

(2005) 10 AHC CK 0177

In the Allahabad High Court

Case No : C.M.W.P. No's. 15504, 12060, 24264, 24271 and 24274 of 2005

Dr. Naresh Agarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-10-2005

Acts Referred:

Aligarh Muslim University (Amendment) Act, 1965 — Section 23, 23(2), 23(3), 28, 29

Aligarh Muslim University (Amendment) Act, 1981 — Section 2(1), 23, 5(2)

Aligarh Muslim University Act, 1920 — Section 13, 14, 15, 16, 17

Constitution of India, 1950 — Article 11, 12, 13, 14, 141

University Grants Commission Act, 1956 — Section 22, 22(1)

Citation : (2005) 4 AWC 3745 : (2005) 4 ESC 2489

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ravi Kant and J.J. Munir, for the Appellant; Shashi Nandan, K, C. Sinha, P.N. Rai, Rajeev Dhawan, Gopal Subramaniam, Vijay Bahadur Singh, V.P. Singh, V.B. Singh, B.N. Rai, Sunita Agarwal, Kapil Sibbal, Manoj Kumar, Akhil Sibbal, Kirtika Singh, M.A. Qadeer and S.K. Anwar, for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—These five connected writ petitions have been filed by 34 petitioners who have obtained a degree of MBBS and claim a right to be considered for admission to Post Graduate, Medical Courses of Aligarh Muslim University. For admission to Post Graduate Medical Courses of Aligarh Muslim University three modes have been determined (a) 25% of the total seats to be filled on the basis of All India Entrance Examination conducted by the All India Institute of Medical Sciences, New Delhi, commonly known as All India Entrance Examination; (b) The remaining 75% of the total seats have been divided to be filled as follows :

(i) 25% of the total seats are required to be filled on the basis of entrance examination conducted by the Aligarh Muslim University in respect of its internal

students commonly known as Entrance Examination for Internal Candidates; and

(ii) the remaining 50% of the total seats are to be filled from external as well as internal candidates on the basis of entrance examination to be conducted by the Aligarh Muslim University. These 50% seats which are required to be filled from internal as well as external candidates on the basis of entrance examination to be conducted by the Aligarh Muslim University have since been reserved under resolution of the Admission Committee/Executive Council of Aligarh Muslim University in respect of Muslim. candidates only. The petitioners who are Hindu by caste as such have been deprived of their right to participate in the process of selection for admission to Post Graduate Courses against 50% of the total seats, reserved for admission through entrance examination conducted by the Aligarh Muslim University. This reservation of the entire 50% of the total seats to be filled on the basis of entrance examination conducted by the Aligarh Muslim University, has given rise to the present writ proceedings. The reservation so made by the Aligarh Muslim University in favour of Muslim candidates only on the strength of it being a minority University entitled to the benefit of Article 30 of the Constitution of India is the bone of contention between the parties to these petitions.

2. The petitioners allege that the Hon"ble Supreme Court in the case of S. Azeez Basha and Another Vs. Union of India (UOI), has held that Aligarh Muslim University has been created by an Act of Parliament and, is not a minority institution so as to be covered under Article 30 of the Constitution of India. Therefore, the reservation provided in respect of Muslim candidates as aforesaid is wholly without jurisdiction and is even otherwise in violation of Article 29(2) of the Constitution of India. It is further contended that the amendment made in Sections 2(1) and 5(2)(c) of the Aligarh Muslim University Act, 1920 vide Act No. 622 of 1981 is ultra vires the Constitution of India, a brazen overruling of the judgment of the Hon"ble Supreme Court in the case of Azeez Basha (supra) and be declared as such.

3. Since the vires of an Act of Parliament were questioned by means of the present writ petitions this Court on 11.3.2005, while passing an interim order, issued notice to the Attorney General of India. On behalf of the Attorney General written submission have been filed. He has been also represented by Sri Gopal Subramaniam, Senior Advocate, during oral submissions. Sri Ravi Kant, Senior Advocate, had advanced arguments on behalf of the petitioners. Aligarh Muslim University has been represented by Dr. Rajiv Dhawan, Senior Advocate, assisted by Smt. Sunita Agarwal.

4. The Union of India as well as the Aligarh Muslim University have taken a stand that the provisions of the Aligarh Muslim University Act, 1920 which were the basis for the judgment of the Hon"ble Supreme Court in the case of Azeez Basha referred to above have since been altered vide the amending Act No. 62 of 1981 with specific reference to Sections 2(1) and 5(2)(c), therefore, the judgment of the Hon"ble Supreme Court in the case of Azeez Basha (supra) is no more a

good law. Counsel for the respondents submit that the Aligarh Muslim University was an institution founded by the Muslims and it has only been incorporated as a University by the Act of 1920. There has been no change in substance of the original minority character of institution by such incorporation. It is contended that it is always open to the Parliament to change the basis or to remove the defects and the impediments pointed out by the Court and to explain and clarify the ambiguous part of the statute which has resulted in a declaration of law by the Hon"ble Supreme Court provided such amendments are within the legislative competence of the Parliament. In view of the rival contentions raised by the parties which have been briefly noticed hereinabove the following issues arise for determination by this Court in the present writ petitions :

1. Whether the Aligarh Muslim University is a minority institution entitled to protection under Article 30 of the Constitution of India and therefore it can provide for reservation of seats for Muslim candidates only. The said issue is to be decided with reference to the following sub-issues :

(i) Whether the judgment and order of the Hon"ble Supreme Court in the case of S. Azeez Basha and Another Vs. Union of India (UOI), , is no more a good law in view of the change effected in the statutory provisions, vide amending Act 62 of 1981?

(ii) Whether the provisions of Act 62 of 1981 especially Section 2(1) and 5(2) are retrospective in nature and have the effect of declaring Aligarh Muslim University as a minority institution within the meaning of Article 30 of the Constitution?

2. Whether the amended Section 2(1) and 5(2)(c) are within the legislative competence of the Parliament and whether the said amendments are a brazen attempt to over rule the judgment of the Hon"ble Supreme Court in the case of Azeez Basha (supra)?

3. Whether the reservation of the entire 50% seats for Muslims required to be filled on the basis of entrance examination to be conducted by the Aligarh Muslim University from internal as well as external candidates is arbitrary and violative of Article 14 and Article 29(2) of the Constitution of India?

4. Whether the petitioners have any locus to maintain the present writ petitions, and whether the petitions have become in fructuous in view of the subsequent developments?

In order to appreciate the aforesaid issues which arise in the present writ petitions it would be worthwhile to record certain basic facts leading to the dispute.

Facts :

5. Aligarh Muslim University was created by legislative Act No. 21 of 1920 (hereinafter referred to as the Act of 1920). The long title of the said Act read as follows :

"WHEREAS it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh, and to dissolve the Societies registered under the Societies Registration Act, 1860, which are respectively known as the Muhammadan Anglo Oriental College, Aligarh, and the Muslim University Association, and to transfer to and vest in the said University all properties and rights of the said Societies and of the Muslim University Foundation Committee;"

Section 2(h) of the 1920 Act defines the University as follows :

"(h) "University" means the Aligarh Muslim University."

Section 5(2) of the 1920 Act reads as follows :

"5. The University shall have the following powers of the University :

(1) ...

(2) To promote Oriental and Islamic study and give instruction in Muslim theology and religion and to impart moral and physical training;"

6. The administration of the University was vested in officers and the Bodies constituted under the Act itself e.g. Academic Council, Executive Council, Chancellor, Pro-Chancellor, Vice Chancellor, Pro-Vice-Chancellor, Honorary Treasurer, Registrar etc. [Reference-Sections 16 and 22 of the Aligarh Muslim University Act].

7. By Aligarh Muslim University Amending Act No. 52 of 1951 (hereinafter referred to as the 1951 Act) and Aligarh Muslim University Amending Act No. 19 of 1965 (hereinafter referred to as the 1965 Act) certain amendments were made in 1920 Act, whereby Section 9 of the 1920 Act was deleted and Section 8 was amended. Certain amendments were also made In Section 13 with regard to the seat and place of Lord Rector. Section 14 was amended with regard to the powers of the Visiting Board. The substantial change was to the proviso to Section 23(1) of the 1920 Act, which requires all the members of the Court would only be Muslims, was deleted. Thus by the said amendments, Non-Muslims could also become members of the Court. By amending of Act 1965, Sub-section (2) and (3) of Section 23 were deleted, as a result whereof the Court no longer remained the supreme governing body and by amendments in Sections 28, 29, 34 and 38 the powers of the Executive Council were correspondingly increased. Changes were also made in the constitution of the Executive Council with a specific declaration that w.e.f. 20th day of May, 1965, every member of the Court and Executive Council shall cease to hold office as a member of the Court or Executive Council, as the case may be. This paved the way for a fresh Court and Executive Council being created. Constitutionality of the said amendments was subject matter of challenge before the Hon"ble Supreme Court in the case of Azeez Basha (supra). The said amendments were challenged by the members of the Muslim community basically on the ground that Aligarh Muslim University had been established by a Muslim minority, any legislative amendments incorporated vide Act of 1951 and Act of 1965, which takes away the right of the

Muslims to administer the said educational institution would be violative of Article 30 of the Constitution of India. It was, therefore, claimed that the Aligarh Muslim University being a minority University could be administered by the Muslims only.

