RIGHTS OF MINORITIES

THE DECISION of the Supreme Court in *Christian Medical College Hospital Employees' Union* v. *Christian Medical College, Vellore Association*,[1] is noteworthy as regards the rights of minorities, for reasons more than one. As a basis for upholding the validity of sections 9*A*, 10, 11, 12 and 13*C*, of the Industrial Disputes Act 1947, as applied to educational institutions established and administered by minorities, the judgment not only draws support from earlier decisions of the Supreme Court holding that regulatory measures regulating the secular affairs of minority institutions are permissible, but also seeks assistance from the pirective principles of the Constitution and international covenants relating to labour legislation.

The precise question at issue in the case was a short one. Employees of the Christian Medical College, Vellore Association (a registered society) were dismissed from service by the management of the college and hospital. On an industrial dispute being raised by the employees' union in respect of the dismissal of these three employees, the Government of Madras referred to the labour court the question whether non-employment of these persons was justified, and if not, the relief to which they would be entitled. Another employee's services were terminated at the end of his probationary period and the dispute relating to him was also referred to the labour court. The employers brought a writ petition challenging the reference on the ground that the Industrial Disputes Act was inapplicable in its entirety to minority educational institutions protected by article 30(1) of the Constitution. That article provides that a minority, whether based on religion or language, has a right to establish and administer educational institutions of its choice. The High Court of Madras quashed the references, upholding the contention of the employers, but on appeal with special leave, the Supreme Court held in the case under discussion that the Industrial Disputes Act could be legitimately applied to minority educational institutions and such application would in no way abridge the right guaranteed by that article.

If one has regard to the long line of authorities on article 30(1) since the commencement of the Constitution, one may notice that the broad dividing line between legitimate and illegitimate statutory provisions in the context of the article has been the principle that measures which regulate the working of minority educational institutions, in order to maintain their standard, do not transgress the constitutional mandate. What is regulatory and what is not, will be a matter of determination in each case. However, by and large, decisions in the past have taken the

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1. (1987) 4 S.C.C. 691.

view that if no outsider is introduced into the management and if the autonomy of the management of the minority educational institution is not substantially interfered with, then the law would be valid. The precise rationale of this approach will be analysed later. But at this stage, it will suffice to state that legislation relating to industrial disputes obviously does not take away the autonomy of the institutions as such. All that it seeks to introduce is a series of safeguards which will try to implement social and economic justice between the management and the workers. No doubt, judicial review (through labour courts or industrial tribunals) of the act of dismissal or other act of the management adversely affecting the career of the employee may act as a restriction on the otherwise absolute right of the management in this regard. But this restriction merely gives an elementary guarantee of freedom from arbitrary action without denying to the management the right to proceed against an erring employee and without placing an unreasonable restraint on the management's right to do so. A series of judicial decisions in the past rendered by the Supreme Court had enunciated the principle that if a provision does not deny or restrict the management's right as above, then reasonable restraint would be permissible. In fact, *dicta* in some of the earlier Supreme Court judgments, particularly those of Khanna and Mathew J. in *Ahmedabad St. Xaviers College Society* v. *State of Gujarat*,[2] specifically mention the aspect of laws relating to industrial relations. In *St. Xaviers* what had been invalidated was a provision which practically gave the vice-chancellor of the university a veto over the terminatory action ordered by the management of the college, and that is what had been held to be objectionable. This is different from legislation regulating industrial relations which does not relegate the management to a position of powerlessness, but seeks to introduce certain norms of justice as per industrial jurisprudence.

In the case under comment, the Supreme Court referred to some of the other judgments of the court also, where this aspect had been hinted at. The most apt are the *dicta* of Mathew and Khanna JJ. as stated above. Khanna J. in *St. Xaviers* pointed out that the provision under attack (and held invalid in that case), laid down no guidelines as to the exercise of the veto by the vice-chancellor. It, therefore, conferred a blanket power on the university. At the same time, he took care to observe as follows:

> It may also be stated that there is nothing objectionable to selecting the method of arbitration for settling major disputes connected with conditions of service of staff of educational institutions. It may indeed be a desideratum. What is objectionable, apart from what has been mentioned above, is the giving of the power to the Vice-Chancellor to nominate the Umpire.[3]

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2. (1975) 1 S.C.R. 173.
3. *Id.* at 244.

