Supreme Court of India

Hon'ble Justice K.K.Mathew, Justice V R Krishna Iyer & A.C. Gupta

Gandhi Faizeam College ... vs University of Agra And Another

Citations: AIR 1975 SC 1821: 1975 SCC (2) 283

JUDGMENT:

The Judgment of the Court was delivered by Krishna lyer, J. K. K., Mathew, J. gave a dissenting opinion. MATHEW, J. The question is whether Statute 14A framed by the University of Agra abridges the fundamental right guaranteed under Article 30(1) of the Constitution of the Muslim community of Saharanpur, a religious minority, to administer the Gandhi Faizeam College,. Saharanpur, established by it. In August, 1964, an application was made on behalf of the college management to the University for permission to start teaching in courses of study including Sociology, Sanskrit, Arabic, Military Studies, Drawing and Painting. The University insisted that as condition for recognition of these additional subjects as courses of study, the managing committee of the college must be reconstituted in conformity with Statute 14A by including the Principal and the senior-most member of the staff in it. Statute 14A provides :

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

In the writ petition filed before the High Court, the appellant contended that Statute 14A abridged its fundamental right under Article 30(1). But the High Court negatived the contention holding that even if Statute 14A is implemented by the religious minority, the right of the minority to administer the educational institution would not be taken away or destroyed and dismissed the writ petition. I should have thought that the matter was concluded by the decision of this Court in Ahmedabad St. Xavier's College Society v. State of Gujarat(1). Section 33A(1) (a) of the Gujarat University Act, 1949, which fell for consideration in that case, among other matters, read "33A(1) Every college (other than a Government college or a college maintained by the Government) affiliated before the commencement

of the Gujarat University (Amendment) Act,. 1972 (hereinafter in this section referred to as 'such commencement')-

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

This provision was challenged in that case as violating the fundamental right under Article 30(1) of the minority community in question there. This Court held by a majority that the provision was bad as it offended the fundamental right of the religious minority under Article 30(1) to administer its educational institution. The reason was that the provision required the inclusion, in the governing body of the college, of persons whom the religious minority did not want to include. When Article 30(1) speaks that a religious or linguistic minority has the right to administer educational institutions of its choice, it means that the fight to carry on the administration of the institution must be left to the managing body consisting of persons in whom the religious or linguistic minority has faith and confidence.

(1) [S.C.C. 717] The learned Chief Justice, speaking for himself and Palekar, J., after referring to the provisions of s. 33A(1) (a) said in that case that the right to administer is the right to conduct and manage the affairs of the institution and that this right is exercised "through a body of persons in whom the founders of the institution have faith and confidence, and who have full autonomy in that sphere". He further said that the right to administer is subject to permissible regulatory measures and that permissible regulatory measures are those which do not restrict the right of administration but facilitate it and ensure better and more effective exercise of the right for the benefit of the institution and through the instrumentality of the management of the institution and without displacing the management. He was of the view that if the administration has to be improved, it should be done through the agency or the instrumentality of the existing management and not by displacing it. The learned Chief Justice further observed that autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions, that the right of administration means day to day administration and that the choice in the personnel of management is a part of the administration. He concluded by saying :

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

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

Khanna, J. in his concurring judgment said that the argument that a law or regulation could not be deemed unreasonable unless it was totally destructive of the right of the minority to administer educational institutions was fallacious and was negatived by this Court by its previous decisions and that a law which ".....interferes with the minorities choice of a governing body or management council would be violative of the right guaranteed by Article 30(1). This view has been consistently taken by this Court in the cases of Rt. Rev. S. K. Patro, Mother Provincial and D. A. V. College (affiliated to the Guru Nanak University) (supra). " Section 33-A which provides for a new governing body for the management of the college and also for selection committees as well as the constitution thereof would conse- quently have to be quashed so far as the minority educational institutions are concerned because of the contravention of Article 30(1)."

