(FULL BENCH)

Before : S. S. Sodhi, J. L. Gupta & V. K. Bali, JJ.

CHRISTIAN MEDICAL COLLEGE, LUDHIANA,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2598 of 1991.

30th March, 1992.

Constitution of India, 1950—Arts. 29, 30—Punjab University Act (No. VII of 1947)—S. 27—Minority Institutions—Right to establish and administer its own Institutions—Minority Institution proposing to set-up Dental College—Clearance of Government sought and affiliation with the Panjab University and approval of Dental Council of India—Panjab University laying down conditions for grant of provisional affiliation being imposition of qualifying test for admission, fees to be charged from the students and appointment and pay-scales of members of the staff—Condition of appointment of teaching staff as per mode of appointment approved by the University violates the guarantee under Art. 30(1) and amounts to an intrusion of the right of minority institutions to administer its institutions—However, University is within its jurisdiction to impose the conditions of pay-scales at par with the U.G.C. scales—Panjab University's conditions that admission to BDS Degree Course of the proposed Dental College must be on the basis of the pre-medical entrance test conducted by the Panjab University, is unwarranted and violative of the guarantee under Art. 30(1)—The condition that fees to be charged from the students would remain unchanged for 5 years following the first year admission is unreasonable—Fees payable have a rational nexus with the rising costs of living and administration—Panjab University's condition to affiliation that any increase in fees must be preceded by the prior approval of the University is unsustainable—The unaided minority institutions is entitled to affiliation without the imposition of the above conditions save in the matter of pay-scales of teachers.

Held, per S. S. Sodhi, J. (V. K. Bali, J. agreeing) that as regards affiliation, there is no fundamental right of minorities for the grant of it and they must consequently follow the prescribed regulations concerning educational standards; qualifications of teachers; and the like, but, at the same time, recognition or affiliation cannot be denied on terms, which would tantamount to surrender by minorities of their constitutional right to administer their educational institutions.

(Para 29)

Christian Medical College, Ludhiana *v.* The State of Punjab and others
(S. S. Sodhi, J. L. Gupta & V. K. Bali, JJ.)

Held, per S. S. Sodhi, J. (V. K. Bali, J. agreeing) that in the matter of selection of teaching staff, the dominant role goes to persons other than those belonging to the petitioners, in that, out of a Committee of seven for selection of Principal, Professors and Lecturers, only two would be from the petitioners for the first two posts and three for the Lecturers posts. This clearly runs counter to the right of administration and management guaranteed to the minority institutions under Article 30(1) of the Constitution.

(Para 34)

Held, per S. S. Sodhi, J. that instrusion into the prohibited field of constitutional guarantees under Article 30(1) of the Constitution thus stands out in bold relief in the respondent-University insisting upon appointments to the teaching staff for the proposed Dental College being made as per the mode of appointment approved by it. This condition offends Article 30(1) of the Constitution and is, therefore, clearly contrary to law and thus unenforceable.

(Para 40)

Held, per S. S. Sodhi, J. that it was well-within the jurisdiction of the respondent-University to impose the condition that pay-scales of teachers of the proposed Dental College would be as per the U.G.C. scales, as revised from time to time. We are informed that similar scales of pay are applicable to other institutions too. If so, this would also lead to uniformity in the matter of pay-scales and even otherwise, it is, on the face of it, in the interests of the minority institutions itself, inasmuch as, it would help attract the best talent available for appointment as teachers. This is, however, not to be construed as a bar or prohibition to the petitioners granting to their teachers pay-scales and other facilities which may be even better than those recommended by the University Grants Commission.

(Para 42-A)

Held, per S. S. Sodhi, J. that the condition sought to be imposed upon the petitioners by the Panjab University that admissions to the B. D. S. Degree Course of the proposed Dental College must be on the basis of its Pre-Medical Entrance Test, constitutes an unwarranted in road into the prohibited arena of the constitutional guarantees under Articles 30(1) of the Constitutions and cannot, therefore, be sustained.

(Para 47)

Held, per S. S. Sodhi, J., that the unreasonableness of the condition that no increase in fees shall be made for five years, stands writ large. Living in an environment of ever-rising prices and expenses, such a condition cannot but be held to be wholly untenable and devoid of any justification, in support. Indeed, it must be recognized and

accepted that fees too must be raised in keeping with the rising cost of living and administration and other expenses of running a Medical College. It deserves to be stressed here that the petitioner is an unaided minority institution. The Panjab University rightly insists that it must maintain standards of excellence and for that purpose the petitioners have to conform to the prescribed requirements of a modern teaching college with suitable equipment and qualified teachers, neither of which are, in any manner, inexpensive commodities. As discussed earlier, there is also a justifiable insistence on the part of the Panjab University that the pay-scales of teachers be no less than the level prescribed by it, but yet the University specifically now seeks to disallow counter-balancing the frequent revision in pay-scales and other increases in expenses, by an increase of fees too. Keeping all these factors in mind, how can it be justified that the fees of students, admitted to the Dental Course must remain static for five years ? This condition, imposed by the Panjab University that there shall be no increase in fees for five years cannot, therefore, be allowed to stand.

(Para 49)

Held, per S. S. Sodhi, J., that we are unable to sustain the condition that there must be prior approval of the Panjab University for any increase in fees, that the petitioners may, on any future date, deem fit to impose. In saying so, we repeat that it would, of course, be open to the University to intervene in the matter if the increase in fees is shockingly unwarranted or patently unreasonable. It will thus be seen that except in the matter of the condition pertaining to the pay-scale of teachers of the proceed Dental College, the other requirements put-forth by the Panjab University for the grant of affiliation, namely: with regards to the mode of appointment of teachers; admissions of students and fees, clearly constitute unwarranted interference with the constitutional rights granted to the petitioners, being a minority educational institution, under Article 30(1) of the Constitution. These conditions cannot, therefore, be allowed to stand in the way of the petitioners, being granted affiliation to the Panjab University as sought by it.

(Paras 53 & 54)

Held, per J. L. Gupta, J. (contra), that it would be perfectly legitimate for the University to lay down the minimum qualifications for eligibility. Assuming for the sake of argument that the objection with regard to the nominees of the Vice-Chancellor and the preparation of the panel of experts by the University is valid, the University can lay down that every Selection Committee shall have three or more experts in the speciality concerned. To illustrate in the matter of appointment of a Professor or a Reader in the department of Orthopaedics, the University can say that the Selection Committee must have three persons of the rank of Professor in the field of Orthopaedics. Further, the proposal for appointment can be

subjected to the approval of the Vice-Chancellor or an appropriate body of the University. If, as it appears to be, such a course of action is permissible in view of the decision in All Bihar Schools case (supra), the method proposed by the University does not really go much farther than that. The University gives a panel of experts to the College and leaves the petitioner free to pick up the required number of experts from that panel. The presence of the nominees of the Vice-Chancellor appears to the calculated to ensure fair selection. In the ultimate analysis, the constitution of the Selection Committee in such a manner obviates the necessity of an approval by the University. In my view, the proposed method is calculated to promote excellence in standards of education and avoid delay in the appointment of teachers.

(Para 62)

Held, per J. L. Gupta, J., that I see no impregnable barrier between an appointment and termination. If regulation of termination ensures security of service, proper selection promotes excellence in education. Ultimately, both are calculated to bring a good name to the Institution and serve the Society better.

(Para 64)

Held, per J. L. Gupta, J. (contra) that the very fact that the University is insisting on its test shows that it has reservations regarding the method proposed to be adopted by the College. In the absence of any 'compelling reasons', I see no valid ground for the insistence of the College in holding its own test. All rights under the Constitution are subject to a reasonable restriction. No right including that under Art. 30 is absolute. It is subject to reasonable regulatory measures. The two requirements imposed by the University, in my opinion, do not go beyond what has been held to be permissible.

(Paras 66 & 68)

Held, per V. K. Bali, J. that as long as no outsider is introduced as a member of the Managing Committee, which Managing Committee is entrusted with the job of making selections, the regulatory clauses, which might tend to promote the cause of education and bring efficiency and excellence in the institution itself, the same will be protected. If, for instance, the University was to provide regulation, wherein, a minimum educational qualification for a teacher was essential for appointment, the same has to be protected. Also, where the University might approve the appointment of a teacher, selected by the Management of a minority institution, only with a view to find out if the procedure prescribed for appointment was followed or not, the same would also be in the interests of the institution with a view to bring about efficiency, by anything more that might tend to interfere in the process of selection of a teacher by an outside agency, irrespective of the quality or quantity thereof, the same would be

crossing the barrier of regulatory measure and would come within the vice of Article 30 of the Constitution of India.

(Para 75)

Held, that the regulation imposed by the University which insists upon participation of the nominee/nominees of the Vice-Chancellor as also the Subject Experts, so nominated by the Vice-Chancellor and who, as conceded by the counsel appearing for the respondent-University, would also play part in making selection of teachers, in my view, would militate against the guaranteed right of religious minority institutions. That being the position, part of clause-4 pertaining to salary, scales, mode of appointment/promotions and qualifications for teachers, in so far as it pertains to the mode of appointment and promotion of teachers by associating nominee/nominees of the Vice-Chancellor, as imposed by the Committee constituted by the Syndicate shall have to be quashed.

(Para 76)

Held, per Full Bench, that the Panjab University was well within its jurisdiction in prescribing it as a condition for affiliation for the proposed Dental College that the pay-scales of the teaching staff should be as per the University Grants Commission's recommendations made from time to time. The condition sought to be imposed by the University with regard to the fees to be charged from the students, to be admitted to the said College and the prior permission of the University for any increase therein, cannot, however be sustained and is thus quashed. Further, by majority, we hold that in the matter of grant of affiliation to the proposed Dental College, the Panjab University acted beyond its jurisdiction and in contravention of Article 30(1) of the Constitution by prescribing conditions relating to appointment of teaching staff and mode of admissions of students to the said College. We here by direct the Panjab University as also the Dental Council of India to finalize the matter with regard to the affiliation/approval of the proposed Dental College with such expedition as it renders it possible for it to start imparting education to students from this Academic year. This writ petition, is, consequently, in these terms, accepted with Rs. 5,000 as costs against the respondent-University.

