CASE NO.:
Appeal (civil) 8599 of 2003

PETITIONER:
The Secretary,Malankara Syrian Catholic College

RESPONDENT:
T.Jose & Ors.

DATE OF JUDGMENT: 27/11/2006

BENCH:
H.K. SEMA & R.V. RAVEENDRAN

JUDGMENT:
J U D G M E N T
(With CA Nos. 8600/2003 & 8576/2003)

R.V. RAVEENDRAN, J.

These appeals by special leave arise from the judgment dated 5.6.2003 of the High Court of Kerala in O.P. No.10111/2000 and connected cases. As these appeals involve questions which are analogous, they are heard and disposed of by this common judgment. As the ranks of the parties vary, they will be referred to by their abbreviated names.
Facts in CA Nos. 8599 and 8600 of 2003 :

2. The Malankara Syrian Catholic College Association of Archidiocese at Trivandrum is a Society registered under the Kerala Literacy, Scientific and Charitable Socieities Registration Act, 1955. It is a minority organisaion and an Educational Agency (for short 'the Society'). It has established and runs several private colleges in Kerala. The colleges are managed by a 'Managing Council' (for short 'the management') appointed by the Educational Agency. The Society has appointed a Manager for the colleges under its management, who implements the decisions of the management. Mar Ivanios College ('college' for short) is one of the colleges run by the said Educational Agency. The said college is an aided private minority institution affiliated to Kerala University under the Kerala University Act, 1974 ('Act" for short). Educational instruction is provided in the college, in accordance with the provisions of the statutes, Ordinances and Regulations made under the Act. Each of the colleges run by the Society is headed by a Principal, who is responsible for the functional efficiency, quality of education and discipline.
3. The post of Principal of the college fell vacant on 31.3.2000. The Manager issued an order dated 27.3.2000 giving charge of the post of Principal and Drawing & Disbursing Officer ('DDO' for short) to Rev. Daniel Kuzhithaakthil, a lecturer in the college. The said order was approved by the Vice-Chancellor of the University by order dated 15.4.2000. The order dated 27.03.2000 was challenged by one of the Lecturers - Dr. Varghese M. Mathunny in O.P. No.10111/2000, wherein an interim order was passed restraining Rev. Daniel from taking charge as Principal. Another Senior Lecturer of the college, Dr. P.V. Thomas also challenged the order dated 27.03.2000 by filing O.P. No. 14337/2000. An interim order was issued in that case on 24.5.2000, restraining Rev. Daniel from functioning as the Principal or DDO.

4. In view of the interim stay preventing Rev. Daniel from acting as the Principal and DDO, the Management made an interim arrangement by appointing T. Jose, a senior lecturer in the College, to discharge the duties of Principal, pending regular appointment to the post. On 5.6.2000, the High Court modified the interim order and gave liberty to the Management to make appointment to the post of Principal on regular basis. In pursuance of it, on 6.6.2000, the Management appointed Rev. Daniel as the Principal on regular basis.

5. The appointment of Rev. Daniel as Principal on 6.6.2000 on regular basis was challenged by T.Jose, (claiming to be the senior most among the eligible and fit lecturers) in Appeal No.5/2000 before the Kerala University Appellate Tribunal, raising two contentions : (i) that Rev. Daniel was ineligible to be appointed as Principal as he did not process the requisite qualifications for the post; and (ii) that the appointment was violative of Section 57(3) of the Act, which required the post of Principal, when filled by promotion, to be made on the basis of seniority-cum-fitness. The Tribunal, by an order dated 20.12.2000, held that Rev. Daniel fulfilled the eligibility criteria, but allowed the appeal holding that the appointment of Rev. Daniel as Principal violated Section 57(3) of the Act. The Tribunal directed the Manager to make a fresh appointment in accordance with law. The said order of the Tribunal was challenged by Rev. Daniel and the Society in O.P. No.3015/2001 and O.P. No. 3742/2001 contending that Section 57(3) of the Act was invalid and inapplicable in respect of minority institutions, as it interfered with the right of a minorities to establish and administer educational institutions of their choice and thereby violated Article 30(1) of the Constitution of India. T. Jose , the appellant before the Tribunal, also challenged the order of the Tribunal in O.P. No.10721/2001, as he was aggrieved by the finding of the Tribunal that Rev. Daniel possessed the qualifications for appointment to the post of Principal.