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

In State of Kerala v. Mother Provincial(1) this Court said that "Administration means management of the affairs of the institution, that the management must be free of control so that the founders or their nominees can mould the institution according to their way of thinking and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served and that no part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right."Sections 48 and 49 of the Kerala University Act, 1969 which came up for consideration in that case respectively dealt with the governing body for private colleges not under corporate management and the managing council for private colleges under corporate management. Under the provisions of these sections, the educational agency or the corporate

management was to establish a governing body or a managing council respectively. The sections provided for the composition of the two bodies It was held that the sections had the effect of abridging the right to administer the educational institution of the religious minority in question there. One of the grounds given in the judgment for upholding the decision of the High Court striking down the sections is that these bodies had a legal personality distinct from governing bodies set up by the educational. agency or the corporate management and that they were not answerable to the founders in the matter of administration of the educational institution. The Court- said that a law which (1) [1971 1S.C.R. 734.

interferes with the composition of the governing body or the managing council as constituted by the religious or linguistic minority is an abridgment of the right of the religious minorities to administer the educational institution established by it [see also W. Proost v. Bihar(1) and Rev. Bishop S. K. Patro v. Bihar (2)]. The determination of the, composition of the body to administer the educational institution established by a religious minority must be left to the minority as that is the core of the right to administer. Regulations to prevent maladministration by that body are permissible. As the right to determine the composition of the body which will administer the educational institution is the very essence of the right to administer guaranteed to the religious or linguistic minority under Article 30(1), any interference in that area by an outside authority cannot be anything but an abridgment of that right. The religious or linguistic minority must be given the freedom to constitute the agency through which it proposes to administer the educational institution established by it as that is what Article 30(1) guarantees. The right to shape its creation is one thing : the right to regulate the manner in which it would function after it has come into being is another. Regulations are permissible to prevent maladministration but they can only relate to the manner of administration after the body which is to administer has come into being.

The provisions of Statute 14A are in pari materia with those of s.33A(1)(a) of the Act which fell for consideration in Ahmedabad St. Xavier's College case (supra) except that only the principal and the senior-most member of the staff alone are required to be included in the managing committee of the college in question here. But, in principle, that makes no difference. The principle, as I said, is that the minority community has the exclusive right to vest the administration of the college in a body of its own choice, and any compulsion from an outside authority to include any other person in that body is an abridgment of its fundamental right to administer the educational institution. It is, no doubt, true that it is upon the principal and the teachers that the whole temper and the tone of a college depend. But that does not mean that the principal and the teachers should be members of the governing council of a college. It was only in the context of the right of the religious or linguistic minority to appoint the principal and teachers of the college established by it that we said in Amendabad St. Xavier's College case (supra) "It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers

appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important (1) [1969] 2 S.C.R. 73 at 77-78.

(2) [1969] 1 S.C.C. 863.

facet of the right to administer an educational institution. We cart perceive no reason why a representative of the University nominated by the Vice Chancellor should be on the Selection Committee for recruiting the Principal or for the insistence of head of the department besides the representative of the University being on the Selection Committee for recruiting the members of the teaching staff. So_long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them."

While affirming the correctness of the observation in the context in which it was made, I think it necessary to repudiate its relevance and application here. I would, therefore, allow the appeal without any order as to costs.

KRISHNA IYER, J.--Our essay in this appeal is to interpret and apply Art. 30 of the Constitution, illumined by the ratio of the recent leading case on the constitutional rights of minorities vis-a-vis educational institutions where a Bench of 11 Judges handed down six opinions on the thorny issue. As we proceed to Judgment, we are reminded of two famous American observations. Chief Justice Marshall, while deciding the celebrated McColloch v. Maryland Case(1) made the pregnant remark : 'We must never forget that it is the constitution we are expounding'. Governor Hughes, soon to ascend the U.S. Supreme Court, said : 'We are under a Constitution, but the Constitution is what the Judges say it is.' Reverentially guided and bound by great precedents but mindful of the luminous texts and goals of the Constitution itself, we have to attempt the task.

The facts of the present case are virtually admitted, the precedent that binds us is of fresh vintage but the legal test when applied to this concrete case-situation is fine, if not baffling. of course, the only area for judicial exploration is decoct the rule from the ruling and fit it to the admitted facts.

