Sindhi Education Society & Anr vs Chief Secretary,Govt.Of Nct Of ... on 8 July, 2010

Author: Swatanter Kumar

Bench: B.S. Chauhan, Swatanter Kumar

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.5489 OF 2007

Sindhi Education Society & Anr. ...Appellants

Versus

The Chief Secretary, Govt. of
NCT of Delhi & Ors. ...Respondents

JUDGMENT

Swatanter Kumar, J.

1. The Bench hearing the letters patent appeal in the High Court of Delhi at New Delhi, while setting aside the judgment/order passed by the learned Single Judge dated 14th September, 2005 in Writ Petition (C) No.2426 of 1992, issued a certificate of leave to appeal under Article 133 read with Article 134-A of the Constitution of India, 1950 (for short `the Constitution') in its judgment dated 30th November, 2006 and considered it appropriate to frame the following questions to be decided by this Court :-

> (a) Whether Rule 64(1)(b) of the Delhi School Education Rules 1973 and the orders/instructions issued thereunder would, if made applicable to an aided minority educational institution, violate the fundamental right guaranteed under Article 30(1) of the Constitution and are the respondents herein entitled to a declaration and consequential directions to that effect ?
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> (b) Have the judgments of the learned Single Judge of the High Court in Sumanjit Kaur v.

NCT of Delhi [2005 III AD (Delhi) 560], as affirmed by the decision dated 1.2.2006 of the Division Bench of the High Court in (LPA Nos.445-446/2005) Govt. of National Capital of Territory of Delhi v. Sumanjit Kaur been correctly decided ?

1. It is useful to notice at this juncture itself that the Division Bench doubted the correctness of judgment of another Division Bench of that Court in the case of Govt. of NCT of Delhi v. Sumanjit Kaur in LPA Nos. 445-446 of 2006 dated 1.2.2006. The Division Bench had affirmed the view taken by the Single Judge in Sumanjit Kaur (supra). The learned Single Judge had expressed the view that such circulars and regulations issued by the Directorate of Education, would be unconstitutional since they are likely to interfere with the choice of the medium of instruction as well as minority character of the institution by compelling the appointment to the teaching faculty of persons, who may be inimical towards that minority community. The Court further held that since the approval in the facts of the case would be deemed to have been granted, the Court was not expected to discuss or pass further orders in the writ petition. The Division Bench, which passed the impugned judgment expressed the view contra to the view taken by the learned Single Judge in the Case of Sumanjit Kaur (supra), as affirmed by the Division Bench. While noticing that the Government of NCT of Delhi had filed the Special Leave Petition (C) No. 16374 of 2006 in this Court in that case, the Division Bench in the present case thought it fit to grant the certificate for leave to appeal to this Court.

1. This is how we have been called upon to examine the constitutionality and legality or otherwise of the above questions framed by the High Court of Delhi. We are also of the considered view that besides the above question, it will have to be examined that even if the relevant provisions of the Delhi School Education Act, 1973 (for short the `DSE Act') are not unconstitutional, would they still apply with their rigors to the linguistic minority schools receiving grant-in-aid from the Government. Before we enter upon the aspects relating to law on the above issues, reference to the basic facts would be necessary.

Facts :-

> 1. The appellant - Sindhi Education Society (hereinafter referred to as `the Society') is a Society established and duly registered under the provisions of the Societies Registration Act, 1860. The Society is running, inter alia, a school known as S.E.S. Baba Nebhraj Senior Secondary School at Lajpat Nagar, New Delhi.
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> 1. According to the Society, Sindhi language is one of the languages included in VIII Schedule of the Constitution and the people speaking Sindhi language are scattered in various parts of the country. As Sindhi language is not spoken by the majority of people in Delhi, therefore, the Sindhi community in Delhi is and has been held to be a linguistic minority by virtue of Article 30(1) of the Constitution. The Society, therefore, has a constitutional right to establish and administer educational institutions of its choice. In furtherance of such an object, the school was established for preservation of Sindhi language and managing the affairs of the school as per its constitution and under the provisions of the relevant laws.

1. In the year 1973, the DSE Act came into force with a view to provide better organization and development of the school education in Union Territory of Delhi and for matters connected therewith and incidental thereto. Soon after coming into force of the provisions of the DSE Act, 1973, the Society felt that certain provisions of the DSE Act infringed the minority character of the Society, particularly, in matters related to administration and management of the school.

1. It appears that the society filed a writ petition in the High Court of Delhi being Writ Petition (C) No. 940 of 1975, titled Sindhi Education Society (Regd.) v. Director of Education and others, which came to be disposed of by a detailed judgment of the Delhi High Court dated 14th July, 1982. In that judgment, the Court specifically held that the Society was a linguistic minority and the provisions of the DSE Act as specified in the judgment would not be applicable to the Society. In order to put the matters with clarity, it will be useful to refer to the findings recorded by the Court which read as under :-

"In the present case the Delhi School Education Act is applicable only to the Union territory of Delhi. It is with reference to this Territory that one has to consider as to whether Sindhi is a language spoken by the majority or minority of the people. On this there can be no doubt. Sindhi is not spoken by majority of the people in Delhi and, therefore, the Sindhi community in Delhi can legitimately be regarded as a linguistic minority. Just as a religious minority may be composed of persons whose mother-tongue may not be the same, similarly a linguistic minority may not necessarily be composed of people who belong to a religious minority of the State. As such, every person, who is a Sindhi, would be regarded as belonging to a linguistic minority irrespective of the fact as to whether he is a Hindu, or a Muslim or a Christian to the effect that some of the provisions of the Act and the Rules would not apply to minority institutions, while some other provisions could be made applicable only with certain modifications or in accordance with the observations made by the Court. We may now summarise the decision of this Court with regard to those provisions of the Act and the Rules which it held as not being applicable, or being applicable as per the directions contained therein, because the learned counsel for the petitioner states that a similar direction should be issued in this case also.

xxx xxx xxx xxx xxx The aforesaid provisions are not to apply to the school but the Director of Education, Delhi should be kept informed of any order of dismissal, removal, reduction in rank or termination of service of an employee by the management. If the Administration receives information that the disciplinary powers are being abused by the school then the Administration will have a right to suspend, reduce or stop the grant-in-aid to the School after giving a hearing to the school.

Section 27A and B :- The said provisions are not to apply to the minority school.

> The writ petition is accordingly allowed in the aforesaid terms and, like in Jain Sabha's case (supra), it is directed that the aforesaid provisions of the Delhi School Education Act, 1973 and the Rules framed thereunder will not apply to the petitioner or would apply only in the manner in which they have been interpreted by this Court. The petitioner will be entitled to costs. Counsel's fee Rs.550/-."

1. The aforesaid judgment appears to have attained finality and, in fact, was not impugned before this Court. The Division Bench, while deciding the above case, clearly held that certain Rules would not be applicable and it specifically noticed the provisions relating to the constitution of the Managing Committee under Rule 59, Rule 64, different Clauses under Rule 96(3), Rule 98, Rule 105 and Rule 120 of Delhi School Education Rules, 1973 (for short `DSE Rules') in that behalf. The Court held that Rule 64 of the DSE Rules is to be construed in respect of minority schools to require compliance only if those provisions of the Act and the Rules and instructions thereunder are in consonance with the provisions of the Constitution, particularly, with Article 30(1) of the Constitution.

1. Rule 64, primarily, deals with the conditions of providing grant-in- aid and further states that no aid is to be granted unless suitable undertaking is given by the Managing Committee. Rule 64 came to be amended by Notification Nos. 1340-2340 dated 23rd February, 1990. This Rule prescribe certain limitation which the Competent Authority can impose in exercise of its powers. Even before amendment of this Rule, on 12th March, 1985, instructions were issued by the Deputy Director of Education, addressed to the appellant stating, inter alia, that in accordance with provision of Rule 64 of the DSE Rules, the Managing Committee of the Society was required to furnish an undertaking that they would make reservation in the appointments of teachers for the Scheduled Castes and Scheduled Tribes. The reference was also made to the instructions issued by the Department of Personnel, Government of India, wherein reservation for Scheduled Castes and Scheduled Tribes in the Institutions/Organisations was ordered. The relevant part of the said letter reads as under :-

> "4. Since the schools are required to apply for grants-in-aid every years on the prescribed proforma as provided under the Act, they are also required to given undertaking to make reservation in the services and posts for scheduled castes and scheduled tribes accordingly. A specimen of the declaration is sent herewith the request that the same be sent to this office duly filled in and signed with stamp of the Authority signing.
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> 5. It may be noted that the future grants-in-aid shall be released on giving the aforesaid undertaking on the enclosed proforma."

The appellant Society responded to that letter vide reply dated 15th April, 1985, inviting attention of the authorities to the judgment of the High Court dated 14.7.1982, in Writ Petition No. 940 of 1975, deciding, inter alia, that the school in question, has been held to be a minority institution and that Rule 64 of the DSE Rules is to be accordingly construed in respect of minority school(s) that they require compliance, only, if the same is in consonance with the provisions of Article 30(1) of the Constitution.

1. The Secretary (Education), Govt. of NCT of Delhi, Respondent No.3, thereafter vide his communication dated 21st March, 1986, informed the appellant that the undertaking, which was required to be given by all the Government aided schools in the matter of compliance with the provisions relating to reservation for Scheduled Castes and Scheduled Tribes in the institutions, is not applicable to the minority institutions. Thus, they were not required to adhere to the same. It will be useful to refer to the communication of the Government at this stage itself, which reads as follow :-

> "In connection with circular letter issued vide even number dated 12.3.85, this is hereby clarified that an undertaking in writing which was required to be given by all the Govt. Aided Schools in the matter of compliance with the provisions relating to reservation for SC/ST in the institutions is not applicable to the minority institutions. As such the managements of the institutions are at the discretion to adhere or not to adhere to the instructions issued by the Govt. of India regarding reservation of SC/ST."

1. The aforesaid letter was issued after the judgment of the Court had been pronounced, however, according to the appellant, in violation of all the principles and the law laid down by that Court, they still received another communication from the authorities in September, 1989, addressed to all the schools that appointment of the Scheduled Castes and Scheduled Tribes candidates is a precondition for all the agencies receiving grant-in-aid from the Government and while referring to Rule 64 of the DSE Rules and its amendment, they were required by the authorities to comply with this condition. The correctness of this action of the respondent was questioned by appellants by filing a writ petition in the High Court, which came to be registered as Writ Petition (C) No.2426 of 1992 titled as Sindhi Education Society v. Union of India and Others. This writ petition was allowed by the learned Single Judge vide his Order dated 14.9.2005. The learned Single Judge felt that the case was entirely covered by the judgment of that Court in the case of Sumanjit Kaur (supra). That was the primary and only reason, stated by the learned Single Judge, for allowing the writ petition.

2. Aggrieved from the judgment of the learned Single Judge, the NCT of Delhi filed a letter patent appeal being L.P.A. Nos. 33 to 36 of 2006 and 40-43 of 2006, and the same was not only accepted but the Division Bench had felt it proper to grant certificate of leave to appeal to this Court, vide judgment dated 30.11.2006. While setting aside the judgment of the learned Single Judge and also expressing a dissent to the Division Bench Judgment in the case of Sumanjit Kaur (supra), the Division Bench, primarily, recorded the reasons as [a] that Rule 64(1)(b) does not infringe any right of the minority institution, [b] Clause 11 of the Kerala Education Bill, 1957, which was the subject matter of consideration before the Supreme Court in the case of In Re. Kerala Education Bill, 1957, [(1959) SCR 995], was pari materia to Rule 64(1)(b) of DSE Rules, and as such was in conformity with law and lastly, implementation of roster of reservation was in consonance with the stated principle and the fundamental rights are not infringed. For these reasons, the High Court passed the order afore-noticed, resulting in filing of the present appeal.

