Fresh from the Bench

All private property cannot be acquired and redistributed by the state, as it would violate the constitutional right to property

PROPERTY OWNERS ASSOCIATION v. STATE OF MAHARASHTRA (2024 INSC 835)

Coram: Chief Justice (Dr) Dhananjaya Y Chandrachud, Justice Hrishikesh Roy, Justice B.V. Nagarathna, Justice Sudhanshu Dhulia, Justice Jamshed B. Pardiwala, Justice Manoj Misra, Justice Rajesh Bindal, Justice Satish C. Sharma, and Justice Augustine G. Masih

The Supreme Court, on 5 November 2024, by a **7:2 majority,** held that not all private property constitutes 'material resources of the community' under Articles 39(b) and (c) that can be acquired and redistributed by the State.

The bench outlined certain principles to determine whether privately owned resources are covered by Article 39(b). This includes:

(i) the nature of the resource and its inherent characteristics;

(ii) the impact of the resource on the well-being of the community;

(iii) the scarcity of the resource; and

(iv) the consequences of such a resource being concentrated in the hands of private owners (¶222).

The judgment has also overruled the decision of *Sanjeev Coke Manufacturing v. Bharat Coking Coal* (1982 INSC 93) (***'Sanjeev Coke'***), which held that private resources are also part of the community's material resources.

Brief Background

The matter arose from the amendment to the Maharashtra Housing and Area Development Act, 1976 (MHADA) in 1986. It was to give effect to Article 39(b) of the Constitution. By way of Chapter VIII-A, the Act allowed the acquisition of redeveloped properties for the erstwhile occupiers. It empowered the state authorities to acquire dilapidated buildings and the land on which those are built, provided 70 percent of the occupants make such a request for restoration purposes. In a **challenge to the constitutional validity of Chapter VIII-A**, the Bombay High Court held that Chapter VIII-A was saved by Article 31-C as it gave effect to the principles laid down in Article 39(b).

On appeal, the Supreme Court then referred the matter to a larger bench due to a dispute over the interpretation of Article 31-C to reconsider the correctness of *Sanjeev Coke* regarding the interpretation of 'material resources of the community.' The Seven-Judge Bench, subsequently, referred the case to a Nine-Judge Bench to reconsider the broad interpretation in *Mafatlal Industries Ltd v. Union of India* (1996 INSC 1514) regarding the type of 'material resources of the community' under Article 39(b). **After this decision, the constitutionality of the MHADA will be decided by a regular bench based on the principles laid down in the present case.**

Issues

Whether privately owned property constitutes 'material resources of the community' that can be acquired and distributed by the state in furtherance of Article 39(b) of the Constitution.

What is the correct interpretation of Article 31C of the Constitution after the judgment of *Minerva Mills v. Union of India* (1980 INSC 142) (***'Minerva Mills'***)?

Rationale

The Court held that after the amendment to Article 31-C was struck down in *Minerva Mills*, the unamended Article 31-C stood revived. Article 31-C is a saving clause that protects laws that implement certain Directive Principles, even if they appear to violate the Fundamental Rights in Articles 14 and 19. The rationale behind this saving clause is to ensure that the social goals are achieved, even if it is through means of distribution of resources that are material to the community. Thus, Article 31-C will continue to prevent statutes from being struck down for violating Articles 14 and 19 if they give effect to Articles 39(b) and (c),[1] as interpreted in this judgment.

In her separate opinion, Justice Nagarathna observed that all privately owned material resources should be first converted into the 'material resources of the community' and only then can be distributed to serve the common good (¶¶7.8-7.9, 11.8, 12.3), except personal belongings (¶7.6). Justice Dhulia, in his dissent, observed that the phrase 'material resources of the community' must be given an expansive meaning (¶48). It is the task of the legislature to decide what and when privately owned resources that serve the common good form part of the material resources of the community (¶49).

An educational institution does not lose its minority status merely because it was created by a statute

ALIGARH MUSLIM UNIVERSITY V. NARESH AGRAWAL (2024 INSC 856)

Coram: Chief Justice (Dr) Dhananjaya Y Chandrachud, Justice Sanjiv Khanna, Justice Surya Kant, Justice Jamshed B. Pardiwala, Justice Dipankar Datta, Justice Manoj Misra, and Justice Satish C. Sharma

The Supreme Court, on 8 November 2024, by a 4:3 majority, overruled the *Azeez Basha v. Union of India (1967 INSC 238)* (***'Azeez Basha'***) ruling and held that merely because an institute is created by a statute does not strip it of minority status. Former Chief Justice Chandrachud authored the judgment for the majority. Justice Surya Kant, Justice Datta, and Justice Sharma authored separate opinions, also differing from each other on several aspects.