(Paras 81 to 88)

(The Division Bench consisting of Hon'ble Mr. Justice M. S. Liberhan & Hon'ble Mr. Justice Harphul Singh Brar on 21st April, 1991 referred the above noted case to the Larger Bench to decide an important question of law and public importance are involved in this writ petition and are likely to effect a large number of cases and even earlier judgment of full bench will come up for consideration, admitted to Full Bench preferably within the month of May. 1991 and directing the Dental Council of India may consider the case of granting provisional affiliation to the petitioner subject to the result of the Writ Petition.

Christian Medical College, Ludhiana *v.* The State of Punjab and others
(S. S. Sodhi, J. L. Gupta & V. K. Bali, JJ.)

The Full Bench consisting Hon'ble Mr. Justice S. S. Sodhi, Hon'ble Mr. Justice J. L. Gupta & Hon'ble Mr. Justice V. K. Bali, on 30th March, 1992 gave their judgments herein with regard to the affiliation sought by the Christian Medical College, Ludhiana, for its proposed Dental College and the conditions put-forth by the Panjab University, Chandigarh, for the grant of it. Do these conditions abridge or extinguish the rights guaranteed under Article 30(1) of the Constitution of India, being the point in issue and decided the case finally by majority, holding that the matter of grant of affiliation to the proposed Dental College, the Panjab University acted beyond its jurisdiction and in contravention of Article 30(1) of the Constitution by prescribing conditions relating to appointment of teaching staff and mode of admissions of students to the said College, and we hereby direct the Panjab University as also the Dental Council of India to finalize the matter with regard to the affiliation/approval of the proposed Dental College with such expedition as it renders it possible for it to start imparting education to students from this Academic Year, and accepting the petition in these terms with Rs. 5,000 as costs against the respondent-University.)

Civil Writ Petition under Articles 226 & 227 of the Constitution of India, praying that:—

(i) *complete record of the case may kindly be summoned;*

(ii) *a writ in the nature of Certiorari, quashing conditions (i), (iii) and (iv) of the resolution dated 18th April, 1990 of the Special Committee constituted by the Syndicate at its meeting held on 24th February, 1990 as approved by the Syndicate in its meeting held on 27th May, 1990,—vide para 20 of the said meeting, be issued;*

(iii) *respondent No. 2 may be directed to grant permission/affiliation to the petitioner to start a Dental College at Ludhiana with effect from the Session 1991-92 without imposing any condition which impinge upon its constitutional guarantee of internal management and its rights under Articles 29 and 30 of the Constitution of India;*

(iv) *in the peculiar circumstances of this case this Hon'ble Court may be pleased to issue any other appropriate writ, order or direction that it deems fit;*

(v) *during the pendency of this writ petition the operation of the impugned resolution of the Committee granting provisional affiliation as approved by the Syndicate may kindly be stayed and the petitioner be allowed to start its Dental College subject to the final result of this writ petition or*

this Hon'ble Court may be pleased to pass any other appropriate interim order that it deems fit;

(*vi*) *issuance of advance notices to the respondents under the High Court Rules and Orders may kindly be dispensed with;*

(*vii*) *filing of certified copies of Annexures may kindly be dispensed with;*

(*viii*) *costs of the petition may kindly be awarded to the petitioner.*

Paramjit Singh Patwalia with Anil Malhotra, Anuj Raura, H. S. Sethi and G. S. Gill, Advocates, *for the Petitioner.*

S. S. Kang, DAG Pb. for the State.

Anupam Gupta, Advocate, *for the University.*

JUDGMENT

S. S. Sodhi, J.

(1) The controversy here is with regard to the affiliation sought by the Christian Medical College, Ludhiana, for its proposed Dental College and the conditions put forth by the Panjab University, Chandigarh, for the grant of it. Do these conditions abridge or extinguish the rights guaranteed under Article 30(1) of the Constitution of India, being the point in issue.

(2) The Christian Medical College, Ludhiana (hereinafter referred to as "the College"), was established and is being administered by Christians and is thus admittedly a minority institution in terms of Article 30(1) of the Constitution of India.

(3) According to the petitioners, the principal object of the College is to train, within a Christian environment, doctors, nurses and other medical personnel, to achieve the highest possible standards of professional service. It is to this end that the programming of the students' activities, within the College and Hospital, is directed. In other words, the Management and maintenance of the College at Ludhiana, in a "true spirit of Christian Service, ideals and principles, in order to equip men and women for service, in the promotion of health and the relief of suffering."

(4) Great emphasis was placed by the petitioners upon the fact that the College was being run by funds generated entirely on its own with no government aid being sought or received by it. It was, in this behalf, said that to begin with, the College and Hospital was supported by funds received from the United Kingdom and Ireland, but in later years, the Christian Church throughout the World, particularly in the United States of America Germany, Netherlands, Switzerland and the Common Wealth Countries, co-operated in the development of the college and Hospital, not only by contributing funds, but also personnel.

(5) Giving the history of the college, the petitioners inform that it was in the year 1881 that medical missionary work was started at Ludhiana by the Green-Field sisters and other Associates who organized the Health Care Education Service. Later, in the year 1893, Dr. Edith Brown started the Northern Indian School of Medicine for Christian Women. The object of this being the training of Indian Nationals particularly, women for service in the field of medical education and health care. This continued till 1952 when the Institution came to take on its present name of the Christian Medical College. This was done in order to open up admission to both men and women students for its up-graded M.B.B.S. Course. Admissions for this Course were made for the first time in the year 1953. Now 50 students are admitted to this Course each year. Besides, this, the College, also maintains a large and modern hospital with over 700 beds.

(6) Coming now to the present controversy, it was on September 22, 1988, that the Executive Committee of the College approved the proposal to start a Christian Dental College at the Christian Medical College Hospital, Ludhiana. This proposal was later also approved by the governing body as its meeting held on September 23 and 24, 1988.

(7) In order to start the Dental College, the College required clearance from the Punjab Government, affiliation with the Panjab University, Chandigarh and finally the approval of the Dental Council of India. The petitioner, consequently wrote to the Punjab Government seeking its permission to start a Dental College at Ludhiana with 20 admissions per year. This permission was granted to it by the letter of the Director, Research and Medical Education, Punjab of July 20, 1989 (annexure P/8).

(8) At the same time, on December 16, 1988, the College also wrote to the Panjab University, Chandigarh seeking its permission for starting the B.D.S. Course from the next academic session, (annexure P/2). The Vice-Chancellor of the University thereupon constituted a committee to inspect the College and advice whether affiliation could be granted to it. It may be mentioned here that the College already has the requisite affiliation from the Panjab University, for its M.B.B.S. Course. On July 8, 1989, the Panjab University wrote and informed the College of the setting up of the Committee (annexure P/9). This committee inspected the premises of the College on August 19, 1989 and submitted its report (annexure P/11), to the effect that there was sufficient staff and accommodation available for starting the B.D.S. Course with 20 admissions for the First and Second Professional Examination. This report was then put up before the Syndicate of the Panjab University as its meeting held on December 16, 1989, where it was resolved that the Committee be asked to spell out the precise needs for the Third and Final Professional Examination of the proposed B.D.S. Course and to get evidence and assurance from the College that such requirements would be fulfilled on time. In pursuance of this decision Prof. Amrit Tiwari, Convener of the Committee wrote to the college on January 9, 1990 (annexure P/13), asking that an assurance be given that the requirements for the Third and the Final Professional Examination, as laid down by the Dental Council of India, would be fulfilled within the requisite time-frame. A very prompt response came from the College, on the very next day, that is, January 10, 1990. The college wrote to the Vice-Chancellor of the Panjab University, conveying such assurance (annexure P/14). This assurance was again reiterated in another letter written to the Panjab University on January 22, 1990 (annexure P/15).

(9) An exchange of correspondence then ensued between the Panjab University and the petitioners with the former seeking further information regarding the proposed Dental College and the petitioners furnishing it (annexure P/16 to 21). The Panjab University, thereafter, at its meeting held on February 24, 1990, constituted a Committee under the chairmanship of Dr. P. N. Chhuttani, former Director of the Post-Graduate Medical Institute for Research and Education, Chandigarh to examine the information received from the petitioners for the grant of permission to start a new Dental College (annexure R/3). This committee invited the petitioners for discussion and the meeting took place on March 27, 1990. There various matters were

discussed including, admission fees; appointment of teachers and their pay-scales. The Committee, thereafter decided that the information and clarification provided on these and other matters be put up before the Panjab University Syndicate (annexure R/4).

(10) There was another meeting between the Committee appointed by the Panjab University Syndicate and the petitioners on April 18, 1990, after which, as the minutes of this meeting, (annexure P/23) reveal, the Committee recommended that if the petitioners accepted the conditions, mentioned therein, and fulfilled them in time, provisonal affiliation may be granted to the proposed Dental College and it be made regular in course of time. The minutes of this meeting and the conditions incorporated therein, were considered by the Panjab University Syndicate at its meeting held on May 27, 1990, when the recommendations of the Committee, as contained in annexure P/23, were accepted with minor modifications (annexure P/24).

(11) Some of the conditions laid down by the Panjab University for grant of provisional affiliation, were however not acceptable to the petitioners; these being, with regard to:—

(a) the qualifying test for admission to the proposed Dental College;

(b) the fees to be charged from students; and

(c) the appointment and pay scales of members of the staff.