8. The challenge so made in Azeez Basha's case (supra) by the petitioners therein was resisted by the Union of India and a stand was taken that the Aligarh Muslim University has not been established by the Muslims nor they have any right under Article 30 of the Constitution of India to administer the same. The Hon'ble Supreme Court after noticing the various facts and provisions of the 1920 Act, as well as the historical background in which the Aligarh Muslim University has been created came to the conclusion that the Aligarh Muslim University has been established by a Legislative Act of Government of India. A Central legislation has brought into existence the Aligarh Muslim University and it was so established. The Hon'ble Supreme Court in no uncertain terms held that the Aligarh Muslim University has not been established by the Muslims nor they have any right of administration. The amendments under challenge being within the legislative power of the Parliament cannot be questioned on the ground that they are violative of Article 30 of the Constitution of India.

9. Subsequent to the said judgment of the Hon'ble Supreme Court the Parliament enacted the Aligarh Muslim University Amendment Act, 1981 (Act No. 62 of 1981) whereby amongst others the long title as well as Section 2(1) and 5(2)(c) and Section 23 were substituted. The amended sections are reproduced below :

"2(1) "University" means ** the educational institution of their choice established by the Muslims of India, which originated as the Muhammadan Anglo-Oriental College, Aligarh and which was subsequently incorporated as the Aligarh Muslim University.

5(2)(c) to promote especially the educational and cultural advancement of the Muslims of India;

23. The Court--(1) The Court shall consist of the Chancellor the Pro-Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor (if any) for the time being, and such other persons as may be specified in the Statutes.

(2) The Court shall be the supreme governing body, of the University and shall exercise all the powers of the University not otherwise provided for by this Act, the Statutes, the Ordinances and the Regulations and it shall have power to review the acts of executive and the Academic Councils (save where such Councils have acted in accordance with powers conferred on them under this Act, the Statutes or the Ordinances).

(3) Subject to the provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely--

(a) to make Statutes and to amend or repeal the same;

- (b) to consider Ordinances;
- (c) to consider and pass resolutions on the annual report, the annual accounts and the financial estimates;
- (d) to elect such persons to serve on the authorities of the University and to appoint such officers as may be prescribed by this Act or the Statutes; and
- (e) to exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes."

10. In the light of the amendments as brought about by the Act No. 62 of 1981 the Admission Committee of the Aligarh Muslim University in its meeting held on 10th January, 2005 recommended that the total seats available for Post Graduate Medical Courses be reserved in the manner as follows :

(a) 25% of the total seats be reserved for internal candidates i.e. institutional quota;

(b) 75% of the total seats be termed as All India quota seats to be filled as below;

(75% All India quota seats be bifurcated into two parts, (i) 50% of the total seats be reserved for Muslims only to be filled by Entrance Examination to be conducted by the Aligarh Muslim University, Aligarh from external as well as internal candidates, (ii) 25% of the total seats be left for open category to be filled through the All India Examination to be conducted by the All India Institute of Medical Sciences, New Delhi.)

11. The recommendations of the Admission Committee were considered and accepted by the Academic Council and Executive Council in its meetings held on 15.1.2005 and 19.1.2005 respectively. The decision so taken, was communicated to the Union of India by the Registrar of the University. On 10.2.2005 the minutes of the Executive Council, approving the reservation as aforesaid was formally forwarded to the Central Government. A meeting between the Vice-Chancellor and the officers of the Ministry for Human Resources, Government of India, took place on 21.1.2005 and 23.2.2005. The Union of India is said to have communicated its acceptance to the proposed reservation vide letter dated 25.2.2005.

12. The petitioners who are Hindu by caste were excluded from participation in the selections for admission against 50% seats which have been reserved for Muslims, the admission whereof was to be done on the basis of entrance examination to be conducted by the Aligarh Muslim University. The reservation so provided in respect of 50% of the total seats for Muslims, to be filled by entrance examination to be conducted by the Aligarh Muslim University itself from internal as well as external candidates has led to the filing of the present writ petitions before this Court.

Contentions :

13. Sri Ravi Kant, Senior Advocate, assisted by Sri J.J. Munir Advocate on behalf of the petitioners has contended :

(a) that Aligarh Muslim University, which has been declared to be a non-minority institution by the Hon"ble Supreme Court vide its judgment in the case of Azeez Basha (supra) could not have provided any reservation in respect of Muslim students only as has been done under the resolution of the Admission Committee dated 10.1.2005, the resolution of Academic Council dated 15.1.2005 and the decision of the Executive Council dated 19.1.2005. It is contended that. Section 2(1) and Section 5(2)(c) of the amending Act have the effect of virtually overruling the judgment of the Hon"ble Supreme Court in the case of Azeez Basha (supra) which is legally not permissible. The Hon"ble Supreme Court has as a matter of fact recorded a finding that Aligarh Muslim University has been established by an Act of Legislature, and therefore cannot be said to have been established by the Muslim minority so as to claim protection of Article 30 of the Constitution of India. The finding so recorded by the Hon"ble Supreme Court could not have been over turned by introducing Section 2(1) and 5(2)(c) to the 1920 Act by Amending Act of 1981. Counsel for the petitioners points out that the law declared by the Hon"ble Supreme Court is binding upon one and all throughout the country in view of Article 141 of the Constitution of India and it is a matter of little difference as to whether the Aligarh Muslim University was a party to the proceedings in the case of Azeez Basha (supra) or not.

(b) It is further contended that the Union of India had taken a firm stand before the Hon"ble Supreme Court in the case of Azeez Basha (supra) that Aligarh Muslim University has not been established by the Muslim minority community and that it has been established under a legislative Act, the institution is not, entitled to the protection of Article 30 of the Constitution of India. The Union cannot now turn around and assert in these writ proceedings that the Aligarh Muslim University has been established by the minority community.

(c) With reference to the judgments in the case of People's Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another, ; Bakhtawar Trust and Others Vs. M.D. Narayan and Others, ; AIR 1997 3127 (SC); Meerut Development Authority, etc. Vs. Satbir Singh and others, etc., , in the matter of Cauvery Water Dispute Tribunal 1993 Suppl. (1) SCC 96, it is submitted that the legislative power cannot be extended so as to over reach/reverse the decision of the Court of law.

(d) Hon"ble Supreme Court of India in the case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, held that pending selections would not be governed by the subsequent amendment in the rules, there is no question of applying new rules or order to the pending selection.

(e) The reservation made for Muslims in respect of the entire 50% of the total seats, the selection whereof was to be done through an examination to be conducted by Aligarh Muslim University would be hit by Article 29(2) of the

Constitution of India. Even otherwise, the manner in which the reservation has been effected (i.e. 100% reservation for one category of seats would be violative of Article 14 of the Constitution of India. Petitioners being fully qualified for being considered against the aforesaid 50% of the total seats, have every right to maintain the present writ petition and to insist upon the Aligarh Muslim University to hold selection for admission against 50% seats through entrance examination conducted by the Aligarh Muslim University itself in accordance with law ensuring the right of the petitioners to participate in the said process of selection.

14. Dr. Rajiv Dhawan, Senior Advocate, and Mr. Gopal Subramaniam, Senior Advocate, Supreme Court of India, on behalf of Aligarh Muslim University and the Union of India respectively have raised common contentions so far as minority status claimed by the Aligarh Muslim University and the reservation provided for Muslim students is concerned, namely :

(1) The legislative competence of Parliament to enact a law in respect of Aligarh Muslim University is referable to Entry 63 of List I of VIIth Schedule to the Constitution of India and therefore the competence of the Parliament to enact a provision like Section 2(1) and 5(2)(c) cannot be questioned on the ground of legislative competence. The amending Act of 1981 has been enforced to fulfil the fundamental rights of Muslims, who were in minority in the undivided country prior to independence and in India even after independence with specific reference to Article 30 of the Constitution of India. Such legislations do not create a fundamental right. They only ensure fulfilment of the fundamental right of the minority. The amending Act 1981 recognizes the historical fact as was apparent from the records before the Parliament to the effect that the Aligarh Muslim University was established by the Muslims and therefore the declaration in Section 2(1) read with Section 5(2)(c), being a recognition of historical fact which the petitioners have not been able to demonstrate in any manner to be arbitrary or whimsical, cannot be faulted with. The judgment of the Hon'ble Supreme Court in the case of Azeez Basha (supra) was based on an interpretation of the statutory provisions as were then part of the Aligarh Muslim University Act. The basis of the conclusion arrived at by the Hon'ble Supreme Court having been substituted by the Amendment Act of 1981, the judgment in the case of Azeez Basha (supra) loses all force subsequent to amendments under Act of 1981. Aligarh Muslim University has now been rightly recognised to have been established by a minority community (Muslims). It is submitted that 1920 Act. was only for the purpose of incorporation of an institution which was established by the Muslims, into a University. There was only a change in the form and not in substance by such incorporation. The Aligarh Muslim University being an autonomous University, is competent to lay down its own process for admission of students including reservation in favour of Muslim students subject, however, to the same being reasonable i.e. within the parameters fixed by the Hon'ble Supreme Court in its various judgments. It is not necessary for the Central University to seek any prior approval of the Government before providing

reservation in respect of minority students. However, in the facts of the case the Central Government has in fact approved the reservation so provided by the Aligarh Muslim University. As such the reservation to the extent of 50% of the total seats reserved by the Aligarh Muslim University for Muslim students only in respect of Post Graduate Medical Courses cannot be said to be constitutionally invalid in any manner. This reservation to the extent of 50% of the total seats is in conformity with judgment of the Hon"ble Supreme Court in the case of Saurabh Chaudri and Others Vs. Union of India (UOI) and Others, .