1. We have already noticed the questions of law of general public importance, which had been framed by the High Court at the time of issuance of certificate. The appellants herein succeeded

before the learned Single Judge, which order in turn, was set aside by the Division Bench of the High Court. The appellants in writ petition had raised a specific challenge to the provisions of Rule 64(1)(b) of the DSE Rules which had been accepted by the learned Single Judge as the matter was stated to be covered by the judgment of that Court in Sumanjit Kaur's case (supra). The respondents vide their letter dated 12th March, 1985, and, thereafter, while referring to the Department of Personnel and Administration, letter dated 7th October, 1974, pressed upon the Managing Committee of the institutions, which were Government aided including minority institutions, to furnish an undertaking that they would abide by the rule promoting reservation while making appointment of teachers in the school. Thus, the question that clearly arise for consideration before this Court is whether the provisions of Rule 64(1)(b) of the DSE Rules is ultra-vires or violative of Article 30(1) of the Constitution. In the alternative, whether the said Rule, as framed, can be enforced against the Government aided institutions belonging to linguistic minorities. In order to examine this aspect in some elaboration, we would have to dissect it into two different sections. Firstly, the law in relation to such minorities, as has been settled by catena of judgments of this Court, and their correct application to the present case, secondly, analysis of the scheme of the DSE Act and the Rules framed there under, in relation to minority institutions. Depending upon the answer to these two aspects, lastly, whether the Rule is enforceable against the minority institutions to the extent that the authorities can deny grant-in-aid for non-compliance. Scheme under the Delhi School Education Act, 1973 and the Rules framed thereunder in relation to the Minority Institutions :-

> 1. As already noticed, there is no dispute to the fact that appellant is a minority institution and the Society is one which enjoys the status of a linguistic minority and thus is entitled to all the constitutional benefit and protection under Articles 29 and 30 of the Constitution. Firstly, one has to examine what is a minority.

`Minority', would include both religious and linguistic minorities. Section 2(o) of the DSE Act defines `minority school' as follows:-

> "minority school" means a school established and administered by a minority having the right to do so under clause (1) of Article 30 of the Constitution Once an institution satisfies the above ingredients, it has to be given the status of a minority institution. The High Court in its judgment in Sindhi Education Society (Writ Petition No.940 of 1975) (supra) had clearly declared that the appellant is a linguistic minority and that judgment has attained finality.

1. There is hardly any dispute in regard to status of this Society. Prior to coming into force of DSE Rules, the Society was obviously free to carry on its activity of running the educational institution, free from any restriction and in accordance with law. DSE Act was enacted to provide better organization and development of school education in Union Territory of Delhi and for matters connected therewith or incidental thereto. The very object of this Act was, therefore, to improve the organization and school education in Delhi. The primary object, thus, was to aid and develop the education system at the school level. In order to achieve this purpose, power is vested in the Administrator to regulate education in all schools in Delhi in accordance with the provisions of the

DSE Act and Rules made there under. Section 3(3) of the DSE Act makes it abundantly clear that on and from the commencement of DSE Act, and subject to the provisions of Clause 1 of Article 30 of the Constitution, the establishment of a new school or opening of a higher class or even closing of existing classes shall have to be in accordance with the provisions of the DSE Act, but for such compliance, the recognition shall be denied to such institution by the appropriate authority. The school is required to have a scheme of management in terms of Section 5 of the DSE Act, but such scheme insofar as it relates to the previous approval of the appropriate authority, will not be applicable to the scheme for an unaided school.

1. Powers of wide dimensions and authority are vested in the Administrator under Section 20 of the DSE Act, which forms part of Chapter VII relating to taking over of the management of the schools under the provisions of the Act. Whenever the Administrator is satisfied that the managing committee or the manager of the school has failed or neglected to perform their duties and carry on the management of the school in accordance with the provisions of the Act, the Administrator can take over the management of the school whether such school is recognized or not. But, such action can be taken only in accordance with the prescribed procedure. However, where the Administrator feels that it is expedient to take over the management of the school, it could pass orders from time to time, outer limit being 3 years which again could be extended for further period, if the Administrator is of that opinion for valid reasons but, in any case, it cannot exceed the period of 5 years in its entirety. These powers of the Administrator indicate the legislative intent to ensure that the object of the DSE Act is not defeated and every recognized or unrecognized institution, without classification on the basis of receiving Government aid, should function and be managed in accordance with the provisions of the DSE Act and the Rules framed thereunder. It is of great significance to notice here that the legislature in its wisdom by a specific provision under Section 21 of the DSE Act has kept minority schools outside the ambit and scope of Section 20. In other words, the power of control and management vested in the authority even on the basis of alleged breach of conditions would not enable the authorities to take over the management of any minority school. Section 21, thus, is an absolute exception to the applicability of Section 20 of the DSE Act. Section 28 of the DSE Act empowers the Administrator to frame Rules with the previous approval of the Central Government. The Administrator has been empowered under Section 28(2), in particular and without prejudice to the generality of the stated powers, to frame Rules in relation to the matters specified in that sub-section.

1. It will not be necessary for us to notice in detail the purposes for which Rules can be framed but reference to few of them would be useful. Under Section 28(2)(b), Rules can be framed in regard to the condition which every existing school shall be required to comply. While, Section 28(2)(g) contemplate framing of minimum qualifications for, and method of recruitment, and the terms and conditions of service of employees, Section 28(2)(k) empowers the Administrator to frame Rules in regard to the conditions under which aid may be granted to recognized schools and on violation of which, aid may be stopped, reduced or suspended and Section 28(2)(q) relates to faming of Rules for admission to a recognized school and lastly under Section 28(2)(u), Rules can be framed in regard to financial and other returns to be filed by the managing committee of recognized private school. It has to be noticed that all these Rules can be framed and have only one purpose `make rules to carry out the provisions of the Act''. In other words, the framing of Rules does not empower

the Administrator to go beyond the purpose of object of the Act and all these Rules so framed should be intended only to further the cause of the Act and bring nothing into existence, which is specifically or by necessary implication impermissible under the provisions of the DSE Act.

1. At this point reference to some of the DSE Rules can be of some assistance. Under Chapter-II - Regulation of Education - The freedom of minority institutions to establish educational institutions for advancement of their own language and culture is a protected freedom. Rule 10 of the DSE Rules recognizes such mandate. It is provided there that any linguistic minority which intends to set up school with the object of imparting education in the mother- tongue of such linguistic minority, shall be entitled to do so and shall be entitled to receive grant-in-aid, if other conditions for that purpose are satisfied. However, second proviso to this rule states that linguistic minority can decide to impart education at the school in a language other than the language of such linguistic minority. In that event, it shall not be obligatory upon the Administrator to give grant-in-aid to such schools. In other words, this rule recognizes two aspects - firstly, the extent of freedom available to the linguistic minority for educational purposes and secondly, an obligation on the part of the Administrator to give grant-in-aid unless the linguistic minority was covered by the second proviso. The indication that such institution would normally be entitled to receive grant-in-aid, if they satisfy the conditions, is clear in terms of Rule 10.

1. Chapter-III deals with Opening of New Schools or Classes or Closure of Existing Schools or Classes. Rule 44 provides that every individual, association of individuals, society or trust which desires to establish a new school, not being a minority school, is required to give intimation in writing to the Administrator of their intention to establish such school. The details of the intention/intimation required have been stated in Rule 44(2). Amongst others, it requires details to be submitted in respect of managing committee of the proposed new school and the proposed procedure until its recognition under the DSE Act for selection of the Head of the School and the teachers as well as the non-teaching staff etc. It is noteworthy that this rule is applicable to the institutions not being a minority school. The minority institution, therefore, has specifically been kept out of the application of this rule, the purpose being that the administration and management of a minority school will remain outside the rigors of compliance of Rule 44.

1. Chapter-IV of the DSE Rules deals with Recognition of Schools. Rule 50 states the condition which an institution is required to satisfy before it can be granted recognition. Rule 56 empowers the competent authority to suspend or withdraw the recognition granted.

1. Chapter-V deals with the Scheme of Management of the recognized schools. Rule 59 is one other provision which, primarily, indicates the limitations of the schools in regard to furnishing of scheme of the management of the recognized schools. All the recognized schools are expected to submit to the authority the scheme of management and comply with the requirements of formation of managing committee of the school and total number of the members in terms of that rule. The managing committee would include two members to be nominated by the Director, and other members to be nominated or elected, as the case may be, in accordance with the rules and regulations of the society in terms of Section 590(1)(iv), (v) and (vi) respectively. The members, who are nominated by the Director and the persons nominated by the Advisory Board, in the case of

schools other than the minority schools, have an effective role to play in decisions of management as well as they have right of voting. However, in regard to minority school the framers of the rule have added five provisos to Rule 59(1). They specifically provided that in a minority school, the members, instead of being elected, would be the one nominated by the society or the trust by which such unaided minority school is run. The educationist, to be nominated by the Director, shall be a non-official belonging to the minority by which the school is established and run, and the managing committee shall co-opt two senior-most teachers out of a panel of ten senior-most teachers of the school by rotation and in case the school works in two shifts, then one senior-most teacher shall be co-opted from a panel of five senior most teachers in each shift by rotation. Sub-rule (iv) of Rule 59 which gives powers to the Advisory Board to nominate two persons will not apply in the case of the minority school. Furthermore, the members nominated by the Director, Education in exercise of its powers under Sub-rule (v) of Rule 59 shall not be entitled to take part in the management of the minority school and shall function as advisers and observers to put forward the views of the Government in the meeting. This reflects the kind of control, the framers of the rule desired, that the authorities should exercise over the aided minority schools in comparison to the Government aided non-minority schools. There is clear line of distinction which gets more and more prominent with further reference to the various provisions of the DSE Act and the Rules framed thereunder.

1. Chapter-VI is the basic chapter, with which, we may be concerned in the present case, as it deals with grant-in-aid. Under Rule 60, every aided school, which was receiving aid, will continue to receive such aid, so long as it fulfills the conditions of receiving the aid, in terms of Rule 64. Rule 64 deals with the condition that an undertaking in writing has to be filed by the institution to receive the grant-in-aid allowed by the competent authority under the provisions of the DSE Act. The Rule reads as under :

> "(1) No school shall be granted aid unless its managing committee gives an undertaking in writing that:
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> (a) it shall comply with the provisions of the Act and these rules;
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> (a) it shall fill in the posts in the school with the Scheduled Castes and the Scheduled Tribes candidates in accordance with the instructions issued by the Central Government from time to time and also maintain the roster and other connected returns in this behalf;"

Rule 65 details the conditions which a school, applying for grant-in-aid, should satisfy. The grant-in-aid is required to be given only for the qualified staff as Rule 66 imposes no obligation upon the State to release grant-in-aid in relation to unqualified staff. The management of the school must employ adequate number of qualified teachers and other staff which is approved by the Director under the norms prescribed for such post or which may be prescribed from time to time.