The appellant is a registered society formed by the members of the Muslim community at Shahjehanpur. Indubitably, the community ranks as 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. The earlier history of the institution need not detain us and a rapid glance at its evolution is enough. The A. V. Middle School was the off- spring of the effort of the Muslim minority resident in Shahjehanpur District. It later became a High School and afterwards attained the status of an Intermediate College. Eventually it blossomed into a degree college affiliated to (1) 4 Wheaton 316, 407.

the University of Agra. In 1948, on the assassination of the Father of the Nation, this college was commemoratively renamed as Gandhi Faiz-e-am College. In August 1964, an application was made on behalf of the college management to the University for permission to start teaching in courses of study including Sociology, Sanskrit, Arabic, military studies, drawing and painting. The University entertained the thought that a new organisational discipline must be brought into the institution and insisted, as a condition of recognition of these, additional subjects as course of study, on certain mutations in the administrative body of the college. The bone of contention before us, as was before the High Court, is that this prescription by the University\,, in tune with Statute 14-A framed by it, is an invasion of the fundamental right guaranteed to the minority community under Art. 30 of the Constitution of India. The High Court has negatived the plea of the management and the appeal issues from that decision.

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

The minority college is administered by a three-tier body organised intramurally by the Society. No outsider has entered the precincts of management which has all along remained with the members only. The General Council with plenary powers, the Governing body more circumscribed yet effective as policy-maker and the Managing Committee, the day-to-day administrative sub-agency-these are the organs vested with controlling power, under the relevant rules of the Society. The essential point is that the Society is that the Society is autonomous and its organs administer the institution, The University directive, backed by Statute 14-A, it is contended, forces two persons on the area of administration. This is argued to be a serious erosion of the great right guaranteed to cultural and religious minorities. Statute 14-A, may at the outset, be reproduced "14-A. Each college, already affiliated or when affiliated, which is not maintained exclusively by Government must be tinder the Management of a regular constituted Governing body (which term includes Managing Committee) on which the staff of the college shall be represented by the Principal of the college and at least one representative of the teachers of the college to be appointed by rotation in order of seniority determined by length of service in the college, who shall hold office for one academic year."

Emboldened by this provision, the Registrar of the Agra University has made the impugned demand which runs thus Agra University From Sri R. N. Pathak, Asst. Registrar (Affiliation), Agra University, Agra.

To The Principal, G. F. College, Shahjahanpur.

No. Aff/7965 Dated Agra, 24 Apr. 1965 Sir, With reference to your application dated December 1, 1964 recognition in certain subjects upto the B. A. standard, I am to inform you that the Executive Council at its meeting held on April 10, 1965 after considering the report of the Inspectors on the inspection of your college and the recommendations of, the relevant committee thereon decided that

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

Yours faithfully, Sd/- R. N. Pathak Asst. Registrar (Affl)" Maybe, we may as well mention the stand taken by the Manage- ment of the College in the correspondence with the Registrar. In one reply it was represented "From The President,-

Managing Committee, G.F. College, Shabjahanpur.

To The Deputy Registrar (AM), Agra University.

No. 660 Dated,

Shahjahanpur,

Nov. 22,

1965 Sir.

With reference to your letter no. Affl /1336, dated August 31, 1965 and subsequent reminder dated October 20, 1965, 1 have the honour to say that we are very grateful to the University for its acceptance of the minority status of our college.

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

The learned Vice-Chancellor is, therefore, requested to grant us affiliation in all the new subjects in respect of which our applications are pending at a very early date, to en-able us to make the necessary preparations, which are likely to take sufficient time, to start the classes in those subjects from the beginning of the next session. We undertake to amend our constitution suitably to give the proposal a practical shape within three months after the receipt of your kind reply.

An early disposal of this letter is solicited. Yours faithfully, Sd/-. .

President, Managing Committee, G. F. College, Shahjahanpur."

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

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

A stream of Supreme Court rulings commencing with the Kerala Education Bill Case (1) and climaxed by St. Xavier's College Case(2) has settled the law for the present, and the last refers to the procedential past. We will confine ourselves largely to the currently final pronouncement; but where did the Court draw the delicate line between unconstitutional conditions and constitutional-regulations ? A certain thread of unanimity exists among the many opinions and that common ground-not individual deviations and different must be the basis of our judgment. Right at the beginning we must observe.