(12) The petitioners consequently addressed a letter to the Panjab University, in this behalf, on September 21, 1990 (annexure P/25), mentioning therein not only its objections to these conditions, but also their reasons for it. This letter was considered by the Committee constituted by the Panjab University Syndicate at its meeting held on February 8, 1991, whereas, its minutes (annexure R/5) show, the Committee regretted its inability to recommend the starting of the proposed Dental College "in the context of an utterly unsatisfactory response from the C.M.C. governing body." These minutes were then considered at the meeting of the Panjab University Syndicate held on February 23, 1991. The Syndicate asked the Committee to hold another meeting with the petitioners to discuss the conditions

relating to appointment of staff; reservation policy; entrance test; pay-scales of teachers and fees to be charged. Three members of the Syndicate were also put on this Committee as special invitees (annexure R/6). In pursuance of this decision, another meeting took place between the Committee and the petitioners on March 8, 1991, but to no avail, as the differences between them, on the conditions for provisional affiliation, could not be narrowed down (annexure R/7).

(13) In order to clarify its position with regard to the conditions laid down by the Panjab University for granting provisional affiliation to the proposed Dental College, the petitioners wrote another letter to the University on March 11, 1991 (Annexure R-8). This was considered by the Committee at an urgent meeting held on March 15, 1991, but this communication too was rejected as "vague and evasive" (annexure R/9).

(14) The last meeting that took place between the Committee and the petitioners was on April 1, 1991, but it appears that on that occasion too, the differences between them persisted and this is what then led the petitioners to move this Court, in writ proceedings.

(15) It is the case of the petitioners that the conditions sought to be imposed by the Panjab University for granting affiliation to the proposed Dental College impinge upon the rights granted and guaranteed to Minority Instructions under Article 30 of the Constitution of India and are, therefore, illegal and hence unforceable. The respondent-University, on the other hand, asserts that the "impugned conditions are eminently reasonable, regulatory measures meant to ensure excellence of education in the proposed Dental College and to make the College an effective vehicle of education. The impugned action/conditions are fully in consonance with Articles 29 and 30 of the Constitution as also Section 27 of the Panjab University Act."

(16) The right of minorities, in terms of Article 30(1) of the Constitution of India, to establish and administer educational institutions of their choice, is indeed well-recognized and this right is not confined to the establishment of institutions for teaching merely their own religion, language or culture, but extends also to imparting, general, secular, technical and professional education. In other words, their choice, in this behalf, is wide and unlimited. The object

of Article 30(1), as was said, *in re* : Kerala Education Bill-1957 (1), being to enable the children of minorities to go into the World fully equipped. Of undoubted relevance, in this context are the views expressed in the Nine-Judge Constitutional Bench judgment of the Supreme Court in *The Ahmedabad St. Xaviers College Society and another etc.* v. *State of Gujarat and another* (2), with regard to the scope and ambit of Article 30(1) of the Constitution of India. Chief Justice Ray, (speaking for himself and Palekar, J.), attributed the real reason for Article 30(1) to; "—— the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

(17) The Hon'ble Judges, however, hastened to add, "The right conferred on the religious and linguistic minorities to administer education 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 1959 S.C.R. 995 (A.I.R. 1958 S.C. 956) summed up in one sentence the true meaning of the right to administer by saying that the right to administer is not the right to maladminister.

(18) The point next to emphasise is that there is no fundamental right of any minority institution to the grant of affiliation to any University, course or other body. The right of minorities to establish and administer educational institutions and to obtain affiliation for

(1) A.I.R. 1958 S.C. 956.
(2) A.I.R. 1974 S.C. 1389.

them are two clearly separate and distinct matters. Affiliation to a University, as was observed by C.J., Ray, in *The St. Xaviers College case* (supra), "really consists of two parts. One part relates to syllabi, curricula courses of instruction, the qualifications of teachers, library, laboratories, conditions regarding health and hygiene of students, management of institutions. It relates to administration of education institutions."

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

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

(21) After referring to the earlier judgment of the Supreme Court in *State of Kerala* v. *Very Rev. Mother Provincial etc.* (3), it was further observed. "—Affiliation mainly pertains to academic and educational character of the institution. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30."

(22) In a similar vein are the observations of Jaganmohan Reddy, J. (speaking for himself and Alagiriswami, J.) "The right of

(3) A.I.R. 1970 S.C. 2079.

a linguistic or religious minority to administer educational institutions of their choice, though couched in absolute terms has been held by this Court to be subject to regulatory measures which the State might impose for furthering the excellence of the standards of education.——".

(23) Further, it was said, "The right under Article 30 cannot be exercised in vacuo. Nor would it be right to refer to affiliation or recognition as privileges granted by the State. In a democratic system of Government with emphasis on education and enlightenment of its citizens, there must be elements which give protection to them. The meaningful exercise of the right under Article 30(1) would and must necessarily involve recognition of the secular education imparted by the minority institutions without which the right will be a mere husk. This Court has so far consistently struck down all attempts to make affiliation or recognition on terms tantamount to surrender of its rights under Article 30(1) as abridging or taking away those rights. Again as without affiliation there can be no meaningful exercise of the right under Article 30(1). the affiliation to be given should be consistent with that right. nor can it indirectly try to achieve what it cannot directly do.——"

(24) A similar exposition of the legal position is provided by H. R. Khanna. J., "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"

(25) Further, "—It is, not however, permissible to prescribe conditions for recognition or affiliation which have the effect of impairing the right of the minority to establish and administer their educational institutions. Affiliation and recognition are, no doubt, not mentioned in Article 30(1), the position all the same remains that refusal to recognize or affiliate minority institutions unless they (the minorities) surrender the right to administer those institutions would have the effect of rendering the right guaranteed by Article 30(1) to be wholly illusory and indeed a teasing illusion. It is, in our opinion, not permissible to exact from the minorities in lieu of the recognition or affiliation of their institutions a price which would entail the abridgement or extinguishment of the right under Article 30(1).—"

(26) An identity of views is also clearly discernable in the observations of Mathew, J., "—Recognition or affiliation creates an interest in the university to ensure that the educational institution is maintained for the purpose intended and any regulation which will subserve or advance that purpose will be reasonable and no educational institution established and administered by a religious or linguistic minority can claim recognition. That is the price of recognition or affiliation, but this does not mean that it should submit to a regulation stipulating for surrender or a right or freedom guaranteed by the Constitution, which is unrelated to the purpose of recognition or affiliation....."

(27) The picture that thus emerges is that it is now settled law that minorities have the right to establish and administer educational institutions of their choice, but this right is not an absolute one. It is subject to regulatory measures necessary for ensuring excellence of education and orderly, efficient and sound education.

(28) In other words, the right of minorities to administer their educational institutions is to be tampered with regulatory measures to facilitate smooth administration.

(29) As regards affiliation, there is no fundamental right of minorities for the grant of it and they must consequently follow the prescribed regulations concerning educational standards; qualifications of teachers; and the like, but, at the same time, recognition or affiliation cannot be denied on terms, which would tantamount to surrender by minorities of their constitutional right to administer their educational institutions.

(30) Turning now to the differences between the Panjab University and the petitioners on the issue of affiliation for the proposed Dental College, there is, in the first instance, the matter of appointment of teachers, that is, Professors, Readers, Lecturers and Demonstrators.

(31) There are two aspects of the appointment of teachers one; their qualifications, and, the other being their mode of appointment. The Panjab University insists and the petitioners accept that the qualifications for Professors, Readers and Lecturers be, as prescribed by the Dental Council of India. Where, however, the parties disagree on, is the mode of their appointment. According to the Panjab University "the mode of appointment of teachers at various levels must be in accordance with the procedure/norms laid down by the Panjab University from time to time." The petitioners construe this as an invasion upon their right to choose their own teachers and thereby brand this condition as impringing upon their rights under Article 30(1) of the Constitution.

(32) It would be relevant here to consider the constitution of the Selection Committee, as per the procedures laid down by the Panjab University The prescribed composition of the Selection Committee, being as under:—

(1) *For appointment of Principal* :

(i) President of the Managing Committee/Director.

(ii) A nominee of the Managing Committee.

(iii) Two nominees of the Vice-Chancellor.

(iv) Three distinguished medical scientists.

(2) *For appointment of Professor* :

(i) President of the Managing Committee/Director, or his nominee.

(ii) Principal.

(iii) Two nominees of the Vice-Chancellor.

(iv) Three subject experts out of the panel suggested by the Vice-Chancellor.

(3) *For appointment of Readers/Lecturer* :

(i) President of the Managing Committee/Director, or his nominee.

(ii) Principal.

(iii) Head of the concerned Department, if he is of a professorial level. In case there is no Professor in the Department, one Senior Professor from the College in his place.

(iv) Two nominees of the Vice-Chancellor.

(v) Two subject experts out of the panel suggested by the Vice-Chancellor.

(33) According to Mr. Anupam Gupta, counsel for the Panjab University, after selection is made by the Selection Committees, so constituted, there is no requirement for any reference to the Vice-Chancellor or approval of the University Senate or Syndicate.

(34) It will be seen that in the matter of selection of teaching staff, the dominant role goes to persons other than those belonging to the petitioners, in that, out of a Committee of seven for selection of Principal, Professors and Lecturers, only two would be from the petitioners for the first two posts and three for the Lecturers post. This clearly runs counter to the right of administration and management guaranteed to the minority institutions under Article 30(1) of the constitution as also binding judicial precedent in *D.A.V. College, Jullundur* v. *The State of Punjab and others* (4). The court had occasion there to consider the validity of the provisions of Section 17 of the Guru Nanak Dev University Act, 1969, which provided that the staff initially appointed shall be approved by the Vice-Chancellor of the University and all subsequent changes shall be reported to the University for the approval of the Vice-Chancellor. It was held, that, "there was no possible justification in

(4) A.I.R. 1971 S.C. 1737.

these provisions which decidedly interfere with the rights of management of the petitioners Colleges. These provisions cannot, therefore, be made as conditions of affiliation, the non-compliance of which would involve dis-affiliation and consequently they will have to be struck down as offending Article 30(1).".

