MRS. IVY C.DA.CONCEICAO

v.

STATE OF GOA & ORS.

(Civil Appeal No. 1257 of 2017)

JANUARY 31, 2017

[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.]

Constitution of India – Arts. 226, 30 – Process of appointment of a principal in minority institution – Judicial review – Amenability – Held: Autonomy of a minority institution under Art. 30 does not dispense with the requirement to act fairly and in a transparent manner – Minority institution is free to select and appoint a principal, without being bound by the principle of seniority alone – Whether the appointment has been made fairly and reasonably and whether there is violation of right of an individual eligible candidate by the minority institution by not adopting fair procedure, is liable to be tested in exercise of power of judicial review under Art. 226 – Goa School Education Rules, 1986 – rr. 64 and 86 – Goa School Education Act, 1984.

Allowing the appeal, the Court

HELD: 1.1 Rules 64 and 86 of the Goa School Education Rules, 1986 are admittedly applicable. In the case of *T. Jose, it is rightly held that right to choose a principal is a part of a right of minority institution under Article 30(1) of the Constitution and the said right is not affected merely because aid is extended by the State to a minority institution. However, the decision of this Court cannot be read as laying down a principle that a minority institution could act arbitrarily or unfairly in dealing with the selection out of the eligible candidates. The minority institution may not be compelled to go by seniority alone but it must follow a criteria which is rational. [Paras 8, 9] [454-C, E-F]**

1.2 Autonomy of a minority institution under Art. 30 of the Constitution does not dispense with the requirement to act fairly and in a transparent manner and the High Court in exercise of its power of judicial review is entitled to examine fairness of selection process. Grievance of a citizen that he was treated unfairly cannot

be ignored on the ground that a minority institution has autonomy or right of choice. Exercise of right of choice has to be fair, non-discriminatory and rational. [Para 14] [460-G]

1.3 While under the constitutional scheme, a "minority institution" is free to select and appoint a principal, without being bound by the principle of seniority alone, whether the appointment has been made fairly and reasonably and whether there is violation of right of an individual eligible candidate by the minority institution by not adopting fair procedure, is liable to be tested in exercise of power of judicial review under Article 226 of the Constitution. Since this aspect of the matter has not been gone into by the High Court, the impugned order is set aside. The matter stands remitted back to the High Court for a fresh decision in accordance with law. [Para 15] [460-H; 461-A-B]

Secy. Malankara Syrian Catholic College v. T. Jose and Others **(2007) 1 SCC 386 : [2006] 9 Suppl. SCR 644**; *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.* **(2002) 8 SCC 481: [2002] 3 Suppl. SCR 587**; *M. Nagaraj & Ors. v. Union of India & Ors.* **(2006) 8 SCC 212 : [2006] 7 Suppl. SCR 336 – relied on.**

Belsi M. v. Corporate Management of Latin Catholic Schools, Diocese of Neyyattinkara **2010 (2) KHC 220**; *Zee Telefilms Ltd. and Anr. v. U.O.I. & Ors.* **(2005) 4 SCC 649 : [2005] 1 SCR 913 – referred to.**

Case Law Reference

[2006] 9 Suppl. SCR 644	**relied on**	**Para 9**
2010 (2) KHC 220	**referred to**	**Para 10**
[2005] 1 SCR 913	**referred to**	**Para 11**
[2002] 3 Suppl. SCR 587	**relied on**	**Para 14**
[2006] 7 Suppl. SCR 336	**relied on**	**Para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1257 of 2017.

From the Judgment and Order dated 14.08.2012 of the High Court of Bombay at Goa in Writ Petition No. 542 of 2008.

Devadatt Kamat, Rajesh Inamdar, Javedur Rahman, Chandra Prakash, Advs. for the Appellant. A

Pratap Venugopal, Ms. Surekha Raman, Anuj Sarma, Ms. Niharika, Aman Shukla, Ms. Kanika Kalaiyarasani (for M/s. K. J. John & Co.), Advs. for the Respondents.

The Judgment of the Court was delivered by B

ADARSH KUMAR GOEL, J. 1. Leave granted. This appeal has been preferred against judgment and order dated 14th August, 2012 passed by the High Court of Bombay at Goa in Writ Petition NO.542 of 2008.

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2. The question for consideration is whether the process of appointment of a principal in minority institution is open to judicial review and on what grounds.

