

St. Stephen'S College vs University Of Delhi on 6 December, 1991

Bench: M.H. Kania, K.J. Shetty, N.M. Kasliwal, M. Fathima Beevi, Y. Dayal

CASE NO. :

Writ Petition (civil) 1868 of 1980

PETITIONER:

ST. STEPHEN'S COLLEGE

RESPONDENT:

UNIVERSITY OF DELHI

DATE OF JUDGMENT: 06/12/1991

BENCH:

M.H. KANIA & K.J. SHETTY & N.M. KASLIWAL & M. FATHIMA BEEVI & Y. DAYAL

JUDGMENT:

JUDGMENT 1992 AIR 1630 = 1991 (3)Suppl.SCR 121 = 1992 (1) SCC 558 = 1991(4) JT 548 = 1991(2) SCALE 1217 with W.P. Nos. 13213-14 of 1984, T.C. No. 3 of 1980 with C.A. Nos. 1831-41 of 1989 with C.A. No. 1786 of 1989 and C.A. No. 2829 of 1989 The Judgments of the Court were delivered by JAGANNATHA SHETTY, J. (for Kania J., Himself, Fathima Beevi and Yogeshwar Dayal, JJ.) -

Introduction

1. St. Stephen's College at Delhi and Allahabad Agricultural institute at Naini are two of our premier and renowned institutions. The former has been affiliated to the Delhi University and the latter to the U.P. University. Both are aided educational institutions and getting grant from the State funds. They have their own admission programme which they follow every academic year. The admission programme provides for giving preference in favour of Christian students. It is claimed that they are entitled to have their own admission programme since they are religious minority institutions. The validity of the admission programme and the preference given to Christian students are the issues that need to be resolved in these cases. The questions are of great constitutional importance and consequence to all minority institutions in the country The Facts in General St. Stephen's College

2. St. Stephen's College was founded on February 1, 1881. It is the oldest College in Delhi. It was first affiliated to Calcutta University and then to Punjab University and thereafter to Delhi University. Upon affiliation to the Delhi University it became one of its three original constituent colleges. The College offers three year degree course in B.A./B.Sc. (Hons), B.A. (Pass) and B.Sc. General as well as two years post - graduate degree course in M.A. and M.Sc. For the academic year 1980-81, the College published "Admissions Prospectus" on May 25, 1980, inter alia, providing that applications for admission for the first year course must be received in the College office on or before June 20,

1980. In the same prospectus, it was also provided that there would be interview prior to final selection of students for admission to the College. It appears that on May 22, 1980 the Vice - Chancellor of the Delhi University in exercise of his emergency powers under Statute 11-G(4) of the Statutes of the University, constituted an Advisory Committee to consider and recommend the dates for admission/registration to various undergraduate/post - graduate courses in the Faculties of Arts and Social Sciences/Mathematics and Science for the academic session 1980-81 and for other related matters concerning admissions. The constitution of the Advisory Committee was approved by the Academic Council in its meeting held on May 29, 1980 and the Academic Council also authorised the Vice-Chancellor to accept the recommendations of the Advisory Committee for implementation. The Advisory Committee, inter alia, laid down as follows "(i) Admission to B.A. (Pass)/B.A. Vocational Studies Courses be based on the merit of the percentage of marks secured by students in qualifying examination

(ii) The admission to B.Com. (Pass) B.A. (Hons.) and B.Com. (Hons.) Courses be also on the basis of marks. However, the College may give weightage to marks obtained in one or more individual subjects in addition to the aggregate marks of the qualifying examination. But whenever weightage is proposed to be given to individual subject (s) by the College, it should be notified in advance to the students through the college Prospectus/Notice Board so that applicants seeking admission know in advance the basis of admission

(ii) That last date for receipt of applications to all the undergraduate courses will be June 30, 1980 and this would be uniformly adhered to by all the Colleges."

3. These recommendations were accepted by the Central Admission Committee and also by the Vice - Chancellor The Circulars of the University

4. On June 5, 1980 the University issued circular to all affiliated colleges prescribing the last date for the receipt of applications as June 30, 1980. The circular also provided phased programme of admission as follows "A. First phase of admission For students securing 45 per cent of marks or above

(i) Notification of first Wednesday 2nd July, 1980 admission list by the colleges Payment of fees (up to) Friday July 4, 1980 up to 4 p.m General note The number of names in all admission lists shall correspond to the number of seat's available in the courses concerned. No student whose name appears in admission list (or who qualifies on the basis of the percentage indicated in the list) shall be denied admission provided he/she pays the fees by the date and time stipulated(ii) Notification of second Friday July 4, 1980 6 p.m Admission List by the Colleges Saturday 5th - Monday 7th Payment of fees July 1980 up to 4 p.m B. Second phase of admission For students securing below 45 per cent but above 40 per cent marks Notification of Third Admission Tuesday July 8, 1980, 12 noon List by the Colleges Payment of fees (up to) Thursday July 10, 1980, 4 p.m."