15. The manner to administer is left to the minority community. The methods applied by the minority institutions are usually to ensure the minority purpose by a combination of delineating the purpose of the institution and ensuring a presence of the minority community on various bodies in charge of the institution.

16. It is further submitted that the petitioners have no locus to challenge the reservation so provided by the Aligarh Muslim University in respect of Muslim candidates. Lastly it has been submitted that the writ petitions have become infructuous in view of subsequent developments as well as in view of the fact that practically all the petitioners have either been admitted to the various courses or they have not been found ineligible for being admitted in any of the courses of Aligarh Muslim University.

17. Sri Gopal Subramaniam, Senior Advocate, has submitted that the Amending Act of 1981 is recognition of the historical fact that the Aligarh Muslim University was established by Muslims who were in minority in India at all the relevant time. Such recognition of a historical fact by the Amendment Act, 1981 cannot be objected to inasmuch as it is within the legislative competence of the Parliament with reference to Entry 63, List-I, Schedule-VII of the Constitution of India. The plenary power of the Parliament can be questioned only on the grounds (a) that the legislature has no competence to enact the law, (b) that the legislation is hit by the rights guaranteed under Part-III of the Constitution, The legislative competence of the Parliament to enact the Amendment Act of 1981 is not in dispute. The Amendment Act, 1981 is only in furtherance of the commitment of the State to fulfil and protect the rights of the minority community and as such it cannot be said to be hit by any of the Articles contained in Part-III of the Constitution of India.

18. The Parliament has not made any attempt to over reach or over rule the judgment of the Hon"ble Supreme Court in the case of Azeez Basha (supra). The Parliament in exercise of its legislative power has brought the Act in tune to recognise the historical facts. It is further clarified that the stand taken by the Attorney General of India in written submissions to the effect that no permission of the Central Government is required by the Central University which is an autonomous body for providing reservation in respect of Muslim candidates, is based on true and correct application of law laid down by the Hon"ble Supreme Court in the cases of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and Islamic Academy of Education and Another Vs. State of

Karnataka and Others, , as well as in Saurabh Chaudhari's case (supra). The University being autonomous body has a right to fix the reservation quota for students of minority community within the permissible limits on its own.

19. In respect of the doubts that had arisen with regard to original intention of its founders to set up a Muslim University large number of documents were before the Legislature, for establishing a clear intention of the Muslim community to establish a Muslim University by converting the original M.A.O. College through an Act of incorporation. Accordingly the Parliament subsequent to the judgment of the Hon"ble Supreme Court in the case of Azeez Basha (supra) had to step in to clear the haze, which was the basis for the judgment of the Hon"ble Supreme Court and to declare that the original minority character of M.A.O. College was never lost by incorporation brought by Legislative Act for enforcing the University Act, 1920.

20. The declaration made in that regard by Amendment Act, 1981 cannot be said to be based on no material so as to categorise the amendment as a fraud on the legislative powers or on the Constitution. Census of various years has been produced before Court in support of the plea that Muslims were in minority not only in United Province but in the entire country in the year 1920 when the Aligarh Muslim University was incorporated and even today.

21. The contentions have been formulated in five broad heads by the Counsel for the respondents :

(a) It is within the legislative competence of the Parliament vide entry 63, List-I, Schedule VII of the Constitution of India to enact a legislation for Aligarh Muslim University which is declared to be an institution of national importance and therefore the Amending Act of 1981 is within the legislative competence of the Parliament.

(b) By the Amending Act of 1981 the Parliament has changed the basis on which the previous decision of the Hon"ble Supreme Court was founded. The change so effected cannot be termed as usurpation of the judicial powers. The Amendment Act has the effect of removing the ambiguity and curing the defects as were noticed in the earlier judgment of the Hon"ble Supreme Court In the case of Azeez Basha (supra). Such amendment being within the legislative competence of the Parliament cannot be said to be a brazen overruling of the judgment of the Hon"ble Supreme Court by the legislature which is prohibited.

(c) The Parliament has fulfilled its obligation to protect fundamental right and has only given effect to its constitutional duty to protect the fundamental rights of the minority community by recognising the fact that Aligarh Muslim University has been established by the Muslims. The Parliament has only declared the doubts, which had arisen because of the language of the earlier Act. There is no impediment for the Parliament to give due recognition to the fundamental rights of the minority community, specifically if the Parliament feels that there has been a deprivation of such a right by an Act of the Parliament itself. In support of the

contention the counsel for the Aligarh Muslim University has placed reliance upon the judgments of the Hon''ble Supreme Court in the cases of State of U.P. v. Zalirn and Ors. 1996 SCC 751 ; Bakhtawar Trust, (supra) and Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality 1969 (2) SCC 233.

(d) The Amending Act of 1981 is a declaratory statute, retrospective in nature it has removed or cured the defects which were noticed in the earlier legislation, subject matter of consideration in the case of Azeez Basha. Because of the curative action of the competent legislature the earlier judgment becomes inoperative and unenforceable. (Reference Ujagar Prints Vs. Union of India (UOI),).

(e) Once it is established that Aligarh Muslim University has been established by a minority community, the right to administer the same is vested in the minority community. In support thereof it is contended that there can be no waiver of the right of administration. Mere non-performance or the defeasance of the right will not waive the right and the minority community can claim at any point of time, such right of administration, so long as the establishment of the institution by the minority community is established.

(f) Aligarh Muslim University being a Muslim minority institution has a right to provide quota in respect of students of its own community. Such a right has been recognised by Constitution Bench Judgment of the Hon''ble Supreme Court in the cases of St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., .

(g) The Aligarh Muslim University has taken a well reasoned decision in respect of reservation of seats for Muslims in Post. Graduate Courses which has since received acceptance by the Union of India as per letter dated 25.2.2000. In the latest judgment of the Hon''ble Supreme Court in the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, , it has been further clarified that admissions in minority institutions should reflect its minority character which may be jeopardized if they do not do so.

(h) Lastly it is submitted that the petitioners have no locus to maintain the present writ petition inasmuch as the petitioners are not entitled to be considered against 50% quota seats which are reserved for Muslim candidates as they do not belong to the particular minority community. The open category seats which were subject matter of admission under the Entrance Examination held by the All India Institute of Medical Sciences have gone unfilled and the petitioners could not compete in the said Entrance Examination. Further in view of the judgment of the Hon''ble Supreme Court in the case of Medical Council of India Vs. Madhu Singh and Others, since the admission process has to be completed by a particular date no effective relief can be granted to the petitioners at such a belated stage. It is, therefore, submitted that the writ petition may be dismissed.

22. On behalf of National Commission for Minority Educational Institutions intervention application has been filed. Sri Vijai Bahadur Singh, Senior Advocate,

assisted by Sri U. P. Singh Advocate has been heard on behalf of the Intervener. The counsel for the National Commission for Minority Educational Institutions (hereinafter referred to as the Commission) after referring to the historical background in which the said Commission has been established, has made reference to facts leading to establishment of the University as well as to various provisions of the Aligarh Muslim University Act. His submissions are to the same effect as have been raised in detail by Senior Advocates appearing for the University and the Union of India, therefore, it is not necessary to reiterate the same all over again,

23. Before advertng to the consideration of the issues raised by the contesting parties it would be in the interest of justice that the Constitutional provisions and legal principles on which the present writ petitions require consideration by this Court may be stated.

Constitutional Scheme and Legal Principles :

24. The preamble of the Constitution of India indicates the objective of the founding fathers who claim to speak on behalf of the people of India. The word "Secular" and "Socialist" were inserted by 42nd Constitutional Amendment in the preamble of the Constitution of India. India is a country of secular people living together. The people of India in delegating legislature, executive and judiciary their respective powers retained for themselves certain rights termed as fundamental rights, which are paramount to the delegated powers. Reference may be had to the judgment of the Hon'ble Supreme Court of India in the case of A.K. Gopalan Vs. The State of Madras, , wherein it has been said that "it is true to say that in a sense the people delegated to the legislative, executive and the judicial organs of the State, there respective powers while reserving to themselves the fundamental rights, which they made paramount by providing that the State shall not make any law, which takes away or abridges the rights conferred by that part."

25. In the case of The State of West Bengal Vs. Subodh Gopal Bose and Others, , it has been declared that Fundamental rights are natural basic rights which are recognised and guaranteed as natural rights inherent in the status of a citizen of a free country.

26. Part-III of the Constitution of India with subtitle "Fundamental Rights" contains Article 12 to Article 35. Such rights are guaranteed against State action, which in turn includes the Parliament and State Legislature as well as other instrumentalities of the State (Reference Article 12 of the Constitution of India). Any law made in violation of fundamental rights would be null and void (Reference Article 13 of the Constitution of India).

27. There is a broad distinction between fundamental rights guaranteed by the Constitution and those rights which are guaranteed by a Statute. If the Statute deals with the right, which is not fundamental in character, the Statute can take it away but the Statute cannot take away a fundamental right. Reference--

Pannalal Binjraj Vs. Union of India (UOI), . Thus, fundamental rights need no recognition or conferment by any statutory enactment of the legislature nor any law is necessarily to be framed by the Parliament for enforcement of such fundamental rights. However, it may be emphasised that these fundamental rights are also subject to ultimate laws, which may be made in the interest of the nation.

