CASE COMMENT ON ALIGARH MUSLIM UNIVERSITY V · NARESH AGARWAL & ORS. (2024 SCC ONLINE SC 3213)

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Aligarh Muslim University v Naresh Agarwal & Ors (2024 SCC OnLine SC 3213)

BEFORE HON'BLE SUPREME COURT OF INDIA

Civil Appeal No. 2286 of 2006

Date of Decision: 08/11/2024

Bench: D.Y.Chandrachud CJI, Sanjiv Khanna J, Surya Kant J, J.B.Pardiwala J, Dipankar Datta J, Manoj Misra J, S.C.Sharma J

1. Facts of the Case:

In 1877, Sir Syed Ahmed Khan, a 19th-century Muslim reformer, founded the Muhammadan Anglo-Oriental College (MAO College) at Aligarh. It was established with the intention to impart modern British education while carefully balancing and protecting Islamic values and principles. On 14th November 1920, the Aligarh Muslim University Act, 1920 was passed to incorporate the MAO College and the Muslim University Association into one single university. The Act transferred all the properties vesting in the MAO College and the Muslim University Association to the AMU. In 1951, the AMU (Amendment) Act, 1951 was passed.

The amendment abolished the University's compulsory religious education for Muslim students. The amendment also removed the provision which mandated only Muslim representation in the Court of the university, which was the governing body of the university. A further amendment in 1965, removed the court as the supreme governing body of the university.[1]These amendments were challenged in the case of S Azeez Basha and anr. v UOI

[1] Supreme Court Observer, 'Aligarh Muslim University Minority Status Case – Background' (Supreme Court Observer, n d) https://www.scobserver.in/cases/aligarh-muslim-university-minority-status-case-background/ accessed 9 April 2025.

(1967). The petitioners challenged the amendment on the ground that the amendment violated their right to establish and administer educational institutions under (Article 30 (1)) of the Constitution of India. Further, they contended that the amendments violated the institution's right to carry out religious and charitable causes (Article 26(a)), the freedom of religion (Article 25), the right to conserve culture and language (Article 29), and the right to acquire property (Article 31) and articles 14 and 19 of the constitution. The SC however dismissed the petition on the ground that the university was established through the AMU Act, 1920 and significant power of administration was not exclusively with Muslims.

In Anjuman-e-Rahmaniya v District Inspector of Schools,[2] a two judge bench questioned the correctness of the Azeez Basha judgment and referred the matter to a seven judge bench for reconsideration. In 1981, the Aligarh Muslim University Act was amended. The long title and preamble of the Act was amended to omit the word "established and" and the definition of "university" under section 2(l) was amended. Section 5(2)(c) was amended by which the University was required to promote "the educational and cultural advancement of the Muslims of India". In 2005, the AMU reserved 50% seats in postgraduate medical courses for Muslim candidates by claiming it to be a minority institution. The Allahabad High Court in Dr. Naresh Aggarwal v UOI (2005) struck down the reservation policy and held that the AMU could not have an exclusive reservation because it was not a minority institution according to S. Azeez Basha.[3] The division bench of Allahabad High Court upheld the judgment of the single bench of the Allahabad High Court in Aligarh Muslim University v. Malay Shukla (2006).

In 2006, the Union government and the University challenged the High Court decision before the Supreme Court. In 2016, the National Democratic Alliance government, elected to the Union government in 2014 withdrew from the appeal before the Supreme Court contending that it does not acknowledge the minority status of the University. On 12 February 2019, a three-judge bench comprising Chief Justice Ranjan Gogoi and Justices L. Nageswara Rao and Justice Sanjiv Khanna referred the decision in S. Azeez Basha for reconsideration by a seven-judge bench. On 8/11/2024, a seven judge bench headed by chief justice DY Chandrachud in a 4:3 majority laid down express parameters for determining whether an educational institution is a 'minority institution' for constitutional purposes. While doing so, the majority struck down the five-judge bench decision in Azeez Basha v Union of India (1967), which had held that

[2] *Anjuman-e-Rahmania v District Inspector of Schools,* AIR 1981 All 377 (India) .
[3] *S Azeez Basha and Anr v Union of India*, AIR 1968 SC 662 (India).

Aligarh Muslim University (AMU) was not a religious minority educational institution under Article 30.