(35) A somewhat similar question arose in *The St. Xaviers College case* (supra) too. Section 33(a) (1) (b) of the Gujarat University Act, 1949 provided that for the recruitment of Principal and members of the teaching staff, there would be a Selection Committee of the College which, in the case of recruitment of Principal, would consist of a representative of the University nominated by the Vice-Chancellor and in the case of recruitment of the members of the staff, of a representative of the University, nominated by the Vice-Chancellor and the Head of the Department, if any, for the subjects taught by such persons. It was held that these provisions abridged the right of the religious minority to administer education institutions of their choice. Mathew, J. in this behalf, observed, "It is upon the Principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the Principal and to have the teaching conducted by teachers appointed by the management after an over all assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. We can perceive no reason why a representative of the University nominated by the Vice-Chancellor should be on the Selection Committee for recruiting the members of the teaching staff. So long as the persons choosen have the qualification prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them." Khanna, J. too expressed the same view by saying— "— — — a law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution

and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1) e. ——"

(36) Counsel for the Panjab University, on the other hand, sought to canvass the contrary proposition by seeking to press in aid the judgment of the Supreme Court in *Re : Kerala Education Bill*— 1957 A.I.R. 1958 S.C. 956. There, clause-10 of the Bill provided that government could prescribe the qualifications for teachers of all government or private-aided schools, selection of teachers would then be made by the State Public Service Commission on the basis thereof and appointments of teachers to all Schools would, thereafter be made in accordance with this selection. This provision was up-held. This rationale, it was thus argued rendered it permissible for the Panjab University too, to prescribe not only the qualifications, but also the mode of appointment of teachers for the proposed Dental College.

(37) Reference was next made to *All Bihar Christian Schools Association and another* v. *State of Bihar and others* (5). The Court, in this case, up-held the Provision of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981, which provided that qualifications for teachers would be laid down by the State Government and the Managing Committee of the Minority Secondary School shall appoint teachers thereafter, with the concurrence of the School Service Board constituted under the Act. Counsel for the petitioners sought to read this as an authority for the proposition that the Panjab University was not only competent to lay down the qualifications, but also prescribe the mode, as had been done in the present case, of selection of teachers for the proposed Dental College.

(38) *The All Bihar Christian School Association's Case* (supra) cannot lend itself to the interpretation as was sought to be put upon it by the counsel for the respondent-University, when regard is had to the proviso to the relevant provision of the Act, namely: Section 18, which, in the matter of the grant of approval for appointments of teachers, restricted the power of the School Service Board to scrutinize just two matters, namely: the qualifications of the teachers selected for appointment and compliance with the rules laid down by Government with regard to the manner of making appointments

(5) A.I.R. 1988 S.C. 305.

and no more. In other words, the selection of teachers lay entirely with the minority institutions. This case cannot, therefore, provide any support to the proposition canvassed by the counsel for the respondent-University.

(39) As regards the *Kerala Education Bill*—1957 case (supra), it must, in the first instance, be borne in mind that there is no discussion to be found there on the State Public Service Commission making selection of teachers for unaided institutions. Further and more important, in this context, is the opinion expressed by H. R. Khanna, J. in *The St. Xaviers College case* (supra) where, it was observed, "— — The opinion expressed by this Court in *Re : Kerala Education Bill case* (supra) was of an advisory character and though great weight should be attached to it because of it persuasive value, the said opinion cannot override the opinion subsequently expressed by this Court in contested cases. It is the law declared by this Court in the consequent contested cases which would have a binding effect. The word "as at present advised" as well as the preceding sentence indicate that the view expressed by this Court in *Re : Kerala Education Bill* in this respect was hesitant and tantative and not a final view in the matter. It has been pointed out that in *Re: Levy of Estate Duty* (6), Spens. C. J. referred to an observation made in the case of *Attorney General of Ontario* v. *Attorney General for Canada* (7), that the advisory opinion of the Court would have no more effect than the opinion of the law officers.———"

(40) Intrusion into the prohibited field of constitutional guarantees under Article 30(1) of the Constitution thus stands out in bold relief in the respondent-University insisting upon appointments to the teaching staff for the proposed Dental College being made as per the mode of appointment approved by it. This condition offends Article 30(1) of the Constitution and is therefore, clearly contrary to law and thus unenforceable.

(41) The respondent University is, however, on much firmer ground in the matter of the pay-scale of the teaching staff of the proposed Dental College. The condition, that it insists upon the petitioners' accepting for the grant of affiliation being that Professors, Readers, Lecturers and Demonstrators must be given the

(6) 1944 R.C.R. 317 (A.I.R. 1944 F.C. 73)
(7) 1912, A.C. 571.

U.G.C. Pay-scales, as revised from time to time; these pay-scales being exclusive of non-practising allowance or there must be permission for private practice.

(42) It was, no doubt, sought to be argued on behalf of the petitioners that pay-scales of teachers are part of the conditions of service of teaching staff of minority institutions as they fall within the domain of management and administration and this being so no interference, by the respondent-University could be permitted in this field but a clear answer to this is, however, provided by the judgment of the Supreme Court in *Frank Authony Public School Employees' Association* v. *Union of India and others* (8). The matter there concerned pay-scales of teachers in the context of the Delhi School Education Act, 1973 which made provision for the terms and conditions of service of employees of recognized private schools. These provisions were, however, specifically made in applicable to unaided minority schools. A plea of discrimination was raised by the teachers of the Frank Authony Public School, New Delhi—an unaided minority institution on the ground that their pay-scale fell far short of those of the teachers of recognised private schools in Delhi. It was contended on behalf of the teachers that the provision, excluding the school from the purview of the Act, violated the equality clause under Article 14, while the school, on its part, sought cover under Article 30 (1). In dealing with this matter, the Court observed, "——The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Art. 30 (1) of the Constitution.——" It was accordingly held that the provisions of Section 10 of the Act, which prescribed the scales of pay and other allowances, payable to teachers, was a permissible regulation, which in no way, detracted from the fundamental rights guaranteed under Article 30 (1) of the Constitution to minority institutions to administer their educational institutions. Section 12 of the Act, therefore, to the extent to which it made Section 10 inapplicable to unaided minority institutions,

(8) A.I.R. 1987 S.C. 311.

was thus discriminatory. In other words, the teachers of the Frank Anthony School were also held entitled to the same conditions of service as teachers of recognized private schools and this mandate of the Legislature was not, in any way, held to be violative of Article 30(1) of the constitution.

(42-A) Such thus being the clear exposition of the law, on the subject, there can be no escape from the conclusion that it was well-within the jurisdiction of the respondent-University to impose the condition that pay-scales of teachers of the proposed Dental College would be as per the U.G.C. scales, as revised from time to time. We are informed that similar scales of pay are applicable to other institutions too. If so, this would also lead to uniformity in the matter of pay-scales and even otherwise, it is, on the face of it, in the interests of the minority institutions itself, inasmuch as, it would help attract the best talent available for appointment as teachers. This is, however, not to be construed as bar or prohibition to the petitioners granting to their teachers pay-scales and other facilities which may be even better than those recommended by the University Grants Commission.

(43) This now brings us to the next point of difference between the petitioners and the respondent-University, namely; that pertaining to admissions. The condition laid down by the Punjab University, in this behalf, being, "the mode of admissions to the B.D.S. Degree Course by the proposed Dental College should be strictly based on the Pre-Medical Test (PMT) held by the Panjab University." This condition, the petitioners construe as impinging upon their right of internal management and otherwise too as being totally unjustified.

(44) It would be pertinent to recall here that earlier too, a similar controversy had arisen between the Panjab University and the petitioners on the mode of admissions to the M.B.B.S. Course on January 20, 1986, it was resolved at the meeting of the University Syndicate that from 1986 onwards, admissions to the M.B.B.S. Course would be made on the basis of the Pre-Medical Entrance Test conducted by the University. A letter to this effect was then addressed to the petitioners on February 20, 1986. This letter, as also the resolution of the Syndicate of January 20, 1986 was challenged by the petitioners in writ proceedings under Article 32 of the Constitution. In the first instance, the Supreme Court, by an interim

order permitted the petitioners to make admissions to the M.B.B.S. Course on the basis of their own test, before ultimately allowing the writ petition on April 24, 1990. The order of the Supreme Court reads as under :—

> "This writ petition is delinked from the other matter in the list.
>
> We have heard Mr. A. K. Sen appearing on behalf of respondent No. 1. In view of the communication dated 3rd March, 1989 from Shri Joginder Singh, nominee of the Vice-Chancellor of the University of Punjab and in view of the stand taken on behalf of the Panjab University and when the minority character of this college is not disputed, the decision of the Syndicate dated 14th March, 1987, need not be given effect to. We order accordingly. The writ petition is disposed of in these terms. There will be no order as to costs."

(45) Anamolous consequences would inevitably follow if in the face of this order, the condition; that admissions to the B.D.S. Course must be only as per the Panjab University Pre-Medical Entrance Test, is sustained. It would mean that for 50 admissions to its M.B.B.S. Course, the petitioners can and will hold their own Entrance Test, but would be obliged to follow another Test for the 20 admissions of its Dental College—a situation patently marked by lack of any reason or logic to justify it. In this context, it also deserves not that the Entrance Test by the petitioners for the M.B.B.S. Course has never been adversely commented upon nor its standard or fairness ever questioned. What is more, there has never been any suggestion even, of any mal-administration by the petitioners, in the matter of admissions to their M.B.B.S. Course. The reason in support of the condition that admissions be only on the basis of the Panjab University Pre-Medical Entrance Test, it appears being, as stated in the minutes of the meeting of the Dr. P. N. Chhuttani Committee of April 1, 1991 namely; "consistent with its general policy relating to admissions to professional course and some other prestigious academic programmes the Syndicate had decided that the mode of admission to the B.D.S. Degree Course at the proposed Dental College should be strictly based on the Pre-Medical Test (PMT) conducted by the Panjab University "The intrinsic flaw in this reasoning, in so far as it concerns the petitioners, speaks for itself.

