

(1974) 02 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 195 of 1973 with Miscellaneous Judicial Case No. 156 of 1973

M. Mushtaque Ali Khan and Others

APPELLANT

Vs

The Magadh University and Others

RESPONDENT

Date of Decision : 02-02-1974

Acts Referred:

Constitution of India, 1950 — Article 2(1), 29(1), 30(1)

Citation : AIR 1974 Patna 341 : (1974) 7 PLJR 332

Hon'ble Judges : N.L. Untwalia, C.J.;Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : Basudeva Pd. and Narendra Pd. and Ors. in C.W.J.C. No. 195 of 1973 and K.D. Chatterji and Ramananda Sinha, in M.J.C. No. 156 of 1973, for the Appellant; K.D. Chatterji, Ramananda Sinha, B.C. Ghosh and Ors. in C.W.J. No. 195 of 1973 and Basudeva Pd. and Renuka Sharma, in M.J.C. No. 156 of 1973, for the Respondent

Judgement

Nagendra Prasad Singh, J.—The petitioners have filed this writ application for quashing the order of the Magadhb, University (hereinafter referred to as the "University"), dated the 18th January, 1973, a copy whereof is annexure "13" to the writ application, suspending the ad hoc Governing Body of Mirza Ghalib College, Gaya (hereinafter referred to as the "College") and constituting an ad hoc committee of persons named in the said order to manage the affairs of the College until a Governing Body was constituted in accordance with the Statutes of the University, and also for quashing certain communications issued by the respondent University, Copies whereof are annexures "8" series and "9" to the writ application. According to the petitioners, the aforesaid order and the communications issued by the University are unauthorised, illegal and arbitrary and amount to an invasion on the fundamental rights of the petitioners guaranteed under Article 30(1) of the Constitution of India.

2. The case of the petitioners is that the Muslim Population of Gaya town and its neighbouring areas decided to start a Muslim Minority College hi the town of

Gaya for imparting modern and scientific education to the students of the Muslim minority Community in a manner which would conserve their distinct language, culture and religion, and, with that end in view, a meeting was held on the 3rd November, 1968, which was attended by distinguished personalities of the Muslim community including Messrs. A. Hafeez, A. Salam and A. Salam Khan and a resolution was passed to that effect and it was decided to name the College as "Mirza Ghalib College, Gaya." A copy of the said resolution is annexure "1" to the writ application. In that connection, another meeting was held on the 24th November, 1968, in which again several Muslim personalities participated and a resolution was passed resolving, inter alia, that a committee consisting of Professor Shakeel Ahmad, Professor Quamar Ahmad and Shree Mahboob Warsi, Advocate, be constituted for carrying out the objects. It was also resolved that a bigger committee should be constituted named "Mirza Ghalib College Council" and whosoever would donate Rupees 500/- would be a member of the said Council. In the said resolution, the following five persons were named as members of the Council:

- (i) Sardar Latifur Rahman,
- (ii) Mahboob Warsi,
- (iii) Syed Muzaffar Nawab,
- (iv) Shafiqur Rahman, and
- (v) Abdus Salam Khan.

The said resolution was signed by Shree A. Hafeez, who was nominated as the President of the College. A copy of the said resolution is annexure "24" to the "affidavit in reply to the application of the intervenors filed on behalf of the "petitioners".

3. The further case of the petitioners is that, on the 25th January, 1969, an ad hoc Governing Body for the College was constituted consisting of 12 members, apart from the Principal and two teachers' representatives. During this period, sufficient funds were collected from the Muslim community for the College and donations of 14 acres of land within the Gaya Municipality and 10 acres of bakasht land were made by the Muslims of the locality for the proposed College. On the 1st February, 1969, an application was filed before the University for affiliation of the proposed College and Rs. 500/- was deposited as inspection cost. A copy of the said application is annexure "2" to the writ application. In the said application it was mentioned that the elites and citizens of Gaya had decided to start and run a Muslim Minority College in the town of Gaya which would "cater mainly to the educational needs and requirements of the students of the Muslim Community." Names of 12 persons to be members of the ad hoc Governing Body of the College, apart from the Principal and two teachers' representatives, were mentioned in the said application. Bye-laws and Rules of the College were framed which were duly approved and adopted at a general

meeting of the committee and copies thereof were sent to the State Bank of India, Gaya and to the respondent University and others. The aforesaid Bye-Laws and Rules were amended by the Councillors from time to time. A copy of the amended "Bye-Laws and Rules of Mirza Ghalib College, Gaya, 1971" is annexure "3" to the writ application.