5. On June 9, 1980, the University issued another circular to Principals of all colleges intimating inter alia, that admission to B.A. (Pass)/ B.A. Vocational study courses be based on the merit of the percentage of marks secured by students in the qualifying examination. The admission to B.Com

(Pass), B. A. (Hons) and B.Com. (Hons) courses shall be on the basis of marks. However, the college may give weightage to marks obtained in one or more individual subjects in addition to the aggregate marks of the qualifying examination. But whenever, weightage is proposed to be given to individual subjects (s) by the college, it should be notified in advance to the students through the College Prospectus/Notice Board so that applicants seeking admission know in advance the basis of admission. This circular also provides certain guidelines for admission to sportsmen and persons with other distinctions

6. The Delhi University Students Union had complained to the University authorities that the College was violating the University Statutes and Ordinances by fixing its own time schedule for receipt of applications as well as by stipulating interview before admission. On the basis of this complaint, the Registrar of the University wrote a letter dated June 9, 1980 requesting the Principal of the College to conform to the University schedule communicated to the College by the circular dated June 5, 1980. This was followed by some more correspondence between the College management and the Vice - Chancellor. The College management pointed out that at that late stage, it would not be possible to make any changes in their admission programme. There then the Vice-Chancellor addressed a letter dated June 7/9, 1980 to the Chairman of the Governing Body of the College stating that as per the decision of the Central Admission Committee, the last date for receipt of admission forms for undergraduate courses should be June 30, 1980 and the stipulation of the College as June 20, 1980 for that purpose would be very embarrassing to the University authorities. The Vice - Chancellor again asked the College management to conform to the dates prescribed by the University

7. The Principal of the College was not available at that time and in his absence, the Vice - Chairman of the College replied by letter dated June 12, 1980 to the Vice - Chancellor stating that "the interview of prospective students by a competent body is an integral part of admission procedure at St. Stephen's College and this policy has been followed and highly valued throughout the history of the college ..."

He thus indirectly pointed out that it was not possible for the College to adhere to the University Circulars. He however, assured the Vice - Chancellor that no admission list would be put up before July 2, 1980, the prescribed by the University for publishing the first admission list A Student moves the Delhi High Court

8. When the matter thus stood, a student by the name of Rahul Kapoor seeking admission to the College for undergraduate course filed a Writ Petition No. 790 of 1980 in the High Court of Delhi under Article 226 of the Constitution, challenging the admission schedule of St. Stephen's College and the interview test prescribed for candidates. The writ petition was filed on June 16, 1980. On June 30, 1980 the High Court passed an order directing the College, to receive the applications for admission till June 30, 1980 and also prohibiting the College from announcing the admission list, for which the prescribed date was July 2, 1980 till the disposal of the writ petition. Incidentally, the High Court also observed that it had no option but to issue such an order since St. Stephen's College had not challenged the validity of the University circulars dated June 5 and 9, 1980. This writ petition has been the subject matter in the Transferred St. Stephen's College moves the Supreme

Court

9. That in pursuance of these events, St. Stephen's College moved this Court by means of a writ petition under Article 32 of the Constitution. We are primarily concerned with this Writ Petition (Civil) No, 1868 of 1980. The averments in the writ petition are these : that St. Stephen's College is a religious minority - run institution. It is a constituent College, like an affiliated college admitted to the privileges of the University, but not a maintained college. From the very beginning, the College has been exercising certain obvious and inherent managerial powers : one of them was to fix reasonable dates for admission and the other was for an interview of the candidates. These managerial functions have never been questioned or interfered with by the University. That even assuming, without conceding that within the general power of the regulations, the University has power to prescribe the date for admission, this would be ex facie violative of the fundamental right of the College as fixing of this schedule is ex facie managerial. The management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right

10. It is further alleged that approximately 6000 applications are received by the College as against its 300 available seats. Because of its pre - eminent position, applications come from every part of the country. In subsequent years, more than 12, 000 applications were received. It would, therefore, be humanly impossible to process those applications within a day and to select 300 of the most suitable candidates with any semblance of fairness. Usually about 40 per cent of the applicants are from outside; of the 300 to be admitted 100 are for admission to the hostel. The provision for the interview, which has been the procedure followed by the College since its inception, is an integral part of administration of the College. It is a part of its managerial function and it cannot be taken away by the University. The selection on the basis of only marks obtained by the candidates on the face of it would be unreasonable and violative of the fundamental right of the College guaranteed under Article 30 of the Constitution. With these and other contentions, the College prayed for a declaration that the circulars dated June 5 and 9, 1980 issued by the University are void qua the College in view of its minority status

11. This Court while issuing rule nisi in the said writ petition has stayed the operation of the circulars. In view of the stay granted by this Court, the College continued to follow its own admission policy, modality and schedule in the succeeding years The Delhi University Students' Union approaches the Supreme Court

12. The Delhi University Students' Union is an intervenor in the Writ Petition No. 1868 of 1980 filed by St. Stephen's College. That subsequently for the admission year 1984 - 85, the Delhi University Students Union and Dr. Mahesh C. Jain filed W. P. Nos. 13213 - 14 of 1984 under Article 32 of the Constitution seeking a direction to St. Stephen's college to follow all University policies, rules, regulations, ordinances regarding admissions etc. and further for a direction restraining the College from giving preference in favour of Christian students in the matter of admission to the College. It was alleged in the writ petition that the College has not been declared to be a minority college by any

Court nor it is recognised as a minority college by the University. It was alternatively contended that even assuming that it is a minority college, it is not entitled to discriminate students on grounds of religion as the College is receiving maintenance grant from the government. The discrimination of students for admission to the College based only on religion is contrary to the provisions of Article 29(2) of the Constitution.