Brief Background

The Mohammadan Anglo-Oriental College (MAO) was founded by Sir Syed Ahmed Khan in Aligarh on 8 January 1877. In 1920, the Aligarh

1 Article 39(b) and (c) of the Indian Constitution provide for Directive Principles that are to be followed by the state. It specifies that the state shall direct its policy towards securing the ownership and control of the material resources of the community to be so distributed as best to subserve the common good. Further, the operation of the economic system must not result in the concentration of wealth and means of production to the common detriment.

Muslim University Act (**'AMU Act'**) was enacted, establishing AMU as a university. The Act was later amended in 1961 and 1965 to address religious instruction and administrative restructuring. Later, in *Azeez Basha*, a Constitution Bench of the Supreme Court ruled that AMU was not a minority institution under Article 30(1), with the rationale that it was established by a statute and not by a religious community and therefore did not meet the criteria under Article 30(1).

Azeez Basha was then referred by the division bench of the Supreme Court in *Anjuman-e-Rahmaniya v. District Inspector of Schools (W.P. (C) No. 54-57 of 1981)* (***'Rahmaniya'***) to a larger seven-judge bench. Importantly, in the interim, Parliament passed the AMU (Amendment) Act, 1981 (**'1981 Amendment'**), defining AMU as an institution 'established by the Muslims of India' aiming to further the educational and cultural advancement of Indian Muslims. In the case of *TMA Pai Foundation v. State of Karnataka (2002 INSC 454)* (***'TMA Pai'***), a nine-judge bench also addressed questions pertaining to minority education, including the issues in *Rahmaniya*. However, it did not resolve those issues. In 2005, Allahabad High Court, in *Dr. Naresh Agrawal v. Union of India (2005 SCC OnLine All 1705)*, declared AMU's reservation for Muslim students in its postgraduate medical programme unconstitutional, holding it was not a minority institution. This decision also led to striking down the 1981 Amendment and restoring the original AMU Act. AMU appealed to the Supreme Court, which stayed the High Court's ruling.

In 2019, a three-judge bench of the Supreme Court questioned the reliance on *Azeez Basha*, noting unresolved issues from *Rahmaniya* and *TMA Pai*; the matter was hence referred to the seven-judge bench.

Issues

(i) What is the indicia for an educational institution to qualify as a minority institution entitled to the protections under Article 30 of the Constitution?

(ii) Whether the Supreme Court's judgment in *Azeez Basha*, which held that Aligarh Muslim University (AMU) is not a minority institution as it was created by a statute, not by the Muslim community, constitutes correct law

Rationale

The Supreme Court upheld the decision of the two-judge bench in *Rahmaniya*, which without dissenting from the views expressed in *Azeez Basha*, questioned its correctness and requested that the matter be placed before the Chief Justice for consideration. (¶¶36–39).

The Supreme Court outlined specific criteria to determine the minority status of an institution.

- It held that such status does not require the institution to serve exclusively the minority community but must predominantly benefit it.
- Courts should holistically examine the origin of the institution, including who initiated its establishment, its purpose, and the involvement of the minority community in steps taken, such as funding, land acquisition, construction, and administrative structure. (¶¶134-136).

The majority interpreted 'establishment and administration' in Article 30(1) conjunctively but clarified that proving administration vests with the minority is not required to establish minority status. Article 30(1) grants administrative rights as a consequence of establishment and, therefore, treating administration as a precondition would defeat the purpose. (¶¶138-139). Lastly, the majority held that an institution's status as one of national importance does not

negate its minority character, as 'national' and 'minority' are not mutually exclusive (¶148). The majority further referred to *In re Kerala Education Bill, 1957 (1968 INSC 64)* and held that the right to establish and administer educational institutions under Article 30(1) extends to institutions established both before and after the adoption of the Constitution (¶¶67, ¶¶107-108). It noted that an educational institution does not lose its minority status merely because it was created by a statute, holding the reasoning of *Azeez Basha* to be flawed. The majority also held that the core issue in *Rahmaniya* was regarding the essential ingredient of a minority education institution. It ruled that both *Rahmaniya* and *TMA Pai* did not concern themselves with the factual situation in *Azeez Basha*, i.e., whether AMU is a minority institution. The 2019 reference order was also limited to its legal aspects and referred only to the question of the indicia to be fulfilled to qualify as a minority educational institution (¶¶33-35).