4. It is alleged that the respondent University, having received the aforesaid application, dated the 1st February, 1969, for affiliation, made certain queries under its communication, dated the 21st March, 1969, which were answered by a letter, dated the 3rd April, 1969, by Shree A. Salam, the Secretary of the College. Copies of the aforesaid two communications are, respectively, annexures "4" and "5" to the writ application. The petitioners have stated in the writ application that, in compliance with the requirements, a sum of Rs. 10,000/- was deposited in cash as security and zamindari bonds for Rupees 30,000/- were purchased and tendered and it was stated that the balance amount of Rupees 20,000/- would be deposited by middle of May, 1969. But, in spite of all requisite conditions having been fulfilled, the respondent University rejected the application for affiliation by its letter, dated the 19th April, 1969, saying that there did not appear to be any need for the establishment of a new college. A copy of the said letter is annexure "6" to the writ application.

5. A representation, dated the 19th May, 1969, was filed before the Chancellor of the University. On the 3rd January, 1970, the Secretary of the Chancellor addressed a demi official letter to the Vice-Chancellor of the University communicating the order passed by the Chancellor on the aforesaid representation, whereby the Vice-Chancellor was requested to examine under what circumstances a University could refuse the affiliation to a College and as to whether such conditions existed to justify the refusal by the University. A copy of the said letter is annexure "16" to the "reply to the counter-affidavit of respondents Nos. 1, 3 and 4" filed on behalf of the petitioners. The Secretary of the College, thereafter, made another application for affiliation to the University on the 19th June, 1970 giving all the details on the form meant for affiliation. Copies of the form duly filled in and the forwarding letter are respectively, annexure "7" to the writ application and annexure "7/1" to the supplementary affidavit filed on behalf of the petitioners on the 22nd January, 1974. In the said form it was stated that Rs. 10,000/- had already been deposited on the 10th April, 1969 and the balance of Rs. 50,000/- was being deposited along with the said application, vide Payment Order of the local State Bank, dated the 19th June, 1970. The respondent University, however, in the meantime purported to nominate several persons as members of the Governing Body of the College under its letters, dated the 29th May, 1971, the 30th May, 1971 and the 20th August, 1971, copies of which are annexures "8" series to the writ application. The question of affiliation was, however, finally decided on the 29th June, 1971 and affiliation was granted for sessions 1970-71 and 1971-72. The respondent University also purported to appoint Shree S.A. Salam as Convener of the Governing Body by a letter, dated the 23rd August, 1971, a copy of which is

annexure "9" to the writ application. It also addressed another letter, dated the 19th April, 1972 to the Convenor of the Governing Body asking him to send a panel of educationists for further action. A copy of this letter is annexure "10" to the writ application.

6. It is the further case of the petitioners that authorities of the respondent University illegally and arbitrarily purported to impose a Governing Body constituted by them, and the then Secretary of the College placed the matter before the ad hoc Governing Body of the College, instead of before the Council of the College, and some of the members of the then ad hoc Governing Body, by their resolution, dated the 16th May, 1972, illegally accepted the imposition of a new and illegal Governing Body constituted by the University, on the condition that the minority character of the institution would be maintained. A copy of the said resolution is annexure "11" to the writ application. When the Councillors of the College learnt about the aforesaid illegal action, a special emergent meeting of the Council was called on the 22nd September, 1972 when it was resolved that the decision taken by some of the members of the ad hoc Governing Body on the 16th May, 1972 was illegal, uncalled for and without jurisdiction and the same was not binding on the College, being against the spirit of the Bye-Laws and the Rules of the College, under which a Muslim Minority College had been envisaged. In the said meeting a new Governing Body of 16 persons was constituted by the Councillors. Out of them, 10 members were named and the remaining 6 were reserved for educationists, guardians" representative to be co-opted by the Governing Body, University representative to be nominated by the University, and for the Principal and two teachers" representatives of the College. It was further resolved in the said meeting of the Council that the University be apprised of the new Governing Body constituted by the Council. A copy of the said resolution is annexure "12" to the writ application.

7. On the 18th January, 1973, the respondent University, however, suspended the Governing Body constituted by it earlier and constituted an ad hoc committee of 7 persons including respondent No. 7, to manage the affairs of the College until a Governing Body was constituted in accordance with the Statutes of the University. A copy of the said impugned order is annexure "13" to the writ application, which, according to the petitioners, amounts to an illegal, arbitrary and unauthorised interference by the respondent University with the fundamental right guaranteed to the minority community under Article 30(1) of the Constitution to establish and administer educational institutions.

8. A counter-affidavit has been filed on behalf of respondents 1, 3 and 4, that is, on behalf of the University and its authorities. Another counter-affidavit, more or less similar to the counter-affidavit of the University, has been filed by respondent No. 7, They challenge the assertions made by the petitioners regarding the establishment of the College by a minority community. According to them, the College had been established by the citizens of Gaya to commemorate the memory of the national poet, Mirza Ghalib, and for that

