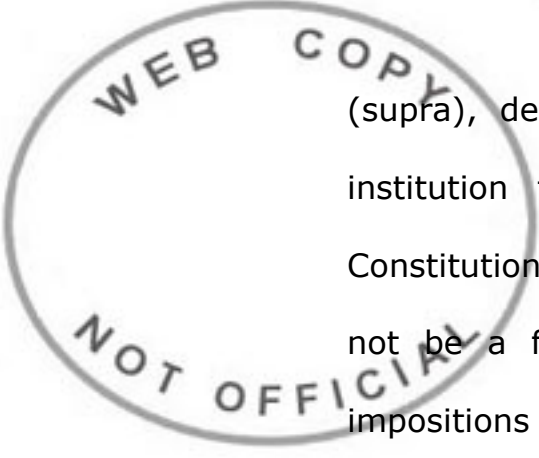
recognition from the State (b) those which want aid and (c) those which want only recognition but no aid. It was held that Article 30 'gives certain rights' and, the key to this bundle of rights under Article 30 is held to be the meaning of the expression 'of their own choice'. It was held that the content of Article 30 is as broad as the choice of minority community. The Supreme Court, in **Kerala Education** (supra), also dealt with rights of an un-aided minority educational institution to get recognition, in light of Article 30 of the Constitution, and laid down the law to the effect that, there may not be a fundamental right to recognition by the state, but impositions of conditions and terms, as a requisite to obtain recognition, which, in effect, 'tantamount to the surrender of their constitutional right of administration of the educational institution of their choice', is violative of Article 30(1) of the Constitution. The court described the 'content' of Article 30(1) of the Constitution in following words:-

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



minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. In other words, the article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children. The next thing to note is that the article, in terms, gives all minorities, whether based on religion or language, two rights, namely, the right to establish and the right to administer educational institutions of their choice. The key to the understanding of the true meaning and implication of the article under consideration are the words "of their own choice". It is said that the dominant word is "choice" and the content of that article is as wide as the choice of the particular minority community may make it. The ambit of the rights conferred by Article 30(1) has, therefore, to be determined on a consideration of the matter from the points of view of the educational institutions themselves. The educational institutions established or administered by the minorities or to be so established or administered by them in exercise of the rights conferred by that article may be classified into three categories, namely, (1) those which do not seek either aid or recognition from the State, (2) those which want aid, and

(3) those which want only recognition but not aid."



20. The Supreme Court, in ***re Kerala Education Bill*** (supra), dealt with rights of an un-aided minority educational institution to get recognition, in light of Article 30 of the Constitution, and laid down the law to the effect that, there may not be a fundamental right to recognition by the state, but impositions of conditions and terms, as a requisite to obtain recognition, which, in effect, 'tantamount to the surrender of their constitutional right of administration of the educational institution of their choice', is violative of Article 30(1) of the Constitution.

"32. We now come to the last category of educational institutions established and administered by minority communities which seek only recognition but not aid from the State...It is, therefore, that Article 30(1) confers on all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice. The minorities, quite understandably, regard it as essential that the education of their children should be in accordance with the teachings of their religion and they hold, quite honestly, that such an education cannot be obtained in ordinary schools designed for all the members of the public but can only be secured in schools conducted under the influence and guidance of people well versed in the tenets of their religion and in the traditions of their culture. The minorities evidently desire that education should



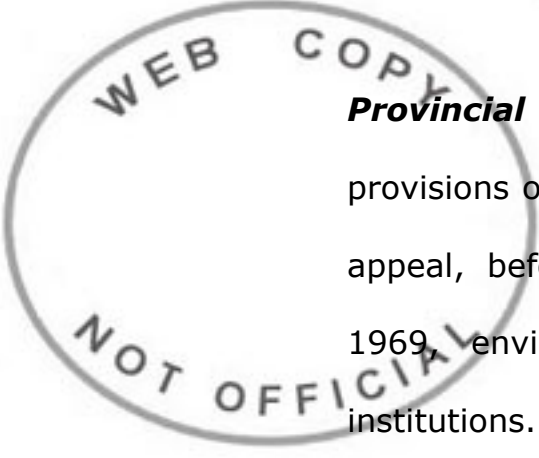
be imparted to the children of their community in an atmosphere congenial to the growth of their culture. Our Constitution makers recognised the validity of their claim and to allay their fears conferred on them the fundamental rights referred to above. But the conservation of the distinct language, script or culture is not the only object of choice of the minority communities. They also desire that scholars of their educational institutions should go out in the world well and sufficiently equipped with the qualifications necessary for a useful career in life...Without recognition, therefore, the educational institutions established or to be established by the minority communities cannot fulfil the real objects of their choice and the rights under Article 30(1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions. There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Article 30(1). We repeat that the legislative power is subject to the fundamental rights and the legislature cannot indirectly take

away or abridge the fundamental rights which it could not do directly and yet that will be the result if the said Bill containing any offending clause becomes law.”

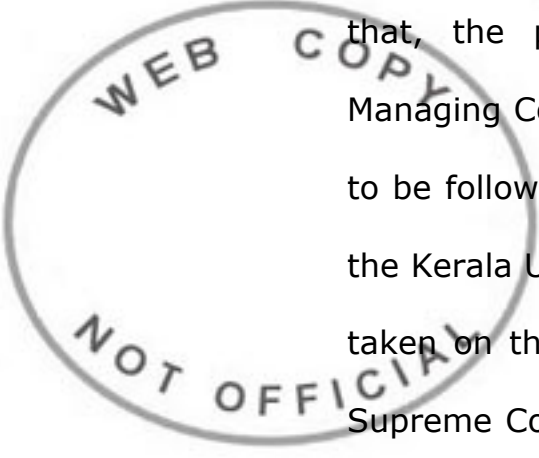


21. A constitution bench of Supreme Court in Right **Rev. Bishop S.K. Patro vs. State of Bihar (1969) 1 SCC 863**, considered constitutional vires of an order of the state government, which directed the Secretary of the Church Missionary Society School, a religious minority institution, to constitute the Managing Committee in accordance with such order. By the said order, the state government nullified the election of the President and Secretary of the Church Missionary Society School, a minority educational institution. The said order was challenged before the high court for being violative of 'the fundamental right of the Christian minority to maintain an educational institution of its choice and guaranteed by Article 30(1).' The High Court dismissed the writ petition on the basis that the School was not 'an education institution established by a minority, protection was not afforded thereto by Article 30 of the Constitution.' The Supreme Court was appealed to decide whether the fundamental right of a minority education institution was infringed by the order of the state government, and thus whether, the order was violative of Article 30 of the Constitution for interfering with the powers of the minority to constitute the Managing Committee for an educational institution of their choice

established by such minority. The Supreme Court held that the order in question was illegal and unconstitutional



