NEUTRAL CITATION NO: 2022/DHC/003602

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12th SEPTEMBER, 2022

IN THE MATTER OF:

\+ **W.P.(C) 8814/2022 and C.M. Nos. 26539/2022 & 30972/2022**

ST STEPHENS COLLEGE ..... Petitioner

Through: Mr. Kapil Sibal, Senior Advocate with Ms. Romy Chako, Mr.Sudesh Kumar Singh, Ms. Aparajita Jamwal, Mr.Koshy John, Advocates

versus

UNIVERSITY OF DELHI AND ANR ..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Mohinder J S Rupal, Ms. V Bhawani, Mr. Aakash Pathak, Mr. Amit Gupta, Mr. Rishav Dubey, Mr. Sahaj Garg, Ms. Apoorva, Mr. Saurabh Tripathi, Advocates for respondent/University of Delhi.

Mr. Vikramjit Banerjee, ASG with Mr.ApoorvKurup, CGSC, Ms. Nidhi Mittal, Mr. Saransh Kumar, Mr. Nring Chamwibo Zeliang, Mr. Raman Yadav, Mr. Ojaswa Pathak, Ms. Aparna Arun, Ms. Janvi Prakash, Mr. Siddhartha Sinha, Mr. Prashant Rawat, Advocates for R-2/UGC.

\+ **W.P.(C) 8869/2022 and C.M. No. 26694/2022**

KONIKA PODDAR ..... Petitioner

Through: Mr. Arun Bhardwaj, Sr. Advocate with Mr. Akash Vajpai, Mr. Abhishek

Sharma and Ms. Gauraan, Advocates.

versus

ST STEPHENS COLLEGE & ORS. ..... Respondents

Through: Mr. A. Mariarputham, Sr. Adv. with Mr. Romy Chacko and Mr. Sudesh Kumar Singh, Advs. for Respondent No. 1.

Mr. Chetan Sharma, ASG with Mr. Mohinder J S Rupal, Ms. V Bhawani, Mr. Aakash Pathak, Mr. Amit Gupta, Mr. Rishav Dubey, Mr. Sahaj Garg, Ms. Apoorva, Mr. Saurabh Tripathi, Advocates for respondent/University of Delhi.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. W.P.(C) 8814/2022 has been filed on behalf of St. Stephen's College, New Delhi (a Constituent/Affiliated College of University of Delhi, *i.e.* Respondent No.1), seeking the quashing of letter dated 09.05.2022 issued by Respondent No.1 communicating that the admission policy as approved by the Academic Council of Respondent No.1 shall be applicable to all colleges under the aegis of Respondent No.1, and that the Petitioner must not only fill 50% of its unreserved seats solely on the basis of the Common University Entrance Test (CUET)-2022 scores, but shall also employ a single merit list for admission of candidates belonging to the Christian community. The writ petition further challenges the Communication dated 24.05.2022 directing the Petitioner to withdraw its Admission Prospectus – Undergraduate (UG)

Programmes (2021-2022) and to issue a Public Notice iterating that Respondent No.1's admission policies shall be applicable to the Petitioner for UG Programmes for the Session 2022-2023.

2. The Petitioner in W.P.(C) 8814/2022 had thereafter also filed an application, being C.M. APPL.30972/2022, seeking permission to incorporate the following additional prayers in the Writ Petition:

> *"a) Issue appropriate writ, direction or order quashing the decision of the Academic Council of the Respondent University dt. 10.12.2021 approving the recommendation of the Committee constituted by the Vice Chancellor to conduct admission to undergraduate courses through a common entrance test to the extend it is applicable to Petitioner college*
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> *b) Issue appropriate writ, direction or order quashing the decision of the Executive Council of the Respondent University dt. 17.12.2021 approving the recommendation of the Committee constituted by the Vice Chancellor to conduct admission to undergraduate courses through a common entrance test to the extend it is applicable to Petitioner college*
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> *c) Issue appropriate writ, direction or order quashing the notification of the Respondent University dt. 20.12.2021 to conduct admission to undergraduate courses through a Central University Common Entrance Test (CUCET) Delhi University Common Entrance Test (DUCET) to the extend it applies to Petitioner St. Stephen's College, New Delhi*
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> *d) Issue appropriate writ, direction or order quashing the public notice issued by UGC dt. 21.3.2022 to conduct admission to undergraduate courses through a Common University Entrance Test (CUET) to the extend it applies to Petitioner St. Stephen's College, New Delhi.*

e) Issue appropriate writ, direction or order quashing Annexure R5 letter issued by UGC dt. 27.3.2022 to conduct admission to undergraduate courses through a Common University Entrance Test (CUET) to the extend it applies to Petitioner St. Stephen's College, New Delhi

f) Issue appropriate writ, direction or order quashing the recommendations of the standing committee of the Academic Council of the Respondent University under clause 5 of ordinance – II of the Ordinances of the University held on 17.3.2022 providing that admission to all minority colleges (including St. Stephens college and Jesus and Mary college) will be done only through CUET and that during centralised counselling, separate merit list will be generated for UR and minority candidates.

g) Issue appropriate writ, direction or order quashing the decision of the Academic Council dt. 22.3.2022 approving the recommendations of the standing committee of the Academic Council of the Respondent University under clause 5 of ordinance – II of the Ordinances of the University held on 17.3.2022 providing that admission to all minority colleges (including St. Stephens college and Jesus and Mary college) will be done only through CUET and that during centralised counselling, separate merit list will be generated for UR and minority candidates."

3. W.P.(C) 8869/2022, styled as a Public Interest Litigation (PIL) has been filed by a law student on behalf of aspirants wanting admission in St. Stephen's College, *i.e.* Respondent No.1, seeking directions to Respondent No.1 to admit students in its unreserved seats solely on the basis of the CUET scores as mandated by the University of Delhi, *i.e.* Respondent No.2. It further seeks directions to Respondent No.2 to implement its admission

policy *vis-à-vis* the non-minority seats in the UG courses at minority colleges.

4. Both the petitions have been taken up together as they pertain to the same question of law with regard to the scope and ambit of administering an educational institution by a minority college under Article 30(1) of the Constitution of India, 1950 *(hereinafter referred to as the "Constitution").* Furthermore, for ease of comprehension, the nomenclature for the parties as enumerated in W.P.(C) 8814/2022 shall be followed. Therefore, St. Stephen's College shall be referred to as "Petitioner-College", with University of Delhi (DU) being referred to as "Respondent No.1" and the University Grants Commission (UGC) being referred to as "Respondent No.2".

5. The facts leading to the instant petitions have been stated as under:

a) On 09.06.1980, a circular had been issued by Respondent No.1 directing all its Affiliated/Constituent colleges to admit students for UG courses solely on the basis of the marks obtained in the qualifying examination. Aggrieved by this circular, a writ petition under Article 32 of the Constitution had been filed by the Petitioner-College stating that, being a minority-run institution, it was entitled under Article 30(1) of the Constitution to devise its own admission procedure.

b) In 1992, by way of a judgement in St. Stephen's College v. University of Delhi, **(1992) 1 SCC 558**, a 5-Judge Constitution Bench of the Supreme Court held that, being a minority-run institution, not only would the circulars of Respondent No.1 not be applicable to the Petitioner-College, but the Petitioner-College would be entitled to a free run when it comes

to admitting students in order to maintain the minority character of the institution. Accordingly, the Petitioner-College's unique procedure of conducting an interview for both General category and minority category after shortlisting candidates who had achieved the cut-off marks in the qualifying examination was held to be valid.

c) It is stated that due to the different evaluation methods of various State Boards, a decision was taken by Respondent No.1 to conduct a single umbrella examination, either formulated by Respondent No.1 or by an independent agency, at the national level to ascertain the merit of the candidates. Accordingly, *vide* Notification dated 20.12.2021, Respondent No.1 stated that admissions in UG courses for the Academic Session 2022-2023 and onwards, would be made through the Central University Common Entrance Test (CUCET) or Delhi University Common Entrance Test (DUCET). Thereafter, by way of Public Notice dated 21.03.2022, Respondent No.2 announced the details of the CUET which was to be conducted by the National Testing Agency (NTA).

d) The Petitioner-College, on being made aware of CUET, communicated to Respondent No.1, via email dated 21.03.2022, that while CUET was an acceptable procedure for ascertaining merit, the Petitioner-College being a minority Christian institution, would be entitled to continue *"with its time-honoured and proven admission process involving an interview to select candidates".* Further, the email noted that the interview process would be offered with a weightage of 15%,

and the final selection to the College would be based on both CUET (85%) and the interview (15%).

e) In April 2022, Respondent No.1 published a Bulletin of Information noting that admission to the Petitioner-College for the Unreserved category would solely be on the basis of merit of CUET score, while 85% weightage of CUET score in addition to 15% weightage of interviews would be applicable to Christian candidates.

Admission to Minority Colleges

Candidates desirous of taking admission under Minority quota must appear in CUET 2022.
In Minority Colleges 50% of the seats are for candidates belonging to Unreserved category and 50% are reserved for Minority candidates.

There are six minority colleges in the University of Delhi, as listed below:

Christian Minority	Sikh Minority
Jesus and Mary College	Mata Sundri College (W)
St. Stephen's College	Sri Guru Gobind Singh College of Commerce
	Sri Guru Nanak Dev Khalsa College
	Sri Guru Tegh Bahadur Khalsa College

For admissions to St. Stephen's College and Jesus & Mary college, following admission criteria shall apply:

	Unreserved	Christian Candidates
Admission criteria	Only on the basis of merit of CUET Score	85% weightage to CUET score and 15% weightage to Interviews conducted by the concerned college.

Candidates applying for the Sikh minority colleges need to submit a certificate from the Delhi Sikh Gurudwara Management Committee (DSGMC) certifying their minority status, at the time of registration and admission.
Candidates applying for the Christian minority Colleges need to submit their baptism certificate and/or Church membership certificate as per the requirements of the respective Colleges.

f) Consequently, *vide* Communication dated 11.04.2022, the Petitioner-College yet again informed Respondent No.1 that in view of the judgement in St. Stephen's College v. University of Delhi (supra), the Petitioner-College would be applying to the college the larger guideline adopted by Respondent No.1 (in this case, the CUET), but would be reserving the right to interview all candidates who were shortlisted. Thereafter, on 20.04.2022,

the Petitioner-College issued a Press Release stating that it would follow the CUET mandate of Respondent No.1, but that it would also conduct an interview for all applicants shortlisted by the Petitioner-College from the CUET list as per their admission criteria.

g) In response to the Press Release dated 20.04.2022, a letter dated 09.05.2022 was issued by Respondent No.1 to the Petitioner-College reiterating that, 50% of the open seats would be filled solely on the basis of merit of the CUET, however, the remaining 50% seats for minority candidates would be filled on the basis of combined merit of 85% weightage to the CUET score and 15% weight to the interview to be conducted by the Petitioner-College. The letter further stated that there would a single merit list for the admission of candidates belonging to the Christian community regardless of any denominations/sub-sects/sub-categories within the Christian minority community.

h) On 23.05.2022, the Petitioner-College released its Admission Prospectus which stated that it would adopt the CUET as the eligibility criteria with 85% weightage for CUET and interview for shortlisted candidates with a weightage of 15%, for both Unreserved and minority categories. In response to this, Respondent No.1 issued yet another letter to the Petitioner-College directing them to withdraw the Admission Prospectus immediately and to issue a Public Notice stating that the approved admission policies of Respondent No.1 would be applicable to the admissions to various courses offered by the

Petitioner-College for UG Programmes for Session 2022-2023. A response to this letter was sent by the Petitioner-College *vide* letter dated 26.05.2022 wherein the Petitioner-College has stated that it shall continue with its own admission process and that its decision as well as its authority to take such a decision is in consonance with the findings of the Supreme Court in St. Stephen's College v. University of Delhi (supra).

i) Aggrieved by the letter dated 09.05.2022 issued by Respondent No.1 as well as the Communication dated 24.05.2022, W.P.(C) 8814/2022 has been filed. W.P.(C) 8869/2022 has been filed seeking directions to the Petitioner-College to employ and adhere to the admission policies of Respondent No.1.

6. Mr. Kapil Sibal, learned Senior Counsel appearing for the Petitioner-College in W.P.(C) 8814/2022, at the outset, submits that as per Clause 15 of the Constitution of St. Stephen's College, Delhi, the Principal is authorised to sign and execute all documents for the purposes of conducting all kinds of legal business. He then submits that Article 30(1) confers on minority institutions the right to establish and administer institutions of their choice. He states the issues in the instant matter have already been considered and laid to rest by the Supreme Court in St. Stephen's College v. University of Delhi (supra) wherein it has been recorded that the Petitioner-College, from its inception, has been exercising *'certain obvious and inherent managerial powers: one of them was to fix reasonable dates for admission and the other was for an interview of the candidates. These managerial functions have never been questioned or interfered with by the University".* He further states that the provision for the interview is an integral part of the administration of the college and the same has been noted astutely by the Supreme Court.

7. He states that the right to administer includes the right of management as well as the right to admit students, as long as the same is done in a transparent manner and does not lead to faltering of merit. Relying upon Para 60 of St. Stephen's College v. University of Delhi (supra), Mr. Sibal submits that the right to select students for admission is an important facet of administration and this right available with the minority institutions is not limited to selecting students who belong to the minority community, but that it also extends to the process of admitting non-minority students.