ISSUES FOR DISCUSSION:

1. Whether an educational institution must be both 'established' and 'administered' by a linguistic or religious minority to claim the rights guaranteed under Article 30?

2. What are the criteria to be satisfied for the 'establishment' of a minority institution?

CRITICAL ANALYSIS

I want to bring up the reference made by the two-judge bench in the Anjuman's case before getting into the first issue. I disagree with the majority opinion's position.

- What criteria must be followed in order to refer to a larger bench?

  The question in Azeez Basha's concerned whether the AMU 1951 and 1965 Amendment Acts were lawful. After raising questions over the validity of Azeez Basha (above) and its tenets, the two-judge panel in Anjuman sent the case to a bigger court for review. Furthermore, the bench in Anjuman explicitly said that seven justices should make up the bigger panel examining Azeez Basha, a ruling by a five-judge bench. The ruling further mandated that the case be brought to the Honourable Chief Justice for additional guidance.

- Whether the seven-judge bench in Anjuman meant to limit the reference such that it would solely examine the requirements for an institution to be considered a minority institution under Article 30 of the Constitution.

Points sent for reference

Whether Act 30(1) of the Constitution allows for the creation of an institution solely by minorities without the involvement of any other community in the formation process. The general concepts outlined in S. Azeez Basha's case alter the organization's status as a minority institution, regardless of whether it is registered as a society under the Society Registration Act shortly after its founding. So that S. Azeez Basha's case can also be considered and the issues that come up in this case directly regarding the necessary conditions or ingredients of the

minority institution can be resolved once and for all, the court ordered that this case be brought before the Hon. Chief Justice to be heard by a bench of at least seven judges.

I believe that this kind of reference violates both the established concept of stare decisis and the regulations of the Supreme Court. Relevant guidelines regarding the referral process have been established by a Constitution Bench in the case of Central Board of Dawoodi Bohra Community and others v. State of Maharashtra and others.[4]

In this case, it was held that:

"(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum.

3) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength."

In Anjuman, the bench not only referred the case but also designated the bench's numerical strength. The bench further directed that the case be brought before the Chief Justice for the sole purpose of informing the seven-judge bench's composition. The well-established notion of stare decisis, which requires the constant application of legal principles once declared by authoritative courts, is totally undermined by such activities. It is impossible to criticize the 2019 Reference Order, which was issued by a three-judge panel that included the Chief Justice of India at the time.

Coming to the first issue, to put it another way, the question is whether the terms "administration" and "establishment" should be interpreted disjunctively or conjunctively when assessing whether an institution is a minority institution. We must break down these two

[4] *Central Board of Dawoodi Bohra Community v State of Maharashtra*, (2005) 2 SCC 673 (SC)

terms—"administration" and "establishment"—in order to comprehend the problem.

In general, "administration" refers to the authority over the institution, whereas "establishment" deals with its past. As a result, "administration" necessitates investigation over an extended period of time, both during and after establishment, whereas "establishment" is temporally focussed. There is no misunderstanding regarding the "establishment" prong. It is clear that the minority community must establish an educational institution to assert its protection under Art. 30.

Stated differently, the establishment by a minority is a prerequisite for asserting the right under Article 30. Using Art. 29 as an example, Article 29 requires that a culture be distinctive in order to use its provision, and once it is invoked, it grants the right to preserve that difference.

In a similar vein, Article 30 specifies minority administration as a prerequisite for invoking the clause, thereby enabling such administration to proceed free from unwarranted government intervention.

ISSUE 1

Whether an educational institution must be both 'established' and'administered' by a linguistic or religious minority to claim the rights guaranteed under Article 30.

Below are the reasons I would like to enumerate for substantiating the first issue :

1. Article 30 would be vulnerable to serious abuse if it were only dependent on the minority community's establishment. In an attempt to get special protection under Article 30, majority communities might buy out or seize minority-founded organizations and run them permanently with less government intervention. It is evident that Article 30 establishes an exemption to the government's overall authority to control and interfere in educational establishments. Article 30 would jeopardize the quality of higher education and erode governmental authority over educational institutions if it were not read strictly.

In Government of A.P. v. A.P. Christian Medical Educational Society,[5] it was held that unquestionably, the government, the university, and eventually the court have the authority to

[5] *Government of Andhra Pradesh v AP ChrisWan Medical EducaWonal Society*, (1986) 2 SCC 667 (India)

lift the "minority veil." It is a well-established statutory interpretation concept that a provision must be read in its whole and that the meaning of another phrase may be inferred from the adjacent text. It is evident that the provision's language intends for the requirements to be interpreted conjunctively because the word "and" has been purposefully used in place of "or."