1. Rule 96 under Chapter VIII relates to the Recruitment and Terms and Conditions of Service of the Employees of the Private Schools other than the Unaided Minority Schools. This chapter itself will not apply to unaided minority schools but would apply to other schools. The chapter deals with how

a selection committee will be constituted and how the employees including the teachers would be appointed to the schools. DSE Rules 96(1) to 96(3) deals in some detail with reference to appointment, constitution of the selection committee, methodology of selection and appointment to the post of teacher as well as Group-D employees. Significantly, DSE Rules 96(3A) and 96(3B) are exceptions to the earlier part of the DSE Rules. The said DSE Rule 96(3A) refers to various nominations which makes it clear that in the case of aided minority schools, such nominated persons, under different clauses stated therein, shall act only as advisers and will not have the power to vote or actually control the selection of an employee. Rule 96(3B) states that notwithstanding anything contained in sub-rule (3), the Selection Committee of a minority school shall not be limited by the number specified in the said sub-rule and its managing committee may fix such number. Obviously, all these provisions have been framed with the emphasis on the fact that authorities like the Administrator, Director and other officers do not have a direct, and in some cases, even indirect participation in the management and administration of the minority school which includes the selection and appointment of teachers. It attains a greater significance, once these provisions along with restrictions stated in the DSE Act are read in conjunction with Articles 29 and 30 of the Constitution.

1. Chapter-XI of the DSE Rules deal with Unaided Minority School. It requires that recruitment of employees of each recognized unaided minority school shall be made on the recommendation of a Selection Committee to be constituted by the managing committee of that school. Rule 128(1) requires the minimum qualifications for appointment as a teacher of an unaided minority school shall not be less than those as are prescribed by the Affiliating Board. In the event, no minimum qualifications have been specified by the Affiliating Board, in respect of the post of any teacher, the minimum qualifications for recruitment to the such post be made by the Administrator after considering such recommendations or suggestions as may be made by the unaided school in this behalf. In terms of Rule 129, the appropriate Authority has been empowered to relax the minimum qualification for such period as it may deem fit and proper. Chapter XII deals with `Admissions to Recognized Schools'.

1. Thus, the scheme of the DSE Act, in particular, is to give greater freedom to the aided minority institutions and not to impinge upon their minority status as granted under Article 30(1) of the Constitution. We shall shortly discuss the constitutional mandate and effect thereof with reference to the facts of the present case. On the analysis of the above, it is clear that Section 21 of the DSE Act has to be given its true meaning and permitted to operate in the larger field. The stringent power vested in the appropriate Authority in terms of the Section 20 cannot be enforced against a minority institution. It is the consequence flowing from the violations committed by management of a school that empowers the authorities to take over the management of the school within the scope of Section 21 of the DSE Act. Minority Institutions being an exception to these rules have been given a distinct and definite status under the Act and the Rules framed thereunder. Discussion on law particularly with reference to the judgments relied upon by the respective parties.

1. Mr. P.P. Malhotra, the learned Additional Solicitor General of India, with great emphasis, argued that by providing and enforcing the intent of Rule 64(1)(b) of the DSE Rules, the Government is not causing any discrimination. The said DSE Rule relating to reservation is uniformly applied to all

schools. It was fairly stated that there is no dispute to the fact that the appellant institution is a linguistic minority institution. It is also contended that the controversy in the present case is covered by Kerala Education Bill, 1957, case (supra) and the appeal deserves to be dismissed.

1. The direction issued by the Directorate of Education for furnishing of such an undertaking is contemplated under Rule 64(1)(b) and its implementation is in consonance with the principle of equality before law and also within the ambit of Article 15 of the Constitution. The right is vested in the Government to make reservation, as such the grant-in-aid is to be used for a social object, namely, upliftment of reserved category, even by providing employment in minority institutions, like the appellant. This shall be the true spirit of the preamble of the Constitution, which requires attainment of the goal, to secure to all citizens, justice, social, economic and political. These expressions are of wide magnitude and the authorities are well within their competence to require minority institutions as well to comply with the rule of reservation and file undertakings as contemplated under Rule 64(1)(b) of the DSE Rules. The reliance has primarily been placed upon the judgment of this Court in the case of Kerala Education Bill, 1957 (supra); T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481]; Kanya Junior High School, Bal Vidya Mandir v. U.P. Basic Shiksha Parishad [(2006) 11 SCC 92], Secy. Malankara Syrian Catholic College v. T. Jose [(2007) 1 SCC 386] and Brahmo Samaj Education Society v. State of W.B. [(2004) 6 SCC 224].

1. On the contra, the submission made by Mr. K.L. Janjani, the learned counsel appearing on behalf of the appellant is that merely because the State is providing grant-in-aid to a minority institution, it will not clothe the authority with the power to interfere in the administration and management of a minority institution. Right to appoint a teacher is a part of the management and, thus, is free from any restriction. In terms of Article 30 of the Constitution, the right of minority to establish and administer educational institutions of their own choice, is incapable of being interfered with by the authorities and the language of Rule 64(1)(b), as well as the directives issued by the respondents violates the constitutional protection available to the appellants in accordance with law. It is the contention of the appellant that the law enunciated in Kerala Education Bill case,1957 (supra) has been watered down suitably by this Court in T.M.A. Pai's case (supra) and also that the provisions of DSE Act are not pari materia, much less, identical to that of Kerala Education Bill, 1957 case (supra). There are specific provisions in the DSE Act and the Rules exempting linguistic minority institutions and, as such, the State cannot derive any benefit from the said judgment. The purpose of allowing grant-in-aid is to create equality and parity with other institutions. But this does not mean that the authorities under the pretext of granting to the minority institutions additional protections impose conditions which would frustrate the very purpose and object of minority institution and for non-compliance thereof, deny the grant-in-aid. On the simple interpretation of Articles 15, 29 and 30 of the Constitution, it is crystal clear that the linguistic minority institution has the right to make appointments, free of restriction or reservation, as that alone will be in the interest of the linguistic minority. The learned counsel for the appellants relied upon the dictum of order in T.M.A. Pai's case (supra), in addition to the Ahmedabad St. Xaviers College Society v. State of Gujarat [AIR 1974 SC 1389]; Father Thomas Shingare v. State of Maharashtra [(2002) 1 SCC 758]; T. Devadasan v. Union of India [AIR 1964 SC 179], Brahmo Samaj Education Society (supra) and Lt. Governor of Delhi v. V.K. Sodhi & Ors. [AIR 2007 SC 2885] in support of his contentions.

1. In the light of the submissions made before us, it will be pertinent for us to examine how the law has travelled for all these years in relation to the right of minority to run their institutions and the extent to which they can be subjected to control by the appropriate authorities, in accordance with law. The seven-Judge Bench of this Court in the case of Kerala Education Bill, 1957 (supra) was concerned with constitutionality or otherwise of certain clauses of the Kerala Education Bill, 1957. While, discussing the scope of rights available to the minority institutions in relation to running of educational courses, the Court dealt with different aspects of the matter and discussed the constitutional provisions construed in light of the Kerala Education Bill. The Bill had provided different clauses which the institution was required to satisfy to receive the grant-in-aid. In para 29 of the judgment, the Court noticed various clauses of the Kerala Education Bill, the validity of which was challenged before this Court. The argument advanced before the Court, inter alia, was also with reference to the Anglo Indian Education Institutions, that they were entitled to receive the grant under Article 337 of the Constitution and the provisions of the said Bill, which legitimately come within the provisions which infringe their right not only under Article 337 of the Constitution, but also violate Article 30(1) of the Constitution. In that case they are prevented from effectively exercising its rights. A Bench noticed the grievances of the minorities in para 29 of the judgment and discussed the same in para 31 before arriving at the final conclusion.

1. The Court in that case was dealing with the Presidential Reference, in terms of Article 143 of the Constitution. While referring to the questions framed for the opinion of the Court, the Court noticed that the width of power of control thus sought to be assumed by the State evidently appeared to the President to be calculated to raise doubts as to the constitutional validity of some of the clauses of the said Bill on the ground of prohibited infringement of some of the fundamental rights granted to the minority communities by the Constitution. The Bench in Para 10 noticed the questions which are as under :-

(1) "Does sub-clause 5 of clause 3 of the Kerala Education Bill read with clause 36 thereof or any of the provisions of the said sub-clause 36 thereof or any of the provisions of the said sub-clause, offend article 14 of the Constitution in any particulars or to any extent?

(1) Do sub-clause (5) of clause (3), sub-clause (3) of clause 8 and clause 9 to 13 of the Kerala Education Bill or any provisions thereof, offend clause 91) of article 30 of the Constitution in any particulars or to any extent?

(1) Does clause 15 of the Kerala Education Bill or any provisions thereof, offend article 14 of the Constitution in any particulars or to any extent?

(1) Does clause 33 of the Kerala Education Bill, or any provisions thereof, offend article 226 of the Constitution in any particulars or to any extent?"

The answers to question Nos. 1 and 3 :

"That result, therefore, is that the charge of invalidity of the several clauses of the Bill which fall within the ambit of questions 1 and 3 on the ground of the infraction of Article 14 must stand

repelled and our answers to both the questions 1 and 3 must, therefore, be in the negative".

Answer to question No. 2 :-

> "Yes, so far as Anglo Indian education institutions entitled to grant under Article 337 are concerned. (ii) As regards other minorities not entitled to grant as of right under any express provision of he constitution but are in receipt of aid or desire such aid and also as regards Anglo Indian educational institutions in so far as they are receiving aid in excess of what are due to them under Article 337 clauses 8(3) and 9 to 13 do not offend Article 30(1) but clause 3(5) in so far as it makes such educational institutions subject to clauses 14 and 15 do not offend Article 30(1).
>
> (iii) Clause 7 (except sub clauses (1) and (3) which applies only to aided schools), clause10 in so far as they apply to recognized schools to be established after the said Bill comes into force do not offend Article 30(1) but clause 3(5) in so far as it makes the new schools established after the commencement of the Bill subject to clause 20 does offend Article 30(1)."

In the said case, the Court held that right of the minorities to some extent was restricted in the sense that general control still could be exercised by the authorities concerned, but in accordance with law. That is how Clause 11 of the Bill, which has been very heavily relied upon by the respondents before us, completely put an embargo on the appointment of teachers of their choice and the teachers could only be appointed out of the panel selected by the Public Service Commission. This clause was held not to be in violation of the Constitution, but clauses 14 and 15, which related to taking over of the management of an aided school for the conditions stipulated therein, were held to be unconstitutional and bad. This was in view of the law stated under the Bill and its scheme that weighed with the Court to record findings afore-noticed.

1. Still another Seven Judge Bench of this Court, in the case of the Ahmedabad St. Xavier's College Society (supra) was, primarily, concerned with the scope of Articles 29 and 30 of the Constitution, relating to the rights of minorities to impart general education and applicability of the concept of affiliation to such institutions. Of course, the Court held that there was no fundamental right of a minority institution to get affiliation from a University. When a minority institution applies to a University to be affiliated, it expresses its choice to participate in the system of general education and courses of instructions prescribed by that University, and it agrees to follow the uniform courses of study. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health, hygiene of students and the other facilities are germane to affiliation of minority institutions. With regard to grant of an appropriate protection of such community in terms of Article 30 of the Constitution, the Court held as under :-

> "12. The real reason embodied in Article 30 (1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the

> purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country The sphere of general secular education is intended to develop the commonness of the boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.
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> xxx xxx xxx xxx xxx
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> 30. Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonized by education.

Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is compete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measure are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or color of minority. A minority institution should shine in exemplary eclectism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character."

As is evident from the above noticed dictum of the Court the emphasis had been laid on the right of the minority institutions to administer institution. Appointment of teacher is an important part of administration of educational institution and administrative freedom of the minority in that regard.

1. Now we may refer to a judgment of this Court in the case of Managing Committee, Khalsa Middle School v. Mohinder Kaur [(1993) Supp. 4 SCC 26]. In this case, the Court was concerned with the amendments made in the Rules and Regulations of the Society. The date of passing of the resolution or its registration, which would be the effective date while dealing with the termination of service of a teacher without obtaining the approval of the Director of Education, could not be annulled for violating the provisions of the DSE Act. While registering the Khalsa Education Society, which was running a school known as Khalsa Primary School, belonging to a minority, it lost its status of minority, which was restored in July, 1979. The action was initiated during the interregnum period

when the Society was working as non-minority institution, the Court took the view that as a non-minority institution, it was required to comply with the conditions of the DSE Act and the Rules framed thereunder, but once the character of minority institution was restored, the provisions will not be attracted. In this regard, the Court held as under :-

> "10.....Here we are concerned with the amendment in the Rules and Regulations of the Society. In the absence of any requirement in the Societies Registration Act that the alteration in the Rules and Regulations must be registered with the Registrar, it cannot be held that registration of the amendment is a condition precedent for such an alteration to come into effect. It is, therefore, not possible to accept the contention of Shri Mehta that the amendment which was made in the Rules and Regulations by resolution dated July 1, 1979 did not come into effect till March 13, 1980 when the amended Rules and Regulations were registered with the Registrar, Firms and Societies. The said amendment should be treated to have come into effect from the date on which the resolution making the said amendment was passed, i.e. July 1, 1979. As a result of the said amendment in the Rules and Regulations of the Society, the alterations made in the Rules and Regulations in 1963 were reversed and the position as it stood prior to the amendment of 1963 was restored. Consequently, the school which was a minority institution till the amendment of the Rules and Regulations in 1963 and had ceased to be a minority institution as a result of the amendment in 1963 regained its status as a minority institution after July 1, 1979, when the rules and regulations were amended and the original position was restored. In view of the restoration of the minority character of the institution the provisions of the Education Act and the Education Rules ceased to be applicable to the institution after July 1, 1979. The impugned order of termination order of the services of the respondent was passed on December 31, 1979, i.e., after the school had become a minority institution. The said order cannot, therefore, be held to be invalid on the ground that it was passed in contravention of Section 8 of the Education Act. The order passed by the Delhi High Court quashing the said order as well as the disciplinary proceedings cannot, therefore, be upheld.
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> The respondent was placed under suspension on August 11, 1972 and continued under suspension till April 9, 1973 on which date Education Act came into force. In other words she was under suspension at a time when the Education Act was not in force. The order of suspension cannot be judged on the basis of the provisions of the Education Act and the Education Rules. We are, therefore, unable to uphold the direction of the High Court quashing her order of suspension."

The aforesaid judgment states principle of law of far reaching consequences, i.e. an institution which is run by a minority linguistic or religious would not be controlled exclusively by the provisions of the DSE Act and the Rules framed thereunder, as the grant of approval would tantamount to interfere in the internal management of a minority institution.

1. Now, we may refer to the case of T.M.A. Pai (supra) which has been strongly relied upon by learned counsel appearing from both the sides before us. In this judgment, the Court had practically discussed the entire case law on the subject and particularly, the case of Kerala Education Bill, 1957 (supra) as well as Ahmedabad St. Xavier's case (supra). It may be noticed that the law stated by the Seven-Judge Bench in Kerala Education Bill, 1957 case (supra), to some extent, has been diluted. Various aspects of this case, we shall shortly proceed to discuss, but let us first examine what the Court has held and in what context. It is really not necessary for us to get into detailed factual matrix and all the principles that have been enunciated by the Eleven-Judge Bench. It will be better for us to restrict ourselves to the discussion only in relation to the question of involvement in the present case. The learned Additional Solicitor General relied upon paras 72, 73, 107, 136, 138, 141, 144 and 450 of the judgment in support of his submissions.

1. On the contrary, the learned counsel for the appellants submitted that the paragraphs relied upon by the respondents are the minority view and not the part of the majority judgment. With this, he placed reliance upon paras 89, 116 and 123 of the judgment. In order to avoid any ambiguity or confusion, we must clarify at the outset that till paragraph 161, it is the majority view of the T.M.A. Pai's case (supra) whereafter different Judge/Judges have expressed their views and given independent conclusions and answers to the questions framed. Thus, it will be expected from us and we would only refer to the decision and finding of the majority view, which is binding on the Court.

1. The respondents have placed reliance upon the law stated by the Bench that any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by majority or the minority. Such a limitation must be read into Article 30. The rule under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that Government regulations cannot destroy the minority character of the institution or make a right to establish and administer a mere illusion, but the right under Article 30 is not so absolute as to be above the law. The appellant also seek to derive benefit from the view that the Courts have also held that the right to administer is not absolute and is subject to reasonable regulations for the benefit of the institutions as the vehicle of education consistent with the national interest. Such general laws of the land would be also applicable to the minority institutions as well. There is no reason why regulations or conditions concerning generally the welfare of the students and teachers should not be made applicable in order to provide a proper academic atmosphere. As such, the provisions do not, in any way, interfere with the right of administration or management under Article 30(1). Any law, 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 may not be any reverse discrimination.

1. It was observed in St. Xavier's case (supra), at page 192 of the judgment that 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. The emphasis by the appellants is more on paragraphs 88 to 90 to say that Articles 29 and 30 are a group of articles relating to cultural and educational rights. Article 29(1) gives the right to any section of the citizens having a distinct language, script or culture of its own, to conserve

the same. Article 29(2) refers to admission to a educational institution established by anyone, but which is maintained by the State or receives aid out of State funds. In other words, State-maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the ground of religion, race, caste or language. Article 30(1) states the right of minorities to establish and administer educational institutions of their choice, as provided under that Article. The fundamental freedom is to establish and to administer educational institutions. It is a right to establish and administer institutions to cater the educational needs of the minorities or sections thereof.

1. Before we really analyze the dictum of this Court in its various judgments and examine the scope of their application to the facts of the present case, it would be necessary for us to refer to certain specific paragraphs of the judgment, besides the above portions which have been relied upon by the learned counsel appearing for the respective parties. The basic questions which would arise for consideration with regard to the facts of the present case are the extent of the right to establish, administer and management of institution by the linguistic minorities, the extent of control or restrictions that can be imposed by the State and obviously the right of a minority institution to receive grant-in-aid. In the case of T.M.A. Pai (supra), the Court was primarily concerned with the ambit and scope of grant of admission to the students in various academic courses in the minority institutions aided or unaided. In that case, the Court was basically not concerned with the methodology to be adopted by the minority institutions and the restrictions that can be imposed by the Government with regard to the recruitment of teachers like Rule 64(1)(b) of the DSE Rules. So to understand, the impact of the dictum in T.M. Pai's case (supra), we may usefully refer to certain paragraphs of the judgment itself.

> "123. After referring to the earlier cases in relation to the appointment of teachers, it was noted by Khanna, J., that the conclusion which followed was that a law which interfered with a minority's choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void, as it was violative of Article 30(1). While it was permissible for the State and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30(1). The Court's attention was drawn to the fact that in Kerala Education Bill, 1957 case this Court had opined that clauses 11 and 12 made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the previous sanction of the authorized officer. At SCR p. 245, Khanna, J., observed that in cases subsequent to the opinion in Kerala Education Bill, 1957 case this Court had held similar provisions as clause 11 and clause 12 to be violative of Article 30(1) of the minority institution. He then observed as follows: (SCC p.792, para

> 109) "The opinion expressed by this Court in Re Kerala Education Bill, 1957 was of an advisory character and though great weight should be attached to it because of its persuasive value, the said opinion cannot override the opinion subsequently expressed by this Court in contested cases. It is the law declared by this Court in the subsequent contested cases which would have a binding effect. The words `as at present advised' as well as the preceding sentence indicate that the view expressed by this Court in Re Kerala Education Bill, 1957 in this respect was hesitant and tentative and not a final view in the matter."

124. In Lily Kurian v. Sr. Lewina this Court struck down the power of the Vice-Chancellor to veto the decision of the management to impose a penalty on a teacher. It was held that the power of the Vice-Chancellor, while hearing an appeal against the imposition of the penalty, was uncanalized and unguided.

In Christian Medical College Hospital Employees' Union v. Christian Medical College Vellore Assn. this Court upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfair dismissals would not infringe Article 30. In Gandhi Faiz-e-am College v. University of Agra a law which sought to regulate the working of minority institutions by providing that a broad-based management committee could be reconstituted by including therein the Principal and the seniormost teacher, was valid and not violative of the right under Article 30(1) of the Constitution. In All Saints High School v.

Govt. of A.P. a regulation providing that no teacher would be dismissed, removed or reduced in rank, or terminated otherwise except with the prior approval of the competent authority, was held to be invalid, as it sought to confer an unqualified power upon the competent authority. In Frank Anthony Public School Employees' Assn. v.

Union of India the regulation providing for prior approval for dismissal was held to be invalid, while the provision for an appeal against the order of dismissal by an employee to a tribunal was upheld. The regulation requiring prior approval before suspending an employee was held to be valid, but the provision, which exempted unaided minority schools from the regulation that equated the pay and other benefits of employees of recognized schools with those in schools run by the authority, was held to be invalid and violative of the equality clause. It was held by this Court that the regulations regarding pay and allowances for teachers and staff would not violate Article 30.

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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.

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).

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141. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30(1) illusory. The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then, is the meaning, scope and effect of Article 30(2)?

Article 30(2) only means what it states viz.

that a minority institution shall not be discriminated against where aid to educational institutions is granted. In other words the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

142. The implication of Article 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it, subject to the fulfilment of the requisite criteria, and the State gives the grant knowing that a

linguistic or minority educational institution will also receive the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.

143. This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfilment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

144. It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instruction can be provided therein. Article 28(1) does not state that it applies only to educational institutions that are not established or maintained by religious or linguistic minorities. Furthermore, upon the receipt of aid, the provisions of Article 28(3) would apply to all educational institutions whether run by the minorities or the non-minorities. Article 28(3) is the right of a person studying in a State-recognized institution or in an educational institution receiving aid from State funds, not to take part in any religious instruction, if imparted by such institution, without his/her consent (or his/her guardian's consent if such a person is a minor). Just as Articles 28(1) and (3) become applicable the moment any educational institution takes aid, likewise, Article 29(2) would also be attracted and become applicable to an educational institution maintained by the State or receiving aid out of State funds.

