

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 2286/2006

ALIGARH MUSLIM UNIVERSITY ...APPELLANT(S)

VERSUS

NARESH AGARWAL & ORS. ...RESPONDENT(S)

WITH

C.A. NO. 2316/2006, C.A. NO. 2861/2006, C.A. NO.
2320/2006, C.A. NO. 2321/2006, C.A. NO.
2319/2006, C.A. NO. 2317/2006, AND C.A. NO.
2318/2006

ORDER

1. This Court in **S. Azeez Basha and Anr.**
vs. **Union of India**¹, *inter alia*, has observed as
follows:

“It is to our mind quite clear that Art. 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

1. (1968) 1 SCR 833

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 reason or 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. We are of the 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 Art. 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 Art. 30(1) .”

2. The judgment of the Allahabad High Court which is under challenge in the present appeal (s) rejects the prayers made on account of the decision of this Court in **S. Azeez Basha** (supra).

3. The issue arising in **S. Azeez Basha** (supra) was referred to a Seven (07) Judges Bench by an order of this Court dated 26th November, 1981 passed in Writ Petition (Civil) Nos. 54-57 of 1981 [**Anjuman-e-Rahmania & Ors.** vs. **Distt. Inspector of School & Ors.**].

4. The aforesaid writ petitions i.e. Writ Petition (Civil) Nos. 54-57 of 1981 were heard along with other connected cases [lead being Writ Petition (Civil) No.317 of 1993 (**T.M.A. Pai Foundation and others** vs. **State of Karnataka and others**)] by a bench of Eleven (11) judges, the judgment in which cases is reported in (2002) 8 SCC 481.

5. The question 3(a) which was formulated for an answer in **T.M.A. Pai Foundation** (supra) which coincidentally reflects the questions referred by the order of this Court dated 26th November, 1981 passed in Writ Petition (Civil) Nos. 54-57 of 1981, is as follows:

“3(a) What are the indicia for treating an educational institution as a minority educational institution? Would an institution be regarded as a minority educational institution because it was established by a person(s) belonging to a religious or linguistic minority or its being administered by a person(s) belonging to a religious or linguistic minority?”

6. However, the Bench did not answer the question stating that it will be dealt with by the Regular Bench.

7. The order of the Regular Bench passed on 11th March, 2003, which, for reasons that we need not dilate, did not answer the aforesaid question 3(a) formulated in **T.M.A. Pai Foundation** (supra).

8. The said facts would show that the correctness of the question arising from the decision of this Court in **S. Azeez Basha** (supra) has remained undetermined.

9. That apart, the decision of this Court in **Prof. Yashpal and another** vs. **State of Chhattisgarh and others**² and the amendment of the National Commission for Minority Educational Institutions Act, 2004 made in the year 2010 would also require an authoritative pronouncement on the aforesaid question formulated, as set out above, besides the correctness of the view expressed in the judgment of this Court in **S. Azeez Basha** (supra) which has been extracted above.

10. Ordinarily and in the normal course the judicial discipline would require the Bench to seek a reference of this matter by a Five Judges Bench.

2. (2005) 5 SCC 420

However, having regard to the background, as stated above, when the precise question was already referred to a Seven Judges Bench and was, however, not answered, we are of the view that the present question, set out above, should be referred to a Bench of Hon'ble Seven Judges.

11. Consequently and in the light of the above, place these matters before the Hon'ble the Chief Justice of India on the administrative side for appropriate orders.

.....,CJI.
(RANJAN GOGOI)

.....,J.
(L. NAGESWARA RAO)

.....,J.
(SANJIV KHANNA)

NEW DELHI
FEBRUARY 12, 2019

ITEM NO.102

COURT NO.1

SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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C.A. NO. 2317/2006 (III-A)

C.A. NO. 2318/2006 (III-A)

Date : 12-02-2019 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE SANJIV KHANNA

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UPON hearing the counsel the Court made the following
O R D E R

Place these matters before the Hon'ble the Chief Justice of India on the administrative side for appropriate orders.

[VINOD LAKHINA]

AR-cum-PS

[ANAND PRAKASH]

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]