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MINORITY INSTITUTIONS AND MAJORITY STUDENTS

TWO ARTICLES of the Indian Constitution which relate to minority institutions have figured before the courts very frequently, ever since the well known Supreme Court judgment relating to the Kerala Education Bill came to be decided. In the beginning, the courts were mostly concerned with striking a balance between the guaranteed rights of such institutions on the one hand and demands of public interest, including excellence in academic and organisational standards, on the other hand. In the course of this process, many points arose for consideration.

While the broad test is well settled, its application in a concrete case has always presented problems. Recently, however, these rights of the minorities came up for consideration before the Allahabad High Court[1] in a novel setting. The precise question was this. Does the right of a minority to establish and administer an educational institution of its choice under article 30(1) of the Constitution include a right to reserve seats for students of the minority community where the institution is maintained by the state or receiving aid out of state funds? In other words, does this right override the constitutional right under article 29(2) of every citizen, not to be denied admission in a state maintained or aided institution on grounds only of religion, race, caste or language? The Allahabad High Court has decided in the case under discussion that such reservation in a minority institution for students of the minority community would violate article 29(2). With respect, this is an eminently correct conclusion, though, as will be mentioned later,[1a] in a case decided in 1971, the Madras High Court seems to have taken a different view.[2] The issue arose in the Allahabad case with reference to certain students who appeared in the entrance test held for admission to B. Tech. and B.Sc. (Agri.) courses held by the Allahabad Agricultural Institute. This is a premier and renowned institute of India and was founded by an American Christian philanthropist, Sam Higginbottom in 1911. The petitioner students were denied admission, though they had secured a high percentage of marks in the competitive test held by the institute, because a large number of seats had been reserved for church-sponsored candidates and tribals. The contention of the petitioners was that this was an unjustified discrimination.

Determination of the question mainly depended on the interpretation to be placed on articles 29(2) and 30(1) of the Constitution. These read :

Art. 29(2) : No citizen shall be denied admission into

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1. *Sheetansu Srivastava* v. *Principal, Allahabad Agricultural Institute*, AIR 1989 All 117.

1*a*. See, *infra* at 106.

2. *Director of School Education* v. *Rev. Brother G. Arogiasamy*, AIR 1971 Mad 440.

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> any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
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> Art. 30(1) : All minorities, whether based on religion or language, shall have the right to establish and administer educational institute of their choice.

The High Court held that article 30 has to be read as subject to article 29(2) and the right to establish and administer an institution has to be read as not above regulation or control. An institution established by a minority may claim to impart education in keeping with its religious faith and belief. But it cannot insist on imparting such education to members of its own community only. "No religion, however dogmatic, is narrow in its outlook". In coming to its conclusion, the High Court could find ample support from a variety of sources—historical, decisional and logical.

As regards the historical sources, the High Court noted that article 29(2) as originally recommended by the minority sub-committee and approved by the advisory committee was drafted as follows :

> No minority, whether of religion community or language, shall be deprived of its rights or discriminated against in regard to the admission into State Educational Institute.[3]

But the language was changed, because, if the provision was limited to "minority", it would destroy the secular character of the educational institution.

There was another branch of the historical discussion. After the Supreme Court set aside the "communal government order" reserving seats in the medical colleges on the basis of caste,[4] the Constitution was amended by inserting article 15(4) to validate discrimination in favour of scheduled castes, scheduled tribes and backward classes. But no such qualification of the rights guaranteed by article 29(2) was inserted in regard to other cases.

There were sufficient precedents also, to support the conclusion that article 29(2) would and could override article 30(1). Apart from the Supreme Court decision[5] which led to a limited amendment of the Constitution, the principle was reiterated in its judgment which dealt with the Government of Bombay circular, directing schools imparting education in the English medium not to admit students other than Anglo-Indians and citizens of non-Asiatic descent.[6] The matter was put even more emphatically in the famous case from Kerala,[7] where the court held in so many words that

3. *Supra* note 1 at 119.
4. *State of Madras* v. *Champakam Dorairajan*, AIR 1951 SC 226.
5. *Ibid.*
6. *State of Bombay* v. *Bombay Educational Society*, AIR 1954 SC 561.
7. *In Re Kerala Education Bill*, AIR 1958 SC 956.

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article 30 was subject to clause (2) of article 29. Summarising the effect of these and other decisions of the Supreme Court, the Allahabad High Court stated the position in these words :[8]

> What crystallises from above discussion is that neither Government is entitled to interfere with right of minority and direct it to admit a student as it may contravene the choice of minority under Art. 30 nor the institution can deny admission to any student because he is not a member of any community nor it can reserve seats for members of its community so as to preclude others as it shall be in violation of Art. 29(2). That is choice should be of minority but within the constitutional framework, namely, without denying admission on ground of caste or religion etc.

With this formidable armoury of case law, it was not difficult for the Allahabad High Court to express its disagreement with the Madras case[9] in which the view was taken that the government cannot place restrictions on the freedom of minority institutions to make admissions of students according to their choice. It was concerned with weightage to be given to students of the Roman Catholic community as desired by the minority institution and contains observations to the effect that if such weightage is not upheld, the protection accorded by article 30(1) would be affected. However, (apart from the decisions to the contrary, mentioned above), the Allahabad High Court pointed out that the decision in the *St. Xaviers College* case[10] contained specific dicta to the contrary. Thus, Justice Dwivedi had in that case pointed out that while the right to admit a student to an educational institution is admittedly comprised in the right to administer the institutions guaranteed by article 30(1), "this right is partly curtailed by article 29(2)".

The Allahabad High Court judgment thus furnishes an example—and an excellent one, at that—of a judicial decision utilising all available sources from history, precedent and logic, to support the conclusion. Incidentally, the High Court did not accept the objection raised to the effect that a writ cannot be issued to a private body. It pointed out that the institute in question was affiliated to the Allahabad University and admissions were made by the university under section 28 of the U.P. Universities Act. Besides this, it had already been held by the High Court that a writ could be issued to a private body if it was entrusted with the performance of a statutory duty.[11]

*P. M. Bakshi**

8. *Supra* note 1 at 122.
9. *Supra* note 2.
10. *St. Xaviers College* v. *State of Gujarat*, AIR 1974 SC 1389.
11. *Alley Ahmad* v. *District Inspector of Food*, AIR 1977 All 539 (FB).

* Member, Law Commission of India; Honorary Professor, Indian Law Institute, New Delhi.

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