The Case of the Delhi University

13. The Delhi University in its affidavit - in - opposition has justified the issuance of the aforesaid circulars with reference to the provisions of the Delhi University Act, the Ordinance II and the relevant Statutes of the University. Reference is made to Statute 30 and the terms and conditions of government grant to Colleges. It is said that every college shall comply with the Statutes, Ordinances and Regulations of the University. The College is required to comply with the directions given by the University regarding admission of students. Reliance is also placed on Ordinance XVIII which provides for constitution of a Staff Council in every college. All the members of the teaching staff, Librarian and the Director of Physical Education constitute the Staff Council. The Principal is the ex- officio Chairman of the Staff Council. The functions of the Staff Council are provided in sub - clause (5) of Clause 6 - A of Ordinance XVIII. One of the functions assigned to the Staff Council is to make recommendations regarding formulation of admission policy within the framework of the policy laid down by the University. The College however, cannot lay down its own admission policy so as to be in conflict with the policy laid down by the University. Like all other colleges admitted to the privileges of the University, St. Stephen's College is also in receipt of maintenance grant from the University Grants Commission. Since the College is receiving aid out of State funds, it is not entitled to practise discrimination in the matter of admission on the ground of religion and/or language. This is plainly contrary to the mandate of Article 29(2) of the Constitution. The circulars of the University containing directions as to admission of students to affiliated colleges do not infringe in any manner the fundamental rights of a the body administering the College, assuming without admitting that such a body is entitled to claim a fundamental right under Article 30 of the Constitution. The College, therefore, is bound to follow the two directions in question which have been given by the University to all colleges alike in exercise of its statutory power under the relevant Ordinances of the University.

The Allahabad Agricultural Institute

14. This is a professional college which offers several courses of study in Agricultural Sciences. It is undisputedly an institution established and administered by the Christian religious minority. In 1911, it was founded by Christians under the leadership of Dr. Sam Higgin-bottom. It is now located on the right bank of Jamuna river at a tiny place called Naini in the famous pilgrimage and education centre of Allahabad. It has 600 acres campus including staff quarters, men's and women's hostels, library and administration buildings within ten departments and auxiliary units of the Institute. The institution imparts education in several courses of study, like Inter Agriculture, Inter Home Science, Indian Dairy Diploma (IDD), B.Sc. in Agriculture, B.Sc. Home Economics, B.Tech. in Agricultural Engineering, M.Sc. in Agriculture and M. Sc. in Agricultural Engineering. It claims to be a national institute and every year it holds entrance test at different centers. It has prescribed the rules of admission to first year of each degree/diploma program as follows "(1) Church sponsored students from the whole Minimum 50 country of which at least one-fifth per cent shall be from U.P (2) Students of U.P. domicile including Church sponsored coming on merit ranking 40 per cent (3) Students from other States including foreign students but excluding U.P and Church sponsored

students 5 per cent (4) Tribals 5 per cent (1) In order to strengthen the spirit of national integration and to bring about the all Indian character of the Institute, the distribution of the seats will be as follows Zones North : Himachal Pradesh, Jammu and Kashmir, Punjab Haryana, Rajasthan, Bihar, Bengal and Delhi 40 per cent South : Orissa, Andhra, Tamil Nadu, Kerala, Karnataka Pondicherry, Goa, Andaman and Nicobar 30 per cent West : Gujarat, Maharashtra, Madhya Pradesh 10 per cent North West : Assam, Arunachal, Mizoram Nagaland, Manipur, Meghalaya, Tripura and Sikkim 20 per cent (2) Scheduled Caste students who qualify the Entrance Test and old students will be adjusted in each of the respective quota and zones first (3) In each of the categories only those who have qualified in the entrance test will be considered and admitted strictly in order of merit within each list (4) Disciplinary action - Any student who was a disciplinary action taken against him/her will not be admitted to any course in this Institute (5) Not less than 25 per cent of the enrollment shall be women students."

15. The students who have been denied admission by this Institute filed writ petitions under Article 226 of the Constitution in the Allahabad High Court challenging the reservation and admission of Church sponsored Christian students. The High Court has allowed the writ petitions declaring that the policy of reservation for Christian students is contrary to the equality guaranteed to citizens under Article 29(2) of the Constitution

16. Being aggrieved by the decision of the High Court, the Institute be obtaining certificate under Article 133(1)(a) of the Constitution has preferred Civil Appeal Nos. 1831-41 of 1989. Civil Appeal Nos. 1786 of 1989 and 2829 of 1989 are by some of the students. They are connected appeals against the same judgment of the Allahabad High Court Question of Law

17. A great many questions were debated before us in the course of hearing. The important issues can be grouped under three main heads First : Whether St. Stephen's College is a minority - run institution ? Second : Whether St. Stephen's College as minority institution is bound by the University circulars dated June 5, 1980 and June 9, 1980 directing that the College shall admit students on the basis of merit of the percentage of marks secured by the students in the qualifying examinations ?

Third : Whether St. Stephen's College and the Allahabad Agricultural Institute are entitled to accord preference to or reserve seats for students of their own community and whether such preference or reservation would be invalid under Article 29(2) of the Constitution ?

18. The first two questions are relevant only to St. Stephen's College and they do not arise in the case of Allahabad agricultural Institute since there is no dispute as to the minority character of that Institute. There is also no grievance by the U.P. University with the procedure of selection of candidates followed by the Instituted. The third question, of course, is relevant to common problems of both the institutions

19. We may take up these questions in turn, but before doing so, we may briefly refer to some of the cases where similar problem came up for consideration