It was strenuously contended that the right to give admission is one of the essential ingredients of the right to administer conferred on the religious or linguistic minority, and that this right should not be curtailed in any manner. It is difficult to accept this contention. If Articles 28(1) and (3) apply to a minority institution that receives aid out of State funds, there is nothing in the language of Article 30 that would make the provisions of Article 29(2) inapplicable. Like Article 28(1) and Article 28(3), Article 29(2) refers to "any educational institution maintained by the State or receiving aid out of State funds". A minority institution would fall within the ambit of Article 29(2) in the same manner in which Article 28(1) and Article 28(3) would be applicable to an aided minority institution. It is true that one of the rights to administer an educational institution is to

grant admission to the students. As long as an educational institution, whether belonging to the minority or the majority community, does not receive aid, it would, in our opinion, be its right and discretion to grant admission to such students as it chooses or selects subject to what has been clarified before. Out of the various rights that the minority institution has in the administration of the institution, Article 29(2) curtails the right to grant admission to a certain extent. By virtue of Article 29(2), no citizen can be denied admission by an aided minority institution on the grounds only of religion, race, caste, language or any of them. It is no doubt true that Article 29(2) does curtail one of the powers of the minority institution, but on receiving aid, some of the rights that an unaided minority institution has, are also curtailed by Articles 28(1) and 28(3). A minority educational institution has a right to impart religious instruction -- this right is taken away by Article 28(1), if that minority institution is maintained wholly out of State funds. Similarly on receiving aid out of State funds or on being recognized by the State, the absolute right of a minority institution requiring a student to attend religious instruction is curtailed by Article 28(3). If the curtailment of the right to administer a minority institution on receiving aid or being wholly maintained out of State funds as provided by Article 28 is valid, there is no reason why Article 29(2) should not be held to be applicable. There is nothing in the language of Articles 28(1) and (3), Article 29(2) and Article 30 to suggest that, on receiving aid, Articles 28(1) and (3) will apply, but Article 29(2) will not. Therefore, the contention that the institutions covered by Article 30 are outside the injunction of Article 29(2) cannot be accepted."

1. The Court then proceeded to discuss the concept of equality and secularism and noticed that for a healthy family, it is important that each member is strong and healthy and all members have the same constitution, whether physical or mental. For harmonious growth and health, it is but natural for the parents to give more attention and food to the weaker child, so as to help him or her to become stronger. Noticing recognition and preservation of different types of people with diverse languages and different beliefs is essential, the Court answered the 11 questions framed therein . It is not necessary for us to refer to all the questions and answers, suffices, it would be to notice the relevant questions and answers given by the majority in para 161 of the judgment.

> "Q. 1. What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India?
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> A. Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put on a par in Article 30, have to be considered Statewise.
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> xxx xxx xxx xxx xxx Q. 4. Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the university to which the institution is affiliated?
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> A. Admission of students to unaided minority educational institutions viz. schools and undergraduate colleges where the scope for merit-based selection is practically

nil, cannot be regulated by the State or university concerned, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens' rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The State Government concerned has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observance of inter se merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the State agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the State agency followed by counselling wherever it exists.

Q. 5. (a) Whether the minorities' rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

A. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to maladministration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence.

Q. 5. (b) Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?

A. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe bye-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State qua non-minority students. The merit may be determined either through a common entrance test conducted by the university or the Government concerned followed by counselling, or on the basis of an entrance test conducted by individual institutions -- the method to be followed is for the university or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the university to provide that consideration should be shown to the weaker sections of the society.

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

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.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

> Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.
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> Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.
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> xxx xxx xxx xxx xxx Q. 9. Whether the decision of this Court in Unni Krishnan, J.P. v. State of A.P. (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration/ modification and if yes, what?
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> A. The scheme framed by this Court in Unni Krishnan case and the direction to impose the same, except where it holds that primary education is a fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering."

1. The above paragraphs and the conclusions arrived at by the Court, certainly suggest that the Court did not specifically or impliedly over ruled or expressed any different view than what was taken by the Court in Ahmedabad St. Xavier's case (supra) as well as discussed the impact of Kerala Education Bill, 1957 case (supra) with reference to Clauses 11 and 12, then the Court held that the view expressed in Kerala Education Bill, 1957 case (supra) was tentative. The view of the Court is that it is not an absolute right of the minority institution, but a right where certain conditions could be applied but such conditions should not, in any way, destroy or completely diminish the status and constitutional direction available to that minority.

1. With the passage of time this Court had the occasion to deal with the clarificatory enunciation of law stated in T.M.A. Pai's case (supra) and dealt with different cases depending on the facts and circumstances of those cases. In the case of Brahmo Samaj Education Society (supra), a Bench of this Court was concerned with the appointment of persons to the post of teachers including principal under the West Bengal College Teachers (Security of Services) Act, 1975, the West Bengal College Services Commission, 1978 and the Regulations framed thereunder. A particular procedure was stated under these rules for making these appointments as per the regulations, National Eligibility Test (NET) is conducted by UGC (University Grants Commission) for determining teaching eligibility criteria of the candidate, which was added as an essential qualification for appointment as a teacher and, even further, restrictions were introduced by adding College Service Commission and appointments were sought to be made through this Commission. The Brahmo Samaj Education Society challenged this procedure and being a religious minority claiming benefit under Articles 25, 26 and 30 (1) of the Constitution, questioned the constitutional validity of these provisions. The Court considered the question whether the appointment of teachers in an aided institution by the College Service Commission by restricting the petitioner's right to appointment is a reasonable restriction. After following the law stated in T.M.A. Pai's case (supra), the Court held as under :

> "6. The question now before us is to decide whether the appointment of teachers in an aided institution by the College Service Commission by restricting the petitioners' right to appointment is a reasonable restriction in the interest of general public or not. The petitioners have a right to establish and administer educational institution. Merely because the petitioners are receiving aid, their autonomy of administration cannot be totally restricted and institutions cannot be treated as a government-owned one. Of course the State can impose such conditions as are necessary for the proper maintenance of standards of education and to check maladministration.....
>
> 7. But that control cannot extend to the day- to-day administration of the institution. It is categorically stated in T.M.A. Pai (SCC at p. 551, para 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) had laid down qualifications to a teaching post in a university by passing Regulations. As per these Regulations UGC conducts National Eligibility Test (NET) for determining teaching eligibility of candidates.

UGC has also authorised accredited States to conduct State-Level Eligibility Test (SLET). Only a person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification for a teacher. The petitioners' right to administer includes the right to appoint teachers of their choice among the NET-/SLET- qualified candidates.

8. Argument on behalf of the State that the appointment through the College Service Commission is to maintain the equal standard of education all throughout the State of West Bengal, does not impress us. The equal standard of teachers are already maintained by NET/SLET. Similarly, receiving aid from State coffers can also not be treated as a justification for imposition of any restrictions that cannot be imposed otherwise."

In the above case, the Court did not rest with laying down the above law but even directed the State Government to take due notice of the declarations made in the T.M.A. Pai's case (supra) and to take appropriate steps in that regard.

1. Thereafter, a Five-Judge Bench of this Court in Islamic Academy of Eduation v. State of Karnataka [(2003) 6 SCC 697], while dealing with the right of the minorities, aided as well as unaided institutions including professional educational institutions, in relation to the process of admission and fee structure, specified that the constitution of committees for admission and fee structure process was improper in relation to unaided minority institutions while certain other specifications were given with regard to the minority aided institutions but the Court specifically noted that non-minority educational institutions, in certain matters, cannot and do not stand on the same footing as

minority educational institutions which enjoys the protection of Article 30 and the preferential right to admit students of their own community. Further noticing that the whole object of conferring the right on minority is that they will be on equality with the majority, the Court further held as under :

> "9.....Undoubtedly, at first blush it does appear that these paragraphs equate both types of educational institutions. However, on a careful reading of these paragraphs it is evident that the essence of what has been laid down is that the minority educational institutions have a guarantee or assurance to establish and administer educational institutions of their choice. These paragraphs merely provide that laws, rules and regulations cannot be such that they favour majority institutions over minority institutions. We do not read these paragraphs to mean that non-minority educational institutions would have the same rights as those conferred on minority educational institutions by Article 30 of the Constitution of India. Non- minority educational institutions do not have the protection of Article 30. Thus, in certain matters they cannot and do not stand on a similar footing as minority educational institutions. Even though the principle behind Article 30 is to ensure that the minorities are protected and are given an equal treatment yet the special right given under Article 30 does give them certain advantages. Just to take a few examples, the Government may decide to nationalise education. In that case it may be enacted that private educational institutions will not be permitted. Non-minority educational institutions may become bound by such an enactment. However, the right given under Article 30 to minorities cannot be done away with and the minorities will still have a fundamental right to establish and administer educational institutions of their choice. Similarly, even though the Government may have a right to take over management of a non-minority educational institution, the management of a minority educational institution cannot be taken over because of the protection given under Article
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> 30. Of course, we must not be understood to mean that even in national interest a minority institute cannot be closed down. Further, minority educational institutions have preferential right to admit students of their own community/language. No such rights exist so far as non-minority educational institutions are concerned.
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> 14.....Whilst discussing Article 30 under the heading "To what extent can the rights of aided private minority institutions to administer be regulated" reliance has been placed, in the majority judgment, on previous judgments in the cases of Kerala Education Bill, 1957, Re, Sidhajbhai Sabhai v. State of Gujarat, Rev. Father W. Proost v. State of Bihar, State of Kerala v. Very Rev. Mother Provincial and Ahmedabad St. Xavier's College Society v. State of Gujarat. All these cases have recognised and upheld the rights of minorities under Article 30. These cases have held that in the guise of regulations, rights under Article 30 cannot be abrogated. It has been held, even in respect of aided minority institutions that they must have full autonomy in

> administration of that institution. It has been held that the right to administer includes the right to admit students of their own community/ language. Thus an unaided minority professional college cannot be in a worse position than an aided minority professional college. It is for this reason that paragraph 68 provides that a different percentage can be fixed for unaided minority professional colleges. The expression "different percentage for minority professional institutions" carries a different meaning than the expression "certain percentage for unaided professional colleges". In fixing the percentage for unaided minority professional colleges the State must keep in mind, apart from local needs, the interest/need of that community in the State. The need of that community, in the State, would be paramount vis-`-vis the local needs."

1. In an attempt to clarify the matters beyond controversy, a Seven- Judge Bench of this Court in the case of P.A. Inamdar v. State of Maharashtra [(2005) 6 SCC 537], discussed the entire gamut of law in relation to minority educational institutions and noticed that the right conferred by Article 30 was more in the nature of protection for minorities. It protects minority institutions from regulatory legislations framed under Article 19 (6), but still they were not immune from regulatory control. The Court was primarily concerned in that case with admission of the students to different institutions where it observed that even within the scope and ambit of Article 30(1) there was a need for imposing reasonable restrictions even on the minority institutions, and such direction would not vitiate and hurt the minority status. There are two basic concepts - one relating to imposition of conditions with regard to the management of the institutions and secondly the power of the State to step in where there are questions of national interest. The Court did approve the permitted operation of the committees with reference to rationality and reasonableness and the two significant matters were decided by the Court as follows :

> "103. To establish an educational institution is a fundamental right. Several educational institutions have come up. In Kerala Education Bill6 "minority educational institutions" came to be classified into three categories, namely, (i) those which do not seek either aid or recognition from the State;
>
> (ii) those which want aid; and (iii) those which want only recognition but not aid. It was held that the first category protected by Article 30(1) can "exercise that right to their hearts' content" unhampered by restrictions. The second category is most significant. Most of the educational institutions would fall in that category as no educational institution can, in modern times, afford to subsist and efficiently function without some State aid. So it is with the third category. An educational institution may survive without aid but would still stand in need of recognition because in the absence of recognition, education imparted therein may not really serve the purpose as for want of recognition the students passing out from such educational institutions may not be entitled to admission in other educational institutions for higher studies and may also not be eligible for securing jobs. Once an educational institution is granted aid or aspires for recognition, the State may grant aid or recognition accompanied by certain restrictions or conditions which must be followed as

> essential to the grant of such aid or recognition. This Court clarified in Kerala Education Bill that "the right to establish and administer educational institutions" conferred by Article 30(1) does not include the right to maladminister, and that is very obvious.