8. With regard to the interview process adopted by the Petitioner-College for selection of students, Mr. Kapil Sibal submits that St. Stephen's College v. University of Delhi (supra) had considered the very same issue as to the Petitioner-College's right to institute its own method of selection and had noted that the interview was not an exclusive test for assessing the suitability of the candidates for college admission. He relies upon Para 63 of the said Judgement stating that as long as the allocation of percentage of marks for oral interview is not high and greater weight is given to the performance of the candidate in the written examination, then the Petitioner-College may continue employing the interview method. Mr. Sibal submits that the process of selecting students belonging to the minority and non-minority categories had already been found to be valid and consistent with the constitutional rights guaranteed under Article 30(1), and when the said Judgement itself did not differentiate between minority and non-minority students, then the same could not be done by Respondent No.1. Furthermore, Article 30 did not make any distinction between schools, undergraduate colleges, either unaided or aided, professional unaided or professional aided colleges.

9. The learned Senior Counsel also submits that there is no compromise on merit as the marks obtained in the qualifying examination, *i.e.* CUET,

would be relevant for the purpose of calling the candidates for the interview. The threshold of merit is crossed once a candidate is called for the interview on the basis of the marks obtained in the qualifying examination, and the interview process is not to reassess or re-measure the merits of the candidate, but to only ascertain as to whether the candidate possesses the disposition and the capabilities to align themselves with the ethos of the institution. Mr. Sibal submits that the merit of the institution being maintained is exemplified by the alumni of the institution. He states that Para 63 of the said Judgement had observed that no arbitrariness nor any vice or lack of scientific basis could be discerned in the interview or the selection process, and that the interview did not confer a wide discretion to the Selection Committee to pick and choose any candidate of their choice. The Judgement also noted that the Petitioner-College had *compelling reasons* to follow its own admission programme so as to maintain the standards of excellence. Mr. Sibal further cites Para 65 of T.M.A. Pai Foundation v. State of Karnataka, **(2002) 8 SCC 481**, to submit that in the 11-Judge Bench judgement, the Supreme Court, relying upon St. Stephen's College v. University of Delhi (supra), had elaborated upon the necessity of the educational institution to sustain the quality of its faculty and students as well as other facilities in order for the said institution to maintain its reputation.

10. Mr. Sibal continues to submit that the situation faced by the Petitioner-College with regard to having to admit students coming from different institutions with diverse standards, and thereby, judging their merit based on different qualifying examinations with different standards was not peculiar and confined to only the Petitioner-College. However, it was only by virtue of Article 30(1) that the Supreme Court had carved out an exception for the Petitioner-College and had held that the process of interview would fall

under the ambit of the fundamental right of a minority institution to establish and administer itself.

11. Mr. Kapil Sibal submits that there has been a complete misinterpretation of Para 151 of T.M.A. Pai Foundation v. State of Karnataka (supra) as the said paragraph only indicates that the Supreme Court had noted that there could not be a rigid percentage for reservations of minority students being admitted to a minority institution as one had to consider the population as well as the educational needs of the area in which the institution is located. He states that in no manner can this paragraph be interpreted to overrule St. Stephen's College v. University of Delhi (supra). He further states that the decision of the Petitioner-College to adopt its procedure for admitting students is in consonance with Para 152, and that Para 152 in no manner intends to do away with the fundamental right of a minority institution under Article 30(1).

12. The learned Senior Counsel argues that the interplay between Article 29(2) and Article 30(1) of the Constitution has been dealt with in both St. Stephen's College v. University of Delhi (supra) and T.M.A. Pai Foundation v. State of Karnataka (supra) wherein it has been held that the right enumerated under Article 30(1) is absolute in nature and cannot be whittled down by so-called regulative measures conceived in the interest not of the minority educational institutions, but of the public or the nation as a whole. Further, the nature of Article 29(2) does not deprive a minority institution from providing preferential treatment to its own community under Article 30(1). Mr. Sibal submits that Article 30(1) contemplates two rights which are separated in point of time, with the first right being the right to establish an institution of the minority's choice, and the second right relating to the administration of the institution and that administration entails management

of the affairs which must be free of control and can be moulded to serve the interest of the minority community. Reference is also made to Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat, **(1974) 1 SCC 717**, which was relied upon in T.M.A. Pai Foundation v. State of Karnataka (supra), wherein it has been stated that the under Article 30, a minority educational institution has a right to administer and not to maladminister. Mr. Sibal further relies on the answer of the 9-Judge Bench of the Supreme Court to Question Nos.4 and 5 in T.M.A. Pai Foundation v. State of Karnataka (supra) to submit that even the aspect of receiving aid would not divest a minority institution of its right to admit minority students as well as to devise a procedure of admission for them.

13. Mr. Sibal cites Christian Medical College Vellore Association v. Union of India and Ors., **(2020) 8 SCC 705,** to submit that the Supreme Court had therein considered T.M.A. Pai Foundation v. State of Karnataka (supra) and had also relied upon P.A. Inamdar v. State of Maharashtra, **(2005) 6 SCC 537**, in order to distinguish between unaided minority educational institutions of the level of schools and undergraduate colleges on the one side, and institutions of higher education, and particularly those imparting professional education, on the other side. He states that in the case of undergraduate colleges, the Apex Court had observed that the scope of merit-based selection was nil and, hence, the requirement for regulation would not be needed.

14. The learned Senior Counsel further contends that the stand of Respondent No.1 to only allow for a single merit list in the minority category is incomprehensible. He states that while Respondent No.2 has allowed for such reservation, Respondent No.1 disagrees with the same. As per Mr. Sibal, as the Petitioner-College does not fall under Article 15(5), special reservations have been carved out for various religious denominations and the

same has been functional since the college opened. He states that these reservations are present to achieve a sense of equality – equality in terms of distribution of wealth, opportunity, access, disparities, economic power. As the Petitioner-College represents the entire cosmos of India, it should be given its right to ensure there is equality in representation. He further states that the Judgement dated 25.07.2019 of the Kerala High Court in The Medical Mission of the South Kerala Diocese of the Church of South India (SIUC) v. Muhammed Rizwan and Ors., **R.P. No. 510 of 2019** in **W.P.(C) 23707/2018,** is based upon a misinterpretation of settled law, and that the Supreme Court has already issued notice in SLP (C) No. 3469-3470/2020 directed against the said Judgement.

15. Mr. Kapil Sibal concludes the arguments on the note that the admission policies of Respondent No.1 would be applicable to the Petitioner-College only to the extent that the qualifying examination would be the CUET, however, it would be the prerogative of the Petitioner-College to continue with its procedure of conducting interviews as per its fundamental right under Article 30. He submits that if the admission policy of Respondent No.1 is implemented, it would entail interviews solely being conducted for Christian students and for 100% weightage being given to CUET for non-minority, which is not the ratio as established by either T.M.A. Pai Foundation v. State of Karnataka (supra) or St. Stephen's College v. University of Delhi (supra).

16. Mr. Arun Bhardwaj, learned Senior Counsel appearing for the Petitioner in W.P.(C) 8869/2022, submits that he is appearing in the said PIL on behalf of several students who aspire to study in the Petitioner-College and will be appearing in the CUET. He states that the decision to implement the CUET had been taken after well-considered deliberation by a Committee constituted by the Vice-Chancellor that was looking into issues regarding

varied marks being awarded by different Boards and admissions based on the same thereto. Mr. Bhardwaj submits that the CUET was, therefore, devised, in order to provide all candidates the following critical advantages:

> *"• an equitable opportunity to the applicants to appear in a single umbrella examination at the national level and evaluation of their merit across their course of study*
> *• do away with the existing aberrations such as distribution of admissions in some categories over and above the others across applicants from various boards, over admissions in a particular course of study*
> *• Merit and only merit of a prospective applicant is the sole criteria in his/her category of admission will be the benchmark of Undergraduate admissions"*

17. Mr. Bhardwaj states that these recommendations were approved by the Academic Council and Executive Council of Respondent No.1, and pursuant to the same, on 21.03.2022, Respondent No.2 decided to hold the CUET from the academic session 2022-2023 in all UGC-funded Universities. Thereafter, Respondent No.1 issued its new admission policy in April 2022 and published its Bulletin of Information wherein it was noted that the Petitioner-College could only induct non-minority students on the basis of merit of CUET score. The learned Senior Counsel submits that the decision of the Petitioner-College to continue with the interview process clearly goes against the decision of Respondent No.1.

18. Mr. Bhardwaj cites an article penned by the former Principal of the Petitioner-College, Professor Valson Thampu, who has criticised the subjectivity and the discrimination perpetuated by the interview process. He states that there is a clear allegation of misuse and the interview allows for those students hailing from privileged backgrounds a better opportunity to get selected, even if a situation arises where they might have scored the same

marks as someone from a relatively less privileged background. In this regard, he presents a chart before this Court to demonstrate how overall merit would be affected if the admission proceeds on the basis of a combined administration of CUET and an interview. He submits that the nation must proceed on merit, and that merit alone must prevail. Mr. Bhardwaj further states that while St. Stephen's College v. University of Delhi (supra) had upheld the interview process, but the decision had been taken in the facts and circumstances existing at that point of time. As per Mr. Bhardwaj, with multiple State Boards, admission could not have been granted exclusively on the basis of the 10+2 marks, and for that reason, the interview was stated to be a non-arbitrary and non-discriminatory process of admitting students. However, in the view of the fact that now the CUET has been implemented, it militates the need to conduct the interview and the decision in the Judgement would no longer be applicable. Furthermore, there was no reservation in the Petitioner-College when the matter was being deliberated and the interview was a method to ensure that the minority character of the institution remained intact. He also brings to the notice of this Court the object of the Petitioner-College which is enumerated in Para 35 of St. Stephen's College v. University of Delhi (supra) that states that instructions in doctrines of Christianity shall be imparted, and submits that when the 50% non-minority students are concerned, they cannot be forced to take up religious teaching. Therefore, if they are not are required to take up religious instructions, there would remain no purpose to make them undergo the screening process.

19. Furthermore, relying on St. Stephen's College v. University of Delhi (supra), Mr. Bhardwaj submits that though administration of educational institutions of their choice under Article 30(1) would entail "management of the affairs of the institution", standards of education would not be a part of the

management as such, and therefore, the State has the right to regulate the standards of education and other allied matters. The learned Senior Counsel further argues that this had been reiterated in T.M.A. Pai Foundation v. State of Karnataka (supra) which held that a minority institution's right to establish and administer was not absolute and unqualified, and that those educational institutions which were imparting higher education would have to accord importance to merit in the interest of the nation.

20. Mr. Bhardwaj relies on Christian Medical College Vellore Association v. Union of India and Ors. (supra) to submit that the Supreme Court had therein upheld the conduct of NEET (an examination for admission into medical colleges), which was a common examination, and no interview was required. He states that the aspect of conducting an interview is not essential to sustain minority character of the institution. He concludes his submissions by stating that T.M.A. Pai Foundation v. State of Karnataka (supra) had observed that a percentage for reservation could be fixed only after looking at the place where the institution was located and the function of the educational institution. As the Petitioner-College is located in New Delhi, they are not entitled to a class within a class, submits Mr. Bhardwaj.

21. *Per contra,* Mr. Chetan Sharma, learned ASG appearing for University of Delhi (DU), i.e. Respondent No.1, submits that being an aided minority educational institution, the Petitioner-College cannot maintain an admission criteria contrary to the UGC Guidelines/Regulations. Furthermore, on account of the fact that the Petitioner-College is a Constituent College of the Respondent No.1, the Petitioner-College is bound by Statute 30 of the Statutes of the University and must follow The Delhi University Act, 1922, Statutes and Ordinances, with regard to admission of students. Therefore, the non-minority students cannot be assessed as per any other criteria apart from

the marks that are scored in the CUET. The learned ASG further states that T.M.A. Pai Foundation v. State of Karnataka (supra) categorically notes that the right of a minority institution to administer itself under Article 30 is not absolute, and that receiving aid out of State funds or on being recognised by the State takes away the absolute right of a minority institution. Mr. Sharma submits that despite being aware of these legal aspects and of the decision taken by both the Respondent No.1 and Respondent No.2, the Supreme Council of the Petitioner-College decided to release an admission procedure contrary to the decision of the Respondents. He states that no administrative decision can override the statutory guidelines/regulations, and therefore, the decision of the Supreme council is *non-est.*

22. The learned ASG submits that the contention of Mr. Sibal that the right to administer and the right to choose students under Article 30(1) is absolute is incorrect in the sense that Article 30 is only a protection granted to the minority institution to be treated at par with non-minority institutions and not better than non-minority institutions. Relying upon Paras 132, 133, 134, 135, 136, 138, 144, 149, 151, 152, 155, 162 – Q.4 of T.M.A. Pai Foundation v. State of Karnataka (supra), the learned ASG substantiates his submission. He further relies on Kanya Junior High School, Bal Vidya Mandir, Etah, U.P. v. U.P. Basic Shiksha Parishad, Allahabad, U.P. and Ors., **(2006) 11 SCC 92**, to submit that the Supreme Court had therein observed that minority communities did not have any higher rights than the majority and that they had merely been conferred additional protection.

23. Mr. Sharma argues that as per P.A. Inamdar (supra), the Supreme Court had held that education at the level of awarding degrees at the graduate and post-graduate or professional disciplines formed one class, and that in order to maintain the standards of the same, regulatory measures could be

implemented. It further noted that the protection dispensed under Article 30 would protect minority institutions from regulatory legislations framed, but they were still not immune to regulatory control.