Mathew J. in *St. Xaviers* expressed himself in these words:

> The question to be asked and answered is whether the particular measure is regulatory or whether it crosses the zone of permissible regulation and enters the forbidden territory of restrictions or abridgement. So, even if an educational institution established by a religious or linguistic minority does not seek recognition, affiliation or aid, its activity can be regulated in various ways provided the regulations do not take away or abridge the guaranteed right. Regular tax measures, economic regulations, social welfare legislation, wage and hour legislation and similar measures may, of course, have some effect upon the right under article 30(1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgement, if an educational institution established by a religious minority seeks no recognition, affiliation or aid, the state may have no right to prescribe the curriculum, syllabi or the qualification of the teachers.[4]

The judgment in the case under discussion (*Christian Medical College*)[5] can be regarded as an application, to the concrete facts of the case, of the well-established principle that the Constitution does not prohibit regulatory measures intended to ensure smooth working and educational excellence in minority educational institutions. This dividing line became necessary because soon after the commencement of the Constitution, it was realised that the right guaranteed by article 30 to minorities cannot be absolute. Thus, it became manifest that some dividing line was imperatively necessary to demarcate what was permissible regulation from what was impermissible. Obviously, the abstract proposition that there was a dividing line was not enough. Such dividing lines have to be given a dimension, a shape and a form. Beginning with the case relating to *In re Kerala Education Bill*,[6] the Supreme Court, through various bench rulings, has been expressing the dividing line in a variety of phraseologies. It will be worthwhile to analyse the various approaches, not only to understand what has been held in the past, but also to predict how the court may react in future.

By way of attempting such an analysis, it is suggested that the varying phraseologies employed in diverse judgments can be categorised under the following heads:

(*i*) *The linguistic approach*: This approach tries to construe the word "administer" so as to confine it to *good* administration. The right to administer does not include the right to maladminister an institution. This

4. *Id.* at 266.
5. *Supra* note 1.
6. A.I.R. 1958 S.C. 956.

approach will be found in the judgment of the S.R. Das, C.J. in *Kerala Education Bill.*[6a]

(*ii*) *The approach of autonomy*: According to this approach, so long as the autonomy of the institution is preserved, regulation of its working is permissible. The exposition by Khanna J. in *St. Xaviers*[7] is an outstanding example of this approach, because though it can be discerned in earlier pronouncements he has elaborated in an ample measure.

(*iii*) *The moral approach*: It has been stated that if the minorities assert a *right* of administration, it is their duty to provide *good* administration.[8]

(*iv*) *The constitutional-cum-linguistic approach*: According to this approach, what the Constitution in article 13 prohibits is a law which "abridges" a fundamental right. Regulatory measures do not abridge the fundamental rights guaranteed by article 30 and are therefore not hit by article 13. This approach was enunciated by Mathew J. in *St. Xaviers.*[9]

(*v*) *The logical approach*: Legislative measures which do not directly impinge upon minority rights are permissible, notwithstanding that their indirect impact may be adverse to those rights. To put it in different phraseology, if the *primary* object is not interference with a fundamental right, then the fact that the *secondary* impact of the challenged law may be to impair a fundamental right, is immaterial. This approach is also suggested by Mathew J. in *St. Xaviers.*[10]

The above enumeration is illustrative only. It is suggested that the real, (if not articulated) rationale is that a certain element of pragmatism is needed in the adjudication of constitutional questions; and that the Constitution has to be construed harmoniously so that the instrument may work and not be wrecked by a rigid and dogmatic approach; and that for these reasons article 30 like many other articles, may have to be read as subject to an implicit limitation out of necessity.

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6*a*. *Id.* at 982.
7. *Supra* note 2.
8. *Id.* at 200.
9. *Supra* note 2.
10. *Ibid.*

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