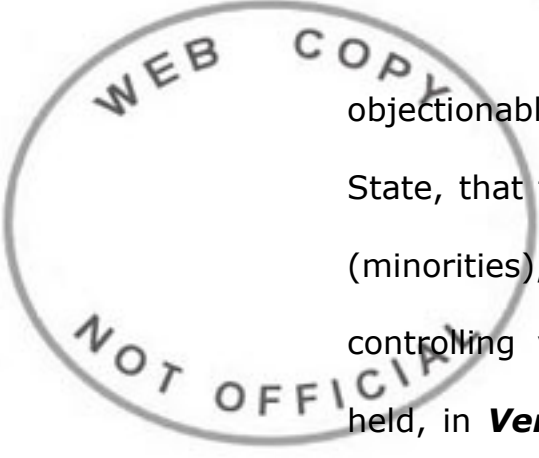
22. In ***State of Kerala v. Very Rev. Mother Provincial*** (supra), the constitutional validity of various provisions of the Kerala University Act, 1969 was challenged, in appeal, before the Supreme Court. The Kerala University Act, 1969 envisaged two different types of private educational institutions. Firstly, those institutions which were not under a corporate management, and secondly, those institutions which were under a corporate management. A 'Corporate Management' meant a person or body of persons, managing affairs of more than one private college. By Sections 48 and 49 of the Act, Corporate Managements were required to constitute a managing council, and other institutions, not under corporate management, were required to constitute a governing body. The governing body envisaged under these provisions comprised of eleven members, who were to be as follows: (1) Principal, (2) the Manager of the College, (3) one person nominated by the University in accordance with the provisions contained in the University Statutes (4) one person nominated by the government, (5) one person elected in accordance with such procedure as might be prescribed by the Statute of the University from among themselves by the permanent teachers of the private college, (6) not more than six persons nominated by the institution concerned. The composition of the managing council, under the Kerala



University Act, 1969, was similarly structured but with more number of members. The Kerala University Act further provided that, the powers and functions a governing body and the Managing Council, the removal of the members and the procedure to be followed, would be prescribed by the statutes framed under the Kerala University Act. The decisions in these bodies were to be taken on the basis of the majority opinion of the members. The Supreme Court observed that after constituting of the 'managing council' or 'governing body', the founders of the community could not exercise any decision making power with respect to the administration of the institutions. The effect of these provisions under challenge was observed by the Supreme Court in following passage:

"14. These sections were partly declared ultra vires of Article 30(1) by the High Court as they took away from the founders the right to administer their own institution. It is obvious that after the erection of the governing body or the managing council the founders or even the community has no hand in the administration. The two bodies are vested with the complete administration of the institutions. These bodies have a legal personality distinct from the educational agency or the corporate management. They are not answerable to the founders in the matter of administration. Their powers and functions are determined by the University laws and even the removal of the

members is to be governed by the Statutes of the University..."



23. The Court found these provisions so much objectionable, that it out-rightly rejected the arguments of the State, that the presence of nominees of the educational agencies (minorities), ensures that the minority community had the controlling voice in the management of the institution. It was held, in ***Very Rev. Mother Provincial*** (supra), that inclusion of the members by the state, in the governing body/managing council of the educational institution violated the fundamental right of the minority to administer an educational institution of their choice. The constitution bench noted following reasons for this conclusion:-

"15. In attempting to save these provisions Mr Mohan Kumarmangalam drew attention to two facts only. The first is that the nominees of the educational agencies or the corporate management have the controlling voice and that the defect, if any, must be found in the Statutes, Ordinances, Regulations, Bye-laws and Orders of the University and not in the provisions of the Act. Both these arguments are not acceptable to us. The Constitution contemplates the administration to be in the hands of the particular community. However, desirable it might be to associate nominated members of the kind mentioned in Sections 48 and 49 with other members of the governing body or the managing council nominees, it is



obvious that their voice must play a considerable part in management. Situations might be conceived when they may have a preponderating voice. In any event, the administration goes to a distinct corporate body which is in no way answerable to the educational agency or the corporate management. The founders have no say in the selection of the members nominated or selected except those to be nominated by them. It is, therefore, clear that by the force of sub-sections (2), (4) and (6) of Sections 48 and 49 the minority community loses the right to administer the institution it has founded. Sub-section (5) also compels the governing body or the managing council to follow the mandates of the University in the administration of the institution. No doubt the Statutes, Ordinances, Regulations, Rules, Bye-laws and Orders can also be examined in the light of Article 30(1) but the blanket power so given to the University bears adversely upon the right of administration. This position is further heightened by the other provisions of the Act to which a reference is now needed."

24. The above conclusion of the constitution bench of six judges, in ***Very Rev. Mother Provincial*** (supra) was based on the proposition of law, stated by the Hidayatullah C.J. in following passages:-

"8. Article 30(1) has been construed before by this Court. Without referring to those



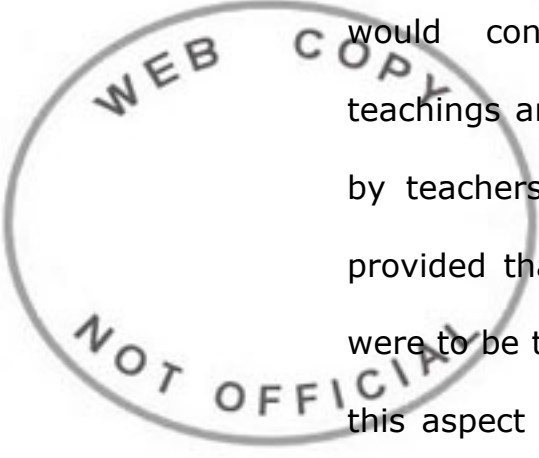
cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.