24. Mr. Sharma further submits that there has been a misinterpretation of St. Stephen's College v. University of Delhi (supra) as well as T.M.A. Pai Foundation v. State of Karnataka (supra) to the extent that it does not grant the Petitioner-College the right to devise a procedure and method of selection of students of the non-minority community as well. Moreover, it also does not relegate to the Petitioner-College the right to carve out sub-categories within the minority quota. In this regard, the learned ASG places reliance on Judgement dated 25.07.2019 of the Kerala High Court in The Medical Mission of the South Kerala Diocese of the Church of South India (SIUC) v. Muhammed Rizwan and Ors. (supra) to submit that the protection available under Article 30(1) is to the minority communities and there can be no sub-division made within the minority community. Therefore, the learned ASG states that Respondent No.1's direction to the Petitioner-College that there must be a single merit list for the admission of candidates belonging to the Christian community regardless of any denominations/sub-sects/sub-categories within the Christian minority community must be implemented.

25. Mr. Vikramjit Banerjee, learned ASG appearing for UGC, i.e. Respondent No.2, opposes the submissions of the learned Senior Counsel appearing for the Petitioner-College and states that no discretion by way of an interview should be allowed even for minority students. He states that every candidate should be evaluated at par and that doing away with the interview in its entirety is Respondent No.2's attempt to reduce any form of discretion and subjectivity. Relying on Para 55, 56, 57, 58, 59 as well as Para 63, 64 of

T.M.A. Pai Foundation v. State of Karnataka (supra), the learned ASG submits that the State has the power to prescribe regulations even in the case of minority educational institutions. He states that the Petitioner-College's submission is that, being a minority institution, they are entitled to carving out of an exception to the general rule being espoused by Respondent No.2, and that this cannot be accepted.

26. The learned ASG further relies upon Para 65 of St. Stephen's College v. University of Delhi (supra) to state that the Supreme Court had observed that the decision to allow the Petitioner-College to continue with its own process of admission was in the absence of a methodology that did not take into account the varying standards of marks of various State Boards. He states that in those circumstances, the Petitioner-College had compelling reasons to follow their own admission programme. However, in view of the fact that CUET has now been implemented, the learned ASG submits that there exists no reason for the Petitioner-College to accord 15% weightage to an interview for non-minority students. Accordingly, Mr. Banerjee submits that the entire basis of St. Stephen's College v. University of Delhi (supra) was that there was no common entrance test for the purposes of standardisation. T.M.A. Pai Foundation v. State of Karnataka (supra), on the other hand, categorically stated that if there is a common entrance test, the same should be given importance and implementation of the same will not affect the minority character of the institution.

27. The learned ASG states that the reservation is not being challenged in any regard; it is only the interview which is being challenged and that the CUET is being imposed. He submits that the CUET in no manner affects the reservation/supernumerary quota for admission in the UG Programme in Central Universities, and that Respondent No.2's stand is that minority quota

can be retained, but the admission should solely be on the basis of the marks scored in the CUET with no interview being conducted. Referring to a letter dated 26.11.2021 issued by the UGC to the Vice-Chancellors of forty-five Central Universities, the learned ASG submits that the CUET is in furtherance of the National Education Policy 2020 which envisioned a common entrance test for admission in universities to reduce the burden on students, the universities, and the entire education system itself. The UGC's decision to implement the CUET was communicated *vide* Public Notice dated 21.03.2022 and a letter dated 22.03.2022 was also issued to all the Vice-Chancellors of the forty-five Central Universities reiterating the content of the Public Notice. With regard to this, the learned ASG submits that the Petitioner-College's decision to move forward with the process of interview runs contrary to the policies of UGC and widens the scope for discrimination and subjectivity.

28. Heard Mr. Kapil Sibal, learned Senior Counsel appearing for the Petitioner-College in W.P.(C) 8814/2022, Mr. Arun Bhardwaj, learned Senior Counsel appearing for the Petitioner in W.P.(C) 8869/2022, Mr. Chetan Sharma, learned ASG appearing for Respondent No.1, Mr. Vikramjit Banerjee, learned ASG appearing for Respondent No.2, and perused the material on record.

29. At the outset, this Court observes that three-broad questions arise for consideration in the instant matter:

i. Whether the right to administer under Article 30(1) accorded to a minority-run aided educational institution extends to its non-minority students?

ii. Whether the admission policies of Respondent No.1, i.e. the University of Delhi, pertaining to the matter at hand, would

be applicable to the Petitioner-College, being a minority institution?

iii. Whether a minority-run institution under Article 30 has the right to sub-classify the reservation accorded to the minority category?

30. Before addressing the aforesaid questions, this Court deems it prudent to elaborate upon the judicial trajectory of the issue at hand for a better comprehension of the matter. Back in the 1950s, the Supreme Court had expressed the importance of education as a medium to provoke thought and expression in people. It had been observed that education clarified our belief and faith, and helped to strengthen our spirit of worship. It was in order to fortify these values, that the Part III of our Constitution came into being. The concept of education has, till date, remained an idea that is meant to be altruistic in nature, and profiteering out of such an idea, though prevalent, is discouraged. The Supreme Court has, thus, observed that the activity of education is neither a trade nor profession, and it cannot be permitted to be a purely economic activity [Refer to Modern Dental College & Research Centre v. State of M.P., **(2016) 7 SCC 353**]. Education is also noted to be a medium to eradicate, or at least to some extent, create awareness in our society about the inherent socio-economic inequalities therein so as to tackle the prejudices arising from the same, and to provide a vehicle to those subjected to these inequalities to traverse into a terrain of equal opportunities. In this context, therefore, fundamental rights such as Article 29 and Article 30 have been envisaged by the fore-fathers of our country.

31. These *Cultural and Educational Rights* as enumerated in our revered Constitution, especially the provisions that shall be a matter of interpretation

in the instant Judgement, have been reproduced as follows for the purposes of expediency:

> *"**29. Protection of interests of minorities***
>
> *(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same*
>
> ***(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them***
>
> ***30. Right of minorities to establish and administer educational institutions***
>
> ***(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice***
>
> ***(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause***
>
> *(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language"*

32. In order for a minority community to effectively conserve its language, script or culture by and through educational institutions, a necessary concomitant would be its right to establish and maintain educational institutions of its choice which is conferred on all minorities by virtue of Article 30(1). The object of conferring the special protection by way of a right on minorities under Article 30 is to ensure that there will be equality between the majority and the minorities. This right, however, is subject to Article 29(2) which provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. These two fundamental rights have been reconciled by the Supreme Court by noting that an aided minority educational institution would not lose its minority character if it admits non-minority students, and therefore, would manage to preserve both Article 29(2) and Article 30(1).

33. It becomes pertinent to note at this juncture that none of the parties have raised questions regarding the status of the Petitioner-College as a minority aided institution as well as the Petitioner-College's right to administer the institution to the extent of the minority students admitted to the college. It is only the reasonableness and the propriety of Respondent No.1's directives to the Petitioner-College and the extent to which they are applicable to the Petitioner-College that is being deliberated herein.

34. The literature pertaining to the interpretation of the rights of a minority institution in administering educational institutions of their choice under Article 30(1) has been a matter of contention for decades and has been wrung through the best legal minds of the country before arriving at a conclusive ambit of the said fundamental right. The issue can be traced back to the 1950s, with the Supreme Court's adjudication of In Re Kerala Education Bill, **1959**

SCR 995, wherein a reference had been made by the President of India under Article 143(1) of the Constitution for the opinion of the Court on certain questions of law of considerable public importance that had arisen out of the Kerala Education Bill, 1957.

35. While analysing the Kerala Education Bill, 1957, the Supreme Court deliberated upon what constituted a "minority", the interplay between Article 29(2) and Article 30(1) as well as the extent of interference of the State in the administration of a minority-run institution. It was observed that the right to administer would not include the right to maladminister, and that the State would possess the authority to prescribe reasonable regulations to ensure the excellence of the institutions to be aided. The relevant portion of the said Judgement has been reproduced as follows:

> *"**31.** We are thus faced with a problem of considerable complexity apparently difficult of solution. There is, on the one hand the minority rights under Article 30(1) to establish and administer educational institutions of their choice and the duty of the Government to promote education, there is, on the other side the obligation of the State under Article 45 to endeavour to introduce free and compulsory education. We have to reconcile between these two conflicting interests and to give effect to both if that is possible and bring about a synthesis between the two. The Directive Principles cannot ignore or override the fundamental rights but must, as we have said, subserve the fundamental rights.* ***We have already observed that Article 30(1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair***

standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided. Learned Attorney-General concedes that reasonable regulations may certainly be imposed by the State as a condition for aid or even for recognition. There is no right in any minority, other than Anglo-Indians, to get aid, but, he contends, that if the State chooses to grant aid then it must not say— "I have money and I shall distribute aid but I shall not give you any aid unless you surrender to me your right of administration". The State must not grant aid in such manner as will take away the fundamental right of the minority community under Article 30(1). Shri G.S. Pathak appearing for some of the institutions opposing the Bill agrees that it is open to the State to lay down conditions for recognition, namely, that an institution must have a particular amount of funds or properties or number of students or standard of education and so forth and it is open to the State to make a law prescribing conditions for such recognition or aid provided, however, that such law is constitutional and does not infringe any fundamental right of the minorities. Recognition and grant of aid, says Shri G.S. Pathak, is the governmental function and, therefore, the State cannot impose terms as condition precedent to the grant of recognition or aid which will be violative of Article 30(1). *According to the statement of case filed by the State of Kerala, every Christian school in the State is aided by the State. Therefore, the conditions imposed by the said Bill on aided institutions established and administered by minority communities, like the Christians, including the Anglo-Indian community, will lead to the closing down of all these aided schools unless they are agreeable to surrender*

their fundamental right of management. No educational institution can in actual practice be carried on without aid from the State and if they will not get it unless they surrender their rights they will, by compulsion of financial necessities, be compelled to give up their rights under Article 30(1). The legislative powers conferred on the legislature of the States by Articles 245 and 246 are subject to the other provisions of the Constitution and certainly to the provisions of Part III which confers fundamental rights which are, therefore, binding on the State Legislature. The State Legislature cannot, it is clear, disregard or override those provisions merely by employing indirect methods of achieving exactly the same result. Even the legislature cannot do indirectly what it certainly cannot do directly. Yet that will be the effect of the application of these provisions of the Bill and according to the decisions of this Court already referred to it is the real effect to which regard is to be had in determining the constitutional validity of any measure. Clauses 6, 7, 9, 10, 11, 12, 14, 15 and 20 relate to the management of aided schools. Some of these provisions e.g. 7, 10, 11(1), 12(1)(2)(3) and (5) may easily be regarded as reasonable regulations or conditions for the grant of aid. Clauses 9, 11(2) and 12(4) are, however, objected to as going much beyond the permissible limit. It is said that by taking over the collections of fees etc. and by undertaking to pay the salaries of the teachers and other staff the Government is in reality confiscating the school fund and taking away the prestige of the school, for none will care for the school authority. Likewise clause 11 takes away an obvious item of management, for the manager cannot appoint any teacher at all except out of the panel to be prepared by the Public Service Commission, which, apart from the question of its power of taking up such duties, may not be qualified at all to select teachers who will be acceptable to religious denominations and in particular sub-clause (2) of that clause is objectionable for it thrusts upon educational institutions of religious minorities teachers of

Scheduled Castes who may have no knowledge of the tenets of their religion and may be otherwise weak educationally. Power of dismissal, removal, reduction in rank or suspension is an index of the right of management and that is taken away by clause 12(4). These are, no doubt, serious inroads on the right of administration and appear perilously near violating that right. But considering that those provisions are applicable to all educational institutions and that the impugned parts of clauses 9, 11 and 12 are designed to give protection and security to the ill paid teachers who are engaged in rendering service to the nation and protect the backward classes, we are prepared, as at present advised, to treat these clauses 9, 11(2) and 12(4) as permissible regulations which the State may impose on the minorities as a condition for granting aid to their educational institutions. We, however, find it impossible to support clauses 14 and 15 of the said Bill as mere regulations. The provisions of those clauses may be totally destructive of the rights under Article 30(1). It is true that the right to aid is not implicit in Article 30(1) but the provisions of those clauses, if submitted to on account of their factual compulsion as condition of aid, may easily be violative of Article 30(1) of the Constitution. Learned counsel for the State of Kerala recognises that clauses 14 and 15 of the Bill may annihilate the minority communities' right to manage educational institutions of their choice but submits that the validity of those clauses is not the subject-matter of Question 2. But, as already explained, all newly established schools seeking aid or recognition are, by clause 3(5), made subject to all the provisions of the Act. Therefore, in a discussion as to the constitutional validity of clause 3(5) a discussion of the validity of the other clauses of the Bill becomes relevant, not as and by way of a separate item but in determining the validity of the provisions of clause 3(5). In our opinion, sub-clause 3 of clause 8 and clauses 9, 10, 11, 12 and 13 being merely regulatory do not offend Article 30(1), but the provisions of sub-clause (5) of clause 3 by making the

> *aided educational institutions subject to clauses 14 and 15 as conditions for the grant of aid do offend against Article 30(1) of the Constitution."*(emphasis supplied)

36. Relying upon In Re Kerala Education Bill (supra), a 9-Judge Bench of the Supreme Court in Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat (supra) considered the question as to whether minorities based on religion or language have the right to establish and administer educational institutions for imparting general secular education within the meaning of Article 30. The Supreme Court therein observed as follows:

> *"**19.** The entire controversy centres round the extent of the right of the religious and linguistic minorities to administer their educational institutions. The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons elected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution.*
>
> ***20.** 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 content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration. Das, C.J., in the Kerala*

Education Bill case 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 mal-administer.

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30. *Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. 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 eclectism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character.*

31. *Regulations which will serve the interests of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration*

are necessary for preserving harmony among affiliated institutions.

32. Education should be a great cohesive force in developing integrity of the nation. Education develops the ethos of the nation. Regulations are, therefore, necessary to see that there are no divisive or disintegrating forces in administration.