28. It is clear on a consideration of the provisions of Part-III of the Constitution that the maker of the Constitution deliberately and advisably made the clear distinction between fundamental rights available to "any person" and those guaranteed to "all citizens". In other words "all citizens" are persons but all persons are not citizens under the Constitution. The legal significance of "all citizens" has been explained by the Hon'ble Supreme Court of India in its judgment in *The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others*, , with reference to the provisions of Article 5 to Article 11 of the Constitution of India read with the Citizenship Act, 1955, a distinction between nationality and citizenship and between natural persons, in contradistinction to legal juristic persons, covered by the definition of "Citizens" entitled to the benefit of the fundamental rights made available to citizens only has been considered in detail. The said legal proposition has been reiterated in the case of *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, as well as in the latest judgment of the Hon'ble Supreme Court in the case of *Dharam Dutt and Others Vs. Union of India (UOI) and Others*, .

29. In the aforesaid legal background, the Hon'ble Supreme Court of India has reiterated time and again that an incorporated company or corporation formed by a group of citizens has a distinct legal entity vis-a-vis the citizens who have formed the same, the Corporation or Company may claim rights which are available to persons only but they are not entitled to claim fundamental rights, which are available to citizens of the country. Suffice is to reproduce relevant portion of para 30 of the judgment of the Hon'ble Supreme Court in the case of *Dharam Dutt* (supra), which reads as follows :

"As soon as citizens form a company, the right guaranteed to them by Article 19(1)(c) has been exercised and no restraint has been placed on that right and no infringement of that right is made. Once a company or a corporation is formed, the business which is carried on by the said company or corporation is not the business of the citizens who get the company or corporation formed or incorporated, and the rights of the incorporated body must be judged on that footing alone and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens. In our opinion the same principle as has been applied to companies and corporations would apply to a society registered under the Societies Registration Act."

30. It is thus settled that incorporated legal juristic entity cannot claim fundamental rights, which are guaranteed by the Constitution in favour of

citizens only.

31. Articles 14, 20, 21, 22 and 27 are rights, which are guaranteed in favour of a person, which may include natural as well as juristic persons, while rights guaranteed under Articles 19, 26, 29 and 30 are rights which are available to citizens only, who are necessarily natural persons and therefore said rights are not available to other juristic legal person.

32. Articles 29 and 30 of the Constitution of India, which are subject matter of consideration in the present writ proceeding, are group of Articles relating to cultural and educational rights which are quoted herein below :

"29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

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

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in Clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that Clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

33. It has been settled by series of judgments that the right guaranteed under Article 30 of the Constitution of India is available to the citizens of India only. Suffice is to reproduce relevant portion of the paragraph 28 of the Constitutional Bench judgment of the Hon''ble Supreme Court of India in the case of St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., , wherein it has been held as follows :

"Prior to the commencement of the Constitution of India, there was no settled concept of Indian citizenship. This Court, however, did reiterate that the minority competent to claim the protection of Article 30(1) of the Constitution, and on that account the privilege of establishing and maintaining educational institutions of its choice, must be a minority of persons residing in India. They must have formed a well defined religious or linguistic minority. It does not envisage the rights of the foreign missionary or institution, however, laudable their objects might be. After the Constitution, the minority under Article 30 must necessarily mean those who form a distinct and identifiable group of citizens of India."

34. Right to establish and administer an educational institution has been subject matter of consideration in series of judgments of Hon''ble Supreme Court of India. The Article is in two parts. The first part is the initial right to establish institutions of minority's choice. "Establishment" means bring into existence of an institution and it must be by a minority community, it is of little relevance if the member of the other community take advantage of such institution or bring in income for establishment of the institution. The second part of right relates to the administration of such institutions. "Administration" means the "management of affairs" of the institution. The management must be free of control, so that the founders or their nominees can mould the institutions 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 the management can be taken away and vested in another body without encroachment of guaranteed fundamental rights. Reference-- State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., .

35. The extent of the meaning of the word "Establish" was also subject matter of consideration in the case of Azeez Basha (supra), which shall be dealt with at a later stage in the judgment. The right to administer broadly includes the following rights :

- (a) admit students,
- (b) set up a reasonable fee structure,
- (c) constitute a governing body, and
- (d) appoint staff and to take disciplinary action.

(Reference may be had to the Constitutional Bench Judgment of the Hon''ble Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, .

36. The legislative power of the Parliament, to frame a law in respect of the subject enumerated under respective entries of List-1 and List-3 of the Seventh Schedule of the Constitution of India, has been enshrined under Articles 245 and 246 of the Constitution of India. In the case of Ujagar Prints Vs. Union of India (UOI), , the Hon''ble Supreme Court held as follows :

"Entries in the legislative lists, it may be recalled, are not sources of the legislative power, but are merely topics or fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow and pedantic sense."

37. Aligarh Muslim University has been declared to be an institution of national importance, and accordingly included in Entry 63, List-1 (Union List) of Seventh Schedule to the Constitution of India. Therefore, the legislative competence of the Parliament to frame law in respect of the aforesaid subject matter is not in doubt nor any doubt in respect of such legislative competence of the Parliament

has been raised. The legislative power of the Parliament to enact a law on the subject includes the power to re-enact, repeal, amend or change a Statute falling under the respective entry. The legislative power of the Parliament can also be invoked for fulfilling the fundamental rights or for giving effect to such rights. As a matter of fact, the Parliamentary Acts for protecting religious endowment through various regulatory Statute is well recognised. [Reference : Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others, ; A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others,]. Such statutory enactment do not in any way curtail the rights conferred in respect of the religious institutions.

38. The legislature, under the Constitution, has power to legislate respectively as well as prospectively. By such exercise of power, the legislature can retrospectively remove the basis of a decision rendered by a competent Court, thereby rendering that, decision ineffective. The power of legislature to remove the defect which is the cause, for invalidating the law, by the appropriate legislation is well recognised. However, such legislative power is to be exercised in a manner that it would no more be possible for the court, to arrive at the same verdict under the changed law. In other words, the every premises of the earlier judgment should be degraded thereby resulting in fundamental change of the basis upon which the earlier judgment was founded. A decision of a Court of law has a binding effect unless the very basis upon which it is made is so altered that the said decision would not have been made in the changed circumstances. It is well settled that a validating Act may even make ineffective judgment and orders of the competent Court provided, it by retrospective legislation removes the cause of invalidity or the basis that has led to those derisions. [Reference : Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, ; AIR 1997 3127 (SC); Bakhtawar Trust and Others Vs. M.D. Narayan and Others, ; Dharam Dutt and Others Vs. Union of India (UOI) and Others,]. However, the Hon"ble Supreme Court has specifically held that the legislature cannot negate a prior judgment of the Constitutional Court of Law except by legislative Acts, which alter the very basis of the earlier judgment. Any other attempt would sound the death knell of the rule of Law, as has been observed by the Hon"ble Supreme Court in the following decisions. [Reference : People's Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another, ; P. Sambamurthy v. State of Andhra Pradesh, AIR 1987 SC 663 and Dharam Dutt and Others Vs. Union of India (UOI) and Others, .

39. In view of the aforesaid judgments of the Hon"ble Supreme Court, for judging as to whether the earlier judgment of the Hon"ble Supreme Court has been rendered inoperative or no more good law by the subsequent legislative enactment of the Parliament following two issues arise--first, what was the basis of the earlier decision; and second, what, if any, may be said to be the removal of that basis. (Reference : para 27 of Bakhtawar Trust case (supra)). In the Constitutional Bench judgment of the Hon"ble Supreme Court in the matter of Cauvery Water Dispute Tribunal 1993 (1) Suppl. SCC 96, it has held as follows :

"The principle which emerges from these authorities is that the legislature can change the basis on which a decision is given by the Court and thus change the law in genera], which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter paries and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal."

40. It is settled that an amending Act purely clarificatory in nature will have retrospective effect. [Reference : Kabul Singh Vs. Kundan Singh and Others,]. Whether an Amending Act is retrospective and declaratory in operation or prospective would depend upon the purposes of the Act, object of the Amending Act and the language used.

41. What should be the extent for the minorities educational institutions to admit students of minority group would depend on variable factors. The situation would be according to the type of the education and nature of the institution. Suffice is to point out that higher the level, lesser should be the reservation. [Reference : para 149 and 151 of T.M.A. Pai Foundation case (supra)]. However, it is for the State authorities to properly balance the interest of all. The relevant authority for determining the quantum of reservation in case of minority university incorporated under Central Statute, is the Central Government. [Reference : Bharati Vidyapeeth [Deemed University] and Others Vs. State of Maharashtra and Another,]. The Constitutional Bench of Hon"ble Supreme Court in the case of Saurabh Chaudhary (2003) 1 SCC 146 has held that reservation can be in particular cases up to 50% of the total seats for post graduate medical courses on the basis of the institutional preference. Findings :

42. Part-III of the Constitution with sub-title "Fundamental Rights" contains Articles 12 to 35. The rights guaranteed under the aforesaid Articles are guaranteed against the State. The "State" in turn include within its ambit the Government and the State Legislature or any local or other authority within the territory of India or under the control of India (reference Article 12). Articles 12 to 35 make distinction between a citizen and a person. Certain rights are conferred on any person e.g. Right to equality, contained in Article 14, rights guaranteed under Articles 20, 21, 25. and 27. Similarly certain fundamental rights are conferred only on citizen e.g. right to freedom contained in Article 19, right guaranteed under Articles 29 and 30. Rights available to persons including corporations which are juristic persons or persons in the eyes of law. So far as fundamental rights guaranteed to the citizens are concerned such rights are available only to citizens (natural persons). Such fundamental rights which are available to citizens are not available to corporations or other body corporates which they do not answer the description of citizen. Suffice it to refer the judgments of the Hon"ble Supreme Court in the cases of Hans Muller of Nurenburg Vs. Superintendent, Presidency Jail, Calcutta and Others, and Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, .