3. The case of the appellant is that she is a Grade-I teacher, teaching Economics in Rosary Higher Secondary School, Navelim, Salcete, Goa, D run by respondent No.3-Diocesan Society. She had passed her B.A. (in Economics and Commerce) and M.A. (in Economics) from Bombay University and also completed her B.Ed. She has been teaching for the last 21 years in the school run by respondent No.3-Diocesan Society. Respondent No.3 receives aid for running the school under the provisions of Goa School Education Act, 1984 (for short, "the Act") and Goa School E Education Rules 1986 (for short, "the Rules"). In the seniority list of teachers, prepared by respondent No.3-Society, the appellant is at serial No.16 while respondent Nos.4 to 6 are at serial Nos.43, 35 and 28 respectively. She is eligible and qualified for the post of principal and the most competent person among those available for the said post. She F was appointed as Incharge-Principal, in the absence of regular principal, from 7th March, 2005 and again from 5th May, 2005. She has no adverse remark in her Confidential Reports. On 1st April, 2005 a vacancy was created for the post of principal on retirement of one Sh. Edward Coutinho, the then Principal of St. Andrew's Higher Secondary School, Vasco. Respondent No.3 sought information about the appellant on 28th July, G 2008 and again a vacancy was created on 1st August, 2008 for the post of Principal on retirement of Smt. Nirmala Mesquita, Principal of Fr. Basilio Andrade Memorial Higher Secondary School, Majorda, Salcete, Goa, and also on 4th August, 2008 on account of appointment of Sh. Mervin D'Souza to the post of Chairman of Goa Board of H

A Secondary and Higher Secondary Education. Vacancies were filled up by promoting respondent nos.4 and 5 in violation of Rules 74 and 86 of the Rules. The said respondents were junior to the appellant and were not in the zone of consideration. Respondent No.6 who was, vide order dated 16th August, 2003, appointed to the post of Principal in Fr. Basilio
B Andrade Memorial Higher Secondary School, Majorda, has already been challenged by the appellant by way of Writ Petition NO.236 of 2004 and which was still pending when the said respondent was again appointed as Principal of St. Theresa's Higher Secondary School, Candolim, on 15th June, 2007 on availability of a vacancy and the claim of the appellant for consideration against the post of Principal has been overlooked.

C 4. Respondent No.3-Society contested the petition by submitting that the school run by it was a "minority institution". Claim of the appellant, for the post of Principal, was duly considered and in exercise of its right under Article 30 of the Constitution of India, it selected the most suitable candidate. There was, thus, no violation of Rules 74 and
D 86 of the Rules. Respondent No.3 sought leave to produce the Minutes of the D.P.C. to support its conduct. Private respondents also contested the petition.

5. Relying upon the judgment of this Court in ***Secy. Malankara Syrian Catholic College*** v. ***T. Jose and Others***[1]. The High Court
E upheld the plea of the respondents in the following terms :

> *"36. ... the minority educational institution is entitled to appoint a qualified person of its choice as Principal, subject to the appointee having educational qualifications prescribed by the State Government and*
F *such a right cannot be taken away by Rules and Regulations. In the case of Manohar Naik (supra), though the Division Bench allowed the appeal, the Apex Court upheld the right of minority educational institution in Goa to appoint a qualified teacher having requisite qualification, serving in the State of*
G *Maharashtra, in a school run by minority educational institution as the headmaster of the school in Goa. Obviously, therefore, he could not have been considered by the DPC in terms of Rule 74(2) of the Rules nor he could be one of the eligible teachers in the school run*

H [1] (2007) 1 SCC 386

by respondent no.3 Society and as such, Rule 86 was not complied with. Even in such factual background, the Apex Court has upheld the right of minority educational institution to appoint a teacher having requisite qualification as a headmaster of its school. In the present case, it is not the case of the petitioner that the respondents no.4 to 7 do not have minimum qualification for being appointed as Principals of the school. ***This being the position, in our considered opinion, the ratio of the judgments of the Apex Court in the above mentioned cases, is squarely applicable in the present case. The necessary sequitur is that the challenge of the petitioner that DPC was not properly constituted or that some of the appointees do not come within the zone of consideration, are irrelevant for the purpose of deciding the issues involved in the present petition.*** *Therefore, in our considered view, no fault can be found with the action of respondent no.3 in appointing respondents no.4 to 7 as the Principals of the different schools run by it."*

(Emphasis added)

6. The contention raised on behalf of the appellant is that while the minority institution may be entitled to appoint a qualified person of its choice as 'principal', it is not open to it to act arbitrarily or unfairly in considering the eligible candidates. Right of autonomy under Article 30 does not exclude the power of judicial review nor it excluded enforcement of fundamental rights of the eligible candidates under Articles 14, 16 and 21 of the Constitution of India. It was submitted that statutory rules require constitution of a committee for selection and the selection has to be reasonable and fair but the High Court erroneously assumed that its jurisdiction was limited to see that the appointed candidate possessed requisite qualification. The High Court ought to have considered the contention of the petitioner that not only he was senior, he was more suitable for the post but was not considered by the respondents.