20. In State of Bombay v. Bombay Education Society (1955 (1) SCR 568 :

1954 AIR(SC) 561) the concerned school known as Bernes High School at Deolali in Nasik District in the State of Bombay was recognised as that of belonging to Anglo-Indian community whose mother tongue is English. There was thus little difficulty for the Court to accept the claim of the Anglo- Indian School that it was a linguistic minority institution entitled to protection under Article 30(1) of the Constitution. In Sidhajibhai Sabhai v. State of Bombay (1963 (3) SCR 837 : 1963 AIR(SC) 540) this Court was concerned with a Training College for teachers, known as the "Mary Brown Memorial Training College", at Borsad, District Kaira. The cost of maintaining the training college was met out of donations received from the Irish Presbyterian Mission, fee from scholars and grant-in-aid under the Education Code of the State Government. The College and other forty-two primary schools are run for the benefit of the religious denomination of the United Church of Northern India and Indian Christians generally, though admission is not denied to students belonging to other communities. The Training College was therefore, held to have been established and administered by the Christian minority. In Rev. Father W. Proost v. State of Bihar (1969 (2) SCR 73 : 1969 AIR(SC) 465) there was again no serious dispute that the institution concerned i.e. St. Xavier's College was founded by Jesuits of Ranchi, who were a Christian minority. In Gandhi Faiz-E-Am-College, Shahjahanpur v. University of Agra (1965 (2) SCC 283) the appellant was a registered society formed by the members of the Muslim community at Shahjahanpur. It was running the G.F. College. The management claimed protection of Article 30(1) against interference by the Agra University. The Court proceeded on the basis that the community ranks as a minority in the country and the educational institution run by it has been found to be what may loosely be called a 'minority' institution, within the constitutional compass of Article 30. This conclusion was reached on a rapid glance at the evolution of the institution. In D. A. V. College, Jullundur v. State of Punjab (1971 (2) SCC 269), the College established by Arya Samaj in the State of Punjab claimed protection under Articles 29(1) and 30(1) of the Constitution. It was conceded by the State of Punjab that the Hindus of Punjab are a religious minority in the State though they may not be so in relation to the entire country. The claim of Arya Samaj to be a linguistic minority was, however, contested. This Court observed that linguistic minority for the purpose of Article 30(1) is one which must at least have a separate spoken language, but it is not necessary that that language should also have a distinct script of its own. The sections of people who speak a language which has no script will also be a linguistic minority entitled to protection of Article 30(1). Since Arya Samaj have a distinct script of their own, namely Devangri, this Court held that they are entitled to invoke the right guaranteed under Article 29(1) because they are a section of citizens having a distinct script. They are also held entitled to the right under Article 30(1) because of their being a religious minority in the State of Punjab. It was also observed that the religious or linguistic minorities need not be so in relation to the entire population of the country and it is enough if they are so in relation to the particular legislation or the State concerned.

After referring to the history of Arya Samaj, it was stated that though the Hindu community is a majority community in the whole of India, the Arya Samaj which comprises members of the Hindu community, is a religious minority in Punjab and that they are entitled to claim the right under Articles 29(1) and 30(1) since the College was established and administered by that religious minority with a script of its own

21. In a more recent case *A. P. Christian Medical Educational Society v. Government of A. P.* (1986 (2) SCC 667 : 1986 (2) SCR 749) the appellant was a registered society. It claimed to have established and administered a medical college as a Christian Minorities Educational Institution. It went on admitting students for the medical college and claimed protection under Article 30(1). The State Government refused permission to establish the College. The University also refused affiliation. When the matter came before this Court, it was observed that the government, the University and ultimately the Court have the undoubted right to pierce the 'minority veil' and discover whether there is lurking behind it no minority at all and in any case no minority institution. The minority institutions must be educational institutions of the minorities in truth and in reality and not mere masked phantoms. It was emphasised that what is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities

22. In *Chikkala Samuel v. District Educational Officer Hyderabad* 1982 AIR(SC) 64 : (1982) 1 Andh LT 50 : (1981) 2 Andh WR 457) the Andhra Pradesh High Court observed that minority institution imparting general secular education in order to claim the benefit of Article 30(1) must show that it serves or promotes in some manner, the interest of the minority community or a considerable section thereof. Without such proof, it was said that there would be no nexus between the institution and the minority as such

23. In *Rajershi Memorial Basic Training School v. State of Kerala* 1973 AIR(Ker) 87 : 1973 Ker(LJ) 76 : 1972 Ker LT 920) the Kerala High Court said that the mere fact that the school was founded by a person belonging to a particular religious persuasion is not at all conclusive on the question. The petitioner has to prove by production of satisfactory evidence that the school in question was one established and administered by a minority whether based on religion or language

24. In *S. Azeez Basha v. Union of India* (1968 (1) SCR 833 : 1968 AIR(SC)

662) the challenge was mainly directed to certain amendments made in the Aligarh Muslim University Act, 1920 by the Amendment Act of 1951 and also of 1965. The petitioners took the plea that by the amendments made in 1965, the management was deprived of the right to administer Aligarh Muslim University and that this deprivation was in violation of Article 30(1) of the Constitution. Having regard to the nature of the contention raised, it was found necessary for this Court to make a detailed study of the history of the Aligarh Muslim University in the light of the provisions of the University Act, 1920. The Court observed that although the nucleus of Aligarh Muslim University was the Mohammadan Anglo - Oriental College which was till 1920 a teaching institution, the conversion of that College into the University was not by the Muslim minority but it

took place by virtue of the Act of 1920 which was passed by the then Central legislature. As there was no Aligarh Muslim University existing till the Act of 1920 and since it was brought into being by the Act of Central legislature, the Court refused to hold that it was established by the Muslim minority. It was also concluded that there is no proof to justify the claim that the Aligarh Muslim University owned its establishment to the Muslim minority and they, therefore, have no right to administer the University by virtue of the fundamental right guaranteed under Article 30(1)

25. A couple of years after the Azeez Basha (1968 (1) SCR 833 : 1968 AIR(SC) 662) decision, this Court had another occasion to determine the nature of an ancient institution claiming to be a minority institution. The decision has been reported in S. K. Patro v. State of Bihar (1969 (1) SCC 863 : 1970 (1) SCR 172). Since it appears to be in close parallel with the case on hand, it will be useful to have the consideration of rival contentions raised therein. There the Education Department directed the C.M.S. School to reconstitute the Managing Committee and that direction was challenged before the High Court of Patna on the ground that the school was a Christian minority institution and entitled to have its own management body without interference by the State. The High Court did not accept that claim of the institution and rounded off its conclusion "Nowhere in the petition or in the affidavit in reply it is asserted by the petitioners that the School was opened, started, founded or brought into existence, and thus established by Indian Church. Surprisingly enough even in regard to the present ownership and administration, nowhere it is stated by the petitioners that it is the Christian minority of the Indian citizens who are seeking protection of their School under Article 30 of the Constitution. It is not the case of the petitioners anywhere that the Indian Christians were members of the Church Missionary Society, London, or the Christians residing or domiciled in India had any hand in the establishment of the educational institution ... In such a situation it has got to be held that the petitioners have failed to prove that C.M.S. School was established by the minority, which is entitled to protection under Article 30 of the Constitution."