Merely because an educational institution belongs to a minority it cannot ask for aid or recognition though running in unhealthy surroundings, without any competent teachers and which does not maintain even a fair standard of teaching or which teaches matters subversive to the welfare of the scholars.

Therefore, the State may prescribe reasonable regulations to ensure the excellence of the educational institutions to be granted aid or to be recognised. To wit, it is open to the State to lay down conditions for recognition such as, an institution must have a particular amount of funds or properties or number of students or standard of education and so on. The dividing line is that in the name of laying down conditions for aid or recognition the State cannot directly or indirectly defeat the very protection conferred by Article 30(1) on the minority to establish and administer educational institutions.

Dealing with the third category of institutions, which seek only recognition but not aid, Their Lordships held that "the right to establish and administer educational institutions of their choice" must mean the right to establish real institutions which will effectively serve the needs of the community and scholars who resort to these educational institutions. The dividing line between how far the regulation would remain within the constitutional limits and when the regulations would cross the limits and be vulnerable is fine yet perceptible and has been demonstrated in several judicial pronouncements which can be cited as illustrations. They have been dealt with meticulous precision coupled with brevity by S.B. Sinha, J. in his opinion in Islamic Academy. The considerations for granting recognition to a minority educational institution and casting accompanying regulations would be similar as applicable to a non-minority institution subject to two overriding considerations: (i) the recognition is not denied solely on the ground of the educational institution being one belonging to minority, and (ii) the regulation is neither aimed at nor has the effect of depriving the institution of its minority status.

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134. However, different considerations would apply for graduate and postgraduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognised by or affiliated with any competent authority created by law, such as a university, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfil these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth."

The apparent analysis was that the emphasis has to be on the need for preserving its minority character so as to enjoy the privilege of protection under Article 30(1).

1. Still, in the case of Kanya Junior High School, Bal Vidya Mandir v. U.P. Basic Shiksha Parishad [(2006) 11 SCC 92], this Court observed that the law did not contemplate granting of any higher rights to the minority as opposed to majority and it only conferred additional protection. Referring to P.A. Inamdar's case (supra), the Court declared that the object underlying Article 30(1) is to see the desire of minorities that their children should be brought up properly, efficiently and acquire eligibility for higher university education. It further noticed that under the provisions of law, the approval of District Basic Education Officer was not necessary before terminating the services of a teacher, as the institution was recognized as a minority institution. Last of the judgment, which has some bearing on the subject in question, is on the principle reiterated by a Bench of this Court in the case of Secy. Malankara Syrian Catholic College (supra), where the Court again dealt with the aided minority educational institutions and terms and conditions of services of employees. The Court in para 12 of the judgment framed the following two questions :

> "12. The rival contentions give rise to the following questions:
>
> (i) To what extent, the State can regulate the right of the minorities to administer their educational institutions, when such institutions receive aid from the State?
>
> (ii) Whether the right to choose a Principal is part of the right of minorities under Article 30(1) to establish and administer educational institutions of their choice. If so, would Section 57(3) of the Act violate Article 30(1) of the Constitution of India?"

The Answer to question no. 1 was provided in para 21 while question no. 2 was answered in para Nos. 27 and 28 of the judgment which read as under :

> "21. We may also recapitulate the extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, as clarified and crystallised in T.M.A. Pai. The State can prescribe:
>
> (i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
>
> (ii) the service conditions of employees without interfering with the overall administrative control by the management over the staff,
>
> (iii) a mechanism for redressal of the grievances of the employees,
>
> (iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

In other words, all laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the management over the staff, or

abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions.

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27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai. Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid will make no difference.

28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions."

The above answers to the questions formulated demonstrates that the Court has kept a clear line of distinction between laws made by the State to regulate the administration of educational institutions receiving grant-in-aid but if such regulations interfere with overall administrative control by the management over the staff or abridges or dilutes, in any other manner, the right to establish and administer educational institutions, in that event, to such extent, the regulations will be inapplicable to the minorities.

Discussion on constitutional provisions read in conjunction with the provisions of the Delhi School Education Act,1973 and the Rules framed thereunder with reference to the legal principles above enunciated

1. Undoubtedly, the Preamble of our Constitution mandates `to secure to all its citizens justice - social, economic and political'. The Constitution has been held to be a living and organic thing and not a mere law and it is expected to be construed broadly and liberally. Thus, these expressions must be given liberal construction so as to further the constitutional mandate. The social and economic justice would take within its ambit the progress and development of the entire nation without reference to caste, creed, colour or the section of the society to which they belong.

1. Article 14 of the Constitution commands equality before law or the equal protection of laws. The concept of equality is wide enough to include equality in advantages available to the public at large as a result of State action. The Constitution has itself made out certain exceptions to the general rule of equality in terms of Articles 15 and 16. Article 15 (1) spells out a prohibitory intent against the State that it would not discriminate against any citizen on the ground only of religion, race, caste, sex, place of birth or any of them. In other words, the State cannot deny the equality on the basis of the aforestated factors. Despite this mandate, Article 15(3) spells out an exception to Article 15(1) and 15(2) as well as to the concept of basic equality and empowers the State to make special provisions for women and children. Similarly, by Article 15(4), which was introduced by 1st Constitutional Amendment of 1951, the State is further empowered to make any special provisions for advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. Article 15(5), which was introduced by 93rd Constitutional Amendment of 2005, made out another exception to the general rule of equality and this sub-Article, while giving power to the State to enact special laws, also carves out an exception in regard to which this power cannot be exercised, i.e. minority educational institutions referred to in clause (1) of Article 30. Article 15(5) reads as under :

> "Nothing in this article or in sub-clause (g) of Clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes insofar as such special provisions relate to their admission to the educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Clause (1) of Article 30."

1. Article 16 further guarantees to the citizens equality of opportunity in matters of public employment. Article 16(2) again prohibits discrimination in respect of any employment or office under the State on the ground of religion, race, caste, sex, descent, place of birth, residence or any of them. These factors cannot render any citizen ineligible for appointment for public employment. Clauses (3) to (4B) are the provisions which empowers the State to make any law in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to a residence within that State or Union Territory, prior to such employment or appointment. It also empowers the State from making any provision for the reservation of appointments or posts in favour of any backward class which, in the opinion of the State, is not adequately represented in the service under the State. The State is also vested with the power of reserving the vacancies in a particular year and make reservation in favour of Scheduled Castes and Scheduled Tribes, which are not adequately represented in service of the State, in matters of promotion with consequential seniority. Putting it simply, the State is entitled to make law and reservations in different fields for Scheduled Castes and Scheduled Tribes and the persons belonging to backward class in the services under the State, in accordance with law.

1. While dealing with the cultural and educational rights under the Constitution, the framers have devoted specific attention to the minorities in our country while enacting Articles 29 and 30. Article 29 grants complete protection to any section of the citizens residing in the territory of India having a

distinct language, script or culture of its own and freedom to conserve the same. Besides granting this freedom, this Article also mandates that no citizen shall be denied admission to any educational institution maintained by the State or receiving aid out of the State funds on the grounds of discrimination stated in Articles 15 and 16 of the Constitution. Article 30 gives certain rights to the minorities, i.e. all minorities whether religious or linguistic, have the right to establish and administer educational institutions of their choice. Article 30(2) has to be noticed with some emphasis. It requires the State not to discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language, while granting aid to the educational institution. The Article reads as under :

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

1. The principle of free primary education had been introduced as a constitutional right by this Court in Unni Krishnan, J.P. V. State of A.P. [(1993) 1 SCC 645]. The Court, while dealing with the case of T.M.A. Pai (supra), not only reiterated the same with approval but made right to receive secondary education as a fundamental right. The dictum of this Court then led to 86th constitutional amendment by Amendment Act of 2002 wherein Article 21-A was introduced placing a clear obligation on the State to provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may by law determine. The judgments of the Court and the constitutional law introduced a new dimension to the right of the children to receive education. To achieve this object, the State had to introduce various incentives and policies to invite the private sector into the field of dispensation of education. This obviously, led to certain liberalization in the field of private sector dealing with the different levels of education. All the schools, which then came up, had to be recognized by the competent authority and they had to work under the regulatory measures declared by the State but in accordance with law. The private sector could be dissected into two sectors - aided and non-aided schools. The aided schools could further be divided into two sections - minority institutions receiving grant in aid and, non-minority institutions receiving grant-in-aid.

1. As is evident from the above narrated principles, the Government does not enjoy identical control over the management of the schools belonging to the minority and/or majority schools. In view of the above ground reality and amendment in law, Article 30(2) provides a definite protection to the minority institutions that they would not be discriminated against providing of grant-in-aid. This aspect is further dealt with some clarity in Chapter VI relating to grant-in-aid under the provisions of the DSE Rules, 1973. In terms of Rule 60, every aided school will continue to get the aid subject to the provisions of the DSE Rules. Rule 64 of DSE Rules contemplates that aid to be given upon furnishing of suitable undertaking by the managing committee. The grant-in-aid, then, would be given only upon satisfaction of the conditions stipulated in Rule 65. Second proviso to Rule 10 requires that wherever a linguistic minority school decides to impart education in a language other than the language of such linguistic minority, in that event the Administrator shall not be under any obligation to give grant-in-aid to such schools. In other words, a school run by linguistic minority would be entitled to receive grant-in-aid if it is imparting education in the language of the minority,

of course, by satisfying other stated conditions. The right to receive grant thus has to be accepted as a legitimate right in contra-distinction or opposed to legal right to get recognition including the case of a minority institution. This principle has been reiterated by this Court in catena of judgments including the judgments referred by us above. The logical impact of Article 30(2) read with the provisions of the DSE Act and the Rules framed thereunder is that, to receive grant-in-aid is a legitimate right of a school subject to satisfying the requirements of law. Article 30(2) thus, has been worded in a negative language not permitting the State to discriminate the minority institution in relation to the matters of grant-in-aid.