(1) [1959] S.C.R. 995.

(2) A.I.R. [1974] S.C. 1389.

8 20 that the whole edifice of case law on Art. 30 has been bed- rocked on the Kerala Education Bill Case (supra), 'The greatest common measure of agreement among the various opinions in St. Xavier's College case (supra) will have to be ascertained. Ray, C.J., following Das C.J. (in the first Kerala Case), has taken middle view, if one may say so with great respect. 'Hands-off Administration altogether' is a tall call to day; but 'hand-cuff managements into uniformity is also not the correct rule. A benignantly regulated liberty which neither abridges nor exaggerates autonomy but promotes better performance is the right construction of the constitutional provision. Such an approach enables the fundamental right meaningfully to fulfill its tryst with the minorities' destiny in a pluralist polity. That is the authentic voice of Indian democracy. To regulate, be it noted, is not to restrict. but to facilitate effective exercise of the very right. The constitutional estate of the minorities should not be, encroached upon, neither allowed to be neglected nor maladministered. This quintessence of the decision may now be aptly home out by pertinent excerpts from the various judgments.

> "The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary clectricism in the administration of the institution" (at P. 1398) "Regulations which will serve the interests of the students, regulations which will serve the interest 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." (at p. 1398) "Autonomy in administration means right to administer

effectively and to manage and conduct the affairs of the institutions..... The University will always have a right to see that there is no maladministration. If there is mat-administration, the university will take steps to ewe the same. There may be control. and check on administration in order to find on,, whether the minority inst itutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students." (at p. 1399).

The 'inner voice' of the whole pronouncement should not be muffled while reading the particular result in the case and that it happily expressed thus "The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and contest of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration. Das, C.J., in the Kerala Education Bill Case (supra) summed up in one sentence the true meaning of the right to administer by saying that the right to administer is not the right to maladminister." (at p. 1396) Mr. Justice Jaganmohan Reddy summed up the law at the threshold "The right of a linguistic or religious minority to administer education-at institutions of their choice, though couched in absolute, terms had been held by this Court to be subject to regulatory measures which the State might impose for furthering the excellence of the standards of education." (at p. 1401) Mr. Justice Khanna stressed what is sometimes ill-remembered "The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give the minorities a sense of security and a feeling of confidence." (at p. 1415).' The learned Judge-, after visualising the abundant catholicity of the guarantee in favour of minorities in our multi-cultural country, insisted that regulations for the welfare of the institution were not constitutional anathema:

"It is, in my opinion, permissible to make regulations for ensuring the regular payment of salaries before a particular date of the month. Regulations may well provide that the funds of the institution should be spent for the purposes of education or for the betterment of the institution and not for extraneous purposes." (at p. 1422) And, after itemising, illustratively other permissible constraints, observed :

"A regulation which is designed to prevent maladministration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice." (at p. 1422) "As observed by this Court in the case of Rev. Sidhrajbhai Sabhai (1963 3 SCR 837), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution effective as an educational institution. Such regulation must satisfy

> a dual test-the test of reasonableness, and the test that it is regulative of the 8 22 educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it." (at p. 1422) In the context of affiliation of colleges, the learned Judge concreteness the law thus : "The said authority can always prescribe regulations and insist that they should be complied with before it would grant affiliation or recognition to an educational institution. To deny the power of making regulations to the authority concerned would result in robbing the concept of affiliation or recognition of its real essence." (at p.
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> 1423) "It would be wrong to assume that an unrestricted right as in Article 30 postulates absence of regulations. Regulations can be prescribed in spite of the unrestricted nature of the right." (at p. 1423) In short, the view which appealed to Khanna J., shows that the law, to be constitutional, should not impair the minorities' right but may, be promotional in the sense of making the purpose of the institution more productive.