6. The said five writ petitions were heard together and disposed of by a common judgment dated 5.6.2003. The High Court rejected the contention of the Educational Agency and Rev. Daniel that section 57(3) of the Act was violative of Article 30(1). The High Court held that the said Section applied to minority institutions also having regard to that Section, the seniormost from among the eligible and fit lecturers had to be appointed as the Principal. It held that Rev. Daniel was not the senior-most among the eligible and fit lecturers of the college and therefore his appointment could not be sustained. Consequently, the High Court rejected O.P. Nos.3015/2001 and 3742/2001 filed by Rev. Daniel and the Society O.P. No.10111/2000 filed by Dr. Varghese M. Mathunny was dismissed as having become infructuous as he had retired on 31.5.2001 and as he had not challenged the order dated 6.6.2000 appointing Rev. Daniel as Principal. O.P. No.10721/2001 filed by T.Jose was allowed. Even though T.Jose had also retired in the meanwhile on 31.3.2001, the High Court directed that his claim for promotion as Principal shall be considered with effect from the date (6.6.2000) when Rev. Daniel was promoted, with all consequential financial benefits. Similarly, O.P. No.14337/2000 filed by Dr. P V Thomas was also allowed with a direction that his claim for appointment as Principal shall be considered with effect from 1.4.2001 with consequential benefits.

7. Feeling aggrieved by the said Judgment dated 5.6.2003, the Society and Rev. Daniel have filed C.A. No.8599/2003 and

C.A.No.8600/2003 respectively challenging the dismissal of their writ petitions OP No.3742/2001 and OP No.3015/2001.

Re : Facts in CA 8576/2003 :

8. St. Gregorious College, another aided minority educational institution, appointed P.G. Thomas Pannicker as Principal by order dated 25.9.2002. The said appointment was challenged by Thomas Lukose before the Kerala University Appellate Tribunal in Appeal No. 15/2002. The Tribunal allowed the said appeal by order dated 30.1.2003 and set aside the appointment of P.G. Thomas Pannicker as Principal and directed fresh selection. That was challenged by the Manager of St. Gregorious College and P.L. Thomas Pannicker, in O.P. No.6621/2003. The said petition was disposed of by the High Court along with the five petitions relating to Rev. Daniel (O.P. No.10111/2000 and connected cases) by its common Judgment dated 5.6.2003, upholding the order of the Tribunal and directing the college Management to make a fresh selection in accordance with section 57(3) of the Act. The order rejecting O.P. No.6621/2003 is challenged by the Manager of St. Gregorious College and Thomas Pannicker in CA No.8576/2003.

The Issue

9. The High Court relying on the decision of the Eleven-Judge Bench of this Court in T M A Pai Foundation v. State of Karnataka [2002 (8) SCC 481] has held that receipt of aid by a minority institution removes the protection under Article 30(1), by taking away its right to claim immunity from interference and therefore all regulations made by the State, governing the manner of making appointments and removal, as also the conditions of service of Principals and Lecturers, will be binding on such aided institution. The High Court held that aid carries the 'price' of surrender of a part of its freedom and independence in matters of administration. As a consequence, it held that Section 57(3) of the Act providing that appointments of Principal should be on the basis of seniority-cum-fitness, is valid and binding on minority institutions.

10. The appellants contend that the right to appoint Principal and teachers is the most important facet of minority's "right to administer" under Article 30(1) of the Constitution. They submit that receipt of aid by minority institutions, does not, in any way, fetter or abridge their constitutional right to administer educational institutions, and therefore Section 57(3) of the Act requiring the appointment of only the senior-most of lecturers as Principal is violative of Article 30(1) of the Constitution.

11. On the other hand, the respondents contend that minorities do not have an unfettered right under Article 30(1) to administer and manage its education institutions; that the State and its agencies can regulate certain facets of administration of private educational institutions by minorities, in particular by prescribing the minimum qualification, experience and other conditions bearing on merit for being appointed as a teacher or Principal; that if such institution is aided by the State, the State can make regulations governing the service conditions for teaching and other staff, which includes the post of Principal; and that Section 57(3) of the Act providing for the manner of filling the post of Principal by promotion, is therefore binding upon minority institutions receiving aid from the State.

12. The rival contentions give rise to the following questions:

(i) To what extent, the State can regulate the right of the minorities to administer their educational institutions, when such institutions receive aid from the State.