1. Article 15(5) of the Constitution excludes the minority educational institutions from the power of the State to make any provision by law for the advancement of any social or backward classes of the citizens or for Scheduled Castes and Scheduled Tribes in relation to their admission to educational institutions including private educational institutions whether aided or unaided. This Article is capable of very wide interpretation and vests the State with power of wide magnitude to achieve the purpose stated in the Article. But, the framers of the Constitution have specifically excluded minority educational institutions from operation of this clause. Article 16 which ensures equality of opportunity in matters of public employment again has been worded so as to prohibit discrimination and, at the same time, vests the State with power to make provisions, laws and reservations in relation to a particular class or classes of persons. It is of some significance to notice that power of the State to exercise such power is in relation to the `service under the State'. This expression has been used in all the clauses of the Article which relates to providing of employment and framing of laws/reservations in those categories. Upon its true construction, this expression itself is capable of a wide construction and must be construed liberally and cannot be restricted to its narrow sense. The expression `service under the State' would obviously include service directly under the State Government or its instrumentalities and/or even the sectors which can be termed as a State within the meaning of Article 12 of the Constitution. Once an organization or society falls outside the ambit of this circumference, in that event, it will be difficult for the Courts to hold that the State has a right to frame such laws or provisions or make reservations in the field of employment of those societies.

1. The interpretation of the word `State' really does not require any deliberation as this aspect is no more res-integra and has been settled by the law stated in the case of Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722], where this Court spelt out the test that would be applicable in determining whether a Corporation or a Government Company or a private body is an instrumentality or agency of the State. Primarily, there are different type of controls, which can be exercised by the State over any other authority, society, organization or private body to bring it within the ambit of the expression `State' or `other authority' appearing in Article 12 of the Constitution. These are financial control, managerial and administrative control and functional control. To put it differently, what is the administrative control that the Government exercises upon such a body, whether functions of that body are governmental functions or closely related thereto, quantum of State control, volume of financial assistances, character and structure of the body and cumulative effect of these factors etc. This has been followed consistently in the case of Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban) [(2005) 5 SCC 632] and in a very recent judgment in the case of State of U.P. v. Radhey Shyam Rai [(2009) 5 SCC 577], wherein

this Court held that Uttar Pradesh Ganna Kishan Sansthan (Sansthan) is a State because these criteria were satisfied and even the State could take over the functions of the Sansthan. Unless all these three aspects are established or they are stated to be satisfied, it will not be permissible to term that society, organization or body as a `State'.

1. There is no doubt, that there may be minority institutions which are receiving grant-in-aid from the Government. But, merely receiving grant-in-aid per se would not make such school or institution `State' within the meaning of Article 12 of the Constitution of India. Even this aspect we need not discuss in any great detail as the question stands settled by the judgment of this Court in the case of V.K. Sodhi (supra), wherein this Court has dealt with the question whether State Council of Education, Research and Training is not State or other authority within the meaning of Article 12. The Court returned the finding that though the finances were being provided by the State, the State Government does not have deep and pervasive control over the working of the Council and it was an independent society and thus, is not a State. The Court held as under :

> "11. The two elements, one, of a function of the State, namely, the coordinating of education and the other, of the Council being dependant on the funding by the State, satisfied two of the tests indicated by the decisions of this Court. But, at the same time, from that alone it could not be assumed that SCERT is a State. It has to be noted that though finance is made available by the State, in the matter of administration of that finance, the Council is supreme. The administration is also completely with the Council. There is no governmental interference or control either financially, functionally or administratively, in the working of the Council. These were the aspects taken note of in Chander Mohan Khanna (supra) to come to the conclusion that NCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. No doubt, in Chander Mohan Khanna (supra), the Bench noted that the fact that education was a State function could not make any difference. This part of the reasoning in Chander Mohan Khanna (supra) case has been specifically disapproved by the majority in Pradeep Kumar Biswas (supra). The majority noted that the objects of forming Indian Institute of Chemical Biology was with the view of entrusting it with a function that is fundamental to the governance of the country and quoted with approval the following passage in Rajasthan SEB v. Mohan Lal [(1967) 3 S.C.R. 377]:
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> "The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people."

The majority then stated:

> "We are in respectful agreement with this statement of the law. The observations to the contrary in Chander Mohan Khanna v. NCERT relied on by the learned Attorney-General in this context, do not represent the correct legal position."
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13. We also find substantial differences in the two set ups. Sabhajit Tewary (supra), after referring to the rules of the Council of Scientific and Industrial Research which was registered under the Societies Registration Act, concluded that it was not a State within the meaning of Article 12 of the Constitution. While overruling the said decision, the majority in Pradeep Kumar Biswas (supra) took the view that the dominant role played by the Government of India in the governing body and the ubiquitous control of the Government in the Council and the complete subjugation of the Governing Body to the will of the Central Government, the inability of the Council to lay down or change the terms and conditions of service of its employees and the inability to alter any bye-law without the approval of the Government of India and the owning by the Central Government of the assets and funds of the Council though normally owned by the society, all indicated that there was effective and pervasive control over the functioning of the Council and since it was also entrusted with a Governmental function, the justifiable conclusion was that it was a State within the meaning of Article 12 of the Constitution. The majority also noticed that on a winding up of that Council, the entire assets were to vest in the Central Government and that was also a relevant indication. Their Lordships in the majority also specifically overruled as a legal principle that a Society registered under the Societies Registration Act or a company incorporated under the Companies Act, is by that reason alone excluded from the concept of State under Article 12 of the Constitution. In the case of SCERT, in addition to the operational autonomy of the Executive Committee, it could also amend its bye-laws subject to the provisions of the Delhi Societies Registration Act though with the previous concurrence of the Government of Delhi and that the proceedings of the Council are to be made available by the Secretary for inspection of the Registrar of Societies as per the provisions of the Societies Registration Act. The records and proceedings of the Council have also to be made available for inspection by the Registrar of Societies. In the case of dissolution of SCERT, the liabilities and assets are to be taken over at book value by the Government of Delhi which had to appoint a liquidator for completing the dissolution of the Body. The creditors' loans and other liabilities of SCERT shall have preference and bear a first charge on the assets of the Council at the time of dissolution. This is not an unconditional vesting of the assets on dissolution with the Government. It is also provided that the provisions of the Societies Registration Act, 1860 had to be complied with in the matter of filing list of office-bearers every year with the Registrar and the carrying out of the amendments in accordance with the procedure laid down in the Act of 1860 and the dissolution being in terms of Sections 13 and 14 of the Societies Registration Act, 1860 and making all the provisions of the Societies Registration Act applicable to the Society. These provisions, in our view, indicate that SCERT is subservient to the provisions of the Societies Registration Act rather than to the State Government and that the intention was to keep SCERT as an independent body and the role of the State Government cannot be compared to that of the Central Government in the case of Council of Scientific and Industrial Research.

> 14. As we understand it, even going by paragraph 40 of the judgment in Pradeep Kumar Biswas (supra), which we have quoted above, we have to consider the cumulative effect of all the facts available in the case. So considered, we are inclined to hold that SCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. As we see it, the High Court has not independently discussed the relevant rules governing the functioning and administration of SCERT. It has proceeded on the basis that in the face of Pradeep Kumar Biswas (supra) decision, the decision in Chander Mohan Khanna (supra) must be taken to be overruled and no further discussion of the question is necessary. But, in our view, even going by Pradeep Kumar Biswas (supra), each case has to be considered with reference to the facts available for determining whether the body concerned is a State or other authority within the meaning of Article 12 of the Constitution of India. So considered, we find that the Government does not have deep and pervasive control over the working of SCERT. It does not have financial control in the sense that once the finances are made available to it, the administration of those finances is left to SCERT and there is no further governmental control. In this situation, we accept the submission on behalf of the appellants and hold that SCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. After all, the very formation of an independent society under the Societies Registration Act would also suggest that the intention was not to make the body a mere appendage of the State. We reverse the finding of the High Court on this aspect."

1. The principle above enunciated clearly shows that it is the cumulative effect of all the three essential features which would finally help in determining whether a society, body or an association is `State' or not. We have referred to various provisions of the DSE Act, 1973 and particularly, the Rules framed thereunder. The DSE Rules specifically contemplate that the State Government will not have any strict control over the management of these institutions. Even the members, who are nominated by the Director of Education, would only have a right of limited participation with no right of voting. Rule 59(b)(iv), requires two other persons who are or have been teachers of any other school or college, to be nominated by the Advisory Board on the Managing Committee of a school. However, this clause shall not apply to a minority institution in terms of the proviso to the said Rule. The limited extent of control exercisable by the authorities is demonstrated in DSE Rules 44, 59 and 96(3A) & (3B). Every school is required, when it desires to establish a new school, to give intimation in writing to the Administrator or its office to establish such a school to specifically exempt the minorities' institutions from application of this detailed provision. In addition to this, the management of a minority school cannot be taken over by the authorities in terms of Section 20 of the DSE Act as the statute itself prohibits the application of Section 20 to such school in terms of Section 21 of the Act. Besides these statutory provisions and the scheme under the DSE Act, various judgments of this Court have also consistently taken the view that the State has no right of interference in the establishment, administration and management of a school run by linguistic minority except the power to regulate as specified.

1. The right to establish and administer includes a right to appoint teachers. Thus, except providing grant-in-aid as per the DSE Rules and having no power to discriminate in terms of Article 30(2) of

the Constitution, the Government has a very limited regulatory control over the minority institutions and no control whatsoever on the managing committee, internal management of the school and, of course, has no power to take over such an institution. This Court has also expressed the view in some judgments that in respect of minority or even minority institutions, steps can be taken even for closure of such institutions in the national interest which of course may be a rare exception. Once the State lacks basic power of jurisdiction to make special provisions and reservations in relation to minority institutions, which do not form part of service under the State, it will be difficult for the Court to hold that Rule 64(1)(b) can be enforced against aided minority institution. There are still other aspects which can usefully be examined to analyze this issue in a greater detail. In T.M.A. Pai's case (supra) the right to establish an institution is provided. The Court held that the right to establish an institution is provided in Article 19(1)(g) of the Constitution. Such right, however, is subject to reasonable restriction, which may be brought about in terms of clause (6) thereof. Further, that minority, whether based on religion or language, however, has a fundamental right to establish and administer educational institution of its own choice under Article 30(1).

1. The right under clause (1) of Article 30 is not absolute but subject to reasonable restrictions which, inter alia, may be framed having regard to the public interest and national interest of the country. Regulation can also be framed to prevent mal-administration as well as for laying down standards of education, teaching, maintenance of discipline, public order, health, morality etc. It is also well settled that a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority education institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and, at the same time, would be required to admit a reasonable extent of non-minority students, to the extent, that the right in Article 30(1) is not substantially impaired and further, the citizen's right under Article 29 (2) is not infringed.

1. A minority institution may have its own procedure and method of admission as well as the selection of students but it has to be a fair and transparent method. The State has the power to frame regulations which are reasonable and do not impinge upon the basic character of the minority institutions. This Court, in some of the decisions, has taken the view that the width of the rights and limitations thereof of unaided institutions, whether run by a majority or by a minority, must conform to the maintenance of excellence and with a view to achieve the said goal indisputably, the regulations can be made by the State. It is also equally true that the right to administer does not amount to the right to mal- administer and the right is not free from regulations. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions. The right of the State is to be exercised primarily to prevent mal- administration and such regulations are permissible regulations. These regulations could relate to guidelines for the efficiency and excellence of educational standards, ensuring the security of the services of the teachers or other employees, framing rules and regulations governing the conditions of service of teachers and employees and their pay and allowances and prescribing course of study or syllabi of the nature of books etc. Some of the impermissible regulations are refusal to affiliation without sufficient reasons, such conditions as would completely destroy the autonomous status of the educational institution, by introduction of

outside authority either directly or through its nominees in the Governing Body or the Managing Committee of minority institution to conduct its affairs etc. These have been illustrated by this Court in the Case of State of Kerala v. Very Rev. Mother Provincial [1970) 2 SCC 417, All Saints High School v. Govt. of A.P. [(1980) 2 SCC 478] and T.M.A. Pai's case (supra). Even in the Kerala Education Bill, 1957 case (supra), referred for opinion by the President under Article 143(1) of the Constitution, this Court while answering question No.2 emphasized upon the freedom and extent of protection available to the minority institutions. Referring to the fact that Articles 29 and 30 are set out in Part-III of the Constitution, which guarantees fundamental rights, the text and margin notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of community, which constitute minority communities. The Court held that Article 30(1) cannot be limited and should equally operate in favour of educational institution, whether established pre or post the commencement of the Constitution. The Bench repelled the contention that by admission of an outsider, the minority institution will loose its character as such, and held:

> "To say that an institution which receives aid on account of its being a minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to any aid".