purpose a meeting of the citizens of Gaya was held in August, 1968, which was presided over by Shree Shakeel Ahmad (respondent No. 7), who was a member of the Syndicate of the respondent University. The meeting was attended by Hindus and Muslims both and there was no proposal to establish a minority institution with the object of conserving the language, script and culture of the Muslim community as such. The college was established with the help and cooperation of members of both the communities. Later, on the 1st February, 1969, an application (Annexure "2") was made for affiliation of the College to the respondent University, which was rejected by the Syndicate of the University and the decision was communicated to the College under a letter, dated the 19th April, 1969 (Annexure "6"), against which a writ application, C.W.J.C. No. 123 of 1970, was filed before this Court, which was dismissed in limine on the 12th January, 1970. On the 19th June, 1970, another application for affiliation was made by the College and the said application was considered by the University after a report submitted by the Inspectors appointed by it for investigation of the requisite conditions for affiliation. The University decided to grant affiliation to the College for two sessions, 1970-71 and 1971-72, which was approved by the Bihar State University Commission in its meeting held on the 19th/20th May, 1971. Thereafter, the University took steps for constitution of a Governing Body for the College in accordance with its Statutes. The University representative was nominated by the Syndicate in its meeting held on the 22nd May, 1971, Members of different categories were also nominated and such nominations were communicated to the College under letters copies of which are annexures "8" series and annexure "9" to the writ application. According to the aforesaid respondents, the affiliation had been granted on the footing that the College was an ordinary educational institution and it was never brought to the notice of the University by the petitioners or any body else on their behalf that the affiliation was being sought as a minority institution. Some section of the people connected with the College, mainly represented by the petitioners, started an agitation against the steps taken by the University for constitution of a Governing Body in accordance with the Statutes. However, a Governing Body, according to the Statutes, was constituted and it started functioning after November, 1972. Names of persons who were members of the said Governing Body have been mentioned in Paragraph 21 of the counter-affidavit filed on behalf of the University. It has been further asserted by the University that complaints about mismanagement were made soon after the constitution of the Governing Body and, being unable to find any solution, the Vice-Chancellor was compelled to dissolve the said Governing Body and to constitute an ad hoc committee of 7 persons by the impugned order (Annexure "13"). In the counter-affidavit filed on behalf of the respondent University, it has been challenged that any Bye-Laws and Rules framed by the College were sent to the University. The authenticity of the printed. Bye-Laws and Rules (Annexure "3") has also been challenged.

9. An affidavit-in-reply to the writ application has been filed on behalf of respondents 12 and 13 supporting the averments made by the petitioners in the

writ application.

10. An application has been filed under the Rules of this Court and under Order 1, Rule 10, of the Code of Civil Procedure, on behalf of 17 persons for being added as parties to the writ application, claiming to be interested in the establishment and running of the College. They support the stand taken by the University and respondent No. 7. The intervenors were heard in accordance with Chapter XXIC of the Rules of this Court.

11. A reply to the counter-affidavit as well as to the said intervenors petition and a supplementary affidavit have been filed on behalf of the petitioners.

12. On the aforesaid statements and counter-statements made by the parties, the moot question for decision is whether the College was established as an educational institution by the Muslim Minority, and as such, it has the protection of Article 30(1) of the Constitution. Article 30(1) of the Constitution reads as follows :--

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

13. Articles 29 and 30 of the Constitution of India occur in Chapter "Fundamental Rights", and they guarantee protection to the interests of the minorities, Article 29(1) is in these words :--

"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."

14. Thus, under Article 29(1), a minority community, having a distinct language, script or culture, has the right to conserve the same. Article 30(1) provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Any law or executive direction which seeks to infringe the said right would, to that extent, - be void.. This aspect of the matter has been considered in several decisions of the Supreme Court as well as of this Court -- vide In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, ; Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, ; Rev. Father W. Proost and Others Vs. The State of Bihar and Others, ; The Right Rev. Bishop S.K. Patro and Others Vs. The State of Bihar and Others, ; D.A.V. College, Vs. State of Punjab and Others, ; Arya Pratinidhi Sabha and Others Vs. The State of Bihar and Others, and Md. Abu Sayeed Ahmad Khan v. State of Bihar 1969 BLJR 343.

15. Apart from the statements made on affidavit in the writ application that the College in question was established by the Muslim Minority Community with the finance raised by them for imparting education with the object of conserving their language, culture and religion, reliance has been placed on behalf of the petitioners on the resolution, dated the 3rd November, 1968 (Annexure "1"),

from which it appears that the Muslims of Gaya town and its neighbourhood held a meeting which began with recitals from the Holy Quran and it was resolved that a College should be started for the Muslims and it should be named as "Mirza Ghalib College, Gaya". Much emphasis has been laid by the petitioners on that part of the resolution which says :--

".....JALSE KI KARWAI QARI MUHAMMAD ASHIQ SAHEB KI TALA-BAT KALAM PAK SE SHURU HUI ZEHAAN WO TAHFOOZ WO TARAQQI KE LIE EK MUSLIM AKLIYAT KALEJ KI SHADEED ZARURAT KO MAHSOOS KARTE HUE SHURKA NE MUNDARZE ZAIL CHAR TAJWIZ BA ITTFAK RAE SE MANZOOR KEE"

to show that the meeting started with religious recitals.