Justices Kant, Datta, and Sharma, in their dissenting opinions, held that the manner of referral to a larger bench in *Rahmaniya* was legally flawed and breached established norms of judicial propriety (¶91, ¶¶24-25, ¶266). It was also observed that if an institution possesses legal existence independent of the statute, then the statute merely recognises an existing institution and does not establish it. Therefore, it cannot take away the role of the minority community in bringing the institution into existence (¶155). Justice Datta observed that the governance structure, funding, admissions, and appointments in the University demonstrate an involvement of the State, which amounted to absolute control over the administration of the university (¶101). He emphasised that the AMU Act's preamble lacked any recognition of minority contributions (¶72).

LMV license holders can drive Transport Vehicles under 7,500 kg without needing a separate endorsement

M/S. BAJAJ ALLIANCE GENERAL INSURANCE CO. LTD. V. RAMBHA DEVI (2024 INSC 840)

Coram: Chief Justice (Dr) Dhananjaya Y Chandrachud, Justice Hrishikesh Roy, Justice Pamidighantam S. Narasimha, Justice Pankaj Mithal, and Justice Manoj Misra

The Supreme Court on 6 November 2024, **unanimously** held the correctness of the law laid down in *Mukund Dewangan v. Oriental Insurance Company Limited (2017 INSC 576)* (***'Mukund Dewangan'***) and decided that a person holding a Light Motor Vehicle ('LMV') license is entitled to drive a Transport Vehicle weighing less than 7,500 kg without any additional endorsement on their license.

Brief Background

The Motor Vehicle Act, 1988 (MV Act) initially classified vehicles as light, medium, and heavy, with light vehicles weighing less than 7,500 kg. In 1994, the Act relaxed medium and heavy vehicles with a new category of 'Transport Vehicles' for transporting passengers and goods. This raised the question of whether a person holding an LMV license could drive a 'Transport vehicle' under 7,500 kg. Insurance companies frequently dispute claims from LMV license holders driving such vehicles. In 2017, a Three-Judge Bench of the Supreme Court in *Mukund Dewangan* ruled

that LMV license holders could drive Transport Vehicles weighing less than 7,500 kg. However, several insurance companies challenged this ruling, arguing that this would allow inadequately trained drivers to operate these vehicles. In 2018, a Division Bench noted that the *Mukund Dewangan* judgment had overlooked important provisions of the MV Act and referred the matter to a larger bench. In 2023, a three-judge bench also questioned the ruling, placing the matter before the Constitutional Bench.

Issue

Whether a person holding a license for an LMV can drive a 'Transport Vehicle' weighing less than 7,500 kg without a specific endorsement on their license?'

Rationale

The Supreme Court noted that if an LMV license holder cannot drive a Transport Vehicle under 7,500 kg, they would need a separate endorsement for 'a Transport Vehicle' to use it for small-scale commercial activities. It was held that requiring such a license for vehicles under 7,500 kg would be unreasonable and contrary to the legislative intent (¶44.3). The Court emphasised a harmonious approach to clarifying the law (¶66). The Court also observed that the 1994 Amendment made to the MV Act, which replaced the 'medium goods vehicle' and 'heavy goods vehicle' categories with 'Transport Vehicle', aimed to simplify the licensing process. Thus, the term 'Transport Vehicle' in the licensing scheme should be understood in the context of medium and heavy vehicles (¶127).

The Supreme Court emphasised that statutes should be interpreted to avoid impractical outcomes. Requiring a person seeking an endorsement for a Transport Vehicle, such as an autorickshaw, to undergo extensive training for heavier vehicles would be illogical and impractical. The court concluded that additional testing requirements for Transport Vehicles should not apply to LMVs. (¶81). The Court also noted that safe driving requires knowledge of traffic rules and focus on the road, which applies to all drivers, regardless of the vehicle class (¶123).