ISSUE - 2

What are the criteria to be satisfied for the 'establishment' of a minority institution?

Before discussing the second issue, I would like to indulge into the history of the establishment; in 1877, the Muhammadan Anglo-Oriental College was established in Aligarh. The college was a teaching institution affiliated to the Calcutta University at first and subsequently to the Allahabad University.

The imperial legislature passed the Aligarh Muslim University Act 1920. The enactment, as the preamble indicates, "established and incorporated" Aligarh Muslim University. The AMU Act was amended by the Aligarh Muslim University (Amendment) Act 1951 and Aligarh Muslim University (Amendment) Act 1965. The amendments related to the religious instructions of Muslim students and the administrative set-up of the university.

In the case S Azeez Basha v. UOI, the petitioners challenged the amendment on three grounds: (a) AMU was established by Muslims, who are a religious minority for the purposes of Article 30(1); (b) Article 30(1) guarantees Muslims the right to administer the University established by them; and (c) the 1951 and 1965 Amendments are violative of Article 30(1) to the extent that it infringed the right of the Muslim community to administer the institution.

However, the Constitution Bench upheld the constitutional validity of the Amendments. The Court held that the term "establish and maintain" in Article 26 must be read conjunctively, like the phrase "establish and administer" in Article 30. Assuming that educational institutions fall within the ambit of Article 26, the Muslim community does not have the right to maintain AMU because it did not establish it.

In 1981, a two-Judge Bench of this Court in Anjuman-e-Rahmaniya v. District Inspector of Schools8 was faced with a question of whether V.M.H.S Rehmania Inter College is a minority educational institution. By an order dated 26 November 1981, the Bench questioned the correctness of Azeez Basha (supra) and referred the matter to a Bench of seven Judges.

About a month after the order referring the matter to a Bench of seven Judges, the AMU Act was amended by the Aligarh Muslim University (Amendment) Act 1981, wherein the words "establish and" were omitted from long title and preamble. The amendment included Section 5(2)(c) by which the University was required to promote "the educational and cultural advancement of the Muslims of India.

Separately, AMU proposed a policy for admission to its postgraduate medical course, under which 50% of the seats were reserved for Muslim candidates. The petitioners in Dr Naresh Agarwal v. UOI argued that the reservation policy under which 50% of the seats were earmarked for Muslims was unconstitutional because AMU was not a minority educational institution, in view of this Court's judgment in Azeez Basha.

The single judge Bench declared the reservation policy unconstitutional and the division Bench affirmed it. The Court observed that by amending Section 2(l), Parliament attempted to overrule the decision in Azeez Basha. This amendment does not change the basis of that decision because the incorporation of the University was not the sole factor which influenced the decision.

On 12 February 2019, while hearing the appeal against the judgment of the Division Bench, a three-Judge Bench of this Court presided over by Chief Justice Ranjan Gogoi noticed that the High Court relied on the decision in Azeez Basha. It also noticed that the reference in Anjuman-eRahmaniya on the correctness of Azeez Basha was yet to be determined. The three-Judge Bench then referred the matter to a seven-Judge Bench.

In State of Kerala v. Provincial Very Rev. Mother,[6] defined "establishment" as the "creation of an institution." The Court determined that the initial right to create institutions of the minority's choosing is the first right under Article 30. Here, "establishment" refers to the creation of an institution, and it must be done by a minority group. If the institution is founded by a single individual, it makes no difference. The legal stance is the same, and in both situations, the goal must be for a member of the minority community to establish an organization for that community's benefit. Based on the aforementioned instance, we may conclude that the word "establish" refers to creating the institution for the minority community's advantage. We must,

[6] *State of Kerala etc v Very Rev Mother Provincial etc* (Supreme Court of India, 10 August 1970) 1970 AIR 2079, 1970 SCC (2) 417, 1971 SCR (1) 734.

however, consider when an institution may be considered to have been established and what it means to create an institution for the community's benefit.

