RESTRICTION ON MALADMINISTRATION IN MINORITY EDUCATIONAL INSTITUTIONS

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ABSTRACT

The Article 30(1) confers a right on all minorities, whether they are based on religion or language, to establish and administer educational institutions of their choice. The right conferred by the clause is in absolute terms and is not subject to restrictions, as in the case of rights conferred by Article (19) of the Constitution. The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education. The right to administer educational institutions can plainly not include the right to maladministration.

Keywords: Rights, Minorities, Educational Institutions, Establish, Administer, maladministration.

Introduction

"Nobody can define maladministration in plain terms,"

Sir Edmund Compton, the first British Parliamentary Commissioner for Administrations[1] said that it may be difficult to define, but believed that it can be illustrated. One can be in disagreement with other people about whether or not a particular case was an example of maladministration. It can also be admitted that there might be a vague and uncertain boundary surrounding the areas of maladministration.

In a sense it all comes back to what one mean by "administration" itself. If one includes within it a measure of rule-making and of adjudication, one widens the notion of administration and in so doing the area in which maladministration can occur. If on the other hand one gives the word a narrower meaning, and in particular exclude rule making and adjudication, the meaning of maladministration is correspondingly confined.

Maladministration is the action of government body which can be seen as causing injustice. Unfortunately, we don't always get things right first time. The term 'maladministration' is not defined, but is sometimes used to describe when our actions or inactions result in a customer experiencing a service which does not match our aims or the commitments we have given. The dictionary meaning of the word 'maladministration' is 'faulty administration.' It follows from this that administration connotes just and honest implementation of the laws of the land, implementation of the policies of the government in a human and impartial manner and above all, to ensure that the fruits of such good administration reach all sections of society irrespective of their individual status without discrimination. When the administration does not achieve the general objectives outlined above, it naturally becomes faulty or maladministration.[2]

In English law, maladministration refers to a dated common law term, now more frequently referred to as breach of trust or other dishonest, self-serving or criminal act by a public official during the course of his/her duties.[3] It applies to situations in which one has not acted properly or provided a poor service. Unauthorized use of public money, bias, neglect,

[1] K.C. Wheare, "Maladministration and its Remedies" 25th Series p.6 (1973)
[2] D. Venkatachalam, "Bureaucracy: An Evaluation and Scheme of Account Ability" 77 (1998).
[3] W.B. Odgers, "The Common Law of England" 182 (1911).

arbitrariness offering no redress, broken promises, abuse or misuse of administrative discretion, misleading statements, wrong advice, discourtesy, mistakes and delays, Corruption, fraud or accepting bribes, extortion by a public or government officer, refusal to carry out a lawful duty, scandalous conduct or electoral offences are samples of maladministration. Corruption is not a single offence, which is the promotion of private gains or selfish interests at the expense of public interest against the overall objectives of the government by the officer in charge and responsible within the area of work. It is an umbrella term to describe various criminal acts, including bribery, threats or reprisals, dishonesty, abuse of public office and other similar offences.

The word 'Maladministration' is used and defined in the Protected Disclosures Act, 1994, which provides that for the purposes of that Act...conduct is of a kind that amounts to maladministration if it involves an action or inaction of a serious nature that is:

(a) Contrary to law, or

(b) Unreasonable, unjust, oppressive or improperly discriminatory,

(c) Based wholly or partly on improper motives.

Maladministration may be described as administrative action or inaction, influenced by improper considerations or conduct. Arbitrariness, bias, including discrimination are examples of improper considerations. Neglect, unjustifiable delay, failure to observe relevant rules and procedures, failure to take relevant considerations into account, failure to establish or review procedures where there is a duty or obligation on a body to do so, are examples of improper conduct. A lack of information, at the right time and in the right quantity for citizens affected by official action was, in the opinion of this report, an important cause of maladministration. Corruption is the end product of a process of administration and is preceded by maladministration. For eradicating the former the latter should be checked. Suitable channels for ventilation of grievances of individuals against the State are an essential prerequisite for checking maladministration.[4]

Restriction on Maladministration in Minority Educational Institution by Court

[4] John B Monteiro, "Painful, Crawl, to of Lokpal." 25 (2013)

Article 30(1) of the Constitution prima facie confers an unqualified right on the minorities to administer the institutions established by them. But, in practice, such a right cannot be absolute. A right to administer cannot be a right to maladministration. The matter has been succinctly explained by the Supreme Court **In Re Kerala Education Bill, 1957 case,**[5]

"We have already observed that Article 30(1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladministration. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars, It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided."