16. The next document referred to is the resolution, dated the 24th November, 1968 (Annexure "24") which was passed in the second general meeting (AAM NASHISHT). In the said resolution names of the participants have been mentioned and all of them belonged to the Muslim community.

17. Reference was then made to the letter, dated the 1st February, 1969 (Annexure "2") addressed by the then Secretary of the College to the respondent University for affiliation of the College. The contents of this letter as well as the receipt thereof have not been disputed by the respondents. On the other hand, in paragraph 5 of the counter-affidavit filed by the University it has been admitted that annexure "2" is a copy of the letter, dated the 1st February, 1969 sent to the University. In the body of the said letter it has been stated as follows :--

"It has been decided by the elites and citizens of Gaya to start, establish and run a Muslim Minority College in the town of Gaya which will cater mainly to the educational needs and requirements of the students of Muslim Community but will remain open for purposes of admission and education to all students irrespective of caste, colour and religion. The main object of establishing this college is to afford facilities mainly to the youths of the Muslim Minority to receive education in their mother tongue as far as practicable and also religious education."

18. It was submitted by the petitioners on the basis of this letter that since the very inception it was being asserted by the petitioners that the College was being established as a Muslim Minority College and this fact was even brought to the notice of the respondent University. Our attention has been drawn also to the Bye-Laws and Rules of the College (Annexure "3"). In the preamble of the said Bye-Laws it has been stated as follows :--

"For a Progressive and enlightened Democracy it is necessary that all Sections and Classes of People are well educated and intellectually equipped to shoulder the responsibilities of a free nation. As the Muslim Minority has lagged behind educationally, it is necessary to advance, foster and promote the education of the Community at a quicker pace. For implementing this, it has been felt necessary

to start, establish and run a Muslim Minority College which will impart Modern and Scientific education to them as well as teach their Mother Tongue, in a manner that will conserve their Language and Culture distinctly.

This institution will cater to their educational needs by providing such facilities as are deemed necessary.

Name and Purpose.

* * * IV. The College shall primarily cater to the educational requirements of the Indian Muslims, but shall remain open for other Communities and Nationalities irrespective of Caste, Class and Religion."

In the body of the said Bye-Laws and Rules it has been mentioned as follows:

BYE-LAWS AND RULES

"Excepting the Clauses in the PREAMBLE appertaining to the NAME AND PURPOSE, the BYE LAWS AND RULES may be suitably amended, altered or deleted, from time to time by a majority of two-thirds votes of the Councillors in attendance in a meeting specially convened by the Secretary on demand by the Governing Body or on requisition of one-third of the total number of the Councillors for the purpose, but such amendment, alteration or deletion shall not be repugnant to or inconsistent with the PREAMBLE or the Clause appertaining to NAME AND PURPOSE as can never be changed or/ and amended in any manner whatsoever."

Clause 1 of the Bye-Laws reads thus:--

"1. There shall be a COUNCIL of the College from amongst the Members of the Muslim Community which shall be responsible for the Establishment, General Administration, Finance and the Smooth running of the College."

19. It has been contended on behalf of the petitioners that there cannot be any doubt regarding the object of establishing the College in view of the clear declaration made in the preamble as well as in the different clauses of the said Bye-Laws and Rules which was to establish a Muslim Minority College. Reference has also been made in this connection to a letter, dated the 3rd April, 1969 (Annexure "5") addressed to the University by the Secretary of the College, which is in reply to a letter, dated the 21st March, 1969 of the respondent University making certain queries, in the said letter, dated the 3rd April, 1969 (Annexure "5") it has been reiterated :--

"..... a few eminent persons of the locality assembled in a meeting held on 3-11-1968 under the Presidentship of Alhaj Maulana Abdul Karim, a Muslim divine. It was resolved in the meeting that a Muslim Minority College after the name of Mirza Ghalib be opened at Gaya in the Centenary Year of the Great Poet Mirza Ghalib with effect from the ensuing academic sessionBesides, under the Constitution of the Indian Union, provisions have already been made to give all possible facilities and freedom to the minority communities for

imparting education to their wards"

20. The next document relevant in this connection is the resolution of the Council of the College, dated the 22nd September, 1972 (Annexure "12"), in which while characterising the resolution, dated the 16th May, 1972 of the ad hoc Governing Body as illegal, it was asserted :--

"..... that the Resolution dated the 16th May, 1972, passed at an emergent meeting by a clique of few members of the Former Ad Hoc Committee of Mirza Ghalib College, Gaya, although being in minority and falsely describing themselves as "Governing Body", accepting the Governing Body constituted by Magadh University, is entirely illegal, uncalled for and without jurisdiction and the same is not binding on the Councillors and it is in clear contravention and violation of the letter and spirit of the bye-laws and rules of Mirza Ghalib College, which clearly envisages a Muslim Minority College, exclusively established and administered by the members of that community."