43. The facts qua the establishment of Aligarh Muslim University were subject matter of consideration before the Hon''ble Supreme Court in the case of Azeez Basha (supra) and the Hon''ble Supreme Court after referring to the historical background of the establishment of the Aligarh Muslim University has recorded its conclusion. It would be worthwhile to refer to para 29 of the said judgment.

"We are, therefore, of opinion that the Aligarh University was neither established nor administered by the Muslim minority and therefore there is no question of any amendment to the 1920 Act being unconstitutional under Article 30(1) for that Article does not apply at all to the Aligarh University."

44, From the aforesaid judgment of the Hon''ble Supreme Court it is to be seen as to whether the conclusion about establishment of the Aligarh Muslim University is solely based upon the interpretation of provisions (which have since been amended) of the Aligarh Muslim University Act, 1920, as were existing on the date of consideration or is based upon various factors and over all reading of the Act itself. If the answer to the question is that the findings are based solely on the provisions (which have since been amended) of the Aligarh Muslim University Act, 1920, as they then stood the counsel for the respondents would be justified in contending that the foundation of the judgment has since been amended/removed by the Parliament, by means of the Amending Act of 1981, and, therefore, the law laid down by the Hon''ble Supreme Court in the case of Azeez Basha (supra) no more holds good. To that extent the amendment made by the Parliament cannot be said to be a brazen overruling of the judgment of the Hon''ble Supreme Court. It is only at that stage the Court has to be seen as to whether the amendments made by the Act of 1981 so fundamentally alter the basis/foundation of the judgment of the Hon''ble Supreme Court in the case of Azeez Basha (supra) or not?

45. The Court may therefore reproduce relevant part of the judgment of the Hon''ble Supreme Court qua the minority status of Aligarh Muslim University. The relevant paras are reproduced below :

"(3) It is necessary to refer to the history previous to the establishment, of the Aligarh University in 1920 in order to understand the contentions raised on either side. It appears that as far back as 1870 Sir Syed Ahmad Khan thought that the backwardness of the Muslim community was due to their neglect of modern education. He therefore conceived the idea of imparting liberal education to Muslims in literature and science while at the same time instruction was to be given in Muslim religion and traditions also. With this object in mind, he organised a Committee to devise ways and means for educational regeneration of Muslims and in May, 1872 a society called the Muhammadan Anglo-Oriental College Fund Committee was started for collecting subscriptions to realise the goal that Sir Syed Ahmad Khan had conceived. In consequence of the activities of the committee a school was opened in May, 1873. In 1876, the school became a High School and in 1877 Lord Lytton then Viceroy of India, laid the foundation stone for the establishment of a college. The Muhammadan Anglo-Oriental

College, Aligarh (hereinafter referred to as the M.A.O. College) was established thereafter and was, it is said, a flourishing institution by the time Sir Syed Ahmad Khan died in 1898.

(4) It is said that thereafter the idea of establishing a Muslim University gathered strength from year to year at the turn of the century and by 1911 some funds were collected and a Muslim University Association was established for the purpose of establishing a teaching University at Aligarh. Long negotiations took place between the Association and the Government of India, which eventually resulted in the establishment of the Aligarh University in 1920 by the 1920 Act. It may be mentioned that before that a large sum of money was collected by the Association for the University as the Government of India had made it a condition that rupees thirty lakhs must be collected for the university before it could be established. Further it seems that the existing M.A.O. College was made the basis of the University and was made over to the authorities established by the 1920 Act for the administration of the university along with the properties and funds attached to the college the major part of which had been contributed by Muslims though some contributions were made by other communities as well.

(5) It is necessary now to refer in some detail to the provisions of the 1920 Act to see how the Aligarh University came to be established. The long title of the 1920 Act is in these words--

"An Act to establish and incorporate a teaching and residential Muslim University at Aligarh."

The preamble says that "it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh, and to dissolve the Societies registered under the Societies Registration Act, 1860 which are respectively known as the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association, and to transfer and vest in the said University all properties and rights of the said Societies and of the Muslim University Foundation Committee." It will be seen from this that the two earlier societies, one of which was connected with the M.A.O. College and the other had been formed for collecting funds for the establishment of the University at Aligarh, were dissolved and all their properties and rights and also of the Muslim University Foundation Committee, which presumably collected funds for the proposed university were transferred and vested in the University established by the 1920 Act.

(6) Section 3 of the 1920 Act laid down that "the First Chancellor, Pro-Chancellor and Vice-Chancellor shall be the persons appointed in this behalf by a notification of the Governor General in Council in the Gazette of India and the persons specified in the Schedule as the first members of the Court", and they happened to be all Muslims. Further Section 3 constituted a body corporate by the name of the Aligarh Muslim University and this body corporate was to have perpetual succession and a Common Seal and could sue and be sued by that name. Section

4 dissolved the M.A.O. College and the Muslim University Association and all property, movable and immovable, and all rights, power and privileges of the two said societies, and all rights, powers and privileges of the Muslim University Foundation Committee were transferred and vested in the Aligarh University and were to be applied to the objects and purposes for which the Aligarh University was incorporated. All debts, liabilities and obligations of the said societies and Committee were transferred to the University, which was made responsible for discharging and satisfying them. All reference in any enactment to either of the societies or to the said Committee were to be construed as reference to the University. It was further provided that any will deed or other documents, whether made or executed before or after the commencement of the 1920 Act, which contained any bequest, gift or trust in favour of any of the said societies or of the said committee would, on the commencement of the 1920 Act be construed as if the University had been named therein instead of such society or committee. The effect of this provision was that the properties endowed for the purpose of the M.A.O. College were to be used for the Aligarh University after it came into existence. These provisions will show that the three previous bodies legally came to an end and everything that they were possessed of was vested in the University as established by the 1920 Act. Section 5 provided for the powers of the University including the power to hold examinations and to grant and confer degrees and other academic distinctions."

46. Paras 6, 7, 8, 9, 10 and 13 of the aforesaid judgment deal with various provisions of the Act of 1920. Paras 14 to 16 deal with the amendments made in the aforesaid Act by Amending Act of 1951. Para 17 deals with the amendments made in the Act of 1920 by amending Act of 1965. After noticing the aforesaid statutory provisions the Hon"ble Supreme Court has held as follows :

"(18) The contention of the petitioners is that by these drastic amendments in 1965 the Muslim minority was deprived of the right to administer the Aligarh University and that this deprivation was in violation of Article 30(1) of the Constitution; and it is to this question we turn now,

(19) Under Article 30(1), "all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice". We shall proceed on the assumption in the present petitions that Muslims are a minority based on religion. What then is the scope of Article 30(1) and what exactly is the right conferred therein on the religious minorities? It is to our mind quite clear that Article 30(1) postulates that the religious community will have the right to establish and administer educational institutions of their choice meaning thereby that where a religious minority establishes an educational institution it will have the right to administer that. An argument has been raised to the effect that even though the religious minority may not have established the educational institution, it will have the right to administer it, if by some process it had been administering the same before the Constitution came into force. We are not prepared to accept this argument. The Article in our

opinion clearly shows that the minority will have the right, to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious; minority would have the right to administer it because, for some reasons or the other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it. In this connection our attention was drawn to In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, , where, it is argued, this Court had held that the minority can administer an educational institution even though it might not have established it. In that case an argument was raised that under Article 30(1) protection was given only to educational institutions established after the Constitution came into force. That argument was turned down by this Court for the obvious reasons that if that interpretation was given to Article 30(1) it would be robbed of much of its content. But that case in our opinion did not lay down that the words "establish and administer" in Article 30(1) should be read disjunctively, so that though a minority might not have established an educational institution it had the right to administer it. It is true that at p. 1062 (of SCR): at p. 982 (of AIR) the Court spoke of Article 30(1) giving two rights to a minority i.e. (i) to establish and (ii) to administer. But. that was said only in the context of meeting the argument that educational institutions established by minorities before the Constitution came into force did not have the protection of Article 30(1). We are of opinion that nothing in that case justifies the contention raised on behalf of the petitioners that the minorities would have the right to administer an educational institution even though the institution may not have been established by them. The two words in Article 30(1) must be read together and so read the Article, gives the right to the minority to administer institutions established by it. If the educational institution has not been established by a minority it cannot claim the right to administer it under Article 30(1). We have therefore to consider whether the Aligarh University was established by a Muslim minority; and if it was so established, the minority would certainly have the right to administer it.

(20) We should also like to refer to the observations in The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others, . In that case this Court, observed while dealing with Article 26(a) and (d) of the Constitution that even if it be assumed that a certain religious institution was established by a minority community it may lose the right to administer it in certain circumstances. We may in this connection refer to the following observations at p.414 (of SCR): (at p. 1416 of AIR) for they apply equally to Article 30(1).

If the right to administer the properties never vested in the denomination or had been validly surrendered by it or had otherwise been effectively and irretrievably lost to it. Article 26 cannot be successfully invoked."