In **St. Xavier's College case**[6] that the right to administer was not a right to mal-administer. Elaborating the minority's right to administer, it was observed as follows:

"...The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclecticism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character."

The Learned Chief Justice, Ray, concluded by observing, as follows:[7]

[5] AIR 1958 SC 956; (1959) SCR 995
[6] The Ahmedabad St. Xavier's College Society v. State of Gujarat (1974) 1 SCC 717
[7] Ibid

"The ultimate goal of a minority institution to 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, correlative duty of good administration."

The learned Judge Khanna, observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. Recognizing that the right to administer educational institutions could not include the right to mal-administer, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it. "It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem..."[8]

The Hon'ble Supreme Court in **Lily Kurian v. Sr. Lewina**[9] observed as follows:

"Article 30(1) is not a charter for maladministration; regulation, so that the right to administer may be better exercised for the benefit of the institution, is permissible; but the moment one goes beyond that and imposes, what is in truth, not a mere regulation but an impairment of the right to administer, the article comes into play and the interference cannot

[8] Ibid.
[9] (1979) 1 SCR 995

be justified by pleading the interests of the general public; the interests justifying interference can only be the interests of the minority concerned."

The right under Article 30 is not absolute.[10] Article 29(2) provides that, where any educational institution is maintained by the State or receives aid out of state funds, no citizen shall be denied admission on the grounds only of religion, race, caste, language or any of them. The use of the expression "any educational institution" in Article 29(2) would refer to any educational institution established by anyone, but which is maintained by the State or receives aid out of state funds. In other words, on a plain reading, State maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the grounds only of religion, race, caste or language.

In **All Saints High School, Hyderabad and Ors. Vs. Government of Andhra Pradesh and Ors.[11]** Case Supreme Court held that from the very language of Article 30(1) it is clear that it enshrines a fundamental right of the minority institutions to manage and administer their educational institutions which is completely in consonance with the secular nature of our democracy and the Directives contained in the Constitution itself. That although unlike Article 19 the right conferred on the minorities is absolute, unfettered and unconditional but this does not mean that this right gives a free license for maladministration so as to defeat the avowed object of the Article, namely, to advance excellence and perfection in the field of education. While the State or any other statutory authority has no right to interfere with the internal administration or management of the minority institution, the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards and issue guidelines for the purpose of ensuring the security of the services of the teachers or other employees of the institution.

In **St. Stephen's College Vs. The University of Delhi[12]** Case Supreme Court says that protection of the minorities is an article of faith in the Constitution of India. The rights to the administration of institutions of minority's choice enshrined in Article 30(1) means management of the affairs of the institution. This right is, however, subject to the regulatory power of the State.

[10] St. Stephen's College v. University of Delhi (1992) 1 SCC 558
[11] AIR 1980 SC 1042; (1980) 2 SCC 478
[12] AIR1992 SC1630; (1992) 1 SCC 558

In **Society of St. Ann's and The Rayalaseema Navodaya Minorities Christian Educational Society, rep. by its President, Babuchandra Paul Vs. The Secretary to Government, Education Department and Ors.**[13] Case learned Judges said:

"The Article 30(1) confers a right on all minorities, whether they are based on religion or language, to establish and administer educational institutions of their choice. The right conferred by the clause is in absolute terms and is not subject to restrictions, as in the case of rights conferred by Article (19) of the Constitution. The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education. The right to administer educational institutions can plainly not include the right to maladministration... The State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed... A regulation which is designed to prevent maladministration of an educational institution cannot be said to Clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30(1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation..."[14]

In **T.M.A. Pai Foundation & Ors vs State of Karnataka & Ors,**[15] the Supreme Court held that the right to establish an educational institution can be regulated; but such regulatory measures must be in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of rigid fee structure, dictating the formation and composition of a government body, compulsory nomination of teachers and

[13] 1993(2) ALT610, 1993(2) An WR423, 1993(2) APLJ (HC) 290.
[14] Ibid.
[15] (2002) 8 SCC 481

staff for appointment or nominating students for admissions would be unacceptable restrictions.