7. Rules 74 and 86 which have been relied upon are as follows:

"74. Recruitment and promotion.

(2) Recruitment/promotion of employees in each

A *recognised private school aided or unaided shall be made on the recommendation of the selection committee/ promotion committee.*

(3) The selection committee/promotion committee shall consist of:

B *(a) in the case of recruitment/promotion of the head of the school/Hr. Secondary school/primary Teachers Training Institute.*

(i) the chairman of the managing committee;

C *(ii)the Dy. Education Officer of the area or an educationist nominated by the Director of Education;*

(iii) an educationist nominated by the managing committee and

(b) in the case of an appointment/promotion of a teacher

D *(other than the headmaster of the school) : -*

(i) the chairman of the managing committee or a member of the managing committee nominated by the chairman;

(ii) the head of the institution;

E *(iii) the Dy. Education Officer of the area or his representative to be nominated by him; and*

(iv) in the case of appointment of a teacher in the Hr. Secondary school or a primary Teachers' Training Institute, a specialist may be co-opted by the committee

F *and in such a case he/she shall carry the same rights and privileges on par with other members.*

(c) in the case of an appointment/promotion of a non-teaching staff

(i)the chairman of the managing committee or a member

G *of the managing committee to be nominated by the chairman;*

(ii) head of the institution;

(iii)the Dy. Education Officer of the area or his nominee;

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Explanation: In case of minority schools the nominee of the Department or an Educationist appointed by the Director of Education in sub-rule

(3) shall function as an observer and can participate in the discussion, but he/she shall not have the right to vote or make selection of the candidates, however he/she shall send a separate report to the Director of Education about his/her observations.

(4) The chairman of the managing committee, or, where he is not a member of the "selection/promotion" committee, the member of the managing committee who is nominated by the chairman to be a member of the "selection/promotion" committee, shall be the chairman of the" selection/ /promotion" committee.

(5) Selection Committee/Promotion Committee shall "follow the procedure applicable to the corresponding posts in the Government Schools".

(6) The selection made by the selection committee/ / promotion committee shall be ordinarily accepted by the managing committee of the school. Where any selection made by the selection committee/promotion committee is not acceptable to the Managing committee of the school, the managing committee shall record its reasons for such non acceptance and refer the matter to the Director of Education for his decision and the Director of Education shall decide the same.

(7) Where a candidate for "recruitment/promotion" to any post in the recognised school is related to any member of the selection committee, promotion committee the member to whom he is related shall not participate in the selection and a new member shall be nominated "by the Managing Committee of the school or by the Director of Education as the case may be as provided in sub-rule (3)".

(8) No managing committee shall entertain any application for employment from a person who is already

A *serving as a teacher or otherwise in a recognised school, whether aided or not, unless, the application from such person is duly forwarded by the manager of the school in which such applicant is serving:*

"Provided that every such application shall be
B *forwarded by the applicant through the Head of the School to the Manager who shall forward the same to the prospective employer within seven days of its receipt by the Head of the School, under intimation to the applicant well within the time stipulated by the later towards the receipt of such application. In case the*
C *Manager fails to forward the application, the applicant may send a copy of his/her application to the prospective employer and appear directly for the interview."*

Provided further that no such employee shall be relieved
D *of his duties on registration except after the expiry of a period of:*

(i) three months, in the case of a permanent employee from the date on which notice of resignation to leave the school is given;

E *(ii) one month, in the case of an employee who is not permanent, from the date of which notice of resignation to leave the school is given;*

Provided also where the employee desires to relieve himself before the expiry of the notice period he shall
F *be relieved forthwith after recovery of three months salary including allowances from the permanent employee and one month salary with allowances from the non-permanent employee as the case may be and the amount so recovered shall be credited to the Government treasury within one month of the acceptance*
G *of the resignation.*

86. Filling of vacancies.- (1) Notwithstanding anything contained in rule 78,every vacancy in an aided school shall be filled up by promotion failing which by direct recruitment, in accordance with such rules as may be

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framed by the Director of Education in this behalf and notified/circulated separately.

"Provided that the claim of any employee already working under the said Management in the Under graduate category possessing the requisite qualifications for the direct recruit shall be given due consideration while filling up the post with direct recruitment."