The genuineness of annexures "5" and "12" has not been challenged, nor has it been disputed that such a letter and a copy of the resolution were received by the University. The legality of the resolution, dated the 16th May, 1972 (Annexure "11") of the ad hoc Governing Body is being disputed by the petitioners because by the said resolution the then ad hoc Governing Body purported to accept the Governing Body constituted by the University. Nonetheless, even in that resolution the minority character of the College and its establishment by donation of the Minority community have been asserted in these words:

"Considered the Magadh University letter and resolved that in the best interest of the development of Mirza Ghalib College, Gaya, to secure permanent affiliation and to preserve the minority status of the institution, the Governing Body constituted by the Magadh University Authorities is accepted.

Further resolved that the minority character of the College is not subject to any change as the College was established by the Muslim public and explicit mandate in this connection was issued to preserve its minority status and donations raised with this high hopes from Muslim community only. The College has been established by the Muslim Minority according to the Constitution of India. The acceptance of the new Governing Body according to the Magadh University Act and Statutes does not impinge or affect the Minority status."

Learned Counsel for the petitioners, during the course of arguments, drew our attention to the statement made in paragraph 22 of the writ application saying that respondent No. 7, who was the then Secretary of the ad hoc Governing Body of the College, addressed a letter to the Secretary, University Service Commission, forwarding a list of Principal and teachers who had been confirmed their posts, for concurrence. In the said letter respondent No. 7 had stated that the College had been established by the Muslim Minority Community. There is no denial by respondent No. 7. On the other hand, in paragraph 13 of the counter-

affidavit filed by him, it has been stated that "any commitment of the Secretary is not binding for the purposes of declaration of the College as minority institution."

21. The University and respondent No. 7 are disputing the denominational character of the College. But their objection is mainly based on two grounds-- (i) that the donations by which the College was established were made not only by the members of the Muslim Community, but also by Hindus; and (ii) that in first application for affiliation, dated the 1st February, 1969, it was mentioned that it was a minority College, but in the second application made on the 19th June, 1970 it was not mentioned that it was a Muslim Minority College and affiliation was not sought on that basis.

22. Mr. K.D. Chatterji, learned Counsel appearing for the respondent University, contended that, even if in the beginning there was some idea to give preference to the Muslim community, later it was abandoned. In support of his contention, learned Counsel drew our attention to certain receipts regarding donations made by certain Hindus, copies of which were filed along with the application filed by the intervenor-applicants. All these receipts are of the year 1972, after the dispute had arisen. Then reference was made to the second application for affiliation, dated the 19th June, 1970 (Annexures "7" and "7/1"), to show that in the earlier application there was some mention regarding the College being a minority institution, but in the second application for affiliation there is no whisper regarding the institution being established or maintained by the Muslim Minority Community. Pointed exception has been taken by the respondent University to the words "Yes, under our own Bye-laws" mentioned against column No. 4 (a) of the form of the second application for affiliation (Annexure "7"). Column No. 4 (a) says--

"Whether the institution shall be under the Management of a regularly constituted Governing Body?"

The answer against this column is-

"Yes, under our own Bye-laws."

It has been asserted that originally the word "Yes" only had been mentioned; but by subsequent interpolation the words "under our own Bye-laws" were typed. Petitioners have placed reliance on the words "under our own Bye-laws" for the purpose of showing that even in the second application it was stated that the College was to be governed by the Bye-laws framed by the College itself, and was not to be governed by the Statutes of the University. The original of annexure "7" has been produced before us by Counsel appearing for the University to show the difference in the type so far as the words "under our own Bye-laws" are concerned. No doubt, there is some difference in the type; but it is very difficult to say as to whether these words were typed before the application was filed before the University, or they were typed subsequently while the application was in the custody of the University. The stand of the University

appears to be that the interpolation had been made some time later while the application was in its custody. But then, it is for the University to explain as to how this interpolation could be made when the application and the form were in its own custody. No explanation whatsoever has been given, and, as such, it is very difficult to arrive at a definite conclusion that the petitioners or somebody else on their behalf had made this interpolation after the affiliation had been granted by the University. I am not, however, going to place much reliance on these words mentioned in annexure "7" for the purpose of deciding the question as to whether the petitioners have been able to prove that the College had been established as a Muslim Minority College.

23. In my opinion, the fact that affiliation was granted on the basis of the second application, in which there was no mention regarding the College being a minority institution, is not of much consequence, because in the Statutes there is no special provision for granting affiliation to a minority institution. The procedure for granting affiliation is contained in Chapter XII of the Statutes framed under the Magadh University Act, and, on requisite conditions being fulfilled, the Senate has to allow the application for affiliation. Moreover, to grant or not to grant affiliation is different from interfering with the management of an institution. It is always open to the University to grant or not to grant affiliation, whether a particular institution is a minority institution or not. But, merely because the affiliation has been granted by the University, it will not clothe the University with power to interfere with the management of an institution.