26. The High Court further observed that the word 'minority' in Article 30 did not mean a minority with reference to the world population but had reference to the population of the Indian Citizens. If aliens residing in India claiming to constitute a minority on the basis of religion or language want to establish and administer an educational institution, they cannot claim protection under Article 30, for, the benefit of Article 30 was confined to persons of Indian origin. It was noted that the school was started in 1854 by the Church Missionary Society, London, and such a Society, could not be said to be a citizen of India and that in any event the persons who constituted the society being aliens, the C.M.S. School established by them could not get the benefit a Article 30(1)

27. On appeal, the judgment of the High Court was reversed by this Court mainly on two grounds : (i) the High Court did not pay sufficient attention to that part of the evidence supplied by the petitioners which was sufficient to justify their claim that the local citizens had participated in the establishment of the school in question, and (ii) Indian citizenship not being a condition for the application of Article 30, the protection thereunder could not be denied on that basis. Regarding the first ground, the Court examine the material on record and found it sufficient to prove that the local Christians of Bhagalpur took a leading role in establishing and maintaining the school. Record book of the Church Missionary Association at Bhagalpur, the copies of letters written to the Church

Missionary Society by the Calcutta Corresponding Committee (of the Church Missionary Society) at Bhagalpur, minutes of the meetings held and the resolutions passed by the Local Council of Bhagalpur were all relied upon in support of the conclusion. It was also found that the assistance for establishing the institution was obtained from other bodies including the Church Missionary Society, London. On this material, it was held that the school was set up by the Christian Missionaries and the local residents of Bhagalpur with the aid of funds part of which were contributed by them. On the second ground this Court observed : (SCC pp. 867-68, paras 17 and 18) "It is unnecessary to enter upon an enquiry whether all the persons who took part in establishing the school in 1854 were 'Indian citizens'. Prior to the enactment of the Constitution there was no settled concept of Indian citizenship, and it cannot be said that Christian Missionaries who had settled in India and the local Christian residents of Bhagalpur did not form a minority community. It is true that the minority competent to claim the protection of Article 30(1) and on that account the privilege of establishing and maintaining educational institutions of its choice must be a minority of persons residing in India. It does not confer upon foreigners not resident in India the right to set up educational institutions of their choice. Persons setting up educational institutions must be resident in India and they must form a well defined religious or linguistic minority. It is not however predicated that protection of the right guaranteed under Article 30 may be availed only in respect of an institution established before the Constitution by persons born and resident in British India Article 30 guarantees the right of minorities to establish and administer educational institutions; the article does not expressly refer to citizenship as a qualification for the members of the minorities."

And later (SCC pp. 868-69, para 19) " We are also unable to agree with the High Court that before any protection can be claimed under Article 30(1) in respect of the Church Missionary Society Higher Secondary School it was required to be proved that all persons or a majority of them who established the institution were 'Indian citizen' in the year 1854. There being no Indian citizenship in the year 1854 independently of the citizenship of the British Empire, to incorporate in the interpretation of Article 30 in respect of an institution established by a minority the condition that it must in addition be proved to have been established by persons who would, if the institution had been set up after the Constitution, have claimed Indian citizenship, is to whittle down the protection of Article 30 in a manner not warranted by the provisions of the Constitution."

28. There is by now, fairly abundant case law on the questions as to"

minority"; the minority's right to" establish", and their right to"

administer"

educational institutions. These questions have arisen in regard to variety of institutions all over the country. They have arisen in regard to Christians, Muslims and in regard to certain sects of Hindus and linguistic groups. The courts in certain cases have accepted without much scrutiny the version of the claimant that the institution in question was founded by a minority community while in some cases the courts have examined very minutely the proof of the establishment of the institution. It should be borne in mind that the words "establish" and "administer" used in

Article 30(1) are to be read conjunctively. The right claimed by a minority community to administer the educational institution depends upon the proof of establishment of the institution. The proof of establishment of the institution, is thus a condition precedent for claiming the right to administer the institution. Prior to the commencement of the Constitution of India, there was no settled concept of India citizenship. This Court, however, did reiterate that the minority competent to claim the protection of Article 30(1) of the Constitution, and on that account the privilege of establishing and maintaining educational institutions of its choice, must be a minority of persons residing in India. They must have formed a well defined religious or linguistic minority. It does not envisage the rights of the foreign missionary or institution, however, laudable their objects might be. After the Constitution, the minority under Article 30 must necessarily mean those who form a distinct and identifiable group of citizens of India. Whether it is "old stuff" of "new product", the object of the institute should be genuine, and not devious or dubious. There should be nexus between the means employed and the ends desired. As pointed out in A. P. Christian Educational Society case (1986 (2) SCC 667 : 1986 (2) SCR 749) there must exist some positive index to enable the educational institution to be identified with religious or linguistic minorities.

Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and it is essential, to make it absolutely clear that on ill-fit or camouflaged institution should get away with the constitutional protection

29. With these prefatory remarks, we may now examine the claim of St. Stephen's College in the light of the submissions made by the parties First Question Origin and Purpose of St. Stephen's College

30. Surprisingly, the Delhi University in the pleading, has neither denied nor admitted the minority character of the College. But the counsel for the University have many things to contend which will be presently considered. Mr. Gupta, counsel for the petitioner in T.C. No. 3 of 1980 has specifically urged that the College was established not by Indian residents, but by foreign Mission from Cambridge and therefore, it is not entitled to claim the benefit of Article 30(1). From the counter affidavit filed by Dr. J. H. Hala - the Principle of the College in W. P. Nos. 13213-14 of 1984 and from the publication of "The History of the College"

the following facts and circumstances could be noted : The College was founded in 1881 as a Christian Missionary College by the Cambridge Mission in Delhi in collaboration with the Society for the Propagation of the Gospel [SPG] whose members were residents in India. The College was found in order to impart Christian religious instruction and and education based on Christian values to Christian students as well as others who may opt for the said education. The Cambridge Brotherhood with plans of establishing the Christian College in Delhi sent the Cambridge Mission whose members were : Rev, J. D. Murray, Rev. E. Bickarsteth, Rev. G. A. Lefroy, Rev. H. T. Blackett, Rev. H. C. Carlyon and Rev. S. S. Allnutt, of the

said members of the Cambridge Mission, Rev. Allnutt, Rev. Blackett and Rev. Lefroy teamed up with Rev. R. R. Winter of the SPG to establish the College. It will be seen that Cambridge Mission alone did not establish the College. The Cambridge Mission with the assistance of the members of the SPG who were residents in India established the College. The contention to the contrary urged by Mr. Gupta, counsel for the petitioner in T.C. No. 3 of 1980 is, therefore, incorrect. The purpose of starting the College could be seen from the Report of 1878 to the Cambridge Brotherhood and it states "the students after leaving St. Stephen's Mission School joined non Christian College and lost touch with Christian teachings the case would be otherwise if we were able to send them from our school to a College, where the teachings would be given by Christian professors and be permeated with Christian ideas."

(F. F. Monk in A History of St. Stephen's College, Delhi, Calcutta, 1935, p. 3). In October 1879 the Cambridge Committee expressed the desirability of imparting instruction also in secular subjects.

"It was also felt that the influence of the missionaries would be greatly increased if they held classes in some secular subjects and did not conform their teachings to strict religious instruction"

. (ibid p. 5)Building

31. Originally, the College building was housed in hired premises paid for by the SPG. A new building was eventually constructed by the Society for the Propagation of the Gospel wherein the foundation stone bore the following inscription To the Glory of God And the Advancement of Sound Learning And Religious Education The new building of the College was eventually opened on December 8, 1881, by Rev. Allnutt. On the said building on the front of the porch, at the top of the parapet, a 'cross' in bas - relief was placed and immediately under the bracket the words "Ad Dei Gloriam" had been inscribed which have since been adopted as the College motto

32. Today the new College building in the University campus has also a large 'cross' at the top of the main tower and in the front porch is inscribed the St. Stephen's motto "Ad Dei Gloriam" to perpetuate and remind the students the motive and objective of the College, namely, "The Glory of God."

33. There is also a chapel in the College campus where religious instruction in the Christian Gospel is imparted for religious assembly in the morning

34. It would thus appear that since its foundation in 1881, St. Stephen's College has apparently maintained its Christian character and that would be evident from its very name, emblem, motto, the establishment of a chapel and its religious instruction in the Christian Gospel for religious assembly. These are beyond the pale of controversy Constitution of the College

35. It is said that during the early part of the College history, it was managed by the Mission Council - a totally Christian body. Late in 1913 it was registered as a society and a constitution was

formulated on November 6, 1913 which was adopted by the SPG Standing Committee and by the Cambridge Committee. The Constitution as it stands today again maintains the essential character of the College as a Christian College without compromising the right to administer it as an educational institution of its choice. The Constitution of the College consists of Memorandum of the Society and Rules. Clause 2 of Memorandum states that "the object is to prepare students of the College for University degrees and examinations and to offer instruction in doctrines of christianity which instruction must be in accordance with the teachings of the Church of North India"

. Clause 4 sets out the original members of the Society who were mostly Christians. The composition of the Society also reflects its Christian character inasmuch as the Bishop of the Diocese of Delhi is the Chairman of the Society [Rule 1(a)]. Further, two persons appointed by the Bishop of the Diocese of Delhi, one of whom shall be a senior Presbyter of the Diocese, shall be members of the Society [Rule 1(b)]. One person to be appointed by the Church of North India Synodical Board of Higher Education shall also be a member of the Society [Rule 1(g)]. Similar is the position of a person to be appointed by the Diocesan Board of education [Rule 1(h)]. Two persons to be appointed by the Executive Committee of the Diocese, one of whom shall be a Presbyter, shall also be members of the Society [Rule 1(i)]. The composition of the Society, therefore, indicates the presence of a large number of Christian members of the Church of North India on its Management

36. The management of the College is being looked after by the Supreme Council and the Governing Body. The Supreme Council consists of some members of the Society, all of whom must be members of the Church of North India or some other church in communion therewith, or any other duly constituted Christian church. They are

(a) The Bishop of the Diocese of Delhi, who shall be the Chairman

(b) Two persons appointed by the Bishop of the Diocese [under Rule 1(b)]

(c) The person appointed by the Church of North India Synodical Board of Higher Education [under Rule 1(g)]

(d) The person appointed by the Diocese Board of Education [under Rule 1(h)]

(e) The Principal of the College (Member - Secretary)

37. Rule 3 of the Society provides that the Supreme Council mostly looks after the religious and moral instruction to students and matters affecting the religious character of the College. The Principal of the College is the Member - Secretary of the Supreme Council. Rule 4 provides that the Principal shall be a member of the Church of North India or of a Church that is in communion with the Church of India. The Vice Principal shall be appointed annually by the Principal. He shall also be a member of the Church of North India or of some other church in communion therewith