(2) The vacancy of Principal, Higher Secondary School/ Primary Training Institutes. Headmasters of Secondary Schools and Middle Schools, and the Asstt. Headmasters of Secondary Schools shall be filled up by promotion subject to the eligibility conditions prescribed in rule 78. While filling up of these posts, the managements shall first explore the possibility of selecting the senior most teacher from the next below 'category indicated in column 5 of Table under rule 78. While making such selection the. management shall also give very careful consideration and shall select the best qualified and most competent person among those available for selection/ appointment to the post. Seniority shall be the first criteria subject to fitness and merit. If the claim of a senior eligible teacher is by-passed, the reason for the same in writing will have to be recorded in the minutes by the promotion committee. The claim of the senior qualified teacher shall not be by-passed arbitrarily without tangible reasons.

Explanation:- Common managements running the secondary schools as well as Higher Secondary schools, shall consider the claims of the Headmasters of Secondary schools in the order of inter se seniority for the promotion to the post of Principal of Higher Secondary Schools subject to eligibility conditions prescribed in rule 78.

(3) The management shall make appointment of Heads only on probation for a year in the first instance and communicate full particulars with their biodata to the

A *Director of Education for his approval. No Head of the school shall be confirmed without the prior approval of the Director of Education.*

(4) Every vacancy which is to be filled up by direct recruitment shall be notified to the Employment
B *Exchange or in the local newspapers as the case may be as per the rules applicable to Government Offices while recruiting the corresponding posts in Government schools. However the harness cases shall be regulated as per the rules applicable to Government offices and the Director of Education shall be the controlling*
C *authority."*

8. The above rules are admittedly applicable. Learned counsel for the State and the private respondents have relied upon Article 30 and judgment of this Court in ***T. Jose*** (supra) to submit that a minority institution had the autonomy in selecting a principal and that seniority is not the
D only criteria and, therefore, it was not open to go into the claim of the petitioner on merits.

9. We have given our anxious consideration to the rival submissions. There is no dispute with the proposition laid down in the case of ***T. Jose*** (supra), that right to choose a principal is a part of a right of minority
E institution under Article 30(1) of the Constitution and the said right is not affected merely because aid is extended by the State to a minority institution. In ***T. Jose*** (supra), this Court held that Section 57(3) of the Kerala University Act, 1974 which required appointment of senior most lecturer as Principal did not apply to a minority institution. However, the
F decision of this Court cannot be read as laying down a principle that a minority institution could act arbitrarily or unfairly in dealing with the selection out of the eligible candidates. The minority institution may not be compelled to go by seniority alone but it must follow a criteria which is rational.

G 10. In Full Bench judgment of the Kerala High Court in ***Belsi M.*** v. ***Corporate Management of Latin Catholic Schools, Diocese of Neyyattinkara***[2] the question considered was: whether the judgment delivered by this Court in ***T. Jose*** (supra) dispensed with the requirement of fair procedure in selecting headmaster of a school. The Full Bench

[2] 2010 (2) KHC 220

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held that the autonomy under Article 30 was not in conflict with the requirement of fair procedure, in the matter of selection of a headmaster/ principal. It was held : A

> *"....So, We find it difficult to accept the view canvassed by the learned counsel for the management that the direction to follow a fair procedure in the matter of selection of teachers for appointment to the post of Headmaster, will have the effect of diluting the right of the minorities to administer their institutions, guaranteed by Article 30(1) of the Constitution of India. The Manager is a statutory authority under the Kerala Education Act. He is conferred with certain powers, rights and duties. Every power conferred on a statutory authority has to be exercised fairly and reasonably. It is an implied limitation on the power of every statutory functionary. The Manager has the power to take disciplinary action against an erring teacher, but he cannot take action against a teacher for being red-haired. Likewise the Manager of a minority educational institution cannot say that he will select the Headmaster by holding a test of 100 metres race and person who comes out first in the said race will be appointed as Headmaster. If such a procedure is followed, the same will be condemned as ultra vires, being arbitrary and irrational. The power to administer does not include the power to maladminster. The power to make selection does not take in its fold the power to follow an unfair procedure in making the selection. In this context, we refer to the decision of the House of Lords in Roberts v. Hopwood – 1925 AC 578. It was a case where the Poplar Borough Council substantially increased the wages of its employees, on the ground that the Council was authorised to grant wages it thought fit. The auditors objected. The matter finally reached the House of Lords. The House held that the power to grant such wages the Borough Council thinks fit, is subject to the implied limitation that it can pay only reasonable wages, even though the word "reasonable" is not present in*