A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

The rules and regulations that promote good administration and prevent mal-administration can be formulated so as to promote the efficiency of teachers, discipline and fairness in administration and to preserve harmony among affiliated institutions.[16]

In **Islamic Academy of Education and ors. Vs. State of Karnataka and ors.**[17] The Supreme Court says Article 30(1) of the Constitution does not confer an absolute right. The exercise of such right is subject to permissible State regulations with an eye on preventing maladministration. Broadly stated there are "permissible regulations" and "impermissible regulations". The Court held following Permissible Regulation:

(1) Guidelines for the efficiency and excellence of educational standards;[18]
(2) Regulations ensuring the security of the services of the teachers or other employees;[19]
(3) Introduction of an outside authority or controlling voice in the matter of service conditions of employees;[20]
(4) Framing Rules and Regulations governing the conditions of service of teachers and employees and their pay and allowances;[21]

[16] Ibid.
[17] AIR 2003SC 3724; (2003)6 SCC697.
[18] Sidhi raj bhai v. State of Gujarat; State of Kerala v. Mother Provincial,(1971)1SCR734 ; All Saints High School v. Government of Andhra Pradesh, (1980) 2SCR924 :
[19] In Re Kerala Education Bill, 1957 and All Saints High School v. Government of A.P.
[20] Ibid.
[21] State of Kerala v. Mother Provincial, (1971) 1 SCR 734. And All Saints High School v. Government of Andhra Pradesh, (1980) 2SCR924 .sss

(5) Appointing a high official with authority and guidance to oversee, that Rules regarding conditions of service are not violated, but, however such an authority should not be given blanket, unanalyzed and arbitrary powers;[22]
(6) Prescribing courses of study or syllabi or the nature of books;[23]
(7) Regulation in the interest of efficiency of instruction, discipline, health sanitation, morality, public order and the like;[24]

In **A.P. Christian Medical Education Society v. Government of A.P.,**[25] it has been held that where the Minority institution is establish not for imparting education to their children genuinely but for commercial purpose the protection of Article 30(1) will not be available to such institution.

In **Frank Anthony Public School Employees Association v. Union of India,**[26] the Supreme Court held that the statutory measures regulating terms and conditions of service of teachers and other employees of minority educational institution for maintaining educational standards and excellence are not violative of the fundamental rights of the minorities to administer educational institutions of their choice under Article 30(1).

In **Christian Medical College Hospital Employees Union v. Christian Medical College Vellore Association,**[27] the Supreme Court has held that Section 9-A, 10, 11-A, 12 and 33 of the Industrial Disputes Act,1947 apply to the Minority Educational Institutions as these provisions are regulatory in nature and do not abridge the right under Article 30(1) of the Constitution.

In **St. John Inter College v. Girdharilal,**[28] the Court held that the right of minority to administer its educational institution is not absolute and regulations can be framed by the State conferring powers on special authority but same should be in consonance with Article 30(1) and not uncanalised or unguided. Regulation can always be made to maintain educational character and for that purpose to lay down qualifications and to prevent Maladministration to

[22] All Saints High School v. Government of Andhra Pradesh, (1980) 2SCR924
[23] Supra. 24
[24] Supra. 21
[25] (1986) 2 SCC 667
[26] (1986) 4 SCC 707
[27] AIR 1988 SC 37
[28] AIR 2001 SC 1891

ensure efficiency and discipline of the institution and several other objectives which would be for the benefit to the institution and which would not offend Article 30 of the Constitution.

Thus above these regulation are not restrictions on the right but merely deal with the aspects of proper administration of an educational institution, to ensure excellence of education and to avert maladministration in minority educational institutions and will, therefore, be permissible. This is on the principle that when the Constitution confers a right, any regulation framed by the State in that behalf should be to facilitate exercise of that right and not to frustrate it.

And some of the impermissible regulations are;

(1) Refusal to affiliation without sufficient reasons;[29]
(2) Such conditions as would completely destroy the autonomous administration of the educational institution;[30]
(3) Introduction of an outside authority either directly or through its nominees in the governing body or the managing committee of minority institution to conduct the affairs of the institution;[31]
(4) Provision of an appeal or revision against an order of dismissal or removal by an aggrieved member of staff or provisions for Arbitral Tribunal;[32]

Referring the verdict of T.M.A. Pai case in **P.A. Inamdar v. State of Maharashtra**[33] the Constitutional Bench of the Supreme Court held that affiliation or recognition by the State or the Board or the University competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence of education and preventing maladministration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula.

[29] Supra 25
[30] Ibid.
[31] Ibid.
[32] St. Xavier's College v. State of Gujarat (supra), Lilly Kurian v. S.R. Lewina, [1979]1SCR820 and All Saints High School v. Government of A.P.(supra)
[33] (2005) 6 SCC 537

In **Sindhi Education Society and ors. Vs. The Chief Secretary, Govt. of NCT of Delhi and Ors.**[34] Case question arose before Court that whether the minorities rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

The Court held that a minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to maladministration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

In **Chief Executive Trustee and Ors. Vs. State of Kerala and The Commissioner for Entrance Examinations,**[35] the Supreme Court held that The State also, no doubt, can provide a procedure of holding common entrance test, but the right of the State is 'only to provide a procedure'. No doubt, the Government can regulate the procedure of holding a common entrance test, to vouch safe fair and merit based admissions and to prevent maladministration, but the test as such can be taken over by the State only if the institutions may fail to satisfy the triple test, by substituting its own procedure. It is, thus, in the case of failure of the institutions to hold examination with the triple test that, the State can take over the procedure. That is the only exception provided with regard to right of minority to have their own admission.