24. It was also submitted that a writ application, C.W.J.C. No. 123 of 1970, had been filed before this Court on the 8th January, 1970 by respondents 12 and 13 and petitioner Mo. 7 against the University for quashing an order contained in the letter, dated the 19th April, 1969 (Annexure "6" to the present writ application) rejecting the first application for affiliation filed on behalf of the College and the said writ application was dismissed in limine on the 12th January, 1970. According to the University, the petitioners cannot raise the same issue again in the present writ application. In my opinion, this argument is misconceived inasmuch as the said writ application had been filed for quashing the resolution of the respondent University rejecting the application for affiliation, of the College. In the present writ application that order is no more questioned, because, admittedly, later, on the second application, the university has granted affiliation to the College. We do not know under what circumstances that writ application was dismissed -- may be, due to the fact that the representation before the Chancellor was then pending, which fact had been mentioned in the earlier writ application saying that the petitioners had filed a representation before the Chancellor against the impugned communication, dated the 19th April, 1969, and that they had not received any reply. From the records of the present case it appears that before that writ application was filed in this Court, the Chancellor had passed an order which was communicated by his Secretary in his aforesaid demi official letter dated the 3rd January, 1970 (Annexing ""16" in the present case). Perhaps the petitioners of that writ application did not know

about it till then. One thing is, however, relevant in that connection that in the writ petition also the petitioners had asserted that, on the 3rd November, 1968, a decision had been taken to establish a Muslim Minority College and that the College was a Muslim Minority College. But that, however, was not the matter in issue in the earlier writ application. As such, in my opinion, the dismissal of the earlier writ application cannot operate as *res judicata* so far as the present writ application is concerned.

25. According to the respondent University and respondent No. 7, the first meeting in connection with the establishment of the College was not held on the 3rd November, 1968, but on the 20th August, 1968, and a copy of the resolution of that meeting has been annexed as annexure "A/7" to the counter-affidavit filed on behalf of respondent No. 7, which has been relied upon by the respondent University. The said resolution bears the signatures only of respondent No. 7 and one Shaheed Ahmad Sowaib, who is applicant No. 1 in the intervenors' petition, supporting the case of respondent No. 7. Apart from the said annexure "A/7", there is no other document on the records of the case to corroborate the fact that any such meeting was held on the 20th August, 1968.

26. As already stated, the genuineness of the Bye-Laws and Rules (Annexure "3") is being challenged by the University as well as by respondent No. 7. The preamble of the Bye-Laws and other parts, which have been extracted above, go to support the case of the petitioners that the College was established as a minority institution. Neither the respondent University nor respondent No. 7 has brought to, our notice any material to hold that annexure "3" has been brought into existence to support the case of the petitioners here. On the other hand, it may be mentioned that Annexure "3" is Bye-Laws and Rules of 1971. It has been stated by the petitioners in paragraph 9 of the "Reply to the counter-affidavit of respondents Nos. 1, 3 and 4" that Bye-Laws of 1969 had been made Annexure "2" to C. W. J.C. No. 123 of 1970 and a copy thereof had been served on the Counsel of the University. The preamble of "Bye Laws and Rules of Mirza Ghalib College 1969" f Annexure "2" to C.W.J.C No. 123 of 1970) was, more or less, identical to the Bye Laws and Rules of 1971 (Annexure "3" here) except a few changes here and there. The relevant portion of the preamble was as follows:--

"As the Muslim minority has lagged behind Educationally, it is necessary to advance foster and promote the education of the community in their mother tongue at a quicker pace. For implementing this, it has been fell necessary to start, establish and run a Muslim Minority College which will impart Modern and Scientific education in their mother tongue (Urdu) and in a manner that will conserve their distinct language, culture and religion."

Even Clause IV under the heading "Name and Purpose" was almost the same.--

"IV. The college shall primarily cater to the educational requirements of the Muslims, but shall remain open to other communities as well irrespective of caste, class and religion."

In the Bye-Laws of that year also there was restriction on the power to amend the preamble. In 1969-70, there was no controversy regarding the minority nature of the institution: the controversy was whether affiliation should be granted or not. In that view of the matter, there is no substance in the contention of the learned Counsel for the University and respondent No. 7 that the Bye-Laws and Rules of 1971 (Annexure "3") is a manufactured document.

27. To challenge the contents of the preamble of Annexure "3", the intervenors have annexed a copy of the prospectus of the College for the year 1970-71 marked Annexure "B/15". Reliance has been placed by the contesting respondents on the following statement in the said prospectus:

"This college has been established by the admirers of Mirza Ghalib, the great national poet of Hindustan. It shall be the endeavour of the sponsors and management of the college to develop secularism, democracy and sense of national integration among the students and staff of the institution."

The genuineness of this prospectus has been seriously challenged by the petitioners on the ground that it is a forged and fabricated document brought into existence in the year 1973.