(46) The matter at any rate, now stands settled by the Supreme Court in *St. Stephen's College* v. *The University of Delhi* (9). By two circulars issued in June 1988, the University of Delhi directed St. Stephen College to admit students on the basis of percentage of marks secured by them in the qualifying examination and to complete the admissions by the specified date. It was held that the St. Stephen College was not bound by the impugned circulars of the University. It being observed in this behalf, "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——".

(47) It follows, therefore, that the condition sought to be imposed upon the petitioners by the Panjab University that admissions to the B.D.S. Degree Course of the proposed Dental College must be on the basis of its Pre-Medical Entrance Test, constitutes an unwarranted inroad into the prohibited arena of the constitutional guarantees under Articles 30 (1) of the Constitution and cannot, therefore be sustained. Finally, there is the matter of fees that can be charged from students admitted to the proposed Dental College.

(48) There is no dispute between the parties that the fees payable by students admitted to the proposed Dental College would be Rs. 6,950 per annum. That the petitioners object to is, the further condition that there would be no change in these fees for five years, following the First Years Admission and even thereafter no change shall be made except with the prior permission of the Panjab University.

(49) The unreasonableness of the condition that no increase in fees shall be made for five years, stands writ large. Living in an environment of even-rising prices and expenses, such a condition cannot but be held to be wholly untenable and devoid of any justification, in support. Indeed, it must be recognized and accepted that fees too must be raised in keeping with the rising cost of living and administration and other expenses of running a Medical College. It deserves to be stressed here that the petitioner is an unaided minority institution. The Panjab University rightly insists that it

(9) J.T. 1991 (4) S.C. 548.

must maintain standards of excellence and for that purpose the petitioners have to conform to the prescribed requirements of a modern teaching college with suitable equipment and qualified teachers, neither of which are, in any manner, inexpensive commodities. As discussed earlier, there is also a justifiable insistence on the part of the Punjab University that the pay-scales of teachers be not less than the level prescribed by it, but yet the University specifically now seeks to disallow counter-balancing the frequent revision in pay-scales and other increases in expenses, by an increase of fees too. Keeping all these factors in mind, how can it be justified that the fees of students, admitted to the Dental Course must remain static for five years ? This condition, imposed by the Panjab University that there shall be no increase in fees for five years cannot, therefore, be allowed to stand.

(50) The main difference between the parties is with regard to the other limb of the condition imposed, namely, that any increase of fees must be with the prior approval of the Panjab University. Support for this was sought from the judgment of the Supreme Court in *The All Bihar Christian Schools case* (supra), where, by section 18(g) of the Act, it was provided that only such fees shall be charged from the students as are prescribed by the State Government and no higher fees shall be charged except with the prior approval of the State Government. In seeking to justify this clause, it was pointed out in the counter-affidavit, filed on behalf of the State Government, that education upto Matriculation was free and therefore no fee was charged and it was consistent with the general policy, that the State had made it a condition of recognition of a minority school, that fees shall be charged as prescribed by the State Government and the charging of higher fees must be with the prior approval of the State Government. It was held that this provision was regulatory in nature and it would not be in the interests of the minority schools to charge higher fees and if the Managing Committee found that circumstances existed to charge higher fees to meet the needs of the institution, it may place the necessary facts and circumstances before the State Government, which the State Government would consider while deciding the question of granting such permission.

(51) The point to note here is that *The All Bihar Christian Schools case* (supra), dealt with the provisions of an Act which also provided for the creation of a fund for payment of salary and allowances to teachers and employees and for other expenses of the

school. It was through this fund that aid was thus being provided to the schools taken over by the State Government. It was, in this context, that the Supreme Court up-held the condition that charging of higher fees would be subject to the prior approval of the State Government. This is what provides that distinguishing feature from the situation with the petitioners. As mentioned earlier, the Petitioner is a wholly unaided minority institution. It already runs the M.B.B.S. Course for which 50 students are admitted every year. No such condition of prior approval of the University with regard to the fees, to be charged from them, has been imposed. It would again the anamolous, in this context, for such a condition to exist with regard to only the 20 students to be admitted to the proposed Dental College. There is, at any rate, no reason to assume that any increase in fees, by the petitioners, would not be reasonable and based upon the increase in the price index and other essential expenses. It would, at any rate, be open to the Panjab University to intervene and insist upon the fees to be charged from the students, to be brought down to a justifiable level, if the petitioners were to charge such higher fees as would shock its conscience or are otherwise unreasonable.

(52) The applicability of different considerations in the case of the unaided minority institutions is also indicated in *Re. The Kerala Education Bill* (supra), where the provisions of Clause-20 of the Bill, which pre-emptorily required that no fees should be charged for tuition in the primary classes, was held to be contrary to law. It was held that in the absence of a provision, such as that in Clause-9, which applied to aided schools only, that the State Government would make good the loss, the imposition of this restriction against collection of fees from any pupil in the primary classes, as a condition for recognition, would make it impossible for an educational institution, established by a minority community, to be carried on. Clause-20 was thus held to infringe the fundamental rights of minority communities in respect of recognized schools to be established, after the commencement of the said Bill.

(53) We are, therefore, unable to sustain the condition that there must be prior approval of the Panjab University for any increase in fees, that the petitioners may, on any future date, deem fit to impose. In saying so, we repeat that it would, of course, be open to the University to intervene in the matter if the increase in fees is schockingly unwarranted or patently unreasonable.

(54) It will thus be seen that except in the matter of the condition pertaining to the pay-scale of teachers of the proceed Dental College, the other requirements put-forth by the Panjab University for the grant of affiliation, namely; with regards to the mode of appointment of teachers; admissions of students and fees, clearly constitute unwarranted interference with the constitutional rights granted to the petitioners, being a minority educational institution, under Article 30(1) of the Constituton. These conditions cannot, therefore, be allowed to stand in the way of the petitioners, being granted affiliation to the Panjab University as sought by it.

(55) It is indeed unfortunate that on account of the avoidable hurdles placed in its way by the Panjab University, the starting of the proposed Dental College has been unduly delayed. The University, on the recommendations of the Committee constituted by it, persisted in insisting upon conditions, which were patently illegal and against the protection provided to religious minorities as enshrined under Article 30(1) of the Constitution of India as also against the mandate of law pronounced by the Apex Court in *The St. Xaviers College case* (supra) in 1974 and followed ever since for over a decade-and-a-half now. This was indeed unwarranted. We cannot, however, put the clock back and compensate the loss to the petitioners and the nation of the services of as many as 20 Doctors during the last year. We, however, obviously can and do hereby direct the Panjab University as also the Dental Council of India to finalise the matter with regard to the affiliation approval of the proposed Dental College, with such expedition that it renders it possible for it to start imparting education to students from this academic year.

(56) This petition must thus succeed and is accordingly hereby accepted. We further direct the respondent-University to pay Rs. 5,000 as costs to the petitioners.

Jawahar Lal Gupta, J.

(57) The lucid and elaborate judgment recorded by S. S. Sodhi, J., obviates the necessity of noticing the facts and various decisions cited at the Bar. Further, the fact that Bali, J., agrees with the conclusions recorded by Sodhi, J., renders a detailed review of the case law wholly unnecessary. It would suffice to record a few reservations that I have.

(58) The first question posed for the consideration of the Full Bench relates to the right of the petitioner to select its teachers. It objects to the right of the University to lay down the constitution of the selection Committee. More particularly, an objection has been raised with regard to the nominees of the Vice-Chancellor and the Subject Experts.

(59) In the *Kerala Education Bill*, 1957, A.I.R. 1958 S.C. 956, the Bench of seven Judges considered the validity of Clause 11 which, as noticed by their Lordships, provided that "the School authorities cannot appoint a single teacher of their choice, but must appoint persons out of the panel settled by the Public Service Commission." The Court while considering the provision observed thus—

> "Likewise Cl. 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 such Cl. (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 Cl. 12 (4). These are, no doubt, serious inroads on the right of administration and appear perilously near violating that right. But considering that these provisions are applicable to all educational institutions and that the impugned parts of Cls. 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."

(60) Thus, even though Cl. 11 constituted a serious inroad was yet upheld as a permissible regulation which the State may

impose on the minorities. No doubt there was a departure in *St. Xaviers College* v. *State of Gujarat*, AIR 1974 S.C. 1389. The dictum in *Kerala Education Bill* case was not taken to be binding. This rationale was not wholly accepted in a later decision in *Special Courts Bill*, 1978 (10). In paragraph 101 at page 519, the Court observed—

> "There was some discussion before us on the question as to whether the opinion rendered by this Court in the exercise of its advisory jurisdiction under Art. 143 (1) of the Constitution is binding as law declared by this Court within the meaning of Art. 141 of the Constitution. The question may have to be considered more fully on a future occasion but we do hope that the time which has been spent in determining the questions arising in this reference shall not have been spent in vain. In the cases of Estate Duty Bill, 1944 FCR 317 at pp. 320, 332, 341 : (AIR 1944 FC 73 at pp. 74, 75, 79, 82); U.P. Legislative Assembly, (1965) 1 SCR 413 at pp. 446, 447 : (AIR 1965 SC 745 at pp. 762, 763) and St. Xaviers College, (1975) 1 SCR 173 at pp. 201, 202 : (AIR 1974 SC 1389 at pp. 1401, 1402) the view was expressed that advisory opinions do not have the binding force of law. In Attorney-General for *Ontario* v. *Attorney-General for Canada* (1912) AC 571 at p. 589 it was even said by the Privy Council that the opinions expressed by the Court in its advisory jurisdiction "will have no more effect than the opinions of the law officers." On the other hand, the High Court of Calcutta in *Ram Kishore Sen* v. *Union of India*, AIR 1965 Cal 282 and the High Court of Gujarat in *Chhabildas Mehta* v. *Legislative Assembly, Gujarat State*, (1970)2 Guj. L.R. 729 have taken the view that the opinion rendered by the Supreme Court under Art. 143 is law declared by it within the meaning of Art. 141. In *The Province of Madras* v. *Boddu Paidanna and Sons*, 1942 FCR 90 : (AIR 1942 FC 33) the Federal Court discussed the opinion rendered by it in the Central Provinces case, 1939 FCR 18 : (AIR 1939 FC 1) in the same manner as one discusses a binding judgment. We are inclined to the view that though it is always open to this Court to re-examine the question already decided by it and to over rule, if necessary, the view earlier taken by it, in so far

(10) A.I.R. 1979 S.C. 478.

as all other courts in the territory of India are concerned they ought to be bound by the view expressed by this Court even in the exercise of its advisory jurisdiction under Art. 143(1) of the Constitution. We would also like to draw attention to the observations made by Ray C.J., in St. Xaviers College (AIR 1974 SC 1389) that even if the opinion given in the exercise of advisory jurisdiction may not be binding, it is entitled to great weight. It would be strange that a decision given by this Court on a question of law in a dispute between the private parties should be binding on all courts in this country but the advisory opinion should bind no one at all, even if, as in the instant case, it is given after issuing notice to all interested parties, after hearing everyone concerned who desired to be heard, and after a full consideration of the questions raised in the reference. Almost everything that could possibly be urged in favour of and against the Bill and urged before us and to think that our opinion is an exercise in futility is deeply frustrating."