Member of communities other than minority community cannot be forced upon a minority school, In **Pramati Education and Cultural Trust Vs. Union of India**[36] the Supreme Court held that the members of the communities other than the minority community which has established the school, cannot be forced upon a minority institution because that will destroy the basic character of the Constitution. The right of children to Free and Compulsory Education Act, 2009 made applicable to minority schools referred to in clause (1) of Article 30 of the Constitution in ultra vires of the Constitution and on this poin the majority judgment in **Society for unaided Private Schools of Rajasthan Vs. Union of India**[37] is not correct. Clause (5) of

[34] (2010)8SCC49
[35] ILR 2007 (1) Kerala 81
[36] AIR 2014 SC 2114
[37] (2012) 6 SCC 1

Article 15 and Article 21 A of the Constitution do not alter basic structure or frame work of the Constitution and are constitutionally valid. The 2009 Act is not ultra vires Article 19(1)(g) but so far as it applies to minority schools aided or unaided covered under clause (1) of the Article 30 of the Constitution, is ultra vires the Constitution.

Minority community to be determined in reference to the State where educational institution is sought to be established. In **Dayanand Anglo vedic college Trust and Management Society Vs. State of Maharashtra**[38] The appellant society formed in the year 1885 and registered under Societies Registration Act,1860 at Lahore and in 1948 in the Punjab established a number of schools and colleges all over India. The aim of the society was to established educational institutions to encourages the study of Hindi, classical Sanskrit and Vedas and to provide instructions in English and other languages, Arts, Science including Medicine, Engineering etc. the appellant established schools and colleges in different places in Maharashtra. Since Hindi speaking persons and followers of Arya Samaj were less than 50% in the State, Higher and Technical Education Department of Maharashtra State granted it the minority status in the years 2004-2009. The society moved an application seeking recognition in the name of appellant, New Delhi instead of Sholapur, the respondent cancelled the recognition of minority statues of the appellant from the year 2004-2005 on the ground that though the Trust was registered under the Bombay Public Trust Act, a majority of trustee were not residents of the State of Maharashtra. Against it, the writ petition was dismissed by the Bombay High Court and appeal against the dismissal of writ was dismissed by the Supreme Court. The Supreme Court held that language is the basis for establishment of different states, a "linguistic minority" has to be determined in relation to State in which the educational institution is sought to be established. The position with regards to religious minorities is the similar as both are at per in Article 30. Not only the institution has to be established by the persons who are minority in the State but the power to administer the institution must vest in such persons. Article 30 cannot be interpreted in such a way as the persons who established the institution in the State for the benefit of the persons who are in minority, any person, be it non minority in other place, can administer and run such institution.

In **Ivy C. da Conceicao Vs. State of Goa**[39] The Constitutional Courts are not entitled to review actions of minority educational institution which is granted autonomy under Article 30.

[38] AIR 2013 SC 1420
[39] AIR 2017 SC 1834 pp. 1842

The fairness in selection of Principal can be examined although the freedom is given in appointing the Principal. The exercise of right of choice has to be fair, non discriminatory and rational.

In **Christian Medical College Vellore Association v. Union of India and Others on 29 April 2020,** They follow the Gurukul tradition. With the introduction of NEET in 2016-17, institutions have been required to admit students through NEET in its place of their method. Some of them have the All India Entrance Test. They have their distinctive procedure of admission for MBBS as well as Post Graduation. The method of examination of some of the institutions is wider on All India Basis, and they test wide-ranging ability also, while, in NEET, evaluation is based on three subjects, namely, Physics, Biology, and Chemistry. They have an involved procedure of the assessment, and they do not admit students only based on their theoretical knowledge. Some of them are the best medical educational institutions in the country. There is not even a single allegation of maladministration against some of the reputed institutions. The principles, which govern the selection, are eligibility, suitability, and distributive justice. The selection of candidates is an important factor to the medical colleges to suit their requirements in a particular field.

Conclusion

Thus Article 30(1) is not a charter of maladministration; regulation so that the right to administer may be better exercised, for the benefit of the institution is permissible. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration.

The ultimate goal of a minority institution to 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, correlative duty of good administration.