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

47. *In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. 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 part of it, a correlative duty of good administration.*

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74. *Clause (1) of Article 30 gives right to all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. Analysing that clause it would follow that the right which has been conferred by the clause is on two types of minorities. Those minorities may be based either on religion or on language. The right conferred upon the said minorities is to establish and administer educational institutions of their choice. The word "establish" indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the affairs of the*

institution. Administration connotes management of the affairs of the institution. The management must be free of control so that the founders or their nominees can mould the institution as they think fit and in accordance with their ideas of how the interest of the community in general and the institution in particular will be best served. The words "of their choice" qualify the educational institutions and show that the educational institutions established and administered by the minorities need not be of some particular class; the minorities have the right and freedom to establish and administer such educational institutions as they choose. Clause (2) of Article 30 prevents the State from making discrimination in the matter of grant of aid to any educational institution on the ground that the institution is under the management of a minority, whether based on religion or language.

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90. We may now deal with the scope and ambit of the right guaranteed by clause (1) of Article 30. The clause confers a right on all minorities, whether they are based on religion or language, to establish and administer educational instructions of their choice. The right con ferred by the clause is in absolute terms and is not subject to restrictions, as in the case of rights conferred by Article 19 of the Constitution. The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education. The right to administer educational institutions can plainly not include the right to maladminister. Regulations can be made to prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of an educational institution without qualified teachers. The

State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational [see observations of Shah, J. in Rev. SidhajbhaiSabhai p. 850]. Further as observed by Hidyatullah, C.J. in the case of Very Rev. Mother Provincial the standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish 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.

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92. *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. The right conferred by Article 30(1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of Rev. Sidhajbhai Sabhai, 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 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.

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94. *If a request is made for the affiliation or recognition of an educational institution, it is implicit in the request that the educational institution would abide by the regulations which are made by the authority granting affiliation or recognition. 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. No institution can claim affiliation or recognition until it conforms to a certain standard. The fact that the institution is of the prescribed standard indeed inheres in the very concept of affiliation or recognition. It is, therefore, permissible for the authority concerned to prescribe regulations which must be complied with before an institution can seek and retain affiliation and recognition. Question then arises whether there is any limitation on the*

prescription of regulations for minority educational institutions. So far as this aspect is concerned, the authority prescribing the regulations must bear in mind that the Constitution has guaranteed a fundamental right to the minorities for establishing and administering their educational institutions. Regulations made by the authority concerned should not impinge upon that right. Balance has, therefore, to be kept between the two objectives, that of ensuring the standard of excellence of the institution and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations which embrace and reconcile the two objectives can be considered to be reasonable.

95. *It has not been disputed on behalf of the petitioners that if the State or other statutory authorities make reasonable regulations for educational institutions, those regulations would not violate the right of a minority to administer educational institutions. We agree with the stand taken by the petitioners in this respect. 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. The unrestricted nature of the right connotes freedom in the exercise of the right. Even the words "freedom" and "free" have certain limitations. In James v. Commonwealth [(1936) AC 578] the Privy Council dealt with the meaning of the words "absolutely free" in Section 92 of the Constitution of Australia. It was said:*

> *" 'Free' in itself is vague and indeterminate. It must take its colour from the context. Compare for instance, its use in free speech, free love, free dinner and free trade. Free speech does not mean free speech; it means speech hedged in by all the laws against defamation, blasphemy, sedition and so forth; it means freedom governed by law...."*

The First Amendment of the American Constitution provides inter alia that the Congress shall make no law respecting establishment of religion or prohibiting the free exercise thereof. Dealing with that Amendment, the US Supreme Court held in the case of Reynolds v. United States [98 US 145 (1878)] that Amendment did not deprive the Congress of the power to punish actions which were in violation of social duties or subversive of good order. The contention advanced on behalf of the appellant in that case that polygamy was a part of his religious belief and the Act of the Congress prohibiting polygamy violated his free exercise of religion was repelled. In the case of Cantwell v. Connecticut [310 US 296 (1940)] Roberts, J., speaking for the US Supreme Court observed in respect of the First Amendment:

> *"Thus the Amendment embraces two concepts — freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection."*

Similar view was expressed by Latham, C.J., in the case of Adelaide Company of Jehovah's Witnesses Inc. while dealing with Section 116 of the Australian Constitution when he said that "obligation to obey the laws which apply generally to the community is not regarded as inconsistent with freedom". It would, therefore, follow that the unrestricted nature of a right does not prevent the making of regulations relating to the enforcement of that right.

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172. In considering the question whether a regulation imposing a condition subserves the purpose for which recognition or affiliation is granted, it is necessary to have regard to what regulation the appropriate authority may make and impose in respect of an

educational institution established and administered by a religious minority and receiving no recognition or aid. Such an institution will, of course be subject to the general laws of the land like the law of taxation, law relating to sanitation, transfer of property, or registration of documents, etc., because they are laws affecting not only educational institutions established by religious minoritties but also all other persons and institutions. It cannot be said that by these general laws, the State in any way takes away or abridges the right guaranteed under Article 30(1). Because Article 30(1) is couched in absolute terms, it does not follow that the right guaranteed is not subject to regulatory laws which would not amount to its abridgment. It is a total misconception to say that because the right is couched in absolute terms, the exercise of the right cannot be regulated or that every regulation of that right would be an abridgment of the right. Justice Holmes said in Hudson Country Water Co. v. McCarter: [209 US 349, 355, 357]

> ***"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."***

No right, however absolute, can be free from regulation. The Privy Council said in Commonwealth of Australia v. Bank of New South Wales [1950 AC 235, 310 (PC)] that regulation of freedom of trade and commerce is compatible with their absolute freedom; that Section 92 of the Australian Commonwealth Act is violated only when an Act restricts commerce directly and immediately as distinct from creating some indirect or consequential impediment which may fairly be regarded as remote. Likewise, the fact that trade and commerce are absolutely free under Article 301 of the Constitution is compatible with their regulation which will not

> ***amount to restriction. [Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, AIR 1962 SC 1406 : (1963) 1 SCR 491]***" (emphasis supplied)

37. We then have St. Stephen's College v. University of Delhi (supra) wherein a Constitution Bench of the Supreme Court deliberated upon the minority character of the Petitioner-College as well as whether the academic policies regulating the right of the Petitioner-College to conduct an interview would hold water in the face of Article 30(1). In the said Judgement, the Supreme Court held that, in the absence of any uniform assessment standard, the institution was well within its right to conduct an interview and that the circulars of Respondent No.1 divesting the Petitioner-College of this right would not be applicable. However, even while holding in favour of the Petitioner-College, the Supreme Court observed that the State possessed the right to regulate the standards of excellence expected of educational institutions, and that such institutions cannot decline to follow the general pattern of education under the guise of exclusive right of management. The paragraphs of the said Judgement which are of importance are as under:

> *"**41.** It was contended that St. Stephen's College after being affiliated to the Delhi University has lost its minority character. The argument was based on some of the provisions in the Delhi University Act and the Ordinances made thereunder. It was said that the students are admitted to the University and not to the College as such. But we find no substance in the contention. In the first place, it may be stated that the State or any instrumentality of the State cannot deprive the character of the institution, founded by a minority community by compulsory affiliation since Article 30(1) is a special right to minorities to establish educational institutions of their choice. The minority institution has a distinct identity and the right to administer with*

continuance of such identity cannot be denied by coercive action. Any such coercive action would be void being contrary to the constitutional guarantee. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised by a body of persons in whom the founders have faith and confidence. Such a management body of the institution cannot be displaced or reorganised if the right is to be recognised and maintained. Reasonable regulations however, are permissible but regulations should be of regulatory nature and not of abridgment of the right guaranteed under Article 30(1).

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

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

> *"2.(ii) Applications for admission/registration shall be made on a prescribed form. Applications by students seeking admission to Master's courses in Faculties of Arts, Mathematical Sciences, Social Sciences, Music and Science shall be sent to the Deans of Faculties, concerned direct. Applications for admission to courses other than those mentioned above shall be made to the Principal of the college concerned."*

***

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

"3. Admissions shall be finalised by the Principals of colleges and Deans of Faculties concerned, as the case may be, not later than such last date as may be prescribed by the Academic Council from time to time:

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

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

Ordinance XVIII clause 6-A(1) provides that there shall be a Staff Council in every College. Subject to the provisions of the Act, the Statutes and the Ordinances of the University, the Staff Council shall take a decision in respect of matters, among others, organising admission of students.

***45**. From these and other relevant provisions of the Act and Ordinances, we have not been able to find any indications either in the general scheme or in other specific provisions which would enable us to say that the College is legally precluded from maintaining its minority character. That in matters of admission of students to Degree courses including Honours courses, the candidates have to apply to the College of their choice and not to the University and it is for the Principal of the College or Dean of Faculties concerned to take decision and make final admission. It is,*

therefore, wrong to state that there is no admission to the College but only for the University. The procedure for admission to Post Graduate courses is of course, different but we are not concerned with that matter in these cases.

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

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55. Though Article 30(1) is couched in absolute terms in marked contrast with other fundamental rights in Part III of the Constitution, it has to be read subject

to the power of the State to regulate education, educational standards and allied matters. *In Ahmedabad St. Xavier's College Society v. State of Gujarat [(1974) 1 SCC 717 : (1975) 1 SCR 173] which was the decision of a nine Judge Bench, Ray, C.J., with whom Palekar, J., concurred, observed (at SCR pp. 197-200: SCC p. 749) that upon affiliation to a University, the minority and non-minority institutions must agree in the pattern and standards of education. Regulations which will serve the interest of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions. It was further observed: (SCC p. 752, para 46)*

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

56. *In the same case Khanna, J., put the principles with a different emphasis: (SCR pp. 234-35 : SCC p. 782, para 90)*

> *"The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education. The right to administer educational institutions can*

plainly not include the right to maladminister. Regulations can be made to prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of an educational institution without qualified teachers. The State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations made in the true interests of the efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational."

57. *Mathew, J., had this to state (SCR p. 267 : SCC pp. 812-13, para 176)*

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

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

58. *In Lily Kurian v. Sr. Lewina [(1979) 2 SCC 124 : 1979 SCC (L&S) 134] it was pointed out: (SCC p. 137, para 36)*

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

and the interference cannot be justified by pleading the interests of the general public; the interests justifying interference can only be the interests of the minority concerned."

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

60. *The right to select students for admission is a part of administration. It is indeed an important facet of administration. This power also could be regulated but the regulation must be reasonable just like any other regulation. It should be conducive to the welfare of the minority institution or for the betterment of those who resort to it. The Bombay Government order which prevented the schools using English as the medium of instruction from admitting students who have a mother tongue other than English was held to be invalid since it*

restricted the admission pattern of the schools. [(1955) 1 SCR 568 : AIR 1954 SC 561] The Gujarat Government direction to the minority run college to reserve 80 per cent of seats for government selected candidates with a threat to withdraw the grant-in-aid and recognition was struck down as infringing the fundamental right guaranteed to minorities under Article 30(1) of the Constitution. [(1963) 3 SCR 837 : AIR 1963 SC 540] In Rt. Rev. Magr. Mark Netto v. State of Kerala [(1979) 1 SCC 23 : (1979) 1 SCR 609] the denial of permission to the management of a minority school to admit girl students was held to be bad. The Regional Deputy Director in that case refused to give sanction for admission of girl students on two grounds: (i) that the school was not opened as a mixed school and that the school has been run purely as a boys school for 25 years; and (ii) that there was facility for the education of girls of the locality in a nearby girls school which was established by the Muslims and was also a minority institution. This Court noted that the Christian community in the locality wanted their girls also to receive education in the school maintained specially by their own community. They did not think it in their interest to send their children to the Muslim girls school run by the other minority community. The withholding of permission for admission of girl students in the boys minority school was violative of Article 30(1). It was also observed that the rule sanctioning such refusal of permission crosses the barrier of regulatory measures and comes in the region of interference with the administration of the institution, a right which is guaranteed to the minority under Article 30(1). The Court restricted the operation of the rule and made it inapplicable to the minority educational institution. In Director of School Education, Government of T.N. v. Rev. Brother G. Arogiasamy [AIR 1971 Mad 440 : (1971) 1 MLJ 325 : 84 Mad LW 195] , the Madras High Court had an occasion to consider the validity of an uniform procedure prescribed by the State Government for admission of candidates to the aided

training schools. The government directed that the candidates should be selected by the school authorities by interviewing every candidate eligible for admission and assessing and awarding marks in the interview. The marks awarded to each candidate in the interview will be added to the marks secured by the candidate in the SSLC public examination. On the basis of the aggregate of marks in the SSLC examination and those obtained at the interview the selection was to be made without any further discretion. The High Court held that the method of selection placed serious restrictions on the freedom of the minority institution to admit their own students. It was found that the students of the minority community could not compete with the students belonging to other communities. The applications of students from other communities could not be restricted under law. The result was that the students of minority community for whose benefit the institution was founded, had little chance of getting admission. The High Court held that the government order prescribing the uniform method of selection could not be applied to minority institutions.