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

> "All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighbourhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached." (at p. 1441) With specific reference to 'affiliation' these guidelines fell from the learned Judge : "Recognition or affiliation creates an interest in the university to ensure that the educational institution is maintained for the purpose intended and any regulation which will subserve or advance that purpose will be reasonable and no educational institution established and administered by a religious or linguistic minority can claim recognition or affiliation without submitting to those regulations. That is the price of recognition or affiliation.. . . In other words, recog-

nition or affiliation is a facility which the university grants to an educational institution." (at p. 1442) Justices Beg and Dwivedi have stretched the regulatory power further than the majority, holding that it is an illusion for a minority 8 23 to claim absolute immunity. The thrust of the case is that real regulations are desirable, necessary and constitutional but, when they operate on the 'administration' part of the right, must be confined to chiselling into shape, not cutting down out of shape, the individual personality of the minority.

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

A dichotomy is sometimes drawn in this branch of juridical discussion. More plainly,. the difference drawn is between creating a Managing body by the minority community and regulation of the manner of its functioning to obviate maladministration. The former is ordinarily beyond the pale of legislative prescription while the latter is permissible as a preservative. Broadly, this is sound, but as a rigid logical formula it breaks down. For, some regulations may impinge marginally upon the composition of the administrative organ though manifestly meant to save the institution from mismanagement. Just one or two examples. If the law says that a person that a person sentenced for a prescribed period of imprisonment for breach of trust or an undischarged insolvent would be disqualified to be the treasurer or one who has been removed from public office for moral delinquency or has been punished for outraging the religious feelings of the very minority under s.295-A, I.P.C. should not hold office on the govern my body, such a regulation affects the structure of the governing body but is indubitably a protection against likely maladministration. Likewise, supposing the management has to award scholarships to students of merit, decide on courses of study to be undertaken, regulate teacher-students committee and discipline, who but the Principal chosen by the minority itself will be better on the Committee to guide it in these vital affairs. These fine but real lines cannot be obfuscated by excessive emphasis on the character of the organ as against its method of working. Men matter in extreme situations.

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

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

> "It would be wrong to assume that an unrestricted right as in Article 30 postulates absence of regulations. Regulations can be prescribed in spirt of the unrestricted nature of the right." (at p. 1423) All the other learned Judges who are party to St. Xavier (supra) and all the earlier rulings have negatived the untouchable absoluteness urged by the managements. Equally fallacious is the simplistic submission which appears to have appealed to the High Court that Art. 30 is disturbed only when the right is destroyed, not when it is damaged.

St. Xavier (supra) has dispelled doubts in this behalf : Abridgement of the constitutional right is as obnoxious as annihilation. To cripple is to kill.

Steering clear of these unconstitutional shoals let us again feel our way through the controversy. First, the principal. In the eloquent words of one of the learned Judges (Mathew, J.) in St. Xavier's case (supra) :

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

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

"15. The Managing Committee shall-

(a) *Dispose of applications for scholarships and concession etc., received by the Secretary or anyother person.*

(b) *Check and pass account kept by the treasurer, Secretary or Principal.*

(c) *Have powers to appoint, suspend, remove or otherwise punish or dismiss any servant of theschool or college or give them promotion or make reductions in their salaries and grant them leave in accordance with the Agra University rules as the case may be.*

Provided that in case of dismissal or removal or fine exceeding one month's pay or suspension for a period exceed- ing one month, an appeal shall lie to the Governing Body whose decision shall be final. The period for filing the appeal shall be 15 days from the receipt of the order against which the appeal is to be preferred.

(d)See that the property of the institution, whether movable or immovable, is properly managed and kept.

(e) *Generally supervise the work of all the Office bearers.*

(f) *To pass the annual budget, annual report and dispose of the audit note.*

(g) *To sanction expenditure upto Rs. 25,000/- in the course of one year, irrespective of the budgetprovisions.*

(h) *To acquire by purchase, mortgage or otherwise immovable or movable property for theinstitution and to sell or otherwise dispose of movable property." An activist principal is an asset in discharging these duties which, are inextricably interlaced with academic functions. The principal is an invaluable insider-the Management's own choice-not an outsider answerable to the Vice-Chancellor. He brings into the work of the Managing Committee that intimate acquaintance with educational operations and that necessary expression of student-teacher aspirations and complaints which are so essential for the minority institution to achieve a happy marriage between individuality and excellence. And the role of the senior-most teacher, less striking maybe and more unobtrusive, is a useful input into managerial skills, representing as he does the teachers and being only a seasoned minion chosen by the management itself. After all, two creatures of the Society on a 16member Managing Committee can bring light, not tilt scales. Moreover, the Managing Committee itself is subject to the hierarchical control of the Governing Body, and the General Council. We see no force in the objection to the two innocuous insiders being seated on the Managing Committee.*