We shall have to examine closely what happened in 1920 when the 1920 Act was passed to decide (firstly) whether in the face of that Act it could be said that the Aligarh University was established by the Muslim minority, (secondly) whether the right to administer it, ever vested in the minority and (thirdly) even if the right to administer some properties that came to the University vested in the minority before the establishment of the Aligarh University, whether it had been surrendered when the Aligarh University came to be established.

(21) Before we do so we would like to say that : the words "educational institutions" are of very wide import and would include a university also. This was not disputed on behalf of the Union of India and therefore it may be accepted that a religious minority had the right to establish a university under Article 30(1). The position with respect to the establishment of Universities before the Constitution came into force in 1950 was this. There was no law in India which prohibited any private individual or body from establishing a university and it was therefore open to a private individual or body to establish a university. There is a good deal in common between educational institutions which are not universities and those which are universities. Both teach students and both have teachers for the purpose. But what distinguishes a university from any other educational institution is that a university grants degrees of its own while other educational institutions cannot. It is this granting of degrees by a university which distinguishes it from the ordinary run of educational institutions. [See *St. David's College, Lampeter v. Ministry of Education* 1951 (1) All ER 559]. Thus in law in India there was no prohibition against establishment of universities by private individuals or bodies and if any university was so established it must of necessity be granting degrees before it could be called a University. But though such a university might be granting degrees it did not follow that the Government of the country was bound to recognise those degrees. As a matter of fact as the law stood upto the time the Constitution came into force, the Government was not bound to recognise the degrees of universities established by private individuals or bodies and generally speaking the Government only recognised degrees of universities established by it by law. No private individual or body could before 1950 insist that the degrees of any university established by him or it must be recognised by Government. Such recognition depended upon the will of the Government generally expressed through statute. The importance of the recognition of Government in the matters of this kind cannot be minimized. This position continued even after the Constitution came into force. It was only in 1956 that by Sub-section (1) of Section 22 of the University Grants Commission Act (No. 3 of 1956), it was laid down that--

"the right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees."

Sub-section (2) thereof further provided that--

"save as provided in Sub-section (1), no person or authority shall confer, or grant, or hold himself or itself as entitled to confer or grant any degree."

Section 23 further prohibited the use of the word "university" by an educational institution unless it is established by law. It was only thereafter that no private individual or body could grant a degree in India. Therefore it was possible for the Muslim minority to establish a university before the Constitution came into force, though the degrees conferred by such a university were not bound to be recognised by Government.

(22) There was nothing in 1920 to prevent the Muslim minority, if it so chose to establish a university; but if it did so the degrees of such a university were not bound to be recognised by Government. It may be that in the absence of recognition of the degrees granted by a university, it may not have attracted many students, and that is why we find that before the Constitution came into force, most of the universities in India were established by legislation. The Aligarh University was also in the same way established by legislation and it provided u/s 6 of the 1920 Act that--

"the degrees, diplomas and other academic distinctions granted or conferred to or on person by the university shall be recognised by the Government as are the corresponding degrees, diplomas and other academic distinctions granted by any other university incorporated under any enactment."

It is clear therefore that even though the Muslim minority could have established at Aligarh in 1920 a university, it could not insist that degrees granted by such a university should be recognised by Government. Therefore when the Aligarh University was established in 1920 and by Section 6 its degrees were recognised by Government, an institution was brought into existence which could not be brought into existence by any private individual or body or such individual or body could not insist upon the recognition of the degrees conferred by any university established by it. The enactment of Section 6 in the 1920 Act is a very important circumstance which shows that the Aligarh University when it came to be established in 1920 was not. established by the Muslim minority for the minority could not insist on the recognition by Government of the degrees conferred by any university established by it.

(23) It is true, as is clear from the 1920 Act, that the nucleus of the Aligarh University was the M.A.O. College, which was till then a teaching institution under the Allahabad University. The conversion of that college (if we may use the expression) into a university was however not by the Muslim minority; it took place by virtue of the 1920 Act which was passed by the Central legislature. There was no Aligarh university existing till the 1920 Act was passed. It was brought into being by the 1920 Act and must therefore be held to have been established by the Central Legislature which by passing the 1920 Act incorporated it. The fact that it was based on the M.A.O. College, would make no

difference to the question as to who established the Aligarh University. The answer to our mind as to who established the Aligarh University is clear and that is that it was the Central Legislature by enacting the 1920 Act that established the said University. As we have said already, the Muslim minority could not establish a university whose degrees were bound to be recognised by Government as provided by Section 6 of 1920 Act-the one circumstance along with the fact that without the 1920 Act the university in the form that it had, could not come into existence shows clearly that the Aligarh University when it came into existence in 1920 was established by the Central Legislature by the 1920 Act. It may be that the 1920 Act was passed as a result of the efforts of the Muslim minority. But that does not mean that the Aligarh University when it came into being under the 1920 Act was established by the Muslim minority.

(25) What does the word "established" in Article 30(1) mean? In Bouvier's Law Dictionary, Third Edition, Vol. 1, it has been said that the word "establish" occurs frequently in the Constitution of the United States and it is there used in different meaning; and five such meanings have been given, namely--(1) to settle firmly, to fix unalterably, as to establish justice; (2) to make or form; as, to establish a uniform rule of naturalization; (3) to found, to create, to regulate; as, Congress shall have power to establish post offices; (4) to found, recognise, confirm or admit; as, Congress shall make no law respecting an establishment of religion; (5) to create, to ratify, or confirm, as We, the people, etc., do ordain and establish this Constitution. Thus it cannot be said that the only meaning of the word "establish" is to be found in the sense in which an educational institution is founded and we shall have to see in what sense the word has been used in our Constitution in this Article. In Shorter Oxford English Dictionary, Third Edition, the word "establish" has a number of meanings i.e. to ratify, confirm, settle, to found, to create. Here again founding is not the only meaning of the word "establish"; and it includes creation also. In Webster's Third New International Dictionary, the word "establish" has been given a number of meanings, namely, to found or base squarely, to make firm or stable, to bring into existence, create, make, start, originate. It will be seen that here also founding is not the only meaning; and the word also means "to bring into existence". We are of opinion that for the purpose of Article 30(1) the word means "to bring into existence" and so the right given by Article 30(1) to the minority is to bring into existence an educational institution and if they do so, to administer it. We have therefore to see what happened in 1920 and who brought the Aligarh University into existence.

(26) From the history we have set out above, it will be clear that those who were in charge of the M.A.O. College, the Muslim University Association and the Muslim University Foundation Committee were keen to bring into existence a university at Aligarh, There was nothing in law then to prevent them from doing so, if they so desired without asking Government to help them in the matter. But if they had brought into existence a university on their own, the degrees of that university were not bound to be recognised by Government. It seems to us that

it must have been felt by the persons concerned that it would be no use bringing into existence a university, if the degrees conferred by the said university were not to be recognised by Government. That appears to be the reason why they approached the Government for bringing into existence a university at Aligarh, whose degrees would be recognised by Government and that is why we find Section 6 of the 1920 Act laying down that "the degrees, diplomas, and other academic distinctions granted or conferred to or on persons by the university shall be recognised by the Government."... It may be accepted for present purposes that the M.A.O. College and the Muslim University Association and the Muslim University Foundation Committee were institutions established by the Muslim minority and two of them were administered by Societies registered under the Societies Registration Act (No. 21 of 1860). But if the M.A.O. College was to be converted into a university of the kind whose degrees were bound to be recognised by Government, it would not be possible for those who were in-charge of the M.A.O. College to do so. That is why the three institutions to which we have already referred approached the Government to bring into existence a university whose degrees would be recognised by Government. The 1920 Act was then passed by the Central Legislature and the university of the type that was established thereunder, namely, one whose degrees would be recognised by Government, came to be established. It was clearly brought into existence by the 1920 Act for it could not have been brought into existence otherwise. It was thus the Central Legislature which brought into existence the Aligarh University and must be held to have established it. It would not be possible for the Muslim minority to establish a university of the kind whose degrees were bound to be recognised by Government and therefore it must be held that the Aligarh University was brought into existence by the Central Legislature and the Government of India. If that is so, the Muslim minority cannot claim to administer it, for it was not brought into existence by it. Article 30(1), which protects educational institutions brought into existence and administered by a minority cannot help the petitioners and any amendment of the 1920 Act would not be ultra vires Article 30(1) of the Constitution. The Aligarh University not having been established by the Muslim minority, any amendment of the 1920 Act by which it was established, would be within the legislative power of Parliament subject of course to the provisions of the Constitution. The Aligarh University not having been established by the Muslim minority, no amendment of the Act can be struck down as unconstitutional under Article 30(1).

(27) Nor do we think that the provisions of the Act. can bear out the contention that it was the Muslim minority which was administering the Aligarh University after it: was brought into existence. It is true that, the proviso to Section 28(1) of the 1920 Act said that "no person other than a Muslim shall be a member of the Court" which was declared to be the supreme governing body of the Aligarh University and was to exercise all the powers of the University, not otherwise provided for by that Act. We have already referred to the fact that Select Committee was not happy about this provision and only permitted it in the Act

out of deference to the wishes of preponderating Muslim opinion.

