

# Interference in Minorities' Rights Unconstitutional

FROM OUR LEGAL CORRESPONDENT

NEW DELHI, April 26.

A special nine-member Bench of the Supreme Court, by a majority, has ruled that the relevant provisions of the Gujarat University Act, 1949, as amended in 1972, empowering the authorities of the university to interfere in the affairs of affiliated colleges and to make these affiliated colleges "constituent colleges" are unconstitutional in so far as they are applicable to educational institutions, established and administered by religious and linguistic minorities.

The powers of interference provided for relate to the conduct of teaching (undergraduate classes), nominations to governing body (management), appointment and disciplinary action and punishment of teaching and non-teaching staff, use of laboratories, libraries and equipment and "levy of contributions".

The Bench, by means of six separate judgments, substantially allowed a batch of writ petitions filed by St. Xavier's College, Ahmedabad (a minority institution) challenging the validity of the relevant provisions of the Act on the ground that they infringed the petitioners' fundamental rights under Article 30(1) of the Constitution.

(This Article says that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice).

The Chief Justice, Mr. Ray, delivered the main judgment speaking for himself and for Mr. Justice Palekar, while Mr. Justice Jaganmohan Reddy pronounced the judgment on his behalf and that of Mr. Justice Alagiriswami, and Mr. Justice Mathew delivered a judgment speaking for himself and Mr. Justice Chandrachud. Mr. Justice Khanna, Mr. Justice Beg and Mr. Justice Dwivedi gave separate judgments.

## IMPORTANT QUESTION

The Chief Justice, in the course of his judgment, said that an important question that arose in these petitions was whether minorities based on religion or language had the right to establish and administer "educational institutions for imparting general secular education" within the meaning of Article 30.

"It will be wrong to read Article 30(1) as restricting the right of minorities to establish and administer educational institutions of their choice only to cases where such institutions are concerned with language, script or culture of the minorities".

The Chief Justice said that "the ultimate goal of a minority institution imparting general secular education is advancement of learning" and therefore—as held in earlier rulings of the court—"it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education".

"In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy and checks on administration may be necessary

in order to ensure that administration is efficient and sound and will serve the academic needs of the institution".

His Lordship said the right of a minority to administer its educational institution involved, as part of it, "a correlative duty of good administration".

## NO COMPULSORY AFFILIATION

Mr. Justice Jaganmohan Reddy in his separate judgment (with which Mr. Justice Alagiriswami concurred), agreeing with the conclusions of the Chief Justice, said that no "compulsory affiliation" could be imposed on minority institutions which would violate the rights of linguistic and religious minorities.

Mr. Justice Khanna said that although disciplinary control over the teachers of a minority educational institution would be with the Governing Council, "regulations can be made for ensuring proper conditions of service of teachers and for securing a fair procedure in the matter of disciplinary action against them.

Mr. Justice Beg, in his separate judgment, differed from the Chief Justice on the effect on certain sections of the impugned Act, even in their application to minority institutions.

Mr. Justice Mathew in his judgment (with which Mr. Justice Chandrachud concurred), while agreeing with the conclusions of the Chief Justice observed that "the fundamental right of a minority to administer educational institutions of its choice comprises within it the elementary right to conduct teaching, training and instruction in the course of studies in the institutions so established by teachers appointed by the minorities." If this essential component of the right of administration was taken away from the minority and vested in the university, there could be no doubt that its right to administer the educational institution guaranteed under the Constitution was taken away.

## SECURITY OF SERVICE

Mr. Justice Dwivedi, in his separate judgment, in substance, dissented from the conclusions of the Chief Justice and other judgments and said: "Security of service is necessary to promote efficiency and honest discharge of duty and it is calculated to improve the institution in the long run." The members of the staff "cannot ordinarily afford to go to courts for redress of their grievances" and the relevant provision which provided a cheaper and expeditious remedy to them was identical to the one in the Industrial Disputes Act.

However, he agreed with the majority judgments that a provision of the impugned Act—stating that every college shall be under a governing body including in it a member of the university and certain others representing teaching and non-teaching staff and students of the college—was not applicable to minority institutions on the ground that this particular provision violated Article 30(1), being an invasion of the fundamental right of administration by the minorities concerned.