The various decisions of this Court where legislative fetters have been struck down are cases in contrast. There, the rules maim; here they improve. There the input upsets the balance; here the addition is minimal and strengthens from within. There, are external mandates to approve; here an internal principal is proposed to be dovetailed to make administration more proficient without injury to independent action. In the Kerala University Act Case(1) the vice of ss. 48 and summarised by Ray C.J., in St. Xavier (supra) was stated thus "Those sections were found by this Court to have effect of displacing the administration of the college and giving it to a distinct corporate body which was in no

way answerable to the institution. The minority community was found to lose the right to administer the institution it founded. The governing body contemplated in those sections was to administer the colleges in accordance with the provisions of the Act, statutes, ordinances, regulations, bye-laws and orders made thereunder. The powers and functions of the governing body, the removal of the members and the procedure to be followed by it were all to be prescribed by the statutes. These provisions amounted to vesting the management and administration of the institution in the hands of bodies with mandates from the University." (at p. 1397) Likewise in Rev. Fr. W. Proost(3) the mischief was summed up in the St. Xavier Case by Ray C.J.., in these words :

> "This Court in Rev. Fr. W. Proost Case(2) held that s.48-A of the Bihar Universities Act which came into force from 1st March 1962, completely took away the autonomy of the governing body of St. Xavier's College established by the Jesuits of Ranchi. Section 48-A of the said Act provided inter alia that appointments, dismissals, removals, termination of service by the governing body of the College were to be made on the recommendation of the University Service Commission and subject to the approval of the University. There were other provisions in that section, viz., that the Commission would recommend to the governing body names of persons in order of preference and in no case could the governing body appoint a person who was not recommended by the University Service Commission." (at p. 1397) Again, the same judgment pinpoints in these brief words, the unconstitutional sting in the Bihar Case viz. Rt. Rev Bishop Patro(3) :
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> "In Rt. Rev. Bishop S. K. Patro v. State of Bihar(3) the State of Bihar requested the Church Missionary Society School, Bhagalpur to constitute a managing committee of the (1) State of Kerala v. Very, Rev,. Mother Provincial; [1971] 1 S.C.R. 734. (2) [19691 2 S.C. R. 73.
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> (3) [19701 1 S.C.R. 172.
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> school in accordance with an order of the State. This Court held that the State authorities could not require the school to constitute a managing committee in accordance with their order." (at p. 1397) The Gujarat Case of St. Xavier (supra) is a study in contrast, as stated earlier. Sections 40 and 41 and s. 38 shackled the management, trenching seriously upon the right to administer. The law, as now expounded, regards this excess as unconstitutional.

In all these cases administrative autonomy is imperilled transgressing purely regulatory limits. In our case autonomy is virtually left intact and refurbishing, not restructuring, is prescribed. The core of the right is not gouged out at all and the regulation is at once reasonable and calculated to promote excellence of the institution--a text book instance of constitutional conditions. To project in bold relief the intrusion into the administration of the provisions in the 2nd Kerala Case (supra), the D.A.V.

College Case(1) and St. Xavier's Case (supra) as against the innocuous prescriptions bearing on management in the present case, we may make a vivid comparison of the clauses. A chart may speak with eloquent clarity (1) 119711 Sup. S.C.R. 688.

---------- Kerala University Act Guru Nanak University Statutes (D.A.V. College)

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(1) (2)

---------- S.48-Governing body for Statue 2(1) (a) private college not under corporate management- A college applying for adm- (1) The educational agency ission to the privileges of of a private college,other the University shall send a than a private college un- letter of application to der a corporate management the Register and shall shall constitute in accor- satisfy the Senate : dance with the provisions of the statutes a governing body consisting of following members namely : (a) That the College shall

(a) the principal of the have a regularly constitu- private college; ted governing body consist- (b the manager of the ing of not more than 20 per Private college; sons approved by the senate

(c) a person nominated by and including among others, the university on accorda- 2 representativesof the nce with the provisions University and the Princi- in that behalf contained ple of the college ex-off- in the states; icio.