9. The next part of the right relates to the administration of such institutions. 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 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. *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 dictated by considerations of the advancement of the country and its people. Therefore, if universities establish the syllabi for examinations they must be followed, subject however to special subjects which the institutions 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 as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. 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 Constitution speaks of administration and that must fairly be left to the minority institutions and no more."*

25. In *Ahmadabad St. Xavier's College Society v. State of Gujarat*, reported in (1974) 1 SCC 717, constitutional validity of various provisions of the Gujarat University Act, 1949, which were made applicable to minority



educational institutions, was challenged before the Supreme Court. The provisions impugned therein provided that University would conduct examinations, determine the instructions, teachings and training in courses and courses would be imparted by teachers of the University. One of the impugned provisions provided that new colleges that seek affiliation to the University were to be treated as the constituent colleges of the University. In this aspect of the facts, the Court was called upon to determine the width and depth of fundamental right of minorities, whether based on religion or language, to establish and administer educational institutions under Article 30 of the Constitution., A Nine-Judge Bench of the Supreme Court, in **Ahmadabad St. Xavier's** case (supra), was called upon to interpret Article 29 and Article 30 of the Constitution, and to reconsider the law laid down by previous decisions of the Supreme Court in the above mentioned cases. While interpreting Article 30(1) of the Constitution in light of Article 29(1) of the Constitution, the Constitutional Bench held that the scope and ambit of Article 30(1) was wider than the scope of Article 29(1) of the Constitution. The Supreme Court interpreted Article 29 and 30 of the Constitution keeping in view the object of Article 30 of the Constitution, which in the words of Chief Justice Ray, was explained as follows :

"9. Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Articles 25 and 26



and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality."

"12. The real reason embodied in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

26. Pertinent for the case in hand, the Court, in **St. Xavier's case** (supra), also was called upon to consider the issue

as to whether "religious and linguistic minorities, who have the right to establish and administer the educational institution of their choice, have a fundamental right to affiliation". The Court rejected the contention on behalf of minority that there is a fundamental right of a minority institution to affiliation. We may refer to the relevant passages from the judgment delivered by Chief Justice Ray, which are extracted as follows :

"14. The consistent view of this Court has been that there is no fundamental right of a minority institution to affiliation. An explanation has been put upon that statement of law. It is that affiliation must be a real and meaningful exercise for minority institutions in the matter of imparting general secular education. Any law which provides for affiliation on terms which will involve abridgement of the right of linguistic and religious minorities to administer and establish educational institutions of their choice will offend Article 30(1). The educational institutions set up by minorities will be robbed of their utility if boys and girls cannot be trained in such institutions for University degrees. Minorities will virtually lose their right to equip their children for ordinary careers if affiliation be on terms which would make them surrender and lose their rights to establish and administer educational institutions of their choice under Article 30. The primary purpose of affiliation is that the students reading in the minority institutions will have qualifications in the shape of degrees necessary for a useful



career in life. The establishment of a minority institution is not only ineffective but also unreal unless such institution is affiliated to a University for the purpose of conferment of degrees on students."

'15. Affiliation to a University really consists of two parts. One part relates to syllabi, curricula, courses of instruction, the qualifications of teachers, library, laboratories, conditions regarding health and hygiene of students. This part relates to establishment of educational institutions. The second part consists of terms and conditions regarding management of institutions. It relates to administration of educational institutions."

"16. With regard to affiliation a minority institution must follow the statutory measures regulating educational standards and efficiency, the prescribed courses of study, courses of instruction and the principles regarding the qualification of teachers, educational qualifications for entry of students into educational institutions etc."

27. The Supreme Court, agreed with the prevision decision in **Very Rev. Mother Provincial** (supra) and clarified that right to be affiliated to a University, of a minority institution, is available to a minority institution so long as the purpose of affiliation, i.e., regulating courses of instructions in institutions for the purpose of co-ordinating and harmonizing the standards of education, is preserved and complied with by the minority

institution. We may beneficially refer to following passages from the judgment of Chief Justice Ray, in **Ahmadabad St. Xavier's** case (supra).



"17. When a minority institution applies to a University to be affiliated, it expresses its choice to participate in the system of general education and courses of instruction prescribed by that University. Affiliation is regulating courses of instruction in institutions for the purpose of coordinating and harmonising the standards of education. With regard to affiliation to a University, the minority and non-minority institutions must agree in the pattern and standards of education. Regulatory measures of affiliation enable the minority institutions to share the same courses of instruction and the same degrees with the non-minority institutions."

"18. This Court in State of Kerala v. Very Rev. Mother Provincial, [(1970) 2 SCC 417] explained the necessity and importance of regulatory measures of system and standard of education in the interest of the country and the people. When a minority institution applies for affiliation, it agrees to follow the uniform courses of study. Affiliation is regulating the educational character and content of the minority institutions. These regulations are not only reasonable in the interest of general secular education but also conduce to the improvement in the stature and strength of the minority institutions. All institutions of general



secular education whether established by the minorities or the non-minorities must impart to the students education not only for their intellectual attainment but also for pursuit of careers. Affiliation of minority institutions is intended to ensure the growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30."

28. As to the nature of a fundamental right under Article 30(1) of the Constitution and whether such right is absolute, the Supreme Court clarified that fundamental right under Article 30(1) of the Constitution is not an absolute right and held that, "checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as a part of it, a co-related duty of good administration."

29. The law settled by Constitution Bench decision of the Supreme Court in ***St. Xavier's case*** (supra), was again disputed and was admitted for reconsideration by a larger Bench comprising Eleven Judges in ***T.M.A. Pai Foundation Vs. State of Karnataka, reported in (2002) 8 SCC 481***, wherein many related issues with respect to fundamental rights of a minority institution to establish and administer educational institutions of their choice, were reconsidered and the law was authoritatively settled. In ***T.M.A. Pai Foundation*** (supra), the Supreme Court reconsidered the law with regard to the extent of the rights of aided private minority institutions to administer a minority institution. The Supreme Court confirmed the position of law laid down, in ***Ahmadabad St. Xavier's case*** (supra), that right under Article 30 is not an absolute right, however, it was further observed that Article 30(1), 'does not specifically mention that the right to establish and administer a minority educational institution would be subject to any rules or regulations'. We may beneficially refer to following passages from the judgments of Kirpal, C.J., speaking for majority of an Eleven Judge Bench, in ***T.M.A. Pai Foundation*** (supra):

"92. Article 30(1) bestows on the minorities, whether based on religion or language, the right to establish and administer an educational institution of their choice. Unlike Articles 25 and 26, Article 30(1) does not specifically state that the right under Article 30(1) is subject to public order, morality and



health or to other provisions of Part III. This sub-article also does not specifically mention that the right to establish and administer a minority educational institution would be subject to any rules or regulations."