38. True, Rule 5 provides that the Supreme Council of the College has no jurisdiction over the administration of the College and it shall be looked after by the Governing Body. But the Governing Body is not a secular body as argued by learned counsel for the University. Rule 6 provides that the Chairman of the Society (Bishop of Diocese of Delhi) shall be the Chairman of the Governing Body. The members of the Society as set out in categories,

(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) of clause (1) shall be the members of the Governing Body. The Chairman and the Vice-Chairman of the Governing Body shall be the members of the Church of North India. Out of categories (a) and (m) in clause (1), only category (k) may be a member of the teaching staff who may not be a Christian. Two members referred under category (l) to be appointed by the Delhi University may not be Christian and likewise, under the category (n) may not be Christian. But the remaining members shall be Christians. Out of thirteen categories, only three categories might be non-Christians and therefore, it makes little difference in the Christian character of the Governing Body of the College. A comparison of Statue 30(c) of the Delhi University at pages 127-28 of Calendar Volume I will show the difference between the Governing Body of other colleges under the Statute as contrasted with St. Stephen's CollegePrincipal

39. It is again significant to note the difference between the method of appointment of the Principal of St. Stephen's College and all other colleges. The Principal of St. Stephen's College is appointed by the Supreme Council and he must be a Christian belonging to Church of North India (Rule 4). He will exercise control, and maintain discipline and regulation of the College. He will be in complete charge of the admissions in the College assisted by admission committee. But the Principals of other affiliated colleges under Ordinance XVIII clause 7(2) [page 335 Calendar Volume I] are to be appointed by the Governing Body of the College

40. The immovable property of the College shall be vested in the Indian Church trustees, who shall merely act as Trustees, and shall have no power of management whatsoever. All other property connected with the College shall be vested in the Society (Rule 21) Delhi University Act and Ordinance

41. It was contended that St. Stephen's College after being affiliated to the Delhi University has lost its minority character. The argument was based on some of the provisions in the Delhi University Act and the Ordinances made thereunder. It was said that the students are admitted to the University and not to the College as such. But we find no substance in the contention. In the first place, it may be stated that the State or any instrumentality of the State cannot deprive the character of the institution, founded by a minority community by compulsory affiliation since Article 30(1) is a special right to minorities to establish educational institutions of their choice. The minority institution has a distinct identity and the right to administer with continuance of such identity cannot be denied by coercive action. Any such coercive action would be void being contrary to the constitutional guarantee. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised by a body of persons in whom the founders have faith and confidence. Such a management body of the institution cannot be displaced or reorganised if the right is to be recognised and maintained. Reasonable regulations however, are permissible but regulations should be of regulatory nature and not of abridgment of the right guaranteed under

Article 30(1)

42. Secondly, we find no provision in the Delhi University Act with overriding powers precluding the management of the College from exercising its right to administer the College as a minority institution. Section 2(a) of the Delhi University Act defines 'college' to mean "an institution maintained or admitted to its privilege by the University and includes an affiliated college and a Constituent College"

. Under Section 4, the University has powers to hold examinations and to grant to, and confer degrees and other academic distinctions on, persons who have pursued a course of study in the University or in any college. Section 6 provides that the University shall be open to all persons of either sex and of whatever race, creed, caste or class. Under Section 7 it is necessary that all recognised teaching in connection with the University courses shall be conducted under the control of the Academic Council. By Section 23, the Academic Council has been constituted as the Academic Body of the University, and it shall, subject to the provisions of the Act, Statutes and Ordinance, have the control and general regulation, and be responsible for the maintenance of standards of instruction etc

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

44. Ordinance II provides for constitution of Admission Committees and procedure for admission for different courses. Clause 2 (ii) of this Ordinance is important and so far as is relevant reads "2.(ii) Applications for admission/registration shall be made on a prescribed form. Applications by students seeking admission to Master's courses in Faculties of Arts. Mathematical Sciences, Social Sciences, Music and Science shall be sent to the Deans of Faculties, concerned direct. Applications for admission to courses other than those mentioned above shall be made to the Principal of the college concerned." Clause 3 of Ordinance II is equally relevant and it provides " 3. Admissions shall be finalised by the Principals of colleges and Deans of Faculties concerned, as the case may be, not later than such last date as may be prescribed by the Academic Council from time to time Provided that the Vice-Chancellor may, at his discretion, allow admission to any courses after the prescribed date as aforesaid, for very exceptional reasons, such as late declaration of results or such other reasons considered satisfactory by the Vice-Chancellor up to the dates thought reasonable by him in each case Provided further that no admissions will be made by a College prior to the date to be fixed by the Academic Council each year Ordinance XVIII clause 6-A(1) provides that there shall be a Staff Council in every College. Subject to the provisions of the Act, the Statutes and the Ordinances of the University, the Staff Council shall take a decision in respect of matters, among others, organising admission of students

45. From these and other relevant provisions of the Act and Ordinances, we have not been able to find any indications either in the general scheme or in other specific provisions which would enable

us to say that the College is legally precluded from maintaining its minority character. That in matters of admission of students to Degree courses including Honours courses, the candidates have to apply to the College of their choice and not to the University and it is for the Principal of the College or Dean of Faculties concerned to take decision and make final admission. It is, therefore, wrong to state that there is no admission to the College but only for the University. The procedure for admission to Post Graduate courses is of course, different but we are not concerned with that matter in these cases

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

Second Question

47. Whether St. Stephen's College as minority institution was bound by the University circulars dated June 5, 1980 and June 9 1980 ?