(d) a person nominated by the Government;

(e) a Person elected in accordance with such procedure as may be prescribed by the Statutes fromamong themselves by the permanent teachers of the private college; and

(f) not more than six persons nominated by the educational agency.

(2) The governing body shall be a body corporate having perpetual succession and a common seal.

(3) The manager of the private college shall be the Chairman of the governing body.

(4) A member of the governing body shall hold office for a period of four years from the date of itsconstitution. (5) It shall be the duty of the governing body to administer the private college in accordance with the provisions of this Act and the Statutes, Ordinances Regulations rules, Bye-laws and Orders made thereunder,

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Gujarat University Act Statue 14-A (St. Xavier's College case) (impugned in the instant case)

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33-A.(1) Every college (other 14.A,Each college,already than a Government college or affiliated or when affiliat- college maintained by the ed which is not maintained Government) affiliated before exclusively by Government the commencement of the Guja- must be under the Management rat University (Amendment) of a regulat constituted Gov- Act, 1972 (hereinafter in this erning body (which term incl- section referred to as such udes Managing Committee) on commencement')- which the staff of the college shall be represented by the

(a)shall be under the priciple of the college and at management of a governing least one representative of the body which shall include teachers of the college to be amongst its members the Pri- appointed by rotation in order ncipal of the college, a of of seniority determined by lenseniority representative of th of service in the college the University nominated by who shall hold office for one the Vice- Chancellor and three academic year. representatives of the tea-

chers of the College and at least one representative each of the members of the non-teaching staff and the students of the college, to be elected respectively from amongst such teachers members of the non-teaching staff and students; and

(b) that for recruitment of the Principal and members of the teaching staff of a college there is a selection committee of the college which shall it)clude-(1) in the case of recruitment of the Principal, a representative of the University nominated by the Vice- Chancellor, and (2)in the case of recruitment of it member of the teaching staff of the college, a representative of the University nominated by the Vice-Chancellor and the Head of the Department, if any, concerned with the subject to be taught by such member. (2) Every college referred to in subsection (1) shall,--

(a) within a period of six months after such commencement, constitute or reconstitute , its governing body in conformity with subsection(1) , and (b) as and when occasion first arises after such com- mencement for recruitment of the Principal and teachers of the college, constitute or reconstitute its selection committee so as to be in conformity with sub-section (1).

(3)The provisions of subsection (1) shall be deemed to be a condition of affiliation of every college to in sub-section (1).

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(1) (2)

---------- (6) The powers and functions of the governing body, the removal of members thereof and the procedure to be followed by it, including the delegation of its powers, shall be prescribed by the Statutes, (7) Notwithstanding anything contained in sub-section (6), decisions of the governing body shall be taken at meetings on the basis of simple majority of the members present and voting.

S.49 Managing council for private colleges under corporate management(a) one

principal by rotation in such manner as may be prescribed by the Statutes;

(b) the manager of the private college;

(c) a person nominated by the University in accordance with the provisons in that behalf containedin the statute,,

(d) a person nominated by the Government;

(e) two persons elected in accordance with such procedure as may be prescribed by the Statutesfrom among themselves by the permanent teachers of all the private colleges; and

(f) not more than fifteen persons nominated by the educational agency. (2) The managing councilshall be a body corporate having perpetual succession and a common seal.

(3) The manager of the private colleges shall be the chairman of the managing council.

(4) A member of the managing council shall hold office for a period of four years from the date of theConstitution.

(5) it shall be the duty of the managing Council to administer all the private colleges under thecorporate management in accordance with the provisions of this Act and the Statutes, Ordinances, Regulations, Bye-laws and orders made thereunder.

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1 2

---------- (6) The powers and functions of the managing council, the removal of members thereof and the Procedure to be followed by it, including the delegation of its Powers, shall be prescribed by the Statutes.