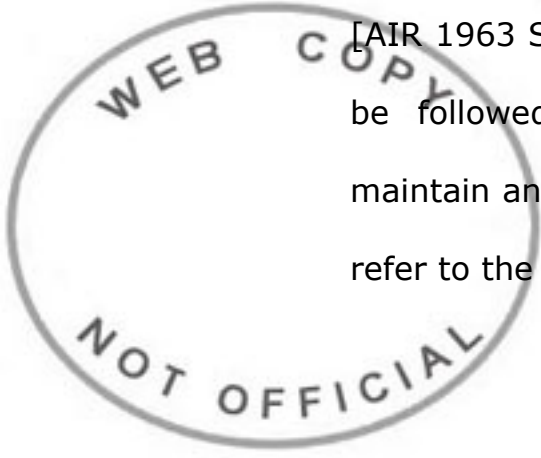
"93. Can Article 30(1) be so read as to mean that it contains an absolute right of the minorities, whether based on religion or language, to establish and administer educational institutions in any manner they desire, and without being obliged to comply with the provisions of any law? Does Article 30(1) give the religious or linguistic minorities a right to establish an educational institution that propagates religious or racial bigotry or ill will amongst the people? Can the right under Article 30(1) be so exercised that it is opposed to public morality or health? In the exercise of its right, would the minority while establishing educational institutions not be bound by town planning rules and regulations? Can they construct and maintain buildings in any manner they desire without complying with the provisions of the building bye-laws or health regulations?"

30. From the above view of the Constitution Bench, in ***T.M.A Pai Foundation*** (supra), it is clearly established that the right of a minority under Article 30(1) of the Constitution, is to be exercised bona fide, and only to protect the interest of the minority community concerned, however, no law can be made in contravention of the special protections to minority under Article

30(1) of the Constitution. The Court further observed, considering re **Kerala Education Bill** (supra) and **Sabhai** case [AIR 1963 SC 540], that government may lay down regulations to be followed by minority educational institutions in order to maintain and promote efficiency for imparting education. We must refer to the relevant passages, which are extracted as follows:-

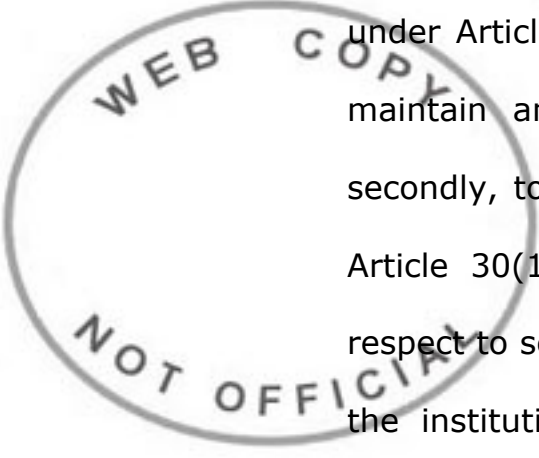
"106. While coming to the conclusion that the right of the private training colleges to admit students of their choice was severely restricted, this Court referred to the opinion in Kerala Education Bill, 1957 case but distinguished it by observing that the Court did not, in that case, lay down any test of reasonableness of the regulation. No general principle on which the reasonableness of a regulation may be tested was sought to be laid down in Kerala Education Bill, 1957 case and, therefore, it was held in Sidhajbhai Sabhai case [AIR 1963 SC 540] that the opinion in that case was not an authority for the proposition that all regulative measures, which were not destructive or annihilative of the character of the institution established by the minority, provided the regulations were in the national or public interest, were valid."

"107. The aforesaid decision does indicate that the right under Article 30(1) is not so absolute as to prevent the Government from making any regulation





whatsoever. As already noted hereinabove, in **Sidhajbhai Sabhai** case [AIR 1963 SC 540] it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the Government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law. It will further be seen that in *Sidhajbhai Sabhai* case [AIR 1963 SC 540] no reference was made to Article 29(2) of the Constitution. This decision, therefore, cannot be an authority for the proposition canvassed before us.”



31. In light of the above passages, in **T.M.A. Pai Foundation** (supra), it transpires that the fundamental right under Article 30(1), can be regulated for two reasons. Firstly, to maintain and promote efficiency for imparting education and secondly, to check mala fide exercise of fundamental right under Article 30(1) of the Constitution. We are of the opinion, with respect to selection of a body of individuals responsible to manage the institution, that, no restrictions can be imposed upon the choice of the minority concerned; however, the body so chosen by the minority concerned can be regulated, for the benefit of the students and the minority community and to check mal-administration.

32. The Court, in **T.M.A. Pai Foundation** (supra), considered the judgment of **Very Rev. Mother Provincial** (supra) and affirmed the view as to the position of law taken by the Supreme Court in the said case. We must refer to the following passages, which may be relevant passage in Para. 109 .

"109... The Court, however, pointed out that an exception to the right under Article 30 was the power with the State to regulate education, educational standards and allied matters. It was held that the minority institutions could not be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of the exclusive right of management, allowed to decline to follow the general pattern. The

Court stated that while the management must be left to the minority, they may be compelled to keep in step with others."

33. After considering previous decisions dealing with Article 30 of the Constitution, the Supreme Court, in **T.M.A. Pai Foundation** (supra), laid down the law in following in Para. 136, 137, 138, 139, excerpted as follows:

135. We agree with the contention of the learned Solicitor-General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. We find it difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

136. Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that





the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also — for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and



administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-à-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination... In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.



139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g. method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.