The topic of existence's essence is complex and ontological; it cannot be resolved by artificially fixing it at a certain moment in time. We cannot declare that the educational institution came into being because of the fulfillment of a single factor since there are several elements that contribute to its formation. Rather, the proper method necessitates evaluating all of the facts, including the beginning, the point of conclusion, and the entire process in between.

Therefore, the investigation of who starts the educational institution must go beyond the parties' correct identification of the pertinent genesis circumstances and the legislative sanction to embrace all components holistically. It would be incorrect in law to provide a comprehensive list of all these elements since they would be factual issues that would vary from case to case. However, the Courts have previously taken into account a few illustrative considerations to evaluate whether or not the minority community formed the institution:

a) The genesis of the institution and who conceptualized the idea;

b) The gathering of resources and who provided the requisite finances for creating the institution;

c) Who contributed towards the infrastructure of the institution to provide it with a physical existence;

d) The framing of charter documents and who imparted the purpose to the institution;

e) In case government approvals were required, who made the initial efforts in taking those permissions and fulfilling the necessary compliances; and

f) Post the approval of the government, who undertook the initial steps in forming the administrative bodies, hiring teachers, admitting students, passing the first statutes and ordinances, ensuring regular compliances, etc., for operationalizing the institution.

It is crucial to remember that none of these elements alone would determine a person's minority status; rather, the study must be comprehensive and the reality of life must be viewed as a continuum rather than as a single element or moment in time.

Courts have made it clear that the institution's minority status is not diminished by the lack of certain elements, such as the fact that it was not built by the minority community (Rt. Rev. Dr. Aldo Maria Patroni v. Assistant Educational Officer)[7] or that it received outside funding (Right Rev. Bishop S.K. Patro v. State of Bihar, (1969) 1 SCC 863)[8]. These rulings reaffirm that the Court's overarching finding should remain unchanged regardless of the existence or lack of a particular component.

Furthermore, the Court cannot require the minority group to carry out the duty that that component specifies on its own. It may be the situation that the community takes the lead in the development of the institution while receiving assistance from other parties.

We would essentially be establishing a requirement that the community operate in silos and that no member of any other community should offer any support in accomplishing its goals if we were to maintain that such aid would eliminate the institution's minority status.

Nevertheless, the opposite must also be true. A minority community member's efforts alone would not be enough to claim the foundation of an institution as belonging to the minority if an outside party took the lead in its creation. Holding differently would allow entities founded by the majority group to claim minority status based on a small contribution from the minority community, potentially abusing the protection provided by Article 30. Therefore, the examination should instead concentrate on who plays a pivotal and decisive role in meeting the necessary requirements for the establishment of an institution.

Since a university may only be established by or under a statute, if we were to believe that the position stated in Azeez Basha is true, the minority community would never be able to qualify for the "establishment" prong under Article 30. The NCMEI Act modification, which places universities under the purview of minority educational institutions, would likewise be in conflict with such a result.

Regarding the statutory intervention, three scenarios can occur

1. Those which are ‘registered in accordance’ with the statute;

[7] *Rt Rev Dr Aldo Maria Patroni v The Assistant Educational Officer & Ors, Original Petition* No 1138 of 1973 (Kerala High Court, 20 November 1973).
[8] *Right Rev Bishop S K Patro v State of Bihar* (1969) 1 SCC 863.

2. which are 'recognized' by the statute; and

3. which are 'created by' the statute.

First scenario: In compliance with the law, registered

According to the Court's ruling in Dalco Engg. (P) Ltd. v. Satish Prabhakar Padhye,[9] a "company" is not "established" under the Companies Act. The Companies Act is not what "owes" an incorporated business its existence. As a result, a "company" is not created under the Companies Act; rather, it is incorporated and registered under it.

Therefore, the organization is not necessarily created by the legislation if it uses a legislative structure. If that were the case, all businesses under the Companies Act of 2013 would become into government entities, which would have ridiculous repercussions.

The second possibility is acknowledged by the statute. This is typically the case with statutes that grant schools and universities affiliation. Following its affiliation with a university, the college must meet the legal standards outlined in the applicable university legislation. Would a statutory action of this kind imply that the institution was created by the statute?

Therefore, the act does not "establish" an institution; rather, it only acknowledges an existing institution if it has legal existence apart from the statute. Additionally, the minority community's contribution to the establishment of the school is not diminished by this type of statute. Therefore, a college would not lose its minority status merely because it is associated with a university and complies with its legal standards. In St. Stephens, this was also mentioned.