(7) Notwithstanding anything contained in sub-section (6), decisions of the managing council shall be taken at meetings on the basis of simple majority of the members present and voting, S.63-Power to regulate the management of private colleges :-

(4) If the governing body or managing council, as the case may be, disapproves any decision taken by the University in connection with the management of the private college the matter shall be referred by the governing body or managing council, as the case may be, to the Government, within one month of the date of receipt of the report under subsection (3) who shall there upon pass such order there on as they think fit and communicate the same to the governing body or managing council and also to the University.

(6) The manager appointed under sub-section (1) of section 50 shall be bound to give effect to the decisions of the University and if at any time, it appears to the University that the manager is not carrying out its decisions, it may, for reasons to be recorded in writing and after giving the manager an opportunity of being heard, by order remove him from office and appoint another person to be the manager after consulting the educational agency.

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

First the D.A.V. College. He who runs and reads will discover that Statute 2(1) (a) insists upon (a) a limit to the strength of the governing body; (b) the approval of the Senate of the University for the constitution of the governing body; and (c) the inclusion of two representatives of the University as also the Principal of the college ex- officio. To legislate for the governing body a rigid restriction on its members is to deprive the minority of its free play in organising its management. To compel approval by the Senate-an outside instrumentality-before the governing body can have legal status, is a violent violation of Art. 30. To foist two representatives of the University--rank outsiders-is again an infringement of the autonomy of the minority institution. The Court, in D.A. V. College case (sup) upheld the complaint of the college authorities thus "In our view there is no possible justification for the provisions contained in Clauses 2(1)(a) and 17 or Chap. V of the statutes which decidedly interfere with the rights of management of the Petitioners Colleges. These provisions cannot therefore be made as conditions of affiliation, the non-

compliance of which would involve disaffiliation and consequently they will have to be struck down as offending Article 30(1)." It is impossible to predicate from the above observations that tills Court regarded as obnoxious the inclusion of the Principal of the very college. On the other hand, the more

serious encroachment which caved into the independent management of the College consists in the first three provisions which are deprivation in character. The present case is a graphic contrast. No ceiling on membership; no unbidden guests, nominees of the University fobbed off- on the Managing Committee. The solitary but inconsequential similarity of circumstance that there is reference to the Principal, there and here, cannot approximate the two cases from the constitutional angle at all, what with complete hold on staff appointment in the former and non,- in the latter.

The Kerala Case (supra), as the table above shows, insists oil the appointment of the Principal himself being controlled, displaces the minority's Managing Committee by imposing an admixed governing agency of statutory concoction wresting authority from the minority.A different entity with legislatively limited functions robs the religious group of its right of administration. The distance between the Kerala University Act provisions and those of the Agra University Act is considerable and the constitutional import too obvious to]. argument.

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

> The provisions contained in section 33-A(1)
>
> (a) of the Act state that every college shall be under the management of a governing body which shall include amongst its members, a representative of the University nominated by the Vice-Chancellor and representatives of teachers, non-teaching staff and students of the college "In (1971) 1 SCR 734 (State of Kerala v. Very Rev. Mother Provincial) this Court said that if the administration goes to a body in the selection of whom the founders have no say, the administration would be displaced. This Court also said that situations might be conceived when they might have a preponderating voice. That would also affect the autonomy in administration. The provisions contained in section 33-A(1) (a) of the Act have the effect of displacing the management and entrusting it to a different agency. The autonomy in administration is lost. New elements in the shape of representatives of different types are brought in. The calm waters of an institution will not only be disturbed but also mixed. These provisions in Section 33-A(1) (a) cannot therefore apply to minority institutions."

(at p. 1399) The features of the Agra University Act vis-a-vis the minority institutions are conspicuously different and leave almost unaffected the total integrity of the administration by the religious group, save in the minimal inclusion of two internal entities namely the principal of their own choice and the senior-most lecturer independently appointed by them.

We are satisfied that the regulatory clauses challenged before us improve the administration and do not inhibit its autonomy and are therefore good and valid. We therefore hold that the statute impugned

is not vulnerable nor void. The appeal has to be and is dismissed, but without costs in the circumstances of this case.

ORDER In accordance with the opinion of the majority, the appeal is dismissed without any order as to costs. V.P.S. Appeal dismissed.