(61) In any case, notwithstanding the departure in *St. Xaviers College case* (supra) the Apex Court itself in *All Bihar Christian School Association* v. *State of Bihar*, A.I.R. 1988 S.C. 305, after reviewing the case law upheld the provisions of Section 18(3) of Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981. The provision *inter alia* required that a recognised minority Secondary School shall appoint teachers according to the qualifications laid down by the State Government for the teachers of the Nationalised Secondary School "with the concurrence of the School Service Board constituted under Section 10 of the Act." The Board was authorised to "scrutinise as to whether the proposed appointment is in accordance with the rules laying down qualifications and the manner of making appointment framed by the State Government has been followed or not, and no more". It was held that the Board is vested with limited power "to see that the person proposed to be appointed possesses the requisite qualifications prescribed and that the prescribed method of selection was followed by the management." Within this limited field, the Board could have declined to approve the proposal of the management for appointment of a teacher either on the ground that he did not possess the requisite qualification or that the prescribed method of selection had not been followed.

(62) In the context of the present case, it would be perfectly legitimate for the Univesity to lay down the minimum qualifications for eligibility. Assuming for the sake of argument that the objection with regard to the nominees of the Vice-Chancellor and the preparation of the panel of exercise by the University is valid, the University can lay down that every Selection Committee shall have three or more experts in the speciality concerned. To illustrate, in the matter of appointment of a Professor or a Reader in the department of Orthopaedics, the University can say that the Selection Committee must have three persons of the rank of Professor in the field of Orthopaedics. Further, the proposal for appointment can be subjected to the approval of the Vice-Chancellor or an appropriate body of the University. If, as it appears to be, such a course of action is permissible in view of the decision in *All Bihar Schools case* (supra), the method proposed by the University does not really go much farther than that. The University gives a panel of experts to the College and leaves the petitioner free to pick up the required number of expert from that panel. The presence of the nominees of the Vice-Chancellor appears to the calculated to ensure fair selection. In the ultimate analysis, the constitution of the Selection Committee in such a manner obviates the necessity of an approval by the University. In my view, the proposed method is calculated to promote excellence in standards of education and avoid delay in the appointment of teachers.

(63) Further, a review of the case law also shows that even in the matter of dismissal etc. of the teachers, there is a sea-change. What was initially considered as an impermissible interference in the right to administer has been gradually accepted as a permissible regulation calculated to ensure secruity of service to the teachers. And in the case of *C.M.C.H. Employees' Union* v. *V. M. College, Vellore Assocn.* (11), the Apex Court has even held that the application of the Industrial Disputes Act to the Minority institutions does not impair the right under Article 30 of the Constitution.

(64) I see no impregnable barrier between an appointment and termination. If regulation of termination ensures security of service, proper selection promotes excellence in education. Ultimately, both are calculated to bring a good name to the Institution and serve the Society better.

(11) A.I.R. 1988 S.C. 37.

(65) The second question relates to the validity of the entrance test proposed by the University. The matter has been considered in the latest pronouncement of the Supreme Court in the case of *St. Stephan College* reported as J.T. 1991(4) S.C. 548. On consideration of the judgment, it appears that their Lordships have upheld the claim of the College as it "seems to have compelling reasons to follow its own admission programme." (paragraph 67). It was further found that the procedure as adopted by the college did not suffer from any arbitrariness or lack of scientific basis. Their Lordships have also found that 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."

(66) Such is not the situation in the present case. The very fact that the University is insisting on its test shows that it has reservations regarding the method proposed to be adopted by the College. In the absence of any 'compelling reasons', I see no valid ground for the insistence of the College in holding its own test.

(67) With regard to the grant of U.G.C. grades as also the right of the College to charge reasonable fees, I agree with the view expressed by Sodhi, J.

(68) A post script. All rights under the Constitution are subject to a reasonable restriction. No right including that under Art. 30 is absolute. It is subject to reasonable regulatory measures. The two requirements imposed by the University, in my opinion, do not go beyond what has been held to be permissible.

(69) I agree with the conclusions as also the reasons on which such conclusions have been arrived at by Brother S. S. Sodhi, J. on all the contentions issues involved in this case, but wish to add few more lines on the conditions precedent for the grant of affiliation, as set up by the Panjab University, particularly pertaining to appointment and promotion of teachers as also admissions in the College to be regulated through Pre-Medical Entrance Test conducted by the University. Before, however, this exercise is taken in hand, on the basis of contentions raised by the learned counsel for the parties, as also on the basis of the case law referred to in support of their respective contentions, I am of the opinion that broadly

speaking, the religious minority institutions have no doubt right to monitor their institutions and the interference into the management of the institution would impinge upon their aforesaid right, as has been granted to them, under Articles 29 and 30 of the Constitution of India, unless an interference is with regard to a regulatory measure which tends to bring about efficiency and excellence in the institution. The two objects, one with regard to preserving the right of the minorities to establish and administer their educational institutions and the other to ensure the standard of excellence of the institution are well-settled objects, and while considering the regulatory measures that may be involved in a given case, the balance has to be kept between the two objectives. The other regulation that can be provided, as I have been able to make out from various judgments cited by the Bar, would be with regard to General Laws of the Land; like, Law of Taxation; Law relating to sanitation; Transfer of Property; Economic Regulations; Social Welfare Legislation; Wage and Hours Legislation and similar measures. Considered in this broad conspectus, the interference of the University in the appointment of teachers to the Dental College, to be run by the petitioner, through participation of nominees of Vice-Chancellor, as per the constitution of the Selection Committee, as has been dealt with in the judgment of S. S. Sodhi, J. which would have pre-dominant role in making selection cannot, but be said to be impinging upon the right of the management, so enshrined under Article 30(1) of the Constitution. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right of management. Justice Khanna, in *The Ahmedabad St. Xaviers College Society and another* v. *State of Gujarat and another* A.I.R. 1974 Supreme Court 1389, while dealing with the similar interference sought by the State of Gujarat, as is sought to be done by the Panjab University in the present case, said, "It is upon the Principal and teachers of the college that the tone and temper of an educational institution depends. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the Principal and to have the teaching conducted by teachers appointed by the management, after an overall assessment of their outlook, and philosophy is perhaps the most important facet of the right to administer an educational institution. We can perceive no reason why a representative of the University nominated by the Vice-Chancellor should be on the Selection Committee for recruiting the Principal or for the insistence of the head of the department besides

the representative of the University being on the Selection Committee for recruiting the members of the teaching staff. So long as the persons chosen have the qualification prescribed by the University, the choice must be left to the management. This is part of the fundamental right of the minorities to administer the educational institution established by them." Section 33-A (1) (a) and (b), which were involved in the aforesaid case read as under :—

"xx xx xx

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

(b) that for recruitment of the Principal and members of the teaching staff of a college there is a selection committee of the college which shall include (1) in the case of recruitment of the Principal, a representative of the University nominated by the Vice-Chancellor, and;.....

xx xx xx"

(70) The Provisions contained in section 33-A (1) (a) of the Act were held to have the effect of displacing the management and entrusting it to a different agency. It was further held that autonomy in the administration, on account of the interference, was lost and new elements in the shape of representatives of different types were brought in. In the language of C. J. Ray, who delivered judgment for himself as also on behalf of Justice Palekar, it was said that under such circumstances, the calm water of the institution will not only be disturbed, but also mixed." Even though the challenge in the aforesaid case to section 33-A (1) (b) was not by the petitioner of the said case, but was by interveners the aforesaid section was held to be violative of the fundamental right, to administer its own institution by the religious minorities. The Selection Committee, as is amply made out from the Provisions quoted above,

was to consist in the case of recruitment of Principal, of a representative of the University, nominated by the Vice-Chancellor and, in the case of recruitment of a member, of the teaching staff of the College, of a representative of the University, nominated by the Vice-Chancellor and the Head of the Department, if any, for subjects taught for such persons. Section 33-A (1) (a) and (b) was said to be of the nature, which could not be applied to minority institutions, as the provisions contained therein would violate the fundamental right of the minority institutions. In the aforesaid case, separate judgments have been written by Justice Jaganmohan Reddy as also Justice Beg and Justice Dwivedi. By majority, Section 33-A of the Gujarat University Act, 1949, as applicable to institution established and administered by religious minorities, was opined against the provisions contained in Articles 29 and 30 of the Constitution of India. In *Rev. Father W. Proost* v. *State of Bihar* (12) the Supreme Court was dealing with Section 48 of the Bihar University Act which *inter alia* provided that appointments, dismissals, removals and termination of service of the governing body of the College, were to be made on the recommendations of the University Service Commission and only subject to the approval of the University. The kind of interference sought for by the University, by enacting Section 48-A of the Bihar University Act, was frowned upon by the Apex Court. It was held that the width of Article 30(1) could not be cut down by introducing in it considerations, on which Article 29(1) was based. Article 29 was held to be a general protection which was given to the minorities to learned language, script or culture, whereas, Section 30 was held to be special right to minorities to establish internal institutions of their choice and the said choice was not limited to institutions seeking to learn language, script or culture and the choice is not taken away if the minority community established educational institution of its choice, and also admits members of other community. In *Rt. Rev. Bishop S. K. Patro* v. *State of Bihar* (13), the State of Bihar had required the religious minority school to constitute a Managing Committee of the School in accordance with the order of the State. The direction of the kind, referred to above, was held to be of such nature by which the minority community was to lose the right to administer the institution, it had founded. The power of the syndicate of the University to veto the action of the governing body or the managing council for the selection of the Principal, even though

(12) A.I.R. 1969 S.C. 465.