34. The Supreme Court also affirmed the view that any condition on a minority educational institution to avail aids from the State, which amounts to abject surrender and abrogation of fundamental rights of a minority educational institution under Article 30, would be impermissible and would amount to indirect infringement of Article 30 of the Constitution. It was observed, in ***T.M.A. Pai Foundation*** (supra), at paragraph Nos. 141 and 143, that :

141...We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If,



however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

143. This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfilment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

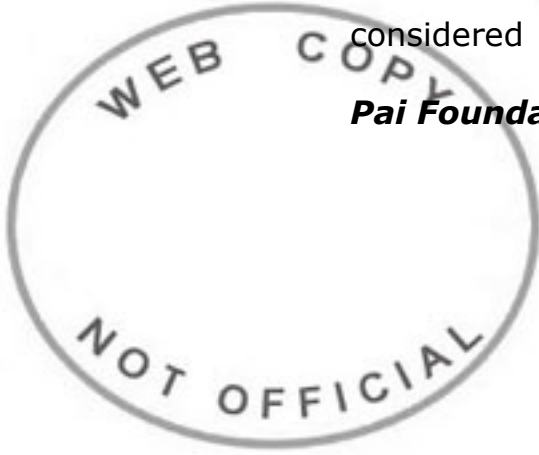
35. It was held that so far as unaided minority educational institutions are concerned, the regulatory measure of control, by the State, should be minimal and the conditions with respect to day-to-day functioning, the management of the educational institution should have the freedom and there should

not be any external controlling agency. The crucial issue, which has bearing upon the issue arising in the present case, was considered and addressed by the Constitution Bench, in **T.M.A. Pai Foundation** (supra), in Para. 161, as follows:-

"Q. 5.(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?"

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who





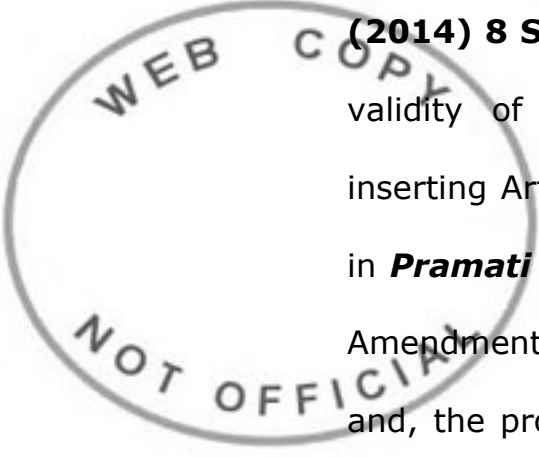
are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

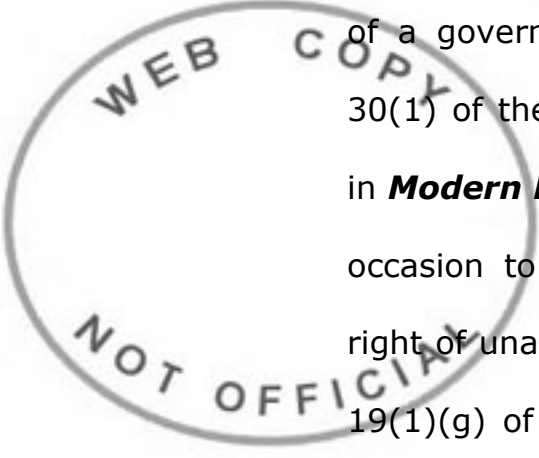
Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

36. It has been held, in ***P.A Inamdar v. State of Maharashtra***, reported in **(2005) 6 SCC 537**, that the fundamental right of a minority to admit students of its choice, under Article 30(1) of the Constitution, includes the right to choose students of non-minority community and also members of their own community from other States, however, this facet of fundamental right is held to be limited, and the fundamental right under Article 30(1), as to the choice to admit students from non-minority, cannot be exercised 'in a manner and to such an extent



that their minority educational status is lost.’ Later, in ***Pramati Educational & Cultural Trust v. Union of India***, reported in **(2014) 8 SCC 1**, the Supreme Court examined the Constitutional validity of Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21-A of the Constitution. The Constitution Bench, in ***Pramati Educational & Cultural Trust*** (supra), held that the Amendment did not alter the basic structure of the Constitution and, the provisions of the Right to Education Act of 2009 insofar as, they provide compulsory 25% reservation in admission and, made applicable to minority schools, aided or unaided, violates the fundamental right of the minorities under Article 30(1) of the Constitution. The established position of law, first laid down in ***Re Kerala Education Bill*** (supra) and affirmed in ***T.M.A. Pai Foundation*** (supra), remains that, any condition which effectively result in surrender of fundamental right of minorities to administer their educational institution, would be ultra vires Article 30(1) of the Constitution.

37. At this juncture, we must refer to the decision of the Supreme Court in ***Modern Dental College & Research Centre v. State of M.P.***, reported in **(2016) 7 SCC 353**. In ***Modern Dental College & Research Centre*** (supra), the law was again clarified to the effect that, with respect to certain facets of the bundle of rights guaranteed by Article 30(1) of the Constitution, no restriction, not even reasonable restrictions, can be imposed. It was noted that one such facet or right guaranteed



under Article 30(1) is the fundamental right of minority against any action of the state, 'dictating the formation and composition of a governing body', such action would be violative of Article 30(1) of the minority. The Constitution Bench of Supreme Court, in **Modern Dental College & Research Centre** (supra), had the occasion to consider the issue as to whether, the fundamental right of unaided private medical and dental colleges, under Article 19(1)(g) of the Constitution, is violated by the provisions of the statute enacted by the legislature of Madhya Pradesh, and the rules framed therein, which, primarily, provided for regulation of admission of students in postgraduate courses in private professional educational institutions, provisions for reservation of seats, and the provisions providing for fixation of fee. The Supreme Court, relying on the authority of the majority decision in **T.M.A. Pai Foundation** (supra), and, in **P.A. Inamdar** (supra) held as follows:-

"55. It would be necessary to clarify the position in respect of educational institutions run by minorities. Having regard to the pronouncement in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481] , with lucid clarifications to the said judgment given by this Court in P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537] , it becomes clear that insofar as such regulatory measures are concerned, the same can be adopted by the State in respect of minority-run institutions as well. Reliance placed

by the appellants in St. Stephen's College v. University of Delhi [St. Stephen's College v. University of Delhi, (1992) 1 SCC 558] may not be of much help as that case did not concern with professional educational institutions."