28. In the reply filed by the petitioners to the intervenors' petition, in paragraph 8, it has been stated that Annexure "B/15" is a forged document, and it was printed in June, 1973. The petitioners have annexed a copy of Bill No. 2803, dated the 20th June, 1973, granted by the printer of Annexure "B/15" with a certificate that the said prospectus was printed in June, 1973. The original certificate on a copy of the said prospectus and the original bill were also shown to us during the course of hearing. In aforesaid Para 8 it has been further stated that genuine prospects for 1970-1971 was printed in July, 1970, and the petitioners have annexed a copy of the certificate of the printer and a copy of the bill, dated the 14th July, 1970. Learned Counsel produced a copy of the prospectus for 1970-71 with the certificate of the printer. In this prospectus there is a statement to this effect:---

"This college has been established by the Muslim Minority community but its doors shall remain open for members of all communities."

29. During arguments, Counsel for the University produced a copy of the prospectus for the year 1970-1971 similar to Annexure "B/15" from the file- of the University. But it was stated on behalf of the University that the University was not in a position to state whether it was a genuine or forged document, although it was in one of the files of the University. It was also stated that the University does not know how it was placed in the file. Respondent No. 7 had filed a petition that the University be directed to produce a copy of the prospectus for the session 1970-71, that is, Annexure "B/15". Even the intervenors, who produced the aforesaid prospectus for the year 1970-71 (Annexure "B/15") in support of the case of respondent No. 7 and the University that the College had been established by the admirers of Mirza Ghalib, and not

by the Muslims, later, during the course of arguments, were not in a position to vouchsafe the genuineness of the said document, and they referred to paragraph 10 of the "rejoinder to the affidavit in reply to the intervenors" application" filed by them where it was stated that they collected it from students of the College who were supplied with this prospectus from the College office. It, however, appears that, after the certificates and the bills from the printer, referred to above, were filed before this Court saying that Annexure "B/15", though purporting to have been printed in the year 1970, had been actually printed in June, 1973, none of the contesting respondents is prepared to take the responsibility regarding the genuineness of Annexure "B/15".

30. On behalf of respondent No. 7 an objection has been taken regarding the maintainability of the present writ application as filed. It has been contended that the petitioners have not challenged the vires of the Statutes framed by the University not making any provision for minority institutions. According to Teamed Counsel for respondent No. 7, Article 2(i) of Chapter XIII of the Statutes says--

"Every college already admitted or when admitted, shall be under the management of a Governing Body constituted in accordance with the provisions laid down herein under Article 2(2)."

and, as such, once the affiliation has been granted by the University, it has authority to constitute a Governing Body in accordance with Article 2(2). In my opinion, this contention on behalf of respondent No. 7 is misconceived. From the aforesaid provision it cannot be read that once affiliation is granted the University gets an authority to interfere with the day-to-day management of the College. If we are to read the aforesaid provision to mean that, per se, it will be ultra vires in view of Article 30(1) of the Constitutor. In my judgment, the said provision is applicable to admitted Colleges other than those established and maintained by minority communities having the protection of Article 30(1) of the Constitution.

31. On behalf of respondent No. 7 our attention was drawn to the second application for affiliation (Annexure "7") where under the heading "subjects" Hindi, English, Bengali, Principal Hind" and Principal Bengali are mentioned, and it was contended that that was against the spirit of establishing a minority college for the purpose of conserving language, culture and religion of that particular community. In this connection learned Counsel made a reference to a few lines of the letter, dated the 1st February, 1969, the first application for affiliation (Annexure "2") where it was mentioned that "Students of other communities will have option to receive education in their respective mother tongues and to study their own religion provided the total strength of such students at any time merit such an arrangement to be made." In my view, neither the aforesaid statement made in annexure "?" nor the subjects mentioned in the aforesaid form are inconsistent with the denominational nature of the institution. As was observed by the Supreme Court in *Rev. Father W. Proost and Others Vs. The State of Bihar*

and Others, , the minorities have a Special right to establish educational institutions of their choice and the said choice is not limited to institutions seeking to conserve language, script or culture and "the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities." The same view was reiterated in State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., and it was held that, under Article 30(1) of the Constitution, the minority has a right to establish an institution of its choice, which means bringing into being of an institution either by a single philanthropic individual of that particular community or by contributions raised by several members of the community; the intention in either case must be to found an institution for the benefit of the minority community. In that connection, Hidayatullah, C. J., speaking for the Court, observed:--

"It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection."

32. Learned Counsel for respondent No. 7 laid much stress on the following lines in the above judgment:

"The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community."

and urged that, in view of the aforesaid observation, the mere fact that the institution has been established by a minority community is not enough; it must be shown that it is for the benefit of the minority community concerned. Learned Counsel submitted that Articles 29(1) and 30(1) of the Constitution have to be read together, meaning thereby that only those institutions which have been established with the object of conserving the language, culture and religion of that particular community are entitled to the benefit of Article 30(1). In my judgment, this submission is directly against the pronouncements of the Supreme Court in several cases where it has been held that the scope of Article 30(1) cannot be cut down by introducing in it considerations on which Article 29(1) is based. In the aforesaid case of Rev. Father W. Proost and Others Vs. The State of Bihar and Others, , firstly, Article 30(1) was referred to and then Article 29(1), and it was observed:

"The latter article is a general protection which is given to minorities to conserve their language, script or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities."