(13) A.I.R. 1970 S.C. 259.

an appeal was provided for such an action, was held to be of such nature, which would have the effect of taking away the power of governing body and the managing council and conferring it upon the University. Such a power was not approved by the Supreme Court in *D.A.V. College* v. *State of Punjab* (14). Clause 17 of the statute which provided that the staff initially appointed shall be approved by the Vice-Chancellor's approval was found to interfere with the right of management of the religious minority. *In All Bihar Christian Schools Association and another* v. *State of Bihar and others* A.I.R. 1988 Supreme Court 305, clauses (b) and (c) of Section 18, which have some bearing upon the facts of the present case came up for scrutiny by the Supreme Court. The aforesaid clauses run thus :—

> "(b) According to the prescribed qualification laid down by the State Government for the teachers of the nationalised secondary schools and within the number of sanctioned posts, the managing committee of the minority secondary schools shall appoint the teacher with the concurrence of the school service board constituted under Section 10 of this Act. Provided that while considering the question of giving approval to appointment of any teacher under this sub-section the board shall only scrutinise as to whether the proposed appointment is in accordance with the rules laying down the qualification and the manner of making appointment framed by the State Government has been followed or not and no more."

> "(c) There shall be rules regarding the service condition of teachers of minority schools based on natural justice and the prevailing law, a copy of which shall be sent to the State Government."

(71) While dealing with the matter, the Supreme Court came to the conclusion, as under :—

> "This clause is in the interest of the minority institution itself, as no outsider is imposed as a member of the Managing Committee, there is no interference with the minority's right to administer its school. Clause (b) provides for

(14) A.I.R. 1971 S.C. 1737.

two things, firstly it requires the managing committee of a minority school to appoint teachers possessing requisite qualifications as prescribed by the State Government for appointment of teachers of other nationalised schools, secondly, the managing committee is required to make appointment of a teacher with the concurrence of the School Service Board constituted under Scetion 10 of the Act. Proviso to clause (b) lays down that the School Service Board while considering the question of granting approval to the appointment of a teacher shall ascertain if the appointment is in accordance with the rules laying down qualifications, and manner of making appointment framed by the State Government. The proviso makes it clear that the School Service Board has no further power to interfere with the right of managing committee of a minority school in the appointment of a teacher. Under cl. (b) the managing committee is required to make appointment of a teacher with the concurrence of the school service board. The expression 'concurrence' means approval. Such approval need not be prior approval, as the clause does not provide for any prior approval. Object and purpose underlying cl. (b) is to ensure that the teachers appointed in a minority school should possess requisite qualifications and they are appointed in accordance with the procedure prescribed and the appointments are made for the sanctioned strength. The selection and appointment of teachers is left to the management of the minority school. there is no interference with the managerial rights of the institution."

(72) Even though the view of the Supreme Court with regard to interference in appointment of teachers in a religious minority institution has been so right from 1969 till today, Mr. Anupam Gupta, counsel appearing for the respondent-University wishes us to take a different view by relying upon the observations of Supreme Court in *Re. Kerala Education Bill*-1957, (A.I.R. 1958 S.C. 956) Clause-2 of the Kerala Education Bill only contains definitions of certain terms used in the Bill. Clause 3(v) says that the establishment of a new school or the opening of a higher school in any private school would be subject to the provisions of the Act. Provisions made therein go to show that any school or higher class, established or opened, otherwise than in accordance with such provisions, would not be entitled to be recognized by the Government. Clause-10

required the government to prescribe the qualifications to be possessed by persons for appointment as teachers in a government school or private school, which, by the definition, means aided or recognized schools. The State Public Service Commission is empowered to select candidates for appointment as teachers for aided schools, according to the procedure laid down in Clause-II. The Supreme Court, while dealing with the aforesaid clause said, "—These are, no doubt serious inroads on the right of administration and appear perilously near violating that right, but considering those provisions are applicable to this institution and the impugned clauses 9, 10 and 11 are designed to give protection and security to the ill-paid teachers who are engaged in rendering service to the nation and to protect the Backward Class. We are prepared, as at present advised to treat these clauses 9, 11, 12(4) as permissible regulations which the State may impose on the minorities as a condition for granting aid to their educational institutions."

(73) It is no doubt true that the passage extracted above to some extent, supports the contention of Mr. Gupta. However, in view of the fact that the Supreme Court in latter decisions, as have been mentioned in earlier part of the judgment, after considering the judgment rendered in *Re. Kerala Education Bill case* (supra), has taken a different view, it shall not be possible for me to hold that interference sought by the University in the appointment of teachers by necessarily sending nominees of the Vice-Chancellor in the selection panel would not be unjustified interference in the rights of religious minority institutions. It shall be seen from a passage extracted above, that the impugned clause, even though upheld, was opined to be of the nature which made serious inroads on the right of administration and appeared perilously near violating that right. Only by considering that the said provisions were applicable to all educational instructions and the impugned clause-II was designed for protection and security of the ill-paid teachers as advised at that time, the Supreme Court treated the said clause as permissible regulation. The question, whether the law laid down in *Re. Kerala Education Bill case* (supra) holds the field, came to be pertinently commented by the Supreme Court in *St. Xavier's case* (supra). Justice Jaganmohan Reddy, while commenting upon the decision referred in *Re. Kerala Education Bill case* (supra) came to the conclusion that the report, which was made to the President in the Reference, was not binding on Supreme Court in any subsequent matter, where, in a concrete case, the infringement of the

rights under any analogous provisions might have been called in question, though it was entitled to a great weight. Further, after dealing with the decisions rendered in *State of Kerala* v. *Very Rev. Mother Provincial etc.* AIR 1970 SC 2079 and *D.A.V. College Bathinda* v. *State of Punjab*, A.I.R. 1971 S.C. 1737, it was said that in so far as the said decisions lay down the principle slightly different or even contrary to the opinion of the Kerala Education Bill case (supra) they are the law laid down by this Court. Mr. Anupam Gupta, however, contends that the opinion rendered by the Supreme Court in exercise of its advisory jurisdiction in Article 143(3) of the Constitution of India, would be a binding law declared by the Supreme Court within the meaning of Article 141 of the Constitution of India. For the aforesaid proposition, Mr. Gupta relies upon decision of the Supreme Court in *Re. Special Courts Bill-1978*, (A.I.R. 1979 S.C. 478). It is true that in paragraph 101 of the Report relied upon by Mr. Gupta, after discussing the case law, the Supreme Court did return a finding that though it was always open to the Supreme Court to re-examine the question already decided by it and to overrule the same, if necessary, the earlier view taken by it, in so far as all other courts of the territory of India are concerned, ought to be bound by the view expressed by the Supreme Court, even in exercise of its advisory jurisdiction under Article 143(i) of the Constitution of India. Whether the view expressed in *Re-Kerala Education Bill case* (supra) would hold the field or it is the judgment that was rendered in *St. Xaviers Case* (supra), which should be followed; the answer is provided from paragraph-101 of the Report itself; which has been relied upon by Mr. Gupta. I am of the considered view that in so far as the regulation pertaining to interference by the University or the government, as the case may be, in appointment of teachers is concerned, it was re-examined in number of cases by the Supreme Court, as referred to above.

(74) Even though the decision rendered in *Re-Kerala Education Bill case* (supra) was not specifically overruled, but the same was watered down particularly in the Constitution Bench consisting of Nine-Judges in *St. Xaviers case* (supra). It is the view expressed in the aforesaid judgment that binds me. Mr. Gupta relied upon judgment rendered by the Supreme Court in the matter of *Cauvery Water Disputes Tribunal* (15), to further suport his contention that advisory opinion of the Supreme Court is binding on all Courts. However, as said above, there is now no dispute on this issue and

(15) J.T. 1991 Vol. 4 Page 361.

even though I hold that the advisory opinion of the Supreme Court is binding upon us, the view expressed by the Supreme Court in *Re-Kerala Education Bill case* (supra) cannot be followed for the reasons already mentioned above. It requires to be mentioned here that on the force of judgments mentioned above and which have been relied upon by the learned counsel for the respondent-University, all that can be said is, the advisory opinion of the Supreme Court is binding on all Courts and that the opinion expressed in *St. Xaviers case* (supra), that such an opinion having been expressed only on advice sought without there being contending parties, present before the Court, would not be binding, can only be said to be no more valid. However, in so far as interference, in the name of regulatory measure, in appointment of teachers of religious minorities is concerned, the law laid down in *St. Xaviers case* (supra) is final and binding and there has been no departure of this principal in any of the cases relied upon by the counsel for the respondent-University.