38. Therefore, so far as issue of reservation in admissions in educational institutions was concerned, the court drew a distinction between cases dealing with 'professional educational institutions' on one hand and other educational institutions on the other hand. However, it was clarified that, this position of law is with regard to the right of a minority to 'admit students' and to 'set-up a fee structure', and this right was held to be included under Article 30(1) of the Constitution. This facet of the fundamental right under Article 30(1), i.e. 'the right to admit students and to set up a reasonable fee structure', it was held, 'could be regulated to ensure maintenance of proper academic standards, atmosphere and infrastructure.' At the same time, the Supreme Court clarified that, it is not that all the rights forming part of the fundamental right under Article 30(1) can be regulated. It is held that, with respect to, many rights, included in, and comprising, fundamental right under Article 30(1), restrictions could not be imposed and observed as follows:-

"45. ...In this behalf, we would like to recapitulate that in [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481], a Bench of eleven Judges dealt with the issues of scope



of right to set up educational institutions by private aided or unaided, minority or non-minority institutions and the extent of government regulation of the said right. It was held that the right to establish and administer an institution included the right to admit students and to set up a reasonable fee structure. But the said right could be regulated to ensure maintenance of proper academic standards, atmosphere and infrastructure. Fixing of rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions. However, occupation of education was not business but profession involving charitable activity. The State can forbid charging of capitation fee and profiteering. The object of setting up educational institution is not to make profit. There could, however, be a reasonable revenue surplus for development of education. For admission, merit must play an important role. The State or the University could require private unaided institution to provide for merit-based selection while giving sufficient discretion in admitting students.

39. We must aptly refer to Para 50 of the decision, in ***T.M.A. Pai Foundation*** (supra), before we conclude as to the position of law, to be applicable in the case in hand. The right to

establish and administer a minority educational institution is understood, as follows:-



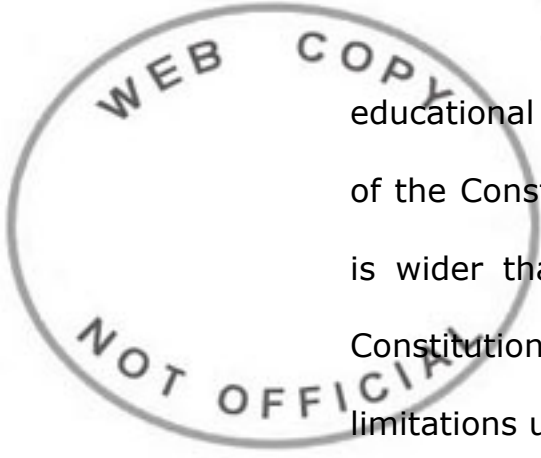
"50. The right to establish and administer broadly comprises the following rights:

- (a) to admit students;
- (b) to set up a reasonable fee structure;
- (c) to constitute a governing body;
- (d) to appoint staff (teaching and non-teaching); and
- (e) to take action if there is dereliction of duty on the part of any employees."

40. We may now summaries the position of law, so far as right of a minority educational institution, to administer and manage such educational institution, in light of fundamental right of a minority educational institution under Article 30(1) of the Constitution, is concerned. The issue, precisely, is whether, the facet of the fundamental right under Article 30(1) of the Constitution, to the extent that such right or facet concerns is the right to constitute and select members of the 'governing body', to the control over the day-to-day management of the educational institution in question, is absolute and unrestricted?. It is settled and undisputed position of law that right to manage, run and control a minority educational institution is a fundamental right of minority under Article 30(1) of the Constitution. It is also undisputed that the right to constitute a governing body for such

institution is also a fundamental right under Article 30(1) of the Constitution.

41. A minority has fundamental right to establish an educational institution, both under Article 26(a) and Article 30(1) of the Constitution, but the fundamental right under Article 30(1) is wider than the fundamental right under Article 26(a) of the Constitution. However, even though there may not be any express limitations upon the rights guaranteed under Article 30(1), as held by the Constitution Bench, in **Ahmadabad St. Xavier's** (supra) and **T.M.A. Pai Foundation** (supra), the fundamental right under Article 30(1) is not absolute and, is essentially subject to reasonable regulations to ensure, for instance, maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in-charge of management. Upon the best consideration, which we have been able to give to the contents of Article 30(1) of the Constitution, we are of the opinion, upon the authority of, **T.M.A. Pai Foundation** (supra), and **Very Rev Mother Provincial** (supra), that even though the fundamental right under Article 30(1) of the Constitution, in entirety is not absolute, certain facets and components of the fundamental right under Article 30 of the Constitution, are irreducible and ossified; right to constitute a governing body and select members of their choice for such body, is one such right of minorities under Article 30(1) of the Constitution. At the same time, it is the duty of the state to

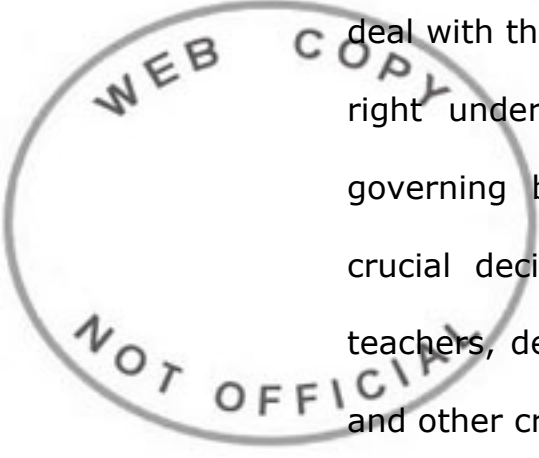


check mal-administration in such educational institutions and regulate the functioning of the governing bodies in accordance with law, but not composition and choice of the members of such governing body.