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

65. The College seems to have compelling reasons to follow its own admission programme. The College receives applications from students all over the country. The applications ranging from 12,000 to 20,000 are received every year as against a limited number of 400 seats available for admission. The applicants come from different institutions with diverse standards. The merit judging by percentage of marks secured by applicants in different qualifying examinations with different standards may not lead to proper and fair selection. It may not also have any relevance to maintaining the standards of excellence of education. As observed by this Court in D.N. Chanchala v. State of Mysore [(1971) 2 SCC 293 : 1971 Supp SCR 608] the result obtained by a student in an examination held by one University cannot be comparable with the result obtained by another candidate in an examination of another University. Such standards depend on several human factors, method of teaching, examining and evaluation of answer papers. The subjects taught and examined may be the same, but the standard of examination and evaluation may vary, and the variations are inevitable. In the premises, the admission solely determined by the marks obtained by students, cannot be the best available objective guide to future academic performance. The College Admission Programme on the other hand, based on the test of promise and accomplishment of candidates seems to be better than the blind method of selection based on the marks secured in the qualifying examinations. We are, therefore, unable to accept the submission that the College Admission Programme is arbitrary and the University criteria for selection is objective.

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

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101. *Laws carving out the rights of minorities in Article 30(1) however, must not be arbitrary, invidious or unjustified; they must have a reasonable relation between the aim and the means employed. The individual rights will necessarily have to be balanced with competing minority interests. In Sidhajbhai case [(1963) 3 SCR 837 : AIR 1963 SC 540] the government order directing the minority run college to reserve 80 per cent of seats for government nominees and permitting only 20 per cent of seats for the management with a threat to withhold the grant-in-aid and recognition was struck down by the Court as infringing the fundamental freedom guaranteed by Article 30(1). Attention may also be drawn to Article 337 of the Constitution which provided a special concession to Anglo-Indian community for ten years from the commencement of the Constitution. Unlike Article 30(2) it conferred a positive right on the Anglo-Indian community to get grants from the government for their educational institutions, but subject to the condition that at least 40 per cent of annual admission were made available to members of other communities.*

102. *In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve.* ***But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to members of communities***

> ***other than the minority community. The admission of other community candidates shall be done purely on the basis of merit.***" (emphasis supplied)

38. A perusal of the abovementioned paragraphs demonstrate that the Apex Court has noticed that one of the compelling reasons as to why the Petitioner-College had been permitted to devise their own admission programme was that numerous applications were received from students who came from various State Boards as well as the Central Board of Secondary Education (CBSE). The process of conducting an interview had, therefore, been allowed on the basis of the fact that merit could not be adjudged solely on the basis of the marks obtained in the qualifying examination.

39. Consequently, W.P. No. 350/1993 was filed by the Islamic Academic of Education which, along with connected petitions, was placed before a Bench of five Judges. As the correctness of the decision in St. Stephen's College v. University of Delhi (supra) was doubted, it was placed before a Bench of seven Judges which, after framing of questions and after taking into consideration the 42nd Constitutional Amendment whereby "education" was included at Entry 25 in List III of the Seventh Schedule of the Constitution, deemed it appropriate to place the matter before an eleven-Judge Bench. This led to the landmark decision in T.M.A. Pai Foundation v. State of Karnataka (supra) where the ratio of St. Stephen's College v. University of Delhi (supra) was upheld. However, the Supreme Court noted that the a rigid percentage for reservation of minority communities could not be affixed, as had been done for the Petitioner-College, i.e. a 50% reservation for the minority community. T.M.A. Pai Foundation v. State of Karnataka (supra) explained the ratio in St. Stephen's College v. University of Delhi (supra) by holding that in the absence of a uniform examination and a rational method of assessing the

students, a competitive method could be evolved, however, if the same was not done, then interviews conducted by the Petitioner-College would be allowed to be continued. The relevant extracts of the said Judgement have been reproduced as follows:

> *"**68**. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and postgraduation non-professional colleges or institutes.*
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> *****
>
> ***71**. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by rules or regulations, the conditions on the basis of which admission will be granted to different*

aided colleges by virtue of merit, coupled with the reservation policy of the State. The merit may be determined either through a common entrance test conducted by the university or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions — the method to be followed is for the university or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the university to provide that consideration should be shown to the weaker sections of the society.

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***90**. In the exercise of this right to conserve the language, script or culture, that section of the society can set up educational institutions. The right to establish and maintain educational institutions of its choice is a necessary concomitant to the right conferred by Article 30. The right under Article 30 is not absolute. Article 29(2) provides that, where any educational institution is maintained by the State or receives aid out of State funds, no citizen shall be denied admission on the grounds only of religion, race, caste, language or any of them. The use of the expression "any educational institution" in Article 29(2) would (sic not) refer to any educational institution established by anyone, but which is maintained by the State or receives aid out of State funds. In other words, on a plain reading, State-maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the grounds only of religion, race, caste or language.*

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***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 SidhajbhaiSabhai case [(1963) 3 SCR 837 : 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 [(1963) 3 SCR 837 : 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.

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***122**. The learned Judge then observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. Recognizing that the right to administer educational institutions could not include the right to maladminister, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation "must satisfy a dual test — the test of reasonableness, and the test that it is regulative of the 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". (SCC p. 783, para 92) It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives — that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.

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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. It was observed*

in St. Xavier's College case [(1974) 1 SCC 717 : (1975) 1 SCR 173] at SCR p. 192 that : (SCC p. 743, para 9)

> *"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."*

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.*

***140**. We have now to address the question of whether Article 30 gives a right to ask for a grant or aid from the State, and secondly, if it does get aid, to examine to what extent its autonomy in administration, specifically in the matter of admission to the educational institution established by the community, can be curtailed or regulated.*

***141**. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified*

period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30(1) illusory. The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then, is the meaning, scope and effect of Article 30(2)? Article 30(2) only means what it states viz. that a minority institution shall not be discriminated against where aid to educational institutions is granted. In other words the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. 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.

***142**. The implication of Article 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it, subject to the fulfilment of the requisite criteria, and the State gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.*

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.*

144. *It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instruction can be provided therein. Article 28(1) does not state that it applies only to educational institutions that are not established or maintained by religious or linguistic minorities. Furthermore, upon the receipt of*

aid, the provisions of Article 28(3) would apply to all educational institutions whether run by the minorities or the non-minorities. Article 28(3) is the right of a person studying in a State-recognized institution or in an educational institution receiving aid from State funds, not to take part in any religious instruction, if imparted by such institution, without his/her consent (or his/her guardian's consent if such a person is a minor). Just as Articles 28(1) and (3) become applicable the moment any educational institution takes aid, likewise, Article 29(2) would also be attracted and become applicable to an educational institution maintained by the State or receiving aid out of State funds. It was strenuously contended that the right to give admission is one of the essential ingredients of the right to administer conferred on the religious or linguistic minority, and that this right should not be curtailed in any manner. It is difficult to accept this contention. If Articles 28(1) and (3) apply to a minority institution that receives aid out of State funds, there is nothing in the language of Article 30 that would make the provisions of Article 29(2) inapplicable. Like Article 28(1) and Article 28(3), Article 29(2) refers to "any educational institution maintained by the State or receiving aid out of State funds". A minority institution would fall within the ambit of Article 29(2) in the same manner in which Article 28(1) and Article 28(3) would be applicable to an aided minority institution. It is true that one of the rights to administer an educational institution is to grant admission to the students. As long as an educational institution, whether belonging to the minority or the majority community, does not receive aid, it would, in our opinion, be its right and discretion to grant admission to such students as it chooses or selects subject to what has been clarified before. Out of the various rights that the minority institution has in the administration of the institution, Article 29(2) curtails the right to grant admission to a certain extent. By virtue of Article 29(2), no citizen can be denied admission by an aided minority institution on the

grounds only of religion, race, caste, language or any of them. It is no doubt true that Article 29(2) does curtail one of the powers of the minority institution, but on receiving aid, some of the rights that an unaided minority institution has, are also curtailed by Articles 28(1) and 28(3). A minority educational institution has a right to impart religious instruction — this right is taken away by Article 28(1), if that minority institution is maintained wholly out of State funds. Similarly on receiving aid out of State funds or on being recognized by the State, the absolute right of a minority institution requiring a student to attend religious instruction is curtailed by Article 28(3). If the curtailment of the right to administer a minority institution on receiving aid or being wholly maintained out of State funds as provided by Article 28 is valid, there is no reason why Article 29(2) should not be held to be applicable. There is nothing in the language of Articles 28(1) and (3), Article 29(2) and Article 30 to suggest that, on receiving aid, Articles 28(1) and (3) will apply, but Article 29(2) will not. Therefore, the contention that the institutions covered by Article 30 are outside the injunction of Article 29(2) cannot be accepted.

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***149**. Although the right to administer includes within it a right to grant admission to students of their choice under Article 30(1), when such a minority institution is granted the facility of receiving grant-in-aid, Article 29(2) would apply, and necessarily, therefore, one of the rights of administration of the minorities would be eroded to some extent. Article 30(2) is an injunction against the State not to discriminate against the minority educational institution and prevent it from receiving aid on the ground that the institution is under the management of a minority. While, therefore, a minority educational institution receiving grant-in-aid would not be completely outside the discipline of Article 29(2) of the Constitution, by no stretch of imagination can the rights guaranteed under Article 30(1) be*

annihilated. It is in this context that some interplay between Article 29(2) and Article 30(1) is required. As observed quite aptly in St. Stephen's case [(1992) 1 SCC 558] (at SCC p. 608, para 85) "the fact that Article 29(2) applies to minorities as well as non-minorities does not mean that it was intended to nullify the special right guaranteed to minorities in Article 30(1)". The word "only" used in Article 29(2) is of considerable significance and has been used for some avowed purpose. Denying admission to non-minorities for the purpose of accommodating minority students to a reasonable extent will not be only on grounds of religion etc., but is primarily meant to preserve the minority character of the institution and to effectuate the guarantee under Article 30(1). The best possible way is to hold that as long as the minority educational institution permits admission of citizens belonging to the non-minority class to a reasonable extent based upon merit, it will not be an infraction of Article 29(2), even though the institution admits students of the minority group of its own choice for whom the institution was meant. What would be a reasonable extent would depend upon variable factors, and it may not be advisable to fix any specific percentage. The situation would vary according to the type of institution and the nature of education that is being imparted in the institution. Usually, at the school level, although it may be possible to fill up all the seats with students of the minority group, at the higher level, either in colleges or in technical institutions, it may not be possible to fill up all the seats with the students of the minority group. However, even if it is possible to fill up all the seats with students of the minority group, the moment the institution is granted aid, the institution will have to admit students of the non-minority group to a reasonable extent, whereby the character of the institution is not annihilated, and at the same time, the rights of the citizen engrafted under Article 29(2) are not subverted. It is for this reason that a variable percentage of admission of minority students depending

on the type of institution and education is desirable, and indeed, necessary, to promote the constitutional guarantees enshrined in both Article 29(2) and Article 30.

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***151**. The right of the aided minority institution to preferably admit students of its community, when Article 29(2) was applicable, has been clarified by this Court over a decade ago in St. Stephen's College case [(1992) 1 SCC 558] . While upholding the procedure for admitting students, this Court also held that aided minority educational institutions were entitled to preferably admit their community candidates so as to maintain the minority character of the institution, and that the State may regulate the intake in this category with due regard to the area that the institution was intended to serve, but that this intake should not be more than 50% in any case. Thus, St. Stephen's [(1992) 1 SCC 558] endeavoured to strike a balance between the two articles. Though we accept the ratio of St. Stephen's [(1992) 1 SCC 558] which has held the field for over a decade, we have compelling reservations in accepting the rigid percentage stipulated therein. As Article 29 and Article 30 apply not only to institutions of higher education but also to schools, a ceiling of 50% would not be proper. It will be more appropriate that, depending upon the level of the institution, whether it be a primary or secondary or high school or a college, professional or otherwise, and on the population and educational needs of the area in which the institution is to be located, the State properly balances the interests of all by providing for such a percentage of students of the minority community to be admitted, so as to adequately serve the interest of the community for which the institution was established.*

152**. **At the same time, the admissions to aided institutions, whether awarded to minority or non-minority students, cannot be at the absolute sweet

will and pleasure of the management of minority educational institutions. As the regulations to promote academic excellence and standards do not encroach upon the guaranteed rights under Article 30, the aided minority educational institutions can be required to observe inter se merit amongst the eligible minority applicants and passage of common entrance test by the candidates, where there is one, with regard to admissions in professional and non-professional colleges. If there is no such test, a rational method of assessing comparative merit has to be evolved. As regards the non-minority segment, admission may be on the basis of the common entrance test and counselling by a State agency. In the courses for which such a test and counselling are not in vogue, admission can be on the basis of relevant criteria for the determination of merit. It would be open to the State authorities to insist on allocating a certain percentage of seats to those belonging to weaker sections of society, from amongst the non-minority seats.

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155*. It will be wrong to presume that the Government or the legislature will act against the Constitution or contrary to the public or national interest at all times. Viewing every action of the Government with scepticism, and with the belief that it must be invalid unless proved otherwise, goes against the democratic form of government. It is no doubt true that the Court has the power and the function to see that no one including the Government acts contrary to the law, but the cardinal principle of our jurisprudence is that it is for the person who alleges that the law has been violated to prove it to be so. In such an event, the action of the Government or the authority may have to be carefully examined, but it is improper to proceed on the assumption that, merely because an allegation is made, the action impugned or taken must be bad in law. Such being the position, when the Government frames rules*

and regulations or lays down norms, especially with regard to education, one must assume that unless shown otherwise, the action taken is in accordance with law. Therefore, it will not be in order to so interpret a Constitution, and Articles 29 and 30 in particular, on the presumption that the State will normally not act in the interest of the general public or in the interests of the sections concerned of the society.

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***161**. The essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation.*

Answers to eleven questions

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***Q. 4.** Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the university to which the institution is affiliated?*

***A**. Admission of students to unaided minority educational institutions viz. schools and undergraduate colleges where the scope for merit-based selection is practically nil, cannot be regulated by the State or university concerned, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.*

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the university may not be entitled to interfere with that right, so long

as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens' rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The State Government concerned has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the State agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the State agency followed by counselling wherever it exists.