(ii) Whether the right to choose a Principal is part of the right of minorities under Article 30(1) to establish and administer educational institutions of their choice. If so, Section 57(3) of the Act would violate Article 30(1) of the Constitution of India.

Re : Question (i)

13. Article 30(1) gives minorities the right to establish and administer educational institutions of their choice. In State of Kerala v. Very Rev. Mother Provincial [1970 (2) SCC 417], a Constitution Bench of this Court explained 'right to administer' thus :

"Administration means 'management of the affairs' of the institution. This 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."

"There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish the syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to reach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others."

(Emphasis supplied)

14. In The Ahmedabad St. Xavier's College Society v. State of Gujarat [1974 (1) SCC 717], a nine Judge Bench of this Court considered the scope and ambit of minority's right to administer educational institutions established by them. The majority were of the view that prescription of conditions of service would attract better and competent teachers and would not jeopardize the right of the management of minority institutions to appoint teachers of their choice. It was also observed :
"Autonomy in administration means right to administer

effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is a part of the administration. The university will always have a right to see that there is no mal-administration. If there is mal-administration, the university will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students."

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

In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration."

15. In FRANK ANTHONY Public School Employees' Association v Union of India [1986 (4) SCC 707], this 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 Article 30(1) of the Constitution. The management of a minority Educational Institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of minority institution cannot complain of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of Article 30(1) which is to make the institution an effective vehicle of education."

16. The scope of Article 30(1), with reference to the scope of the right to administer educational institutions, was also

considered by this court in In re. Kerala Education Bill, 1957 (AIR 1958 SC 956), Rev.Sidhajbhai v. State of Bombay [1963 (3) SCR 837], D.A.V. College v. State of Punjab [1971 (2) SCC 269], All Saints High School v. Government of A.P. [1980 (2) SCC 478], St. Stephen's College v. University of Delhi [1992 (1) SCC 558], N. Ammad v. Manager, Emjay High School [1998 (6) SCC 674], Board of Secondary Education & Teaching Training v. Joint Director of Public Instructions, Sagar [1998 (8) SCC 555].

17. In TMA Pai (supra), this Court made it clear that a minority institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institution receiving aid. Article 30(1) clearly implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions. But all conditions that have relevance to the proper utilization of the aid by an educational institution can be imposed. The High Court, however, wrongly construed TMA Pai and concluded that acceptance of aid by a minority institution takes away its right to claim immunity from interference and therefore the State can lay down any regulation governing the conditions of service of employees of aided minority institutions ignoring the constitutional guarantee under Article 30(1). For this purpose, the High Court relied on the observations in Paras 72 and 73 of TMA Pai (supra). The said paragraphs are extracted below :

"72. Once aid is granted to a private professional educational institution, the Government or the State agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution. The State, which gives aid to an educational institution, can impose such conditions as are necessary for the proper maintenance of the high standards of education as the financial burden is shared by the State. The State would also be under an obligation to protect the interest of the teaching and non-teaching staff. In many States, there are various statutory provisions to regulate the functioning of such educational institutions where the States give, as a grant or aid, a substantial proportion of the revenue expenditure including salary, pay and allowances of teaching and non-teaching staff. It would be its responsibility to ensure that the teachers working in those institutions are governed by proper service conditions. The State, in the case of such aided institutions, has ample power to regulate the method of selection and appointment of teachers after prescribing requisite qualifications for the same. Ever since In Re, Kerala Education Bill, 1957 [AIR 1958 SC 956] this Court has upheld, in the case of aided institutions, those regulations that served the interests of students and teachers. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institutions. In other words, rules and regulations that promote good administration and prevent maladministration can be formulated so as to promote the efficiency of teachers, discipline and fairness in administration and to preserve harmony among affiliated institutions."

73. There are a large number of educational institutions, like schools and non-professional colleges, which cannot

operate without the support of aid from the State, Although these institutions may have been established by philanthropists or other public-spirited persons, it becomes necessary, in order to provide inexpensive education to the students, to seek aid from the State. In such cases, as those of the professional aided institutions referred to hereinabove, the Government would be entitled to make regulations relating to the terms and conditions of employment of the teaching and non-teaching staff whenever the aid for the posts is given by the State as well as admission procedures. Such rules and regulations can also provide for the reasons and the manner in which a teacher or any other member of the staff can be removed. In other words, the autonomy of a private aided institution would be less than that of an unaided institution."