48. The first circular of the University dated June 5, 1980 has prescribed the last date for receipt of applications for admission. By the second circular dated June 9, 1980 all the Colleges of Delhi University were directed to admit students solely on the basis of merit determined by the percentage of marks secured by the students in the qualifying examinations. The first circular left by itself could not have been complained of, but it is so closely connected with the directive in the second circular. If the last date fixed in the first circular for receipt of applications was followed, then the College could not have selected applicants by following its own admission programme. It is the case of the College that it has been following its own admission programme for more than 100 years and over the years it has built up a corporate image in a number of distinctive activities. The admission programme of the College has become a crucial instrument to promote the excellence of the institution and it forms part of the administration which the College is entitled to have as a minority institution under Article 30(1) of the Constitution. The university cannot direct the college to dispense with its admission programme in the absence of proof of maladministration of the college. The circulars have been challenged also on the ground that they are not regulative in nature. It is said that if students are admitted purely on the basis of marks obtained by them in the qualifying examination it would not be possible for any Christian student to get admission. It has been found

that unless concession is afforded, the Christian students cannot be brought within the zone of consideration. They generally lack merit when compared with the other applicants Admission Programme of St. Stephen's College

49. The applications are sorted out for each course of study under the direct supervision of the Tutor of admission, and are then sent to two teachers of the department concerned for scrutiny. These applications are then further scrutinise in relation to the combination of subjects taken by the students at his last examination and the order of preference indicated by him regarding the course in which admission is sought by him. At this stage in accordance with the cut-off percentage given by the departments for different combination of subjects, the two teachers of the department concerned, out of whom one is the Head of the Department and the other is a nominee of the department, prepare a list of potential suitable candidates which is normally on the basis of 1 : 4 and 1 : 5 for Arts and Science students respectively. The lists of names of the applicants called for interview for each subject is put up on the notice board separately with the date and time at which they would be interviewed. Those living outside the Union territory of Delhi are informed by post. The applicant selected for the interview has to appear before a Selection Committee normally consisting of the Principal, the Tutor for admissions, two members of the department concerned, and the President of Games (a senior member of the faculty). Each member of the Committee has a complete list of the candidates invited for interview with the aggregate percentage of marks, marks obtained in individual subjects, interests and proficiency in sports and extracurricular activities etc. Questions are asked to test the candidate's knowledge of the subject together with his general awareness of the current problems. The interview is conducted orally but if and when necessary, problems are given to be solved in writing. Each application form has also space provided where the applicant is required to write about his interest, hobbies, values, career plan etc. This is carefully studied while determining the suitability of a candidate for a particular course. Each member of the Committee grades the performance of the candidates and at the end of the interview of each course of study, the opinion of all the members is taken into account and by consensus the final list of candidates selected for admission is put up Concession to Christian Students and Others

50. To Christian students, relaxation up to 10 per cent is given. The Scheduled Castes/Scheduled Tribes candidates who are having a minimum of 50 per cent of marks are called for interview for selection to Honours courses. For B.A. pass course, a further concession to them is granted and the qualifying marks are reduced even below 50 per cent. As far as sportsmen and sportswomen are concerned, national or State level players are given concession normally up to 10 per cent and in exceptional cases up to 15 per cent or even more. However, a Christian student, who is below the cut - off percentage by more than 10 per cent is never called for interview

51. The actual working of the concession given by the College and the result achieved thereon in several years are set out in Annexure I to Writ Petition No. 1868 of 1980. The Christian students who get concession up to 10 per cent and thereby get preferential admission are only 6 per cent to 10 per cent. They are also admitted in accordance with the standard prescribed by the University and none who falls below the standard has ever been admitted to the College The Contentions of Delhi University and Students Union

52. On behalf of the Delhi University and the Student's Union the impugned circulars were sought to be justified on several grounds. The first circular fixing the last date for receipt of applications for admission was sought to be justified on the ground that it was intended to ensure uniformity in the admission dates in all colleges and it would be beneficial to and in the interests of students who are seeking admission in different colleges. With regard to the second circular or the University it was contended that the admission based on the merit determined by the marks secured by the applicants in the qualifying examinations would exclude arbitrariness in the selection and ensure fairness to all applicants. It was also submitted that the circulars are regulative in character and do not impinge upon the fundamental rights guaranteed under Article 30(1) to St. Stephen's College as a minority institution

53. Article 30(1) provides"

30. Right of minorities to establish and administer educational institutions. - (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

"54. The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institutions. This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standard of education are not a part of the management as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The state, therefore has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others. There is a wealth of authority on these principles. See : State of Bombay Education Society, (1955 (1) SCR 568 : 1954 AIR(SC) 561), .Kerala Education Bill, 1957, Re 1959 SCR 995 : 1958 AIR(SC) 956) Sidhrajibhai Sabhai v. State of Bombay (1963 (3) SCR 837 : 1963 AIR(SC) 540), Rev. Father Proost v. State of Bihar (1969 (2) SCR 73 : 1969 AIR(SC) 465), and State of Kerala v. Mother Provincial (1970 (2) SCC 417 : 1971 (1) SCR 734)

55. Though Article 30(1) is couched in absolute terms in marked contrast with other fundamental rights in Part III of the Constitution, it has to be read subject to the power of the State to regulate education, educational standards and allied matters. In Ahmedabad St. Xavier's College Society v. State of Gujarat (1974 (1) SCC 717 : 1975 (1) SCR 173) which was the decision of a nine Judge Bench, Ray, C.J., with whom Palekar, J., concurred, observed (at SCR pp. 197 - 200 : SCC p. 7490 that upon affiliation to a University, the minority and non-minority institutions must agree in the pattern and standards of education. Regulations which will serve the interest of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration.

Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions. It was further observed : (SCC p. 752, para 46)"

That the ultimate goal of a minority.