(29) These provisions in our opinion clearly show that the administration was also not vested . in the Muslim minority; on the other hand it was vested in the statutory bodies created by the 1920 Act, and only in one of them, namely, the Court, there was a bar to the appointment of any one else except a Muslim, though even there some of the electors for some of the members included non-Muslims. We are therefore of opinion that the Aligarh University was neither established nor administered by the Muslim minority and therefore there is no question of any amendment to the 1920 Act being unconstitutional under Article 30(1) or that Article does not apply at all to the Aligarh University."

(Note : A feeble attempt was also made on behalf of the respondents to create a doubt with regard to law so declared by Hon"ble Supreme Court with reference to the opinion expressed by Constitutional Expert Sri H.M. Seervai in his book "Constitutional Law of India". The said contention, being beyond the scope of the proceedings in the present writ petition, was rightly given up.)

47. The Hon"ble Supreme Court has dealt in great detail the historical background in which the Muhammadan Anglo Oriental College, Aligarh and Muslim University Association were dissolved their properties and rights were transferred and declared to be vested in the University. Section 3 of the Act declared the constitution of a body corporate by the name of Aligarh Muslim University having perpetual seal and a right to sue and to be sued by that name.

48. The dissolution of M.A.O. College and the Muslim University Association was also specifically noticed in Section 4 of the Act. The effect of Section 3, Section 4 read with Section 6 of the original Act vis-a-vis the University being brought in existence by a legislative Act are the main basis for the decision of the Hon"ble Supreme Court in Azeez Basha. The said sections have not been amended and holds ground even today. Mere deletion of the word "Establish" from the long title and amendment to Section 2(1), whereby the University has been defined to be an educational institution of their choice, established by the Muslims of India, which originated as M.A.O. College, Aligarh and which was subsequently incorporated as Aligarh Muslim University in itself is not sufficient to hold that the Aligarh Muslim University, which was a creation of a legislative Act, has not been so created. The entire Act has to be read as a whole, amendment in the long title and few sections of the Act are not themselves sufficient for record a finding that the Aligarh Muslim University is a minority institution covered by Article 30 of the Constitution of India. In the case of the Bakhtawar Trust (supra), the Hon"ble Supreme Court in paragraph 27 has held that two questions ought to be answered for judging as to whether the basis, upon which the earlier decision of the Court was based, had been changed for the purposes of coming to a conclusion that the earlier law declared by the Court is no more good law. The questions are (a) what was the basis of the earlier decision, and (b) what if any may be said to be the removal of that basis. From the judgment of Azeez Basha, which has been quoted in extension hereinabove, this Court has no hesitation to

hold that the basis of the judgment of the Hon''ble Supreme Court in Azeez Basha has not been so fundamentally altered so as to come to a conclusion that if the amendments made under the 1981 Act had been there before the Hon''ble Supreme Court at the time of decision of Azeez Basha the judgment would have been otherwise. The Hon''ble Supreme Court has clarified the meaning to be attached to the word "Establish" as mentioned in Article 30 of the Constitution of India and has held that the same means to bring into existence. The bringing into existence of the Aligarh University by an Act of Legislature has been considered by the Hon''ble Supreme Court in the light of the historical background and various provisions of the Act including Sections 3, 4 and 6 which remain unamended. The Hon''ble Supreme Court has taken note of the fact that the foundation of the Aligarh Muslim University lay in the M.A.O. College as well as in the Muslim University Association. Thereafter having regard to Sections 3, 4 and 6 read with other sections of the Act whereby Aligarh Muslim University was declared to be a body corporate having perpetual succession and a common seal it has been held the Aligarh Muslim University was a statutory body distinct from its members who had contributed to incorporation of the same.

49. The legal position with regard to fundamental rights being altered with the incorporation of a company/ corporation has been a subject matter of consideration before the Hon''ble Supreme Court in the case of Dharam Dutt (supra) as well as in The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others, , it has specifically been held that with incorporation, the corporate body become a distinct legal entity vis-a-vis the members, who have contributed to the incorporation. Fundamental rights, which are available to the citizens (e.g. Articles 19, 29 and 30) under the Constitution of India, are not available to incorporated body's and as they do not answer the description of citizen of India. Aligarh Muslim University having been incorporated as a legal juristic person under a legislative Act of 1920, as such cannot claim fundamental right guaranteed for citizens under the Constitution of India nor the members of the minority community can claim such a fundamental right in respect of a body incorporated.

50. It is no doubt true that in the case of Azeez Basha it has been held that institution as referred to in Article 30 may include the University also. The aforesaid conclusion of the Hon''ble Supreme Court has to be read in the background, in which it has been so held. The Hon''ble Supreme Court itself in the case of Azeez Basha has recorded that a private University could be created prior to the enforcement of University Grant Commission Act, 1956 although the degree awarded by the said University may not be necessarily recognised by the Government. Meaning thereby that prior to University Grant Commission Act there was no bar for a private University being established and degree awarded, which may or may not be recognised by the State. As a matter of fact reference may be had to the following .institutions, which were awarding degrees/ certificates without having been established by any Act of Legislature, prior to the enforcement of the University Grant Commission and such degrees/

certificates were recognised by the State :

1. Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, .
2. The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, .

51. Subsequent to the enforcement of the University Grant Commission Act, 1956 a private University can be established provided such University is granted recognition as "deemed University" by the University Grant Commission. Therefore, to that extent minority citizens may establish a minority University subject to it being declared a "deemed University" by the University Grant Commission.

52. In view of the aforesaid, the Court is of the opinion that the judgment of the Hon"ble Supreme Court in the case of Azeez Basha (supra) was based on over all consideration of the provisions of the Act and the historical background, in which Aligarh Muslim University was brought in existence. Such basis, on which the aforesaid judgment was founded has not been so fundamentally altered under Act of 1981 so as to create a situation that in the changed circumstances the Court could not have rendered said judgment.

53. This leads us to the second issue namely whether the members of the minority community, who are said to have founded the University, retained a right to administer the University even after its incorporation. From Section 3 read with Sections 13, 15, 16 to 22 of the Act, it is apparently clear that the administration of the University was vested in the officers and the statutory bodies, which were constituted under the Act itself and at no point of time the founders, who had contributed to establish the University claimed any right to administer the same. The administration of the University has all along vested in the officers and the bodies continued under the statutory provisions itself. The Hon"ble Supreme Court has, therefore, held in the case of Azeez Basha that the right of administration was never vested in the Muslim minority. Subsequent to the creation of the University itself under 1920 Act.

54. The contention of the counsel for the respondent to the effect that the right of administration automatically follows once it is established that the institution is established by a minority community is too broad a proposition to be accepted. From the judgments, which have been noticed hereinabove, it is settled that Article 30 consists of two part (1) right to establish (2) right to administer. Both rights are to be read conjunctively. [Reference : T.M.A. Pai Foundation and St. Stephen's College (supra)]. However, it does not necessary to follow that every time the citizens of minority community establishes an institution, they necessarily desires that said institution must be administered by the members of the minority community only. It is always open to the founder members, who establish an institution, to handover the administration of the same to person who may not belonging to minority community and therefore it is not always necessary that the right to administer the minority institution would follow

automatically, once the institution is established by the minority. The right to administer depend upon the wish and desire of the founder members. From the facts, which have been noticed in the case of Azeez Basha and as apparent from the Act of 1920, right to administer the University was ever retained by the members of the Muslim community. As a matter of fact, the right to administer had been willingly surrendered in favour of the statutory authorities and bodies constituted under the Act. Suffice is to reproduce para 20 of the judgment in Azeez Basha :

"(20) We should also like to refer to the observation in *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, . In that case this Court observed while dealing with Article 26(a) and (d) of the Constitution that even if it be assumed that a certain religious institution was established by a minority community it, may lose the right to administer it in certain circumstances. We may in this connection refer to the following observations at p. 414 (of SCR): (at p. 1416 of AIR) for they apply equally to Article 30(1).

""If the right to administer the proper ties never vested in the denomination or had been validly surrendered by it or had otherwise been effectively and irretrievably lost: to it, Article 26 cannot be successfully invoked."

55. At this stage it would be worthwhile to refer to the challenge, which was made to the amendment incorporated in 1920 Act by the amending Act of 1951 and Act of 1965. The proviso to Section 23(1) of the Act, 1920, which provided that all members of the Court would only be Muslims, was deleted vide Amending Act of 1951. In order to give effect to the said amendment, the Amending Act of 1965, provided that all members of the Court as well as of the Executive Council will cease to hold such office from the appointed date i.e. 20th May, 1965. The provisions of the aforesaid Act of 1951 and 1965 were challenged before the Hon'ble Supreme Court specifically by the Muslims only, who alone could claim a right as citizens to seek protection under Article 30 of the Constitution of India. The challenge was repelled by Hon'ble Supreme Court after recording a finding amongst other that the right to administer was never vested in Muslim minority.

56. That an other anomaly, which may be created on acceptance of the contention raised by the counsel, for the University and Union of India would be that, in case it is held that amendment incorporated vide Act 1981 declare Aligarh Muslim University to be a minority institution with Reference to Article 30, it would logically follow that the amendments made vide Amending Act, 1951 and the Amending Act of 1965, whereby the constitution of the governing bodies was altered by the legislature would ipso facto be rendered void, being hit by Article 13 of the Constitution of India inasmuch as the amendments made by the Act of 1951 and 1965 would violate the rights of the minority institutions vested under Article 30 of the Constitution. The contention of respondents, if accepted, would create a situation whereby the legislative Acts of 1951 and 1965 declared constitutionally valid by the Hon'ble Supreme Court, would be rendered void

being hit by Article 13 of the Constitution of India.