(75) It shall thus be made out from various judgments, that have been reproduced above, that as long as no outsider is introduced as a member of the Managing Committee, which Managing Committee is entrusted with the job of making selections, the regulatory clauses, which might tend to promote the cause of education and bring efficiency and excellence in the institution itself, the same will be protected. If, for instance, the University was to provide regulation, wherein, a minimum educational qualification for a teacher was essential for appointment, the same has to be protected. Also, where the University might approve the appointment of a teacher, selected by the management of a minority institution, only with a view to find out if the procedure prescribed for appointment was followed or not, the same would also be in the interests of the institution with a view to bring about efficiency, but anything more that might tend to interfere in the process of selection of a teacher by any outside agency, irrespective of the quality or quantity thereof, the same would be crossing the barrier of regulatory measure and would come within the vice of Article 30 of the Constitution of India.

Mr. Gupta also relies upon *C.M.C. Employees Union* v. *C.M. College, Vellore Association* (16), to contend that if provisions of

(16) A.I.R. 1988 S.C. 37.

Industrial Disputes Act made applicable to a minority educational institution were not held to interfere with the right of minorities, as enshrined under Article 30(1) of the Constitution, where a procedure for dismissal is also provided, then in any case with regard to initial appointment as well, the regulation provided by the University would not violate the said right of the petitioners. I am afraid, the aforesaid judgment can not come to the rescue of the respondent-University. It shall be seen that the Industrial Disputes Act, 1947 is a General Law which is for prevention and settlement of Industrial Disputes. The same has been enacted as a social security measure in order to ensure welfare of labour. The activities of a religious minority can be regulated provided the regulations do not take away or abridge the guaranteed right. While dealing with the case in *C.M.C. Employees Union* (supra) it was clearly stated that the Industrial Disputes Act being a General Law for prevention and settlement of industrial disputes, cannot be construed as a Law which may directly interfere with the right of administration of a minority educational institution granted under Article 30(1) of the Constitution. In fact, while dealing with *St. Xaviers case* (supra), Justice Mathew, on behalf of himself, as also Justice Chandrachud, while concurring with the judgment rendered by the Chief Justice made a departure from the general right as enshrined under Article 30(1) of the Constitution, when the regulatory measure pertaining to applicability of general laws of land, like law of Taxation; Law relating to Sanitation; Transfer of Property, etc. were protected.

(76) The regulation imposed by the University which insists upon participation of the nominee/nominees of the Vice-Chancellor as also the Subject Experts, so nominated by the Vice-Chancellor and who, as conceded by the counsel appearing for the respondent-University, would also play part in making selection of teachers, in my view, would militate against the guaranteed right of religious minority institutions. That being the position, part of clause-4 pertaining to salary, scales, mode of appointment/promotions and qualifications for teachers, in so far as it pertains to the mode of appointment and promotion of teachers by associating nominee/ nominees of the Vice-Chancellor, as imposed by the Committee constituted by the Syndicate,—*vide* annexure P/3, shall have to be quashed.

(77) Coming now to the condition imposed by the respondent-University for grant of affiliation to the petitioners by necessarily

governing admissions through Entrance Test, known as 'P.M.T. Test' by the University itself, it shall be appropriate to first deal with the same very condition imposed by the University when the petitioner-Institution had started M.B.B.S. College. It is an admitted position between the parties that,—*vide* decision dated March 13, 1987, taken by the Syndicate, the petitioner was told that for regulating admission to the M.B.B.S. Course for the Session-1987, the petitioner shall have to be so through Entrance Test, that is, 'P.M.T. Test' to be held by the University and in case it was not done the admissions made by the petitioner-Institution would not be approved. The minutes of the meeting dated March 14, 1987. read as under :—

> "(ii) That as per its earlier decision, the P.M.T. shall be held by the University to regulate 1987 admissions to the M.B.B.S. Course at both the Medical College at Ludhiana and in consequence thereof admissions to the M.B.B.S. Course in 1987 not based on the University P.M.T.-1987, will not be approved."

(75) It is significant to mention that the petitioner had already started the Medical College and with regard to admissions pertaining to the Sessions 1987, that the aforesaid decision was conveyed to it,—*vide* letter dated March 19, 1987. The petitioner filed C.W.P. bearing No. 432 of 1987 in the Supreme Court. We are given to understand by the learned counsel for the petitioner that the aforesaid case was tagged with the petition filed by St. Stephen College Delhi and many other matters. Even though, the Supreme Court has delivered the judgment in St. Stephens case very recently, the case pertaining to the petitioner was taken earlier in point of time. and as such was delinked. This delinking was on account of the fact that one Shri Joginder Singh, as nominee of the Vice-Chancellor, who was to go into the question as to whether the Entrance Test conducted by the petitioner itself was such which might be of the standard that the University expects had done that exercise. Shri Joginder Singh, who had gone into the matter and after thoroughly probing the issue, addressed a letter dated March 4, 1987 to the Registrar of the Panjab University. The contents of the aforesaid letter are reproduced as under

> "As desired, I have made a review of M.B.B.S. admissions for the Session 1989-90 in the Christian Medical College.

Ludhiana. It is observed that the College has a system of admission which is based on an All India Entrance Test, conducted by an outside agency, which appears to be foolproof. The admissions to the above course are then made on the basis of the merit list prepared by the Examining Agency and duly notified to the students, of course, on the basis of reservations of seats as mentioned in the prospectus. The admissions made, as checked by me from the College record are based purely on merit.

I take this opportunity to thank the Director and the Principal of C.M.C. of given full co-operation in the discharge of my duties as the Vice-Chancellor's nominee."

The learned counsel for the petitioner states that it is on the basis of aforesaid letter that the necessary application was made in the Supreme Court to get the case delinked. The matter came up for hearing on April 24, 1990, when the following order was passed—

"This writ petition is delinked from the other matter in the list.

We have heard Mr. A. K. Sen appearing on behalf of the petitioner and Mr. Jamendra Lal, appearing on behalf of respondent No. 1. In view of the communication dated 3rd March, 1989 from Shri Joginder Singh, nominee of the Vice-Chancellor of the University of Punjab and in view of the stand taken on behalf of the Panjab University and when the minority character of this college is not disputed the decision of the Syndicate dated 14th March, 1987, need not be given effect to. We order accordingly. The writ petition is disposed of in those terms. There will be no order as to costs."

(79) The unequivocal stand of the petitioner is that it is the same Test that is prevailant for regulating admissions in M.B.B.S. Course that would be governing admissions in the Dental College as well. The students who secure first 50 Positions as per their choice, would be admitted in M.B.B.S. Course, whereas the remaining 20, strictly in order of merit, would find their admission for the B.D.S. Course. The facts leading to earlier petition and the decision thereof have been specifically pleaded in paragraph-15 of the petition. In reply to paragraph-15, all that the respondent-University

has to say is that the orders of the Supreme Court dated April 24, 1990 have no bearing on the present case, which has to be independently decided and that the conditions relating to the Pre-Medical Entrance Test is manifestly reasonable and regulatory measurement to ensure excellence of education in the proposed Dental College and to make the College an effective vehicle of education.

(80) The first question that requires determination is as to whether on the facts and circumstances of the case the University is precluded from imposing condition for the grant of affiliation holding of an Entrance Test known as P.M.T. Test by the Panjab University. The learned counsel for the petitioner submits that on an identical question, the matter stands finalised by the highest Court of the Land and the University is debarred from imposing the condition of P.M.T. Test, on account of the well-known principal of *res judicata*, Mr. Anupam Gupta, on the other hand, contests the plea of the petitioner. Admittedly, the judgment exhibit P/29 is an *inter-partes* judgment. Admittedly, as well, it is the condition of admission through P.M.T. Test that was involved in the litigation pertaining to admission of M.B.B.S. College and also for the B.D.S. College, now proposed to be set up. Mr. Anupam Gupta, has not disputed that it is the same P.M.T. Test which is going to regulate admissions in the B.D.S. College, that is in vogue with regard to admissions for M.B.B.S. College. Even though it has been said that the letter written by Shri Joginder Singh, contents whereof have been reproduced above, was procured, but there is nothing on the record nor even pleading to that effect. In view of the facts and circumstances that have been mentioned above, the conclusion with regard to applicability of *res judicate* has to be drawn. The University, on account of judgment annexure P/29, is precluded from imposing the condition of regulating admissions through P.M.T. Test and refusal to grant affiliation on the ground aforesaid as made out from annexure P/23, is wholly illegal. In *St. Stephan College'* v. *The University of Delhi*. J.T 1991 (4) S.C. 548, the right of admission to a religious minority institution has clearly been protected. The only exception that appears to me is that such a right can be curtailed only if there are allegations and proof of mal-administration in the matter of admissions. Once there is not even a whisper of any mal-administration in the matter of admissions and the only ground descipherable from the minutes of various meetings as also the pleadings in the written statement is that it is only with a view to bring about uniformity in the

matter of admissions that such a condition has been imposed, the decision for imposing the condition pertaining to religious minority institutions, against which there is no allegation of mal-administration or of ignoring merit, does not commend to me. Clause-1 contained in annexure P/23 pertaining to the mode of admission to the proposed Christian Dental College is also thus held to be patently illegal and is consequently quashed.

ORDER OF THE COURT

(81) We accordingly hold that the Panjab University was well within its jurisdiction in prescribing it as a condition for affiliation for the proposed Dental College that the pay-scales of the teaching staff should be as per the University Grants Commission's recommendations made from time to time.

(82) The condition sought to be imposed by the University with regard to the fees to be charged from the students to be admitted to the said College and the prior permission of the University for any increase therein, cannot, however be sustained and is thus quashed.

(83) Further, by majority, we hold that in the matter of grant of affiliation to the proposed Dental College, the Panjab University acted beyond its jurisdiction and in contravention of Article 30(1) of the Constitution by prescribing conditions relating to appointment of teaching staff and mode of admissions of students to the said College.

(84) We hereby direct the Panjab University as also the Dental Council of India to finalize the matter with regard to the affiliation/approval of the proposed Dental College with such expedition as it renders it possible for it to start imparting education to students from this Academic Year.

(85) This writ petition is, consequently, in these terms, accepted with Rs. 5,000 as costs against the respondent-University.

R.N.R.