B C D E F G H

A *the enabling statute. What is stated by the House of Lords is a well-settled principle of Administrative Law. This decision has been referred to with approval by the Hon'ble Supreme Court in Delhi Science Forum v. Union of India 1996 (2) SCC 405. So, the Full Court in Kurian Lizy (supra) only reminded the duty of a statutory functionary that while he overlooks the rights of seniors, he may follow a fair procedure. We have no doubt in our mind that the said direction can definitely stand with the decision in Malankara Syrian Catholic College (supra). The said decision does not impliedly overrule the decision in Kurian Lizy (supra). So, the observation of the Division Bench in Lijin (supra) that Kurian Lizy (supra) cannot stand with Malankara Syrian Catholic College (supra) is not tenable."*

11. It can hardly be disputed that power of judicial review under Article 226 is available to go into the question whether action of an aided educational institutional (even a minority institution) is transparent and fair. Despite the autonomy under Article 30, exercise of power by a minority institution discharging public functions is open to judicial review.[3] In ***T.M.A. Pai Foundation & Ors.*** v. ***State of Karnataka & Ors.*** [4] this Court held:

" 135. We agree with the contention of the learned Solicitor-General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. We find it difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

[3] (2005) 4 SCC 649 para 31-32.

[4] (2002) 8 SCC 481

136. Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also — for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-à-vis other educational institutions. Any

A *law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St. Xavier's College case3 at SCR p. 192 that : (SCC p. 743, para 9)*

B *"The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality."*

C *In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.*

D *139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g. method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.*

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F *Q. 5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and*

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regulation of fees, etc. would interfere with the right of administration of minorities? A

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. ***However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself."*** B C

12. In the same judgment, Khare, J. (as His Lordship then was) held: D

" *232. Another question that arises in this connection is as to on what grounds the staff and teachers, if aggrieved, can challenge the arbitrary decisions of the management. One of the learned Senior Counsel suggested that such decisions be tested on the grounds available under the labour laws. However, seeing the nature of the minority institutions the grounds available under labour laws are too wide and* ***it would be appropriate if adverse decisions of the management are tested on grounds of breach of the principles of natural justice and fair play or any regulation made in that respect."*** E F

(Emphasis added)

13. In ***M. Nagaraj & Ors.*** v. ***Union of India & Ors.***[5] it was observed: G

" *31. At the outset, it may be noted that equality, rule of law, judicial review and separation of powers are distinct concepts. They have to be treated separately, though*

[5] (2006) 8 SCC 212 H

A *they are intimately connected. There can be no rule of law if there is no equality before the law; and rule of law and equality before the law would be empty words if their violation was not a matter of judicial scrutiny or judicial review and judicial relief and all these features would lose their significance if judicial,* B *executive and legislative functions were united in only one authority, whose dictates had the force of law. The rule of law and equality before the law are designed to secure among other things, justice both social and economic.*

C *106. ..... According to the Constitutional Law of India, by H.M. Seervai, 4th Edn., p. 546, equality is not violated by mere conferment of discretionary power. It is violated by arbitrary exercise by those on whom it is conferred. This is the theory of "guided power". This* D *theory is based on the assumption that in the event of arbitrary exercise by those on whom the power is conferred, would be corrected by the courts.*

118. The constitutional principle of equality is inherent in the rule of law. However, its reach is limited because E *its primary concern is not with the content of the law but with its enforcement and application. The rule of law is satisfied when laws are applied or enforced equally, that is, even-handedly, free of bias and without irrational distinction. The concept of equality allows differential treatment but it prevents distinctions that are* F *not properly justified. Justification needs each case to be decided on case-to-case basis.* "

14. The above decisions clearly show that autonomy of a minority institution does not dispense with the requirement to act fairly and in a transparent manner and the High Court in exercise of its power of judicial G review is entitled to examine fairness of selection process. Grievance of a citizen that he was treated unfairly cannot be ignored on the ground that a minority institution has autonomy or right of choice. Exercise of right of choice has to be fair, non-discriminatory and rational.

15. We, thus, hold that while under the constitutional scheme, a

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"minority institution" is free to select and appoint a principal, without being bound by the principle of seniority alone, whether the appointment has been made fairly and reasonably and whether there is violation of right of an individual eligible candidate by the minority institution by not adopting fair procedure, is liable to be tested in exercise of power of judicial review under Article 226 of the Constitution. Since this aspect of the matter has not been gone into by the High Court, we allow this appeal and set aside the impugned order. The matter stands remitted back to the High Court for a fresh decision in accordance with law. We make it clear that we have not expressed any opinion on merits of the controversy between the parties. No costs.

The parties are directed to appear before the High Court for further proceedings on Wednesday, the 15th February, 2017.

Nidhi Jain Appeal allowed.