The Uttar Pradesh Board of Madarsa Education Act, 2004 is constitutionally valid, except for provisions pertaining to higher education degrees such as Fazil and Kamil

ANJUM KADARI V. UNION OF INDIA (2024 INSC 831)

Coram: Chief Justice (Dr) Dhananjaya Y Chandrachud, Justice Jamshed B Pardiwala, and Justice Manoj Misra

The Supreme Court on 5 November 2024, upheld the constitutional validity of the Uttar Pradesh Board of Madarsa Education Act, 2004 (Act of 2004), except for the provisions that provide for the regulation of higher education degrees, which were found to be in conflict with the University Grants Commission Act, 1956 (Act of 1956).

In a judgment authored by Justice Dr. Chandrachud (former Chief Justice), a three-judge bench of the Supreme Court set aside the judgment of the High Court that invalidated the Act on the ground of

being violative of the principle of secularism and Articles 14, Article 21, and Article 21-A of the Constitution and Act of 1956.

Brief Background

The Act of 2004 establishes a 'Board of Madarsa Education' to regulate standards of education for students studying in *Madarsas* in the state. It provides both religious and secular education up to various levels, including elementary, secondary, and higher education. On 22 March 2024, a Division Bench of the Allahabad High Court invalidated the entire Act and directed the State Government to take steps to accommodate all students who were studying in *Madarsas* in schools recognised by the Education Boards of the State of Uttar Pradesh. On 5 April 2024, the Supreme Court stayed the implementation of the judgment while it heard the case.

Issue

Whether the Uttar Pradesh Board of Madarsa Education Act, 2004 is constitutional.

Rationale

The Supreme Court, distinguishing between 'religious instruction' (teaching religious practices) and 'religious education' (teaching philosophy of religion), found that Article 28 of the Constitution, which prevents imparting religious instruction at institutions maintained out of government funds, does not prohibit institutions from providing 'religious education', nor does it prevent the government from recognising institutions imparting religious instruction alongside secular education. The Court ruled that the Act of 2004 is consistent with the positive obligation of the State to ensure that students studying in recognised *Madarsas* attain a minimum level of competency that will allow them to effectively participate in society and earn a living (¶72).

The Supreme Court held that the legislative scheme of the Act of 2004 shows that it is not a law to provide religious instruction; rather, it has been enacted to regulate the standard of education in *Madarsas* (¶65). The Court held that the Right of Children to Free and Compulsory Education Act, 2009 (**'Act of 2009'**), which facilitates the fulfilment of the Fundamental Right under Article 21A, does not apply to minority educational institutions.

The Supreme Court held that the State has sufficient regulatory powers under the Act of 2004 to regulate standards of education in *Madarsas* and that the state legislature of Uttar Pradesh was competent to enact the Act under Entry 25, List III ('Education' under the Concurrent List).[2] The Court held that just because the education that is sought to be regulated includes some religious teachings or instructions, it does not push the legislation outside the legislative competence of the state (¶85).

The Court held that Entry 25 of List III cannot be interpreted to mean that only education that is devoid of any religious teaching or instruction is allowed to be regulated; otherwise, it would fall outside the legislative competence of the state (¶90). The Court ruled that this interpretation would be against the constitutional scheme given that Article 30 expressly recognises the right of minorities to establish and administer educational institutions (¶86).

The Supreme Court held that the Act of 1956 has been enacted by Parliament under Entry

2 **Entry 25 of List III :** Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

3 **Entry 66 of List I :** Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

66 of List I[3] and held that Entry 25 of List III is expressly subject to and thus subordinate to Entry 66 of List I. The Court observed that it had held in several cases that the Act of 1956 occupies the field concerning the coordination and determination of standards in higher education; therefore, the Act of 2004, to the extent that it seeks to regulate higher education, is in conflict with the act of 1956 and would be beyond the legislative competence of the state legislature (¶93). Thus, the provisions of the Act of 2004 that regulate higher education, such as the degrees of *Kamil* and *Fazil* (Bachelor's level and Post-Graduate degree), are unconstitutional (¶99). However, the Court observed that the regulation of these higher education degrees is separable from the remainder of the Act; thus, only the provisions that pertain to *Fazil* and *Kamil* are unconstitutional and the rest of the Act of 2004 is valid (¶¶102-103).