Examining examples of these colleges, which are legally required to be operationalized by a statute, is pertinent at this point. It is essential to remember that the statute will not grant legal approval in the situation of Prof. Yashpal's case ,[10] until it is satisfied that the institution has enough infrastructure.

"*When the Constitution has conferred power on the State to legislate on incorporation of university, any Act providing for establishment of the university must make such provisions*

[9] *Dalco Engineering (P) Ltd v SaWsh Prabhakar Padhye*, (2010) 4 SCC 378 (India)
[10] *Prof Yashpal and Anr v State of Chhattisgarh and Ors*, (2005) 5 SCC 420 (India) .

that only an institution in the sense of university as it is generally understood with all the infrastructural facilities, where teaching and research on a wide range of subjects and of a particular level are actually done, acquires the status of a university."

Let's now examine the 2019 Uttar Pradesh Private Universities Act. It lays out exactly what the sponsoring body needs to do to be approved to establish a university. The organisation must establish an endowment fund, own a particular amount of property, build buildings, install equipment, hire professors, organise the curriculum and other events, establish regulations for the university's operations, and adhere to other standards. Such a body must next submit an application for the sanction by providing the necessary information.

The government does not provide the sanction and incorporate it under the legislation until it is satisfied that the sponsoring entity has complied with the requirements. Therefore, the private body originates and fulfills other crucial responsibilities, even while the legislation approves the final legal existence.

Therefore, if the minority group satisfies the requirements of the UGC—that is, obtains legal authorization to establish the university through a statute—it may establish a university under Article 30.

Third scenario - Created by the statute

As demonstrated in the preceding section, if another entity fulfills additional requirements besides legal operationalization, an institution would not owe its existence to the legislature itself. The government itself, however, may also fulfil the other requirements by, for example, conceptualising the organisation, supplying the capital and infrastructure needed for its establishment, creating its charter papers, and then operationalising it through various agencies. In case the leading role in the different factors instantiated is played by the Legislature itself or through the Executive Government, then it will be said to have brought the institution into existence and not any private individual or community.

The distinction between the second and third scenarios

Thus, there is a degree and a factual difference between the second and third kinds of institutions (i.e., those established by legislation and those recognized by statute). Although both kinds of institutions might seem to have been created by a statute on paper, only a careful

examination of their histories can determine whether they actually fall under the third category, where legislative action is responsible for their very existence, or simply fall under the second category, where the statute operationalizes the institution. The Court may determine whether or not the institution satisfies the establishment criteria under Article 30 based on this approach.

CONCLUSION

The AMU case presents a challenge in balancing minority rights with legal regulations and legislative laws. The judgment offers a detailed analysis of Article 30 and the indicia framework, and reevaluates the Azeez Basha case, indicating progress in constitutional interpretation. The Court remains cautious and has deferred a final decision, highlighting the importance of thoroughly examining AMU's unique history and legal status established by whom. The determination of AMU's minority identity awaits the regular bench's verdict, prolonging this ongoing constitutional debate initiated post-India's independence and necessitated the involvement of CJI Chandrachud for settlement.

The discussion primarily focused on the interpretation of law regarding the status of AMU as a minority institution under Article 30(1). The determination of AMU's minority status was left unresolved to be proven through evidence of its establishment by a minority group. The dissenting opinions of the judges may play a role in future considerations regarding AMU's minority status in a regular bench. The 2006 ruling by Allahabad HC, which declared AMU as a non-minority institution based on Azeez Basha, is no longer valid after Azeez Basha was overruled.

The task of gathering evidence as per the guidelines set by a judgment is crucial for AMU to prove its status as a religious minority institution for better adjudication. Establishing a student representation through a students' union is essential at this critical juncture to ensure effective decision-making for the future of AMU. AMU is asserting its autonomy in administration as a minority institution, but at the same time, it is withholding student representation in bodies like the Academic Council, Executive Council, and AMU Court. The importance of student representation is emphasized now more than ever in the history of AMU due to the significant impact it holds on the alma mater's fate.

AMU must fully implement all provisions of the AMU Act for the government to do the same. The AMU administration needs to strictly follow and execute all provisions of the Act to ensure

integrity. Failure by the AMU administration to constitute essential bodies as per the Act could weaken their position. The administrative setup should clearly demonstrate that the institution was founded to safeguard the rights of the minority.