42. We must construe provisions of Part III of the Constitution to give them the widest latitude to protect the rights so inherent and elementary that the founding fathers deemed it necessary to recognize them as fundamental right under the Constitution. We deem it necessary to refer to the law laid down by Supreme Court, in **T.M.A. Pai Foundation case** (supra), so as to adopt liberal interpretation for the provisions contained in fundamental right under Part-III of the Constitution, the relevant passage, in para 143 of the judgment, is extracted hereunder: -

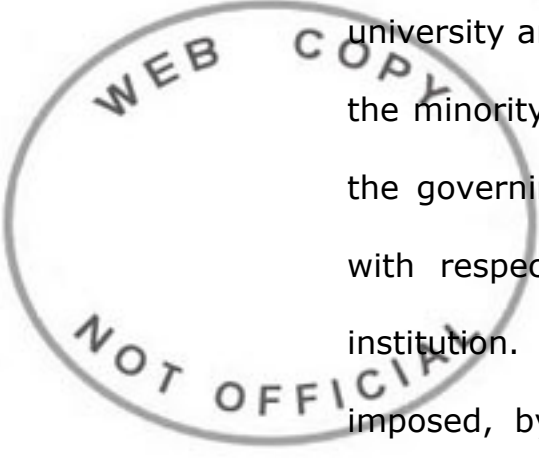
"When constitutional provisions are interpreted, it has to be borne in mind that the interpretation should be such as to further the object of their incorporation. They cannot be read in isolation and have to be read harmoniously to provide meaning and purpose. They cannot be interpreted in a manner that renders another provision redundant. If necessary, a purposive and harmonious interpretation should be given."

43. From various pronouncements and the law laid down therein, we are disposed to carry the implication that a bunch of rights flow from the fundamental right of a minority under Article 30(1) of the Constitution. In our opinion, the



fundamental right under Article 30(1) of the Constitution, as observed above, comprises various facets and, therefore, we must deal with the present case with regard to the facet of fundamental right under Article 30(1) of the Constitution to constitute a governing body or a managing council responsible for taking crucial decisions for the institutions, such as, appointment of teachers, decisions with regard to syllabus, course of instructions and other crucial decisions for the institution.

44. The contents and the constituent rights of the fundamental right under Article 30(1) of the Constitution, protect the interest of minority community from interference by the state, by imposing various forms of limitations on the exercise of power by the State. The expression 'establish and administer educational institutions', and the word 'choice' brings and encompasses various rights which become part of the fundamental right of the minorities to establish and administer educational institutions. The issues which arises, with respect to interpretation of Article 30(1) of the Constitution, is whether the choice is only with respect to the establishment of a minority educational institution, or the choice, within the meaning of Clause (1) of Article 30 of the Constitution, includes the choice with respect to administration and, therefore, the minority continues to exercise the choice (the fundamental right to choose) with respect to the management and the administration of the educational institution of the minority.



45. So far as the case of the petitioner is concerned, we are of the opinion that if the impugned statutes of the university are enforced upon the minority college, the members of the minority community would be deprived of their right to chose the governing body, which is conferred with the deciding power with respect to management and the affairs of the minority institution. It is pertinent to note here that, such condition is imposed, by the University, on the minority institution for the purpose of obtaining affiliation from the University. The impugned statute are in nature of a delegated legislation. It is a fundamental principle that what cannot be done directly cannot be done indirectly and this principle has been adopted by the Constitution Bench in **Ahmadabad St. Xavier's** case (supra), and affirmed by the decision of the Supreme Court, in **T.M.A. Pai Foundation** case (supra), to the effect that while imposing conditions for granting affiliation to a minority educational institution, no condition can be imposed upon a minority educational institution, which would indirectly result in abrogating the fundamental right of the minority under Article 30(1) of the Constitution.

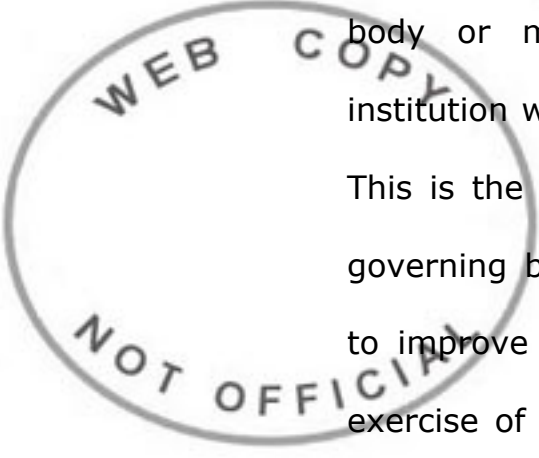
46. The reason and the point at which the fundamental right under Article 30, in **Very Rev. Mother Provincial** (supra), was interpreted and the issue which arose therein , is the issue in the present case. In **Ahmadabad St. Xavier's College Society** (supra), the Constitution Bench considered previous decisions of the Supreme Court in, **Re Kerala**

Education Bill (supra), **Right. Rev. Bishop S.K. Patro** (supra), **Very Rev. Mother Provincial** (supra), **D.A.V College vs. State of Punjab** (AIR 1971 SC 1737) and observed as follows:-



"28. These rulings of this Court indicate how and when there is taking away or abridgment of the right of administration of minority institutions in regard to choice of the governing body, appointment of teachers and in the right to administer."

47. In light of the judgment of the Supreme Court, in **Ahmadabad St. Xavier's** case (supra) and **T.M.A. Pai Foundation** case (supra), and more specifically in **Very Rev. Mother Provincial** (supra), we have no doubt that right to constitute a governing body for the minority educational institution is a fundamental right under Article 30(1) of the Constitution. This is the ratio of the decision of the Supreme Court in **Very Rev. Mother Provincial** (supra). The issue which arises at this juncture is whether this facet of the fundamental right under Article 30(1) of the Constitution, can be regulated or controlled in a manner provided under the impugned provisions of statutes of the University? We are of the view that the right to constitute a governing body and to choose members of such body, for the petitioner minority institution so as to protect the control over the affairs of such institution is absolute and no limitations can be placed upon this limited right to choose the members of the governing body for the administration of minority institution.