But the aforesaid observations in Paras 72 and 73 were not made with reference to aided minority educational institutions. The observations in para 72 were intended for aided non-minority private professional institutions. The observation in para 73 in the context of aided non-minority non-professional private institutions. The position of minority educational institutions securing aid from the State or its agencies was considered in Para 80 to 155, wherein it was clearly held that receipt of State-aid does not annihilate the right guaranteed to minorities to establish and administer educational institutions of their choice under Article 30(1).

18. The observations of the Eleven-Judge Bench in TMA Pai (supra) in respect of the extent to which the right of administration of aided minority educational institutions could be regulated, are extracted below :

"\005\005 the state cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration.

It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. \005. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instruction can be provided therein."

(Emphasis supplied)

Among the questions formulated and answered by the majority while summarising conclusions, Question 5(c) and answer thereto has a bearing on the issue on hand : Question 5 (c) is extracted below :

"Whether the statutory provisions which regulate the facets

of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities ?

The first part of the answer to Question 5 (c) related to unaided minority institutions. With reference to statutory provisions regulating the facets of administration, this court expressed the view that in case of an unaided minority educational institutions, the regulatory measure of control should be minimal; and in the matter of day-to-day management, like the appointment of staff (both teaching and non-teaching) and administrative control over them, the management should have the freedom and there should not be any external controlling agency. But such institutions should have to comply with the conditions of recognition and conditions of affiliation to a University or Board; and a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. This Court also held that fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

The second part of the answer to Question 5(c) applicable to aided minority institutions, is extracted below :-
"For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff."
(Emphasis supplied)

The position enunciated in TMA Pai is reiterated in P.A. Inamdar vs. State of Maharashtra [2005 (6) SCC 537].

19. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights :

a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;

b) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the

part of any of its employees;

c) To admit eligible students of their choice and to set up a reasonable fee structure;

d) To use its properties and assets for the benefit of the institution;

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-'-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/Lecturers by adopting any rational procedure of selection.

(v) Extention of aid by the State, does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).

20. Aided institutions give instruction either in secular education or professional education. Religious education is barred in educational institutions maintained out of State fund. These aided educational minority institutions providing secular education or professional education should necessarily have standards comparable with non-minority educational institutions. Such standards can be attained and maintained only by having well qualified professional teachers. An institution can have the services of good qualified professional teachers only if the condition of service ensures security, contentment and decent living standards. That is why State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of employees of educational institutions will apply to minority institutions also, provided that such law does not interfere with the overall administrative control of the managements over the staff.

21. We may also recapitulate the extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, as clarified and crystalised in TMA Pai. The State can prescribe :
(i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,

(ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.

(iii) a mechanism for redressal of the grievances of the employees.

(iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

In other words, all laws made by the State to regulate the administration of educational institutions, and grant of aid, will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the Management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions.
Re: Question (ii) :

22. The Principal or Headmaster of an educational institution is responsible for the functional efficiency of the institution, as also the quality of education and discipline in the institution. He is also responsible for maintaining the philosophy and objects of the institution.

23. In State of Kerala vs. Very Rev. Mother Provincial [1970 (2) SCC 417], this Court upheld the decisions of the Kerala High Court declaring sub-sections (1) (2) (3) of section 53 of the Kerala University Act, 1969 relating to appointment of Principals were ultra vires Article 30(1) in respect of minority institutions. This Court affirmed the following findings of the High Court (reported in 1969 Kerala Law Times 749) without independently considering the same :-

"The principal of a college is, as S.2(12) recognizes, the head of the college, and, the post of the principal is of pivotal importance in the life of a college; around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching; and the right to choose the principal is perhaps the most important facet of the right to administer a college. The imposition of any trammel thereon \026 except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself \026 cannot but be considered as a violation of the right guaranteed by article 30(1) of the Constitution, and, for the reasons we have already given, by article 19(1)(f) as well. To hold otherwise would be to make the rights "a teasing illusion, a promise of unreality". Provision may, of course, be made to ensure that only proper persons are appointed to the post of principal; the qualifications necessary may be prescribed, and the mode of selection for the purpose of securing the best men may be laid down. But to go beyond that and