***Q. 5. (a)** Whether the minorities' rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?*

***A**. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to maladministration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.*

***Q. 5.(b)** Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?*

***A**. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe bye-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State qua non-minority students. The merit may be determined either through a common entrance test conducted by the university or the Government concerned followed by counselling, or on the basis of an entrance test conducted by individual institutions — the method to be followed is for the university or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the university to provide that consideration should be shown to the weaker sections of the society.*

***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.*
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> *****
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> ***Q. 8**. Whether the ratio laid down by this Court in St. Stephen's case [(1992) 1 SCC 558] (St. Stephen's College v. University of Delhi) is correct? If no, what order?*
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> ***A.** The basic ratio laid down by this Court in St. Stephen's College case [(1992) 1 SCC 558] is correct, as indicated in this judgment. However, rigid percentage cannot be stipulated. It has to be left to authorities to prescribe a reasonable percentage having regard to the type of institution, population and educational needs of minorities."* (emphasis supplied)

40. Noting that the decision in T.M.A. Pai Foundation v. State of Karnataka (supra) raised more questions than it had answered, a need arose for a Constitution Bench of the Supreme Court to interpret the same which led to the decision being rendered in Islamic Academy of Education v. State of Karnataka, **(2003) 6 SCC 697**. However, events following this decision indicated that despite the exercise being undertaken for interpretation of the 11-Judge Bench judgement, some of the main questions had remained unsettled, and this led to the constitution of a 7-Judge Bench in P.A. Inamdar v. State of Maharashtra (supra).

41. In P.A. Inamdar (supra), it was reiterated that merely because Article 30(1) has been enacted, minority educational institutions would not become immune from the operation of regulatory measures. Moreover, once aided, the autonomy conferred by the protection of Article 30(1) on the minority

educational institution would be diluted as provisions of Article 29(2) are attracted. With regard to the extent of the regulation that can be exercised by the State, the Supreme Court has summarised as follows:

> *"**94**. Aid and affiliation or recognition, both by the State, bring in some amount of regulation as a condition of receiving grant or recognition. The scope of such regulations, as spelt out by a six-Judge Bench decision in Rev.Sidhajbhai case [Rev. SidhajbhaiSabhai v. State of Gujarat, (1963) 3 SCR 837 : AIR 1963 SC 540] and a nine-Judge Bench case in St. Xavier's [(1974) 1 SCC 717] must satisfy the following tests: (a) the regulation is reasonable and rational; (b) it is regulative of the essential 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; (c) it is directed towards maintaining excellence of education and efficiency of administration so as to prevent it from falling in standards. These tests have met the approval of Pai Foundation [(2002) 8 SCC 481] . However, Rev. Sidhajbhai case [Rev. SidhajbhaiSabhai v. State of Gujarat, (1963) 3 SCR 837 : AIR 1963 SC 540] and St. Xavier's [(1974) 1 SCC 717] go on to say that no regulation can be cast in "the interest of the nation" if it does not serve the interest of the minority as well. This proposition (except when it is read in the light of the opinion of Quadri, J.) stands overruled in Pai Foundation [(2002) 8 SCC 481] where Kirpal, C.J., speaking for the majority has ruled (vide SCC p. 563, para 107)—*
>
> > *"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."*
>
> *(Also see, paras 117 to 123 and para 138 of Pai Foundation [(2002) 8 SCC 481] where Kirpal, C.J. has dealt with St. Xavier's [(1974) 1 SCC 717] in detail.) No right can be absolute. Whether a minority or a non-minority, no community can claim its interest to be above national interest."*

42. P.A. Inamdar (supra), while examining the extent of the protection designated to minority educational institutions, further distinguished between professional and non-professional educational institutions, noting that merit and excellence assumed special significance in the context of professional educational institutions. Further, even when considering unaided minority educational institutions, the Supreme Court remarked that regulatory measures for ensuring educational standards and maintaining excellence thereof were no anathema to the protection conferred by Article 30(1). The relevant provisions of the said Judgement are as follows:

> *"Difference between professional and non-professional educational institutions*
>
> ***104** [Ed.: Para 104 corrected vide letter dated 31-8-2005.] . Article 30(1) speaks of "educational institutions" generally and so does Article 29(2). These articles do not draw any distinction between an educational institution dispensing theological education or professional or non-professional education. However, the terrain of thought as has developed through successive judicial pronouncements culminating in Pai Foundation [(2002) 8 SCC 481] is that looking at the concept of education, in the backdrop of the constitutional provisions, professional educational institutions constitute a class by themselves as distinguished from educational*

institutions imparting non-professional education. It is not necessary for us to go deep into this aspect of the issue posed before us inasmuch as Pai Foundation [(2002) 8 SCC 481] has clarified that merit and excellence assume special significance in the context of professional studies. Though merit and excellence are not anathema to non-professional education, yet at that level and due to the nature of education which is more general, the need for merit and excellence therein is not of the degree as is called for in the context of professional education.

***105**. Dealing with unaided minority educational institutions, Pai Foundation [(2002) 8 SCC 481] holds that Article 30 does not come in the way of the State stepping in for the purpose of securing transparency and recognition of merit in the matter of admissions. Regulatory measures for ensuring educational standards and maintaining excellence thereof are no anathema to the protection conferred by Article 30(1). However, a distinction is to be drawn between unaided minority educational institution of the level of schools and undergraduate colleges on the one side and institutions of higher education, in particular, those imparting professional education, on the other side. In the former, the scope for merit-based selection is practically nil and hence may not call for regulation. But in the case of the latter, transparency and merit have to be unavoidably taken care of and cannot be compromised. There could be regulatory measures for ensuring educational standards and maintaining excellence thereof. (See para 161, answer to Question 4, in Pai Foundation [(2002) 8 SCC 481] .) The source of this distinction between two types of educational institutions referred to hereinabove is to be found in the principle that right to administer does not include a right to maladminister.*

***106**. S.B. Sinha, J. has, in his separate opinion in Islamic Academy [(2003) 6 SCC 697] described (in*

para 199) the situation as a pyramid-like situation and suggested the right of minority to be read along with the fundamental duty. Higher the level of education, lesser are the seats and higher weighs the consideration for merit. It will, necessarily, call for more State intervention and lesser say for the minority.

107** [Ed.: Para 107 corrected vide letter dated 31-8-2005.] . Educational institutions imparting higher education i.e. graduate level and above and in particular specialised education such as technical or professional, constitute a separate class. While embarking upon resolving issues of constitutional significance, where the letter of the Constitution is not clear, we have to keep in view the spirit of the Constitution, as spelt out by its entire scheme. Education aimed at imparting professional or technical qualifications stands on a different footing from other educational instruction. Apart from other provisions, Article 19(6) is a clear indicator and so are clauses (h) and (j) of Article 51-A.* ***Education up to the undergraduate level aims at imparting knowledge just to enrich the mind and shape the personality of a student. Graduate-level study is a doorway to admissions in educational institutions imparting professional or technical or other higher education and, therefore, at that level, the considerations akin to those relevant for professional or technical educational institutions step in and become relevant. This is in the national interest and strengthening the national wealth, education included. Education up to the undergraduate level on the one hand and education at the graduate and postgraduate levels and in professional and technical institutions on the other are to be treated on different levels inviting not identical considerations, is a proposition not open to any more debate after Pai Foundation [(2002) 8 SCC 481] *. A number of legislations occupying the field of education whose constitutional validity has been tested and accepted suggest that while recognition or*

> *affiliation may not be a must for education up to undergraduate level or, even if required, may be granted as a matter of routine, recognition or affiliation is a must and subject to rigorous scrutiny when it comes to educational institutions awarding degrees, graduate or postgraduate, postgraduate diplomas and degrees in technical or professional disciplines. Some such legislations are found referred in paras 81 and 82 of S.B. Sinha, J.'s opinion in Islamic Academy [(2003) 6 SCC 697] ."*
>
> (emphasis supplied)

43. Recently, in Christian Medical College Vellore Association v. Union of India and Ors. (supra), while considering as to whether NEET/a common entrance test interfered with the rights of unaided minority institutions and relying upon St. Stephen's College v. University of Delhi (supra), Modern Dental College & Research Centre v. State of M.P., **(2016) 7 SCC 353,** and the aforementioned decisions on this topic, the Supreme Court observed that NEET was a device to standardise and for computing equivalence between different kinds of qualifications, and that it did not interfere with the rights of unaided minority institutions as it had been imposed in national interest considering the malpractices of granting illegal admission. The said Judgement has encapsulated the trajectory of the judicial pronouncements in this regard and observed as follows:

> *"**35**. Dealing with unaided minority educational institutions in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , the Court observed that Article 30 does not come in the way of the State stepping in to secure transparency and recognition of merit in the matter of admissions. Regulatory measures for ensuring educational standards can be framed. In the case of professional education, transparency and merit have to*

be unavoidably taken care of and cannot be compromised.

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***38**. In Modern Dental College & Research Centre [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , the Constitution Bench of this Court considered the provisions of Articles 19(1)(g), 19(6), 26 and 30 in relation to the right to freedom of occupation of private unaided minority and non-minority educational institutions. This Court observed that the activity of education is neither trade nor profession i.e. commercialisation and profiteering cannot be permitted. It is open to impose reasonable restrictions in the interest of general public. The education cannot be allowed to be a purely economic activity; it is a welfare activity aimed at achieving more egalitarian and prosperous society to bring about social transformation and upliftment of the nation.*

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***65**. Thus, we are of the opinion that rights under Articles 19(1)(g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India do not come in the way of securing transparency and recognition of merits in the matter of admissions. It is open to regulating the course of study, qualifications for ensuring educational standards. **It is open to imposing reasonable restrictions in the national and public interest.** The rights under Article 19(1)(g) are not absolute and are subject to reasonable restriction in the interest of the student's community to promote merit, recognition of excellence, and to curb the malpractices. Uniform entrance test qualifies the test of proportionality and is reasonable. The same is intended to check several maladies which crept into medical education, to prevent capitation fee by admitting students which are lower in merit and to prevent exploitation, profiteering and*

commercialisation of education. The institution has to be a capable vehicle of education. The minority institutions are equally bound to comply with the conditions imposed under the relevant Acts and Regulations to enjoy affiliation and recognition, which apply to all institutions. In case they have to impart education, they are bound to comply with the conditions which are equally applicable to all. The Regulations are necessary, and they are not divisive or disintegrative. Such regulatory measures enable institutions to administer them efficiently. There is no right given to maladminister the education derogatory to the national interest. The quality of medical education is imperative to subserve the national interest, and the merit cannot be compromised. The Government has the right for providing regulatory measures that are in the national interest, more so in view of Article 19(6) of the Constitution of India.

***66**. The rights of the religious or linguistic minorities under Article 30 are not in conflict with other parts of the Constitution. Balancing the rights is constitutional intendment in the national and more enormous public interest. Regulatory measures cannot be said to be exceeding the concept of limited governance. The regulatory measures in question are for the improvement of the public health and is a step, in furtherance of the directive principles enshrined in Articles 47 and 51(A)(j) and enable the individual by providing full opportunity in pursuance of his objective to excel in his pursuit. The rights to administer an institution under Article 30 of the Constitution are not above the law and other constitutional provisions. Reasonable regulatory measures can be provided without violating such rights available under Article 30 of the Constitution to administer an institution. Professional educational institutions constitute a class by themselves. Specific measures to make the administration of such institutions transparent can be imposed. The rights available under Article 30 are not*

> *violated by provisions carved out in Section 10-D of the MCI Act and the Dentists Act and Regulations framed by MCI/DCI. The regulatory measures are intended for the proper functioning of institutions and to ensure that the standard of education is maintained and does not fall low under the guise of an exclusive right of management to the extent of maladministration. The regulatory measures by prescribing NEET are to bring the education within the realm of charity which character it has lost. It intends to weed out evils from the system and various malpractices which decayed the system. The regulatory measures in no way interfere with the rights to administer the institution by the religious or linguistic minorities."*

44. Further, the Supreme Court in Christian Medical College Vellore Association v. Union of India and Ors. (supra) had explained T.M.A. Pai Foundation v. State of Karnataka (supra) and noted that the 11-Judge Bench had observed that if a system was devised to compute equivalence between different kinds of qualifications, for instance, a common entrance test, it would not be in violation of the rights conferred under Article 30(1). Even for the purposes of an unaided minority institution, a common entrance test could be implemented to determine merit. The relevant portion is as follows:

> **"*32**. *In T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , the Court held that some system of computing equivalence between different kinds of qualifications like a common entrance test, would not be in violation of the rights conferred. The unaided minority institutions under Article 30(1) of the Constitution of India have the right to admit students, but the merit may be determined by common entrance test and the rights under Article 30(1) are not absolute so as to prevent the Government from making any regulations. The Government cannot be prevented from framing regulations that are in national interest. However, the*

> *safeguard is that the Government cannot discriminate any minority institution and put them in a disadvantageous position vis-à-vis to other educational institutions and has to maintain the concept of equality in real sense. The minority institutions must be allowed to do what non-minority institutions are permitted. It is open to State/bodies concerned to frame regulations with respect to affiliation and recognition, to provide a proper academic atmosphere.* ***While answering Question 4, it was held that the Government or the university can lay down the regulatory measures ensuring educational standards and maintaining excellence and more so, in the matter of admission to the professional institutions. It may not interfere with the rights so long as the admissions to the unaided minority institutions are on transparent basis and the merit is adequately taken care of****."*
>
> (emphasis supplied)

45. Flowing from the aforementioned landmark judgements on the scope and ambit of Article 30(1), the understanding that is developed is that Article 30, though couched in absolute terms, is subject to reasonable regulations by the State. However, such regulations cannot be proposed to be for the betterment of society at large or in the interest of the State, and must first and foremost be for the purposes of ensuring that the standards of excellence of the minority institution are maintained and that the interests of the minority community are advanced. Furthermore, the degree of interference that can be exercised by the State depends on the basic foundation of an institution. For instance, an unaided minority institution has a greater leeway in devising its administrative processes than an aided minority institution. Moreover, an unaided professional minority institution would have lesser liberty to follow its own rules and regulations than an unaided minority institution imparting higher secondary education. An educational institution seeking recognition or

affiliation can also not claim total immunity from regulations of legislature or the university. In all these circumstances, the one thread that runs through is that the State's ability to institute regulations circumscribing the right to administer of a minority institution under Article 30(1) is maintained, but the validity of the same depends on the purpose of the said regulations.