Moreover, most of these denominational institutions are for the benefit of the

communities concerned. As would appear from the Bye-Laws and Rules (Annexure "3"), under the heading "Name and Purpose", Clause IV, which has been quoted above, this College is to primarily cater to the educational requirements of the Indian Muslims; it is however, open to other communities and nationalities, irrespective of caste, class and religion.

33. It was lastly contended on behalf of the contesting respondents that the University should have some right to protect the interest of the institution when it grants affiliation to such an institution. In my opinion, there is no right to any institution, whether established by a minority community or not, to get affiliation. Affiliation is granted by the University only when the institution fulfils the requisite conditions and maintains the requisite standard. As was observed by S. R. Das, C. J. In *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, .

"The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions. There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice, is in truth and in effect to deprive them of their rights under Article 30(1)."

34. On a consideration of the facts, the circumstances and the materials on record, it has to be held that the petitioners have been able to prove the denominational character of the Mirza Ghalib College, Gaya. Once that is held, as a necessary corollary, it has to be held that the respondent University cannot interfere with the day-to-day management of the College by imposing its own Governing Body.

35. In the result, the application is allowed and the impugned order, dated the 18th January 1973 (Annexure "13") as well as the communications connected therewith (Annexures "8" series and "9") are quashed. In the circumstances, however, there will be no order as to costs. M. J.C. No. 156 of 1973:

36. The opposite party to this miscellaneous judicial case, A. Salam Khan, along with 13 others had filed the above mentioned C.W.J.C. No. 195 of 1973 before this Court for quashing the order of the Magadh University, dated the 18th January, 1973, constituting an ad hoc committee of persons named in the said order to manage the affairs of Mirza Ghalib College, Gaya, on the ground that the said order amounts to an interference with the rights of the petitioners of the writ application to manage the affairs of the said College, which has been established by the Muslim Minority Community.

37. The writ application was admitted on the 5th March, 1973 and a Bench of this court constituted an ad hoc committee consisting of the District Magistrate, Gaya, petitioners Nos. 1, 2 and 5, respondent No. 8, of the said writ application

and the Principal of the College and one person to be nominated by the Magadh University. It was further directed that no other committee, either appointed by the Council of the petitioners or the Magadh University, shall function till the said order of this Court remained in operation. By another order, dated the 16th May, 1973, the Bench modified the aforesaid order, dated the 5th March, 1973 and added two more members to the ad hoc committee, namely. Professor S. Shakil Ahmad and Shri M.Z. Alam.

38. It appears that in an issue of the "Searchlight", dated the 11th June, 1973 (Morning Edition), an advertisement was published under the signature of Shree A. Sakim Khan (Petitioner No. 7 to the writ application) inviting applications for admission to I. A., I. Sc., B.A. and B.Sc. classes, petitioner No. 7 describing himself as "Secretary, Council, Mirza Ghalib College, Gaya", in an Urdu daily, Sada-e-aam, dated the 7th June, 1973 (out station) and 6th June, 1973 (local) an appeal was also published by petitioner No. 7 requesting the guardians to get their wards admitted in the said College.

39. On the 30th August, 1973, the University filed this application under Article 215 of the Constitution and Section 12 of the Contempt of Courts Act for prosecuting the opposite party-petitioner No. 7 to the writ application for having violated the orders of this Court. According to the University, the aforesaid publications amount to contemptuous disregard of the orders of this Court and the opposite party should be punished for the same. Copies of the aforesaid publications have been annexed to this application.

40. A counter-affidavit has been filed by the opposite party stating that he is the Secretary of the Mirza Ghalib College Council, and not the Secretary of any committee appointed by the Council, and he has highest regard for this Court. It has also been stated that he has neither committed any contempt of the orders of this Court nor did he intend to do so. According to the opposite party, the aforesaid publications were, more or less, in the nature of an appeal to the desirous candidates in the interest of the institution and did not amount to any disregard of the orders of this Court.

41. Learned Counsel for the opposite party has submitted during the hearing of this application that it was a mere appeal on behalf of the Council for the benefit of the candidates for whom the institution had been established and those publications do not amount to an interference with the management of the institution during the pendency of the writ application. In my opinion, no doubt the publication in the Urdu daily (Annexure "2") is an appeal, as contended by the opposite party, but so far as the publication in the "Searchlight" is concerned, there cannot be two opinions that the opposite party was not at all concerned with inviting applications from candidates for admission to the College. In my opinion, however, the mistake on the part of the opposite party in publishing the said item was not intentional and perhaps under bona fide belief that the same would not amount to violating the orders of this Court passed in the writ application. In that view of the matter, a lenient view of the matter

should be taken. In the circumstances, there is no need to proceed against the opposite party for contempt of the orders of this Court.

42. The application is, accordingly rejected.

Untwalia, C.J.

43. I agree.