We further hold that the 'choice' with a minority, under Article 30(1) of the Constitution, includes the right to choose a governing body or managing council responsible to 'administer' such institution within the meaning of Article 30(1) of the Constitution. This is the right to choose the composition and structure of the governing body under Article 30(1), and reasonable regulations, to improve the standard of education and to prevent mala fide exercise of rights under Article 30(1) of the Constitution, can be imposed upon the decisions of, and, functioning of such governing body, but no interference can be permitted in the composition of the governing body. This is so because a minority educational institution loses its constitutional character as a 'minority educational institution', if the deciding power and control over the affairs of such institution is not with the minority concerned, or with the people of the 'choice' of the minority concerned. [See: Ruma Pal J, 2003 judgment].

48. We, however, clarify that this does not mean that all the facets of the fundamental right under Article 30(1) of the Constitution are absolute or no reasonable limitations can be imposed on other facets of Article 30(1) of the Constitution.

49. On a careful consideration of sub-clauses (i)(ii)(iii) and clause 3.1 of the statute which provides that members of governing body would constitute the principal of the college-ex officio, one teacher representative elected from and by the teachers of the college and one representative of the non-

teaching employees elected from and by the non-teaching employees of the college respectively, these three sub-clauses are not directory, but mandatory, and therefore, the members of the minority community, which established the institution, are deprived of their right to choose the members of the governing body, under Article 30(1) of the Constitution.

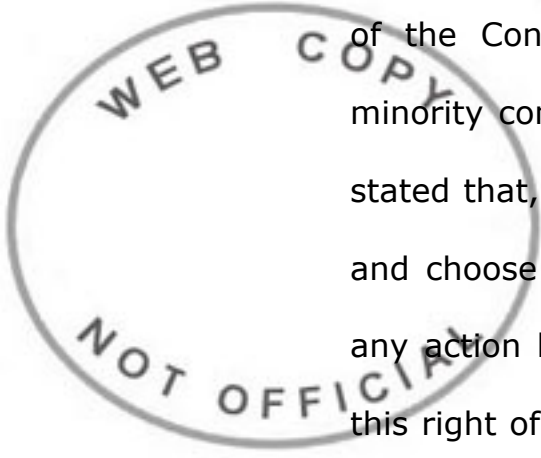
50. Similarly, sub-clause (vi) of Clause 3.1 of the statutes which allows the trusts / society to nominate five persons as members of the governing body. One of whom is to be a woman and one of whom should be a scheduled caste, is violative of Article 30(1), to the extent that, the presence of a schedule-caste, who may or may not be a member of the minority concerned, and this clause also deprives, the minority concerned, of their fundamental right of choice under Article 30(1).

51. Further-more, sub-clause (vii) of Clause 3.1 of the statute provides the power to other members of the governing body to co-opt one person from amongst the educationist or person noted for his academic interest normally resident in the district, in which the college is situated, as empowers the members the Governing body, to bring in an academician of their choice into the governing body, is also violative of Article 30(1) of the Constitution. Sub-clause (iv)(v) of Clause 3.1 of the Statute which provides for one representative of the University to be nominated by the Vice Chancellor and one officer of the government not below the rank of Sub-divisional Magistrate, to be

nominated by the executive council of the University to be the members of the governing body by which outsiders are brought into the management of the college, in the light of the law discussed above, clearly offend Article 30(1) of the Constitution.

52. Clause 3.2 of the statute is concerned, it provides for constitution of ad hoc governing body by the Vice Chancellor in consultation with the executive council to administer the college in the event the governing body is not set up as per the statutes. It appears to be, in our considered opinion, that the same is violative of fundamental right of a minority educational institution under Article 30(1) of the Constitution, as such a right vests with the minority institution as a necessary corollary to the fundamental right under Article 30(1) of the Constitution. However, the following clause 3.3 of the Statute, which grants an unbridled power to executive committee of the University, to decide the issue regarding filling up of any seat in the governing body on its own or on a reference made to it, and making its decision subject to the decision of the chancellor to be final and binding is per se irrational as the language used therein "if for any reason whatsoever" shows that it is an absolute and unbridled power vested with the University and, thus, is patently violative of Article 30(1) of the Constitution. However, Clause 4.1 of the Statute giving the power to the executive council to terminate the terms of any member of the governing body on the recommendation of the Vice Chancellor, only if in the continuance

of such person is not in the interest of the college is arbitrary and violates the fundamental right of the petitioner under Article 30(1) of the Constitution, because it interferes with the right of a minority community to administer its educational institution. It is stated that, as observed above, the right of minority to constitute and choose members of governing body cannot be controlled by any action by the State. We have clarified that the regulation of this right of a minority, under Article 30(1) of the Constitution, as held, in **T.M.A. Pai Foundation** (supra), can be limited only in two situations, firstly, to promote and regulate educational standards and allied infrastructure of the minority institution and, secondly, in the national interest. So far as the impugned Clause 4.1 of the Statute is concerned, to the extent this Clause empowers the Vice Chancellor to remove a member of the governing body of a minority educational institution on the grounds other than so held, in **T.M.A. Pai Foundation** (supra), is violative of Article 30(1) of the Constitution. This Court however, has not raised any objection with respect of clause 6 and VII of the statutes but with regard to clause 7.1 sub-clause 2 of the statutes, we feel that because the said clause provides for appointments of teachers and principal on the recommendation of the selection committee constituted as per the guidelines framed by the executive committee, such a clause clearly seeks to clip the wings of the minority educational institutions to make such appointments and abridge their rights in this regard and would be



clearly violative of their rights as envisaged under Article 30(1) of the Constitution.

53. Having considered the entire issue at hand and keeping in mind the law, in this regard, and after careful perusal of the provisions of the Statues of the University, this Court, thus, has no option but to hold that sub-Clauses (iv) and (v) of Clause 3.1 and Clause 3.3 as well as Clause 7.1 sub-Clause (ii) of the statue of the AKU University Act, 2008 being violative of Articles 30(1) of the constitution and are thus, held *ultra vires* and thus, are null and void as being opposed to Article 13(2) as well as Article 30 of the Constitution of India.

54. In the result, the writ application is allowed as indicated above. However, there shall be no order as to costs.

(I. A. Ansari, CJ)

Anjana Mishra, J: I agree.

(Anjana Mishra, J)

J .Alam/-

AFR/NAFR	AFR
CAV DATE	21.07.2016
Uploading Date	28.10.2016
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