46. In this regard, the *first question* that arises is whether Article 30(1) subsumes the right of an aided minority institution to prescribe a procedure for admission for its non-minority students. To answer this question, it is necessary to discuss the constitutional intent of Article 30, which is to bring minorities at par or equality with majority as well as to give them the right to establish, administer and run minority educational institutions In Sindhi Education Society v. Govt. (NCT of Delhi), **(2010) 8 SCC 49**, the Supreme Court was discussing whether the Delhi School Education Act, 1973, and the Rules framed thereunder, were intended to make inroads into the character and privileges of the minority community. While doing so, the Apex Court noted the importance of the primary object in interpreting a provision:

> *"**99**. At last, what is the purpose of granting protection or privilege to the minorities in terms of Article 29, and at the same time, applying negative language in Article 30(2) in relation to State action for releasing grant-in-aid, as well as the provisions of the DSE Act, 1973 and the Rules framed thereunder? **It is obvious that the constitutional intent is to bring the minorities at parity or equality with the majority as well as give them right to establish, administer and run minority educational institutions**. With the primary object of Article 21-A of the Constitution in mind, the State was expected to expand its policy as well as methodology for imparting education. The DSE Act, as we have already noticed, was enacted primarily for the purpose of better organisation and development of school education in the Union Territory of Delhi and for matters connected*

> *therewith or incidental thereto. Thus, the very object and propose of this enactment was to improve the standard as well as management of school education. It will be too far-fetched to read into this object that the law was intended to make inroads into character and privileges of the minority. Besides, in the given facts and circumstances of the case, the court is also duty-bound to advance the cause or the purpose for which the law is enacted. Different laws relating to these fields, thus, must be read harmoniously, construed purposively and implemented to further advancement of the objects, sought to be achieved by such collective implementation of law.* ***While you keep the rule of purposive interpretation in mind, you also further add such substantive or ancillary matters which would advance the purpose of the enactment still further. To sum up, we will term it as "doctrine of purposive advancement****"."* (emphasis supplied)

47. In the aforementioned Judgement, it was observed that the Court is duty-bound to advance the cause or the purpose for which the law is implemented and, therefore, these laws must be construed purposively. In the instant case, the object underlying Article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently, and that they should acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments that will make them fit for entering public services, educational institutions imparting higher instructions, including general secular education. In this context, the dual intent that is sought to be achieved by Article 30(1) in the interest of minorities are: *(i)* to enable such minority to conserve its religion and language, and *(ii)* to give a thorough, good, general education to children belonging to such a minority [Refer to In Re Kerala Education Bill (supra)].

48. When observed through the prism of constitutional intent, it becomes clear that the right of a minority institution to administer, i.e. manage the affairs of the institution and other allied matters, is for the purpose of ensuring that the minority community is relegated to a position that places it at par with the majority community. As a corollary, it could not have been the intent of the Constituent Assembly to allow minority institutions to implement its protectionist measures for the betterment of the minority community, and then extend this protection to the non-minority community. Such an interpretation of the provision under Article 30(1) would only defeat the purpose of the constitutional provision, which is to bring minority communities at par with the non-minority communities.

49. A reading of the foregoing judicial pronouncements holding the field also demonstrates that no categorical judicial assertion has been rendered with regard to a minority institution's right to administer an institution of its choice under Article 30(1) being extended to its non-minority members. In the absence of such an assertion and from a plain reading of Article 30(1), it can only be discerned that the right enumerated therein did not encompass the non-minority community.The golden rule of interpretation clearly denotes that words must be read in its ordinary, natural and grammatical meaning. Assuming that the non-minority community would also be subjected to a specialised process of admission would entail reading into the constitutional provision an aspect that does not exist. This line of interpretation can also be culled out from the aforesaid Judgements which have set conditions for the kind of State regulations that can be effectuated upon a minority educational institution, and how the same may only be permissible if they are in furtherance of the minority interest, *not* non-minority interest, and conducive to those who resort to it.

50. In this regard, there is strength in the contention of the learned ASGs and Mr. Arun Bhardwaj that when the object of the Petitioner-College is to impart religious instruction [as illuminated in Para 5 of St. Stephen's College v. University of Delhi (supra) as well as Clause 2 of the Memorandum of Society in the Constitution of the college], the same cannot be enforced upon the non-minority community. If such religious instruction cannot be imposed upon the non-minority community, despite the same being a tangent of the right to administer of the Petitioner-College, it can be inferred that the non-minority community would not be subject to other instructions that are imparted by the minority institution for the betterment of the minority community. Further, in doing so, the minority character of the educational institution does not suffer as its right to establish the said institution remains intact, and its right to administer, to the extent of its minority community and for the betterment of the said community, remains unhindered. Therefore, the contention of Mr. Sibal that the right available to minority institutions is not limited to selecting students belonging only to the minority community alone and extends to the process of selecting and admitting students from the non-minority community as well also cannot be accepted.

51. Consequently, this Court is of the opinion that while the Petitioner-College retains its authority to conduct interviews in addition to the CUET for the admission of students belonging to the minority community, it cannot devise a policy that forces the non-minority community to undergo an interview as well. Therefore, the right of the Petitioner-College to conduct interviews and accord to them 15% weightage for the purposes of admitting students does not extend to non-minority students, and solely pertains to its minority students.

52. Having answered the first question, it becomes important to ascertain the *second question*, i.e. whether the admission policy of Respondent No.1, as stated in its Bulletin of Information for Undergraduate Admissions 2022, would be applicable to the Petitioner-College or would it pierce its minority character by impinging upon its right to administer under Article 30(1).

53. A perusal of the aforesaid Judgements on this topic has brought to the fore one strain of thought that has remained consistent – Article 30 is not absolute in nature and may be subjected to restrictions imposed by the State as long as the same are reasonable in nature and do not destroy the basic character of the minority institution. There is no clear-cut bar that prevents the State from making guidelines/regulations, even in the case of unaided minority educational institutions. Regulations can be framed to prevent maladministration as well as for laying down standards of education, teaching, maintenance of discipline, public order, health, morality, etc. We, therefore, at the outset itself, reject Mr. Sibal's submission that Article 30 is absolute and cannot be amenable to regulations of the State.

54. What remains to be seen is whether the policies of Respondent No.1 that are being impugned herein are such that they are unreasonable and excessive, or if they are in consonance with the conditions that have been laid down over the years regarding the scope of such regulations. It is now well settled that a minority institution may have its own procedure and method of selection of students, but it has to be a fair and transparent method. The judicial view is that the width of the rights and limitations thereof of even unaided institutions, whether run by a majority or by a minority, must conform to the maintenance of excellence and, with a view to achieve the said goal indisputably, regulations can be framed by the State.

55. St. Stephen's College was established in 1881, as a Christian Missionary College by the Cambridge Mission in Delhi in collaboration with the Society for the Propagation of the Gospel (SPG) whose members were residents in India. It was founded in order to impart Christian religious instruction and education based on Christian values to Christian students as well as others who may opt for the said education. In 1922, along with two other colleges, the Petitioner-College formed the University of Delhi. Since then, the Petitioner-College has been one of the top ranking colleges in the country and is known for its illustrious alumni sprinkled in all fields. It is a non-professional minority aided educational institution, and has been implementing the process of an interview since its founding.

56. Mr. Sibal has submitted before us that the process of administering an interview for all shortlisted applicants is a practice that has been lauded over the decades and has aided to maintain the standard of excellence. He has stated that the aspect of merit is not derogated as the candidates called for the interview have already proven that they are meritorious by scoring the cut-off marks. He has stated that the purpose of the interview is to solely ascertain as to whether the candidate is capable of aligning themselves with the ethos of the Petitioner-College. Mr. Sibal has relied upon St. Stephen's College v. University of Delhi (supra) to buttress the importance of an interview and how the same has not been found to be arbitrary or discriminatory so as to warrant the interference of the University. He has further contended that the aspect of merit is not eroded because of the interview as the CUET ensures that the same is preserved and that it is only from a list of meritorious applicants, who have achieved the cut-off marks, that a shortlist for the interview is prepared.

57. This Court does not find weight in the learned Senior Counsel's submissions. The reason why CUET was imposed was because of the varying standards of evaluation and teaching of different State Boards in allocation of marks that placed students of one Board at a disadvantage than the other. CUET was meant to be a method to standardise and uniformalise the process of evaluation by providing all applicants a level playground for proving their merit. It was in the context of varying standards of different State Boards and in the absence of reservation for the minority community that the Supreme Court had noted in its Para 65 of St. Stephen's College v. University of Delhi (supra) that there were *compelling reasons* for the Petitioner-College to follow its own admission programme. There is reason in the submissions of Mr. Arun Bhardwaj and both the learned ASGs that now that CUET has been implemented which takes away the aspect of having to select students on the basis of marks obtained in qualifying examinations of different institutions with different standards, the basis of the Judgement also goes away and therefore, no compelling reason exists anymore for an interview to be conducted.

58. It has been observed in Para 102 in the very same Judgement itself that *"in light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions* ***subject of course to conformity with the University standard****."* Therefore, while this Court does not agree with the submission of Mr. Bhardwaj and the learned ASGs that T.M.A. Pai Foundation v. State of Karnataka (supra) virtually overrules St. Stephen's College v. University of Delhi (supra) on account of the fact that it categorically notes in Q.8. that

apart from the fixation of rigid percentage for reservation, the basic ratio is correct, this Court also does not agree with the submissions of Mr. Sibal that St. Stephen's College v. University of Delhi (supra) grants the Petitioner-College the power to conduct an interview for shortlisted for all times to come, even when the basis of the observations rendered in the said Judgement have changed. No sufficient explanation has been advanced by the learned Senior Counsel for the Petitioner-College as to how the taking away of the right of the Petitioner-College to conduct interviews for its non-minority candidates will deprive the Petitioner-College of its fundamental right under Article 30(1) when it still retains its right to prefer its minority community and conduct an interview for its minority population.

59. It becomes pertinent at this juncture to reiterate Para 152 of T.M.A. Pai Foundation v. State of Karnataka (supra) which very aptly notes that admissions to aided institutions, whether awarded to minority or minority students, *cannot be at the absolute sweet will and pleasure of the management of the minority educational institutions*. If it is found that the regulations to promote academic excellence and standards do not encroach upon the guaranteed rights under Article 30, the aided minority educational institutions *can be required to observe inter se merit amongst the eligible minority applicable and* ***passage of common entrance test*** *by the candidates, where there is one, with regard to admissions in professional and non-professional colleges.* The Judgement notes that if there is no such test, a rational method of assessing comparative merit may be evolved. The contention of Mr. Sibal that the right established by Article 31 of the Constitution of India cannot be whittled down by any regulatory measure is, thus, belied by the observations made in T.M.A. Pai Foundation v. State of Karnataka (supra).

60. In the instant case, with the advent of CUET, it cannot be said that *inter se* merit will not be observed. The concept of merit itself is contentious and convoluted, and is premised on the philosophy that "we get what we deserve". Michael Sandel, an American political philosopher, in his book titled, "The Tyranny of Merit: What's Become of the Common Good?", has observed how embedded in the principle of merit lies the dark side of the promise of mastery and self-making, which fails to take into consideration the surrounding factors, such as generational wealth, social capital, access to better educational resources, etc. When we perceive merit as a standalone concept premised on an individual's capabilities, we fail to delve into the background of the individual which goes beyond merit and choice into the realm of luck and chance. The CUET implemented by the Respondents is an attempt to level the playing field and remove aberrations that have arisen due to the varying standards of evaluation of different State Boards. In view of this, this Court is of the opinion that the conduct of an interview over and above the CUET has the potential of introducing subjectivity and bias into the admission process, thereby eroding the very purpose for which CUET is being brought into play.

61. It is the contention of Mr. Vikramjit Banerjee, learned ASG appearing for Respondent No.2, that even for seats reserved for minority community, the selection must be made solely from the merit list, cannot be accepted. The UGC has not chosen to challenge the University directives in the instant Writ Petitions. It is, therefore, not open to Mr. Banerjee to contend beyond the scope of the same. Further, such restrictions would take away the very important right of the minority institutions to administer the said institution. It is for the institution to decide as to what would be best for the minority community and, for that purpose conducting an interview, which has been

held to be free and transparent by the Apex Court in St. Stephen's College v. University of Delhi (supra), cannot be said to be contrary to the interest of the minority institution. As stated earlier, the process of conducting an interview imparts an element of subjectivity which, in this case, i.e. for the purposed of inducting students from the minority community, would be best for furthering their interest.