Existing rules governing eligibility criteria cannot be changed once recruitment begins unless the existing rules permit it

TEJ PRAKASH PATHAK V. RAJASTHAN HIGH COURT (2024 INSC 847)

Coram: Chief Justice (Dr) Dhananjaya Y Chandrachud, Justice Hrishikesh Roy, Justice Pamidighantam S. Narasimha, Justice Pankaj Mithal, and Justice Manoj Misra

The Constitution Bench of the Supreme Court, on 7 November 2024, in a judgment authored by Justice Misra, **unanimously** held that the existing rules governing eligibility criteria cannot be changed once recruitment begins unless the existing rules permit it. The Court held that the doctrine that stops the change of rules midway through the recruitment process is founded on the rule against arbitrariness in Articles 14 and 16 and the doctrine of legitimate expectations. The Court held that the candidates have a legitimate expectation that selection will be based on known criteria and that public authorities should act predictably unless there is a good reason not to do so.

Brief Background

By its notification dated 17 September 2009, the Rajasthan High Court invited applications for the posts of translators wherein the relevant rules specified the qualifications as well as the method of recruitment to the posts, which included an examination consisting of a written test followed by an interview. After the examination, the Chief Justice of the High Court added a minimum percentage of 75% in the examination for filling up the posts in question. Some unsuccessful candidates filed a writ petition before the High Court contending that the Chief Justice's decision amounted to 'changing the rules of the game after the game is played.' After the dismissal of the writ petition by the High Court, a Special Leave Petition was filed before a Three-Judge Bench of the Supreme Court. The three-judge

4 *State of Haryana v. Subash Chander Marwaha and Others (1974)* – The Supreme Court held that candidates securing minimum qualifying marks in a recruitment examination would have no legal right to be appointed.

5 *K. Manjusree v. State of Andhra Pradesh* (2008 INSC 195) – The Supreme Court held that the procedure adopted by the authority in preparing the fresh selection list by applying the requirement of minimum marks for the interview was not legal and valid. The Court held that the requirement of minimum marks for interviews after the entire selection process (consisting of written examination and interview) was completed would amount to changing the rules of the game after the game was played, which is clearly impermissible.

bench noted that a previous decision of the SC in the case of *State of Haryana v. Subash Chander Marwaha and Others* (1974) (***'Marwaha'***)[4] was not brought to the notice of the Court in *K. Manjusree v. State of Andhra Pradesh* (2008 INSC 195)[5] (***'K. Manjusree'***). The Court referred the matter to a Constitution Bench, stating that applying the ratio of *K. Manjusree* to the present case would not be in the public interest. The Court held that the principle of not permitting the State or its instrumentalities to tinker with the 'rule of the game' in matters of prescription of eligibility criteria needs to be considered by a larger bench.

Issue

Whether the 'rules of the game' governing a recruitment process can be changed after the recruitment process has commenced.

Rationale

The Supreme Court ruled that the principle that the rules of the game could not be changed midway did not apply with as much strictness to the procedure for selection as it did to the fixing of the eligibility criteria. It reasoned that where the relevant rules were silent on the procedure of selection, the recruiting body could fill in the gaps through administrative instructions provided they did not violate the provisions of the rules, the statute, or the Constitution, but where the rules covered the field, the recruiting body had to abide by them.

The Court upheld the decision in *K. Manjusree* and held that recruitment bodies can devise appropriate procedures or methods of selection during the recruitment process as long as they are transparent, non-discriminatory, and rational. It was observed that in *K. Manjusree*, the existing rules had not specified the procedure of selection. Thus, the concerned authority came up with an aggregate qualifying percentage for the written exam and interview. The rule was then changed following the completion of the interview process, adding a minimum qualifying percentage for the interview in itself (¶18). In these circumstances, the Court held that the change was illegal as the considerations of examiners in evaluating the candidates would have been different had they known that there was a minimum percentage for the interview in addition to the written exam (¶19).

The Supreme Court in the present case addressed the contention that the decision in *K. Manjusree* contradicted *Marwaha* (¶22). In *Marwaha*, following the preparation of the selection list, the recruiting body fixed a percentage for the appointment from amongst the names in the list (¶24). This was upheld, with the Court ruling that such an act came under the purview of administrative policy (¶25). In the present case, the Court held that *Marwaha* dealt with the right to be appointed from the select list, whereas *K. Manjusree* dealt with the right to be placed in the select list. Therefore, it ruled that *K. Manjusree* could not be at variance with *Marwaha*, as both decisions dealt with separate questions (¶26).

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