place any further fetter on the choice would be an unreasonable interference with the right of management. Therefore, so far as the post of principal is concerned, we think it should be left to the management to secure the services of the best person available. This, it seems to us, is of paramount importance, and the prospects of advancement of the staff must yield to it. The management must have as wide a field of choice as possible; yet sub-section (2) of Section 53 restricts the choice to the teachers of the colleges or of all the colleges, as the case may be, and enables the appointment of an outsider only if there is no suitable person in such college or colleges. That might well have the result of condemning the post to a level of dull mediocrity. A provision by which an outsider is to be appointed, or a junior member of the staff preferred to a senior member, only if he is of superior merit, the assessment of which must largely be left to the management, is understandable; but a provision which compels the management to appoint only a teacher of the college (or colleges) unless it pronounces all the teachers unsuitable, is clearly in derogation of the powers of the management, and not calculated to further the interest of the institution\005\005\005.. But we might say that there can be no objection to the appointment of the principal as of any other member of the staff being subject to the approval of some authority of the University so long as disapproval can be only on the ground that the person appointed has not the requisite qualifications. Also that if disapproval is not to be only on some such stated ground, but is left entirely to the will and pleasure of the appointing authority, that would be to deprive the educational agency of its power of appointment and would be bad for offending article 19(1)(f) and article 30(1)."
(Emphasis supplied)

24. The importance of the right to appointment of Principals/Head-masters and teachers of their choice by minorities, as an important part of their fundamental rights under Article 30 was highlighted in St. Xavier (supra) thus :

"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 overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution\005\005. So long as the persons chosen have the qualifications 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."
[Emphasis supplied]

25. In N.Ammad (supra) the appellant contended that he being the senior-most graduate teacher of an aided minority school, he should be appointed as the Headmaster and none else. He relied on Rule 44A of the Kerala Education Rules which provided that appointment of Headmaster shall ordinarily be according to seniority, from the seniority list prepared and maintained under clauses (a) and (b) of Rule 34. This Court held:
"Selection and appointment of Headmaster in a school (or

Principal of a college) are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years.

How important is the post of Headmaster of a school has been pithily stated by a Full Bench of the Kerala High Court in Aldo Maria Patroni v. E.C. Kesavan (AIR 1965 Ker 75). Chief Justice M.S. Menon has, in a style which is inimitable, stated thus :

"The post of the headmaster is of pivotal importance in the life of a school. Around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching. The right to choose the headmaster is perhaps the most important facet of the right to administer a school, and we must hold that the imposition of any trammel thereon \026 except to the extent of prescribing the requisite qualifications and experience \026 cannot but be considered as a violation of the right guaranteed by Article 30(1) of the Constitution. To hold otherwise will be to make the right 'a teasing illusion, a promise of unreality'."

Thereafter, this Court concluded that the management of minority institution is free to find out a qualified person either from the staff of the same institution or from outside, to fill up the vacancy; and that the management's right to choose a qualified person as the Headmaster of the school is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be chiselled out through any legislative act or executive rule except for fixing up the qualifications and conditions of service for the post; and that any such statutory or executive feat would be violative of the fundamental right enshrined in Article 30(1) and would therefore be void. This Court further observed that if the management of the school is not given the wide freedom to choose the person for holding the key-post of Principal subject, of course, to the restriction regarding qualifications to be prescribed by the State, the right to administer the School would get much diminished.

26. In Board of Secondary Education and Teachers Training (supra), this Court held :

"The decisions of this Court make it clear that in the matter of appointment of the Principal, the management of a minority educational institution has a choice. It has been held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal. Any rules which takes away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. In this case, both Julius Prasad selected by the management and the third respondent are qualified and eligible for

appointment as Principal according to rules. The question is whether the management is not entitled to select a person of their choice. The decisions of this court including the decision in State of Kerala v. Very Rev. Mother Provincial [1970 (2) SCC 417] and Ahmedabad St. Xavier's College Society v. State of Gujarat make it clear that this right of the minority educational institution cannot be taken away by any rules or regulations or by any enactment made by the State. We are, therefore, of the opinion that the High Court was not right in holding otherwise. The State has undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence. But in that process, the aforesaid right of the management cannot be taken away, even if the Government is giving hundred per cent grant."

(Emphasis supplied)

27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by TMA Pai. Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid, will make no difference.

28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited, to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

29. Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum-fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate, or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority run educational institutions even if they are aided.

30. In view of the above, we allow these appeals and, consequently, set aside the judgment dated 5.6.2003 of the High Court. As a consequence, O.P.Nos.10111/2000, 10721/2001 and 14337/2000 stand dismissed. O.P.No.3015, 3742 and

6621/2003 filed by the College Managements/Selected Principals are allowed.

JUDIS