62. Therefore, even though there exist limitations to the regulations of the State when it comes to interfering in the admission process instituted by the Petitioner-College under its fundamental right as per Article 30(1) for the minority community, it emerges before this Court that the Respondent No.1 is well within its right to formulate policies regulating the right of the Petitioner-College, which is an aided educational institution, to admit students if it is of the opinion that the admission policies of the Petitioner-College may potentially lead to maladministration and lower the standard of excellence of the institution. Accordingly, the policies of Respondent No.1 that is under consideration in the instant matter do not traverse beyond reasonability and do not impinge upon the rights of the Petitioner-College under Article 30(1).

63. After having established that the right of the Petitioner-College to conduct interviews under the garb of right to administer under Article 30(1) would not extend to its non-minority candidates, and that the Petitioner-College is bound by the admission policy formulated by Respondent No.1 pertaining to the instant issue, this Court will now delve into the *third question* – whether the Petitioner-College has the right to sub-classify the minority category under Article 30? In this regard, it would be pertinent to peruse the Judgement of the Kerala High Court in The Medical Mission of the South Kerala Diocese of the Church of South India (SIUC) v.

Muhammed Rizwan and Ors. as has been relied upon by the learned ASG appearing for Respondent No.1. Mr. Sibal has stated that an SLP has been filed before the Supreme Court against the said Judgment, and notice has been issued in the same. However, it is necessary to note that there is no stay on the operation of the Judgement as such.

64. In the case before the Kerala High Court, which was a review of a Judgement rendered by the Division Bench, a similar issue had arisen with regard to reservation being accorded to various denominations of the minority community and the propriety of the same. Reliance had been placed on a mutual reading of Article 26 and Article 30(1) for the purposes of expanding the protection under Article 30, and it had been submitted that every denomination was, therefore, entitled to a preference and choice. This proposition was rejected by the High Court which observed that the protection which was available under Article 30(1) was to the minority communities and there could be no sub-division within the minority community, in the off-chance that it would put at peril the larger interest of the community members as a whole. The relevant paragraphs of the said Judgement are as follows:

> *"**10**. The seat matrix proposed by the colleges, envisaging grant of admission to various sects and creeds within the religion was found to be invalid and illegal, especially then it would lead to merit being compromised and the minority community members themselves being prejudiced by such categorization. The settled position of law that inter se merit among the candidates would have to be maintained even while selecting candidates for admission to a minority institution was reiterated with reliance placed on Islamic Academy of Education v. State of Karnataka [(2003) 6 SCC 697]. Indian Medical Association v. Union of India [(2011) 7 SCC 179] was relied on to*

find, what the source is. The Hon'ble Supreme Court found the regulations by the State in the case of non-minority educational institutions, to be on the higher side; especially when selection of students is made from the general pool, based on merit and marks obtained in the qualifying examination. The ability to choose within a smaller group within the general pool, was a right available to the minority institutions under Article 30(1).The ability to so choose within a smaller group was held to be not a right to choose the source, which was held to be one given and determined by the Constitution itself. The source was found to be the minority community and depends only on whether the group claiming to be minority is actually a minority community or not. When the minority community is identified there cannot be further dissection of the same.

11*. The minority communities notified by the Government are only five in number – Muslims, Christians, Sikhs, Budhists and Zoroastrians (Parsis). We cannot accept the contention of the review petitioners that the right available under Article 30(1) has to be telescoped through the freedom conferred under Article 26. The reliance placed on Acharya JagdishwaranandAvadhuta is absolutelymisplaced. The Hon'ble Supreme Court, in that case was not considering the extension of the protection under Article30(1); to a religious denomination within the Hindu religion. Ananda Margiswere held to be a denomination of Hindu religion, even going by their own averment that they were Shaivites which was and is a well known segment of Hindu religion. There the question was whether the Ananda Margis in carrying out a procession, could also indulge inthe unique practice of "Tandava" carrying lethal weapons and a skull, all of which had symbolic significance to the tenets practiced by them. The Supreme Court though found them entitled to carry on processions when there is no prohibition under the Cr.P.C; all the same held the "Tandava", with the props of skull and lethal weapons*

to be objectionable to public morals and detrimental to maintenance of law and order, thus dis-entitling protection under Articles 25 and 26. There never arose a question of the protection under Article 30(1).

***12**. As has been held by the Division Bench, in the decision under review, the protection available under Article 30(1) is to the minority communities and there can be no sub-division made within the minority community, thus giving short shrift to merit and putting at peril the larger interest of the community members as a whole. A division or dissection, made by the educational agency, of the community into sub-sects and denominations, however laudable and bona fide the object be, would run foul of the very constitutional vision, of providing an integrated egalitarian, all inclusive society, enabling a level playing field to the minority community members. If the freedom available to the religious denominations under Article 26, is extended, projected and telescoped into Article 30(1); then Ananda Margis, who were found, by the Supreme Court, to be a separate denomination within the Hindu community could claim protection under Article 30(1);though they cannot be regarded as a minority community. The minority institutions definitely have an unfettered right to admit their students to the institutions, on merit through a transparent, non-exploitative and fair procedure. Any discrimination on grounds of different practices, distinct social or financial status, political affiliations, nativity to a district, dependency to a Trustor allegiance to a Church etc. would frustrate and violate the protection granted to the minorities. It would be prejudicial to the members of the community itself who are excluded on grounds of the distinctions which often are artificial; viewed in the perspective of the protection envisaged under Article 30(1).*

***13**. The ecclesiastical hierarchy existing in the Christian Church does not confer on the Christian*

community any separate status from the other minority communities, to make a division within the community, to favour some. However good the intentions are it results in exclusion of meritorious others, from the same community; whatever their status, standing, affiliations, allegiance or practises are. When the institution, to be retained the status of minority, is required to primarily cater to the members of that community there cannot be an exclusion of some belonging to the same community. Reckoning the status of minority, also would have to be on the unit of the State or the Centre and there cannot be a further demarcation of areas on the basis of the sub-division of a State into districts and thehsils.

***14**. The choice is not of the minority institution to decide the source from which appointments are to be made. The source is clearly defined, though by implication, as the minority religious community which is enabled the protection under Article 30(1). Here there is a common merit list prepared and there are students available withint he minority community, who are by-passed for reason of their not being included in the preferred groups or the divisions of revenue territory, different practices of faith, social or financial status. When the minority community has a right to admit a student of their community in preference to a student of any other community, even ignoring comparative merit; among their own community members, merit cannot be ignored, in which event it would be obliterating the very objective of the protection guaranteed under Article 30(1). There cannot be a source found by the institution different from the community; even if that source is culled out from the community itself.*

***15**. The decision of the Andhra Pradesh High Court, in Christu Jyoti Institute of Technology and Science Vs. David 2001 KHC 630 is apposite. A Christian minority institution, run by Roman Catholics denied admission to a student, a Christian, for reason of his being a Protestant. The contention raised by the College was*

> *that there are Colleges run by the Protestants and the appellant, run by Roman Catholics was established for the benefit of that particular community, though it comes within the Christian religion. The Division Bench headed by S.B. Sinha C.J (as he then was) found, on the basis of the Minorities Commission Act that the minority defined therein was among others, Christians and that the minority status certificate issued to the appellant also showed it as an institution run by the Christian Minority Community. It was held:- "For the purpose of deriving the benefits under Art. 29 & 30read with the provisions of the Act and the Rules, different groups of faiths among the "Christianity" put together would constitute "Christianity Minority Community". All the different groups of faiths among the Christianity are equally entitled to claim the benefits provided for their community."(sic-para 15). This decision has been upheld by the Hon'ble Supreme Court in Civil appeal No. 1140 of 2002 by order dated 03.09.2002; giving the precedent, the exalted sheen under Article 141 of the Constitution"*

65. The Kerala High Court had observed therein that the ratio of T.M.A. Pai Foundation v. State of Karnataka (supra) could not be resorted to for buttressing the submission that a right had been conferred under Article 30(1) to the denominations spoken of in Article 26, and there could be no telescoping of the rights under Article 30(1), by reference to Article 26. Thus, any conferment of protection to a denomination within a minority religion, in exclusion of the community itself would be in contravention of the equal protection available to the other members of the minority religion.

66. This Court is not in agreement with the rationale expounded in the decision of the Kerala High Court. The judgements that have been propounded on this topic demonstrate that the minority community institutions have a right to establish and administer institutions of their choice

as per Article 30(1). Though this fundamental right under Article 30 is not absolute and there are limitations that can be implemented by the State, the said limitations are only for the furtherance of the interest of minority communities and to prevent any instances of maladministration. Once that right has been given to a minority institution, then the seats which are to be filled in by the minority students cannot be curbed/restricted by directing the institutions as to how to fill those seats, provided the method adopted by the institution is fair and transparent. In fact, the very purpose of Article 30(1) would be defeated if it is done so. Therefore, any exercise undertaken by the State that would whittle down the protection that is granted to a minority community can only be said to be detrimental to the community as a whole and, therefore, cannot be sustained. The contention of Mr. Sibal that any interference in the right of admission to the minority candidates would seriously impede the "freedom of choice" granted to the various minority institutions under Article 30 which would, in the opinion of this Court, include the right to give preference/reservation to members of the religious denomination who have founded and are administering the educational institution for the purpose of admission, is, therefore, accepted.

67. Flowing from the above, this Court respectfully disagrees with the contention of the learned ASG that a single merit list for the candidates belonging to the Christian community, regardless of any denominations/sub-sects/sub-categories within the Christian minority community must be given. Any such protection would fall foul of the judicial pronouncements on the instant subject and would not be within the four corners of reasonableness and would not be furthering the right of the minority community itself as it would alter the right of a minority institution under Article 30(1).

68. In view of the above, this Court has arrived at the following conclusions:

i. The fundamental right under Article 30(1) accorded to a minority institution cannot be extended to non-minority members.

ii. Article 30(1) is not absolute and the State has the right to formulate regulations concerning the administration of a minority institution to the extent that it is for the furtherance of the interest of the minority community and is in a bid to prevent maladministration of the minority institution. Aided minority educational institutions that are affiliated with a University must follow the norms and procedure of the said University.

iii. Protection under Article 30(1) can be extended to the extent that it allows a minority institution to sub-classify the reservation accorded to the minority community.

69. Consequently, the communication dated 09.05.2022 issued by Respondent No.1 is liable to be set aside to the extent that it mandates a single merit list for admission of candidates belonging to the Christian community regardless of any denominations/sub-sects/sub-categories within the Christian community. The Petitioner-College is, therefore, directed to follow the admission policies for the year 2022-2023 as formulated by Respondent No.1. Further, in accordance with the subsequent communication dated 24.05.2022, the Petitioner-College must withdraw its Admission Prospectus and issue a Public Notice declaring the amended admission procedure.

70. Accordingly, the writ petitions are partly allowed and disposed of, along with the pending applications, if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

SEPTEMBER 12, 2022
Rahul.

ITEM NO.30 COURT NO.6 SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 7636-7637/2022

ST. STEPHENS COLLEGE Appellant(s)

VERSUS

UNIVERSITY OF DELHI & ANR. Respondent(s)

(IA No. 146355/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 19-10-2022 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Appellant(s) Mr. Kapil Sibal, Sr. Adv.
Mr. A. Mariyar Puthham, Sr. Adv.
Mr. Romy Chacko, AOR
Mr. Varun Mudgal, Adv.
Mr. Praveen Kkumar Singh, Adv.
Mr. Robin V. S., Adv.
Mr. Chandan Kumar Mandal, Adv.
Ms. Aprajita Jamwal, Adv.
Mr. Kozhy John, Adv.
Mr. Sudesh Kumar Singh, Adv.

For Respondent(s) Mr. Tushar Mehta, Solicitor General
Mr. Sanjay Jain, ASG
Mr. Vikramjit Banerjee, ASG
Mr. Arun Bhardwaj, Sr. Adv.
Mr. Apoorv Kurup, Adv.
Ms. Nidhi Mittal, Adv.
Mr. Saransh Kumar, Adv.
Ms. Aparna Arun, Adv.
Ms. Komal Aggarwal, Adv.
Mr. Hardik Rupal, Adv.
Ms. V. Bhawani, Adv.
Mr. Aakash Pathak, Adv.
Mr. Nishank Tripathi, Adv.
Ms. Harshita Sukhija, Adv.
Mr. Akash Kishore, Adv.
Mr. Ojaswa Pathak, Adv.
Ms. Damini Garg, Adv.
Mr. Raman Yadav, Adv.
Mr. Prashant Rawat, Adv.
Mr. Nring Chamwibo Zeliang, Adv.
Mr. Akash Vajpai, Adv.

Ms. Gauraan, Adv.
Mr. Navin Kumar Sehrawat, Adv.
Mr. Ashish Sharma, Adv.
Mr. Vishnu Kant, AOR
Mr. Mohinder Jit Singh, AOR

UPON hearing the counsel the Court made the following

O R D E R

We have heard the learned counsel for the parties for quite some time for grant of interim relief, as prayed for by the appellant and after going through the Judgment in *St. Stephen's College Vs. University of Delhi* (1992) 1 SCC 558 and the fact that it is the first time when Entrance Test(CUET) has been introduced by the University of Delhi for the purpose of admission to various colleges for undergraduate courses, including the petitioner-institution, protecting their rights as a minority institution under Article 30 of the Constitution of India, a question raised for consideration is as to whether the admissions to the open category seats could be made purely on the basis of CUET qualifying test or in addition to it, a discretion has to be left with the college/institution for conducting interviews for the purposes of preparing the final list for admission against the open category seats in an aided minority institution (petitioner).

After taking into consideration the Judgment impugned before us, we find no reason at this stage to stay the operation of the impugned Judgment. Consequently, the prayer for interim relief, as prayed for, is rejected. However, the admission process shall remain subject to the final outcome of the appeals.

(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS

(MATHEW ABRAHAM)
COURT MASTER