57. In the opinion of the Court the power to amend the statutory provisions cannot be extended to such an extent so as to create a situation whereby legislative Act, declare constitutionally valid, could be rendered unconstitutional by subsequent legislative enactment.

58. In view of the facts noticed and conclusions arrived by the Hon"ble Supreme Court in the case of Azeez Basha qua the Aligarh Muslim University being brought into existence, it cannot be said that the said decision was solely based on the interpretation of the statutory provisions, so as to enable the legislature to declare vide Section 2(1) that the Aligarh Muslim University has been established by the Muslim minority. The declaration in that regard u/s 2(1) is on the face of it is an attempt to negate the judgment of the Hon"ble Supreme Court specifically when such declaration has been made without altering the foundation/basis on which the judgment in the case of Azeez Basha was based. Section 2(1) has the effect of setting aside an individual decision inter parte. Such an Act on the part of the legislature amounts to exercise of judicial power, and functioning as an Appellate Court or Tribunal. [Reference : Judgment of the Hon"ble Supreme Court in the case of Cauvery Water Tribunal (supra)]. In order to save Section 2(1), as substituted under 1981 Act from being stuck down on the ground of brazen overruling of the judgment of the Hon"ble Supreme Court in Azeez Basha it is necessary to read down the said provision in a manner so as to hold that the word "Established" referred to in Section 2(1) necessarily refers to Muhammadan Anglo Oriental College, which was established by Muslims and was subsequently incorporated into the University, as has been held in the case of Azeez Basha. Accordingly it is held that the word "Established" in Section 2(1) may be read with reference to Muhammadan Anglo Oriental College only, which was established by Muslims.

59. It is also surprising to note that the Academic Council and Executive Council of the Aligarh Muslim University, which have been constituted under the statutory provisions of the Aligarh Muslim University Act itself and declared to be a body corporate (Section 3 of the Act), started asserting a fundamental right guaranteed by Article 30 of the Constitution of India. As already held by the Hon"ble Supreme Court, such rights are available to citizens only and therefore the statutory body like the Academic Council and Executive Council could not have claimed any protection for themselves under Article 30 of the Constitution so as to provide reservation for the Muslim students nor it was open to the Executive Council and the Academic Council, which are creature of legislative enactment itself to assert that Aligarh Muslim University is entitled to the benefits of Article 30 of the Constitution of India, specifically when Academic Council and the Executive Council in control of the University on date have been reconstituted by the Amending Acts of 1951 read with the Amending Act of 1965, the constitutionality whereof has been upheld by the Hon"ble Supreme Court only after coming to the conclusion that Aligarh Muslim University was not a

minority institution.

60. The contention raised on behalf of the counsel for the University with regard to Aligarh Muslim University being not a party to the writ petition of Azeez Basha may also be dealt with. In the case of Nabhi Raja and R.C. Cooper (supra), the Hon'ble Supreme Court has held that a person not possessed of a fundamental right cannot challenge the validity of a law on the ground that it is unconstitutional. Fundamental right (Article 30 of the Constitution of India) are available to a citizen of India only. Admittedly the Aligarh Muslim University cannot be held to be a citizen, as it is a body incorporate and therefore on its own it cannot claim protection of Article 30 of the Constitution of India. It is only the Muslim minority members who can claim such protection and could challenge the validity of amending Acts of 1951 and 1965. It makes no difference as to whether the Aligarh Muslim University was a party in the case of Azeez Basha or not. Even otherwise at no point of time any attempt was made by the Aligarh Muslim University to get itself impleaded those proceedings nor the law declared by the Hon'ble Supreme Court in the case of Azeez Basha was ever questioned by any review petition.

61. Although the Court has reservation with regard to the extent of reservation provided in respect of Post Graduate Medical Courses by the Aligarh Muslim University (i.e. 50% of the total seats) as well as to the manner in which the said reservation has been implemented i.e. one category of the seats being completely reserved for Muslim students (50% of the total seats required to be filled by open examination to be conducted by the Aligarh Muslim University), both the aforesaid issues are not required to be gone into any further inasmuch as this Court has held that Aligarh Muslim University is not a minority institution, entitled to protection of Article 30 of the Constitution of India and therefore has no right to provide any reservation on the basis of religion. The reservation provided by the Academic Council of the Aligarh Muslim University vide its resolution dated 15th January, 2005 the resolution of the Executive Council dated 19th February, 2005 and the approval granted by the Central Government vide letter dated 25.2.2005 to that extent are hit by Article 29(2) of the Constitution of India and as such cannot be legally sustained.

62. It is declared that no reservation can be provided by the Aligarh Muslim University for admission of students on the basis of religion only and any decision in that regard, being hit by Article 29(2) of the Constitution of India, would be patently illegal and without jurisdiction.

63. The objection with regard to locus and the writ petitions having been infructuous because of subsequent developments may also be dealt with.

64. On behalf of the University it is conceded that students belonging to Muslim community irrespective of their having appeared in All India Entrance Test, as well as their appearance in the examination conducted for the internal students, including the result thereof, have been permitted to appear in the entrance

examination conducted by the Aligarh Muslim University in respect of the 50% of the total seats, which are since reserved for the Muslim students only. It logically follows that if reservation of 50% is done away under order of this Court, the petitioners who are members of other community would have a right to participate in the aforesaid examination held by the University for the 50% of the total seats irrespective of the fact as to whether the petitioners had appeared in the All India Entrance Examination and were successful therein or not, as well as irrespective of the fact that the petitioners who were internal candidates and had appeared in the examination conducted by the Aligarh Muslim University for internal students (25% of the seats). Like the students belonging to Muslim community, petitioners are also entitled to participate in the selection process for admission to Post Graduate Medical Courses against 50% seats to be filled through the entrance examination conducted by the Aligarh Muslim University both for internal as well as external candidates. Such participation in entrance examination could have resulted in the petitioners being declared entitled for admission to Post Graduate Courses and in case where the petitioners have been successful in other two examinations, to improve their ranking so as to become entitled for being admitted to a particular subject of their choice i.e. the popular subject like Medicine, Surgery etc.

65. In such circumstances, the participation of the petitioners in All India Entrance Examination, their admission to Post Graduate Medical Course by the Aligarh Muslim University on the basis of the other two examinations, is of no consequence so far as the right of the petitioners to participate in the entrance examination conducted by the Aligarh Muslim University for the 50% of the total seats which have since been reserved for students belonging to Muslim community only is concerned.

66. Dr. Naresh Agrawal (Writ Petition No. 15504 of 2005) has appeared in the admission test held by the Aligarh Muslim University as an external candidate staking his claim against 50% of the seats which were subsequently reserved for Muslims. He has been refused consideration because of the subsequent resolution of the Academic Council and Executive Council, which are under challenge in the present writ petition.

67. In the opinion of the court, the writ petitions have neither become infructuous on the basis of the subsequent developments nor it can be said that the petitioners have no locus to challenge the reservation, which has been provided for in respect of Muslim students only. Objections in that regard are accordingly rejected.

68. Normally this Court would not have interfered with the admissions already granted on the basis of examinations held after the students have already been admitted and a considerable time has lapsed, however, this Court is also conscious of the fact that reservations as has been applied by the Aligarh Muslim University, for Muslim students only, is totally unconstitutional and in teeth of Article 29(2) of the Constitution. Therefore, this Court cannot permit such

flagrant violation of the Constitution of India, and the conscience of the Court does not permit that admissions granted for Post Graduate Medical Courses on the strength of reservation provided for Muslim students only by the Aligarh Muslim University to stand. Reference may also be had to the fact that under the interim order of this Court dated 11.3.2005 it was provided that any admission granted during the pendency of the writ petition would abide the final outcome of the petition. Therefore, the admission, which had been granted in pursuance of the reservation applied, were made subject to the final orders to be passed in the present petition.

69. At the fag end of the hearing in the present petition, counsel for the University brought to the knowledge of the Court that a similar writ petition is pending consideration before the Hon"ble Supreme Court of India. However, he fairly conceded that it is for the Court to decide as to whether the proceedings of this petition be kept in abeyance till decision of the Hon"ble Supreme Court. Since this Court has already heard the counsel for the parties at great length (for weeks together) after exchange of pleadings and further since the Hon"ble Supreme Court has not passed any interim order restraining the disposal of the present writ petition, . this Court deems it fit and proper to decide the present writ petition on the merits of the contention raised before the Court itself.

70. Accordingly, the writ petitions are allowed. It is held that the judgment of the Hon"ble Supreme Court in the case of Azeez Basha still holds good even subsequent to the Aligarh Muslim University Amendment Act, 1981 (Act No. 62 of 1981). Aligarh Muslim University is not a minority institution within the meaning of Article 30 of the Constitution of India. Therefore, the University cannot provide any reservation in respect of the students belonging to a particular religious community. The resolution of the Academic Council dated 15th January, 2005, the decision of the Executive Council dated 19th February, 2005 as also the approval granted thereto under letter of the Union of India dated 25th February, 2005 are hereby quashed. The admissions granted in pursuance of the aforesaid reservation stand cancelled. The Aligarh Muslim University is directed to conduct a fresh entrance examination in respect of the 50% seats of the Post Graduate Medical Courses, preferably within one month from the date a certified copy of this order is filed before the Vice-Chancellor of the University, without making any reservation on the basis of religion.