While admitting non-members, the institution does not shed its character or ceases to be a minority institution. The freedom of minority institutions was further explained by the Bench by saying that it is the choice of the minority institution, to establish such educational institutions as well serve both purposes that of conserving their religion, language or culture and also the purpose of giving a thorough good general education to their children. So, they could even impart education in their own language or in any other language, which choice essentially has to be left to the minority institution. The constitution itself uses the word `choice' in Article 30(1), which indicates the extent of liberty and freedom, the framers of the Constitution intended to grant to the minority community. Thus, there arises no occasion for the Court to read restrictions into such freedom on the ground of policy. It may amount to intrusion into the very minority character and protection available to the community in law. The right to frame regulations, therefore, is not itself an unregulated right. It has its own limitations and sphere within which such regulations would be framed and made operative.

1. It is not necessary for us to examine the extent of power to make regulations, which can be enforced against linguistic minority institutions, as we have already discussed the same in the earlier part of the judgment. No doubt, right conferred on minorities under Article 30 is only to ensure equality with the majority but, at the same time, what protection is available to them and what right is granted to them under Article 30 of the Constitution cannot be diluted or impaired on the pretext of framing of regulations in exercise of its statutory powers by the State. The permissible regulations, as afore-indicated, can always be framed and where there is a mal-administration or even where a minority linguistic or religious school is being run against the public or national interest, appropriate steps can be taken by the authorities including closure but in accordance with

law. The minimum qualifications, experience, other criteria for making appointments etc are the matters which will fall squarely within the power of the State to frame regulations but power to veto or command that a particular person or class of persons ought to be appointed to the school failing which the grant-in-aid will be withdrawn, will apparently be a subject which would be arbitrary and unenforceable. Even in T.M.A. Pai's case (supra), which view was reiterated by this Court in the case of Secy. Malankara Syrian Catholic College (supra), it was held that the conditions for proper utilization of the aid by the educational institution was a matter within the empowerment of the State to frame regulations but without abridging or diluting the right to establish and administer educational institutions. In that case, while dealing with the appointment of a person as Principal, the Court clearly stated the dictum that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet to right to administer the educational institution. It being an important part of the administration and even if the institution is aided, there can be no interference with the said right. The power to frame regulations and control the management is subject to another restriction which was reiterated by the Court in P.A. Inamdar's case (supra) stating that it is necessary that the objective of establishing the institution was not defeated.

1. At last, what is the purpose of granting protection or privilege to the minorities in terms of Article 29, and at the same time, applying negative language in Article 30(2) in relation to State action for releasing grant-in-aid, as well as the provisions of DSE Act, 1973 and the rules framed thereunder? It is obvious that the constitutional intent is to bring the minorities at parity or equality with the majority as well as give them right to establish, administer and run minority educational institutions. With the primary object of Article 21A of the Constitution in mind, the State was expected to expand its policy as well as methodology for imparting education. DSE Act, as we have already noticed, was enacted primarily for the purpose of better organization and development of school education in the Union Territory of Delhi and for matters connected therewith or incidental thereto. Thus, the very object and propose of this enactment was to improve the standard as well as management of school education. It will be too far fetched to read into this object that the law was intended to make inroads into character and privileges of the minority. Besides, in the given facts and circumstances of the case, the Court is also duty bound to advance the cause or the purpose for which the law is enacted. Different laws relating to these fields, thus, must be read harmoniously, construed purposively and implemented to further advancement of the objects, sought to be achieved by such collective implementation of law. While, you keep the rule of purposive interpretation in mind, you also further add such substantive or ancillary matters which would advance the purpose of the enactment still further. To sum up, we will term it as `doctrine of purposive advancement'. The power to regulate, undisputedly, is not unlimited. It has more restriction than freedom particularly, in relation to the management of linguistic minority institutions. The rules, which were expected to be framed in terms of Section 28 of the DSE Act, were for the purpose of carrying out the provisions of the Act. Even, otherwise, it is a settled principle of law that Rules must fall within the ambit and scope of the principal legislation. Section 21 is sufficiently indicative of the inbuilt restrictions that the framers of the law intended to impose upon the State while exercising its power in relation to a linguistic minority school.

1. To appoint a teacher is part of the regular administration and management of the School. Of course, what should be the qualification or eligibility criteria for a teacher to be appointed can be defined and, in fact, has been defined by the Government of N.C.T. of Delhi and within that specified parameters, the right of the linguistic minority institution to appoint a teacher cannot be interfered with. The paramount feature of the above laws was to bring efficiency and excellence in the field of school education and, therefore, it is expected of the minority institutions to select the best teacher to the faculty. To provide and enforce the any regulation, which will practically defeat this purpose would have to be avoided. A linguistic minority is entitled to conserve its language and culture by a constitutional mandate. Thus, it must select people who satisfy the prescribed criteria, qualification and eligibility and at the same time ensure better cultural and linguistic compatibility to the minority institution. At this stage, at the cost of repetition, we may again refer to the judgment of this Court in T.M.A. Pai's case (supra), where in para 123, the Court specifically noticed that while it was permissible for the State and its educational authorities to prescribe qualifications of a teacher, once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of the teachers. Further, the Court specifically noticed the view recorded by Khanna, J. in reference to Kerala Education Bill, 1957 case (supra), and to clauses 11 and 12 of the Bill in particular, where the learned Judge had declared that, it is the law declared by the Supreme Court in subsequently contested cases as opposed to the Presidential reference, which would have a binding effect and said:

> "123.....The words `as at present advised' as well as the preceding sentence indicate the view expressed by this Court in relation to Kerala Education Bill, 1957, in this respect was hesitant and tentative and not a final view in the matter."

What the Court had expressed in para 123 above, appears to have found favour with the Bench dealing with the case of T.M.A. Pai (supra). In any case, nothing to the contrary was observed or held in the subsequent judgment by the larger Bench.

1. The concept of equality stated under Article 30(2) has to be read in conjunction with the protection under Article 29 and thus it must then be given effect to achieve excellence in the field of education. Providing of grant-in-aid, which travels from Article 30(2) to the provisions of the DSE Act and Chapter VI of the Rules framed thereunder, is again to be used for the same purpose, subject to regulations which themselves must fall within the permissible legislative competence. The purpose of grant-in-aid cannot be construed so as to destroy, impair or even dilute the very character of the linguistic minority institutions. All these powers must ultimately, stand in comity to the provisions of the Constitution, which is the paramount law. The Court will have to strike the balance between different facets relating to grant-in-aid, right to education being the fundamental right, protection available to religious or linguistic minorities under the Constitution and the primary object to improve and provide efficiency and excellence in school education. In our considered view, it will not be permissible to infringe the constitutional protection in exercise of State policy or by a subordinate legislation to frame such rules which will impinge upon the character or in any way substantially dilute the right of the minority to administer and manage affairs of its school. Even though in the case of Mohinder Kaur (supra), the Bench of this Court held that upon restoration of the minority character of the institution, the provisions of the Act and the

rules framed thereunder would cease to apply to a minority institution. We still would not go that far and would preferably follow the view expressed by larger Bench of this Court in T.M.A. Pai's case (supra) and even rely upon other subsequent judgments, which have taken the view that the State has the right to frame such regulations which will achieve the object of the Act. Even if it is assumed that there is no complete eclipse of the DSE Act in the Rules in the case of minority institutions, still Rule 64(1)(b), if enforced, would adversely effect and dilute the right and protection available to the minority school under the Constitution.

1. Now, we will revert back to the facts of the present case. There is no dispute to the fact that the appellant-school is a linguistic minority institution and has been running as such for a considerable time. Admittedly, it was receiving grant-in-aid for all this period. Its minority status was duly accepted and declared by the judgment of the Delhi High Court in the case of this very institution and which has attained finality. In this very judgment, the Court also held that certain provisions of DSE Rules, 1973 would not apply to this minority school. Thereafter, vide letter dated 12th March, 1985, the Managing Committee was required to give an undertaking that it would make reservation in service for Scheduled Castes and Schedule Tribes, to which the school had replied relying upon the judgment of the Delhi High Court in its own case. However, vide letter dated 21st March, 1986, Secretary (Education), Government of N.C.T., Delhi had informed the appellants that the circular requiring Government aided schools to comply with the provisions relating to reservation was not applicable to the minority institutions. In face of the judgment of the Court, such a requirement was not carried out by the appellant-school and the controversy was put at rest vide letter dated 21st March, 1986 and the institution continued to receive the grant-in-aid. However, in September, 1989, again, a letter was addressed to all the government aided schools including the appellant stating that it was a precondition for all agencies receiving grant-in-aid, not only to enforce the requirement of providing reservation in the posts but even not to make any regular appointments in the general category till the vacancies in the reserved category were filled up. This was challenged before the High Court. At the very outset, we may notice that we entirely do not approve the view expressed by the learned Single Judge of the Delhi High Court in the case of Sumanjit Kaur (supra) insofar as it held that the regulation would be unconstitutional since they are likely to interfere with the choice of the medium of instruction as well as minority character of the institution by compelling the appointments to the teaching faculty of the persons, who may be inimical towards the minority community.

1. We are of the considered view that the learned Single Judge as well as the Division Bench erred in law in stating the above proposition as it is contra-legam. The Preamble of our Constitution requires the people of India to constitute into a `Sovereign Socialist Secular Democratic Republic'. Secularism, therefore, is the essence of our democratic system. Secularism and brotherhoodness is a golden thread that runs into the entire constitutional scheme formulated by the framers of the Constitution. The view of the learned Single Judge and the Division Bench in the case of Sumanjit Kaur (supra), runs contra to the enunciated law. We are afraid that while deciding a constitutional matter in accordance with law, the Court would not be competent to raise a presumption of inimical attitude of and towards one community or the other. We do not approve the view of the High Court that a provision of an Act or a Circular issued thereunder could be declared as unconstitutional on such presumptuous ground. However, to the extent that it may interfere with the choice of medium

of instructions as well as minority character of the institution to some extent is a finding recorded in accordance with law. The Division Bench while entertaining the appeal against the judgment of the learned Single Judge, had primarily concentrated on the point that the selection of the teacher was valid and not violative of the Rules and accepted the findings recorded by the learned Single Judge, resulting in grant of relief to the appellants. Further, in our considered view and for the reasons afore-recorded, the judgment of the Division Bench in the present case while dismissing the writ petition filed by the appellants before that Court cannot be sustained in law. Further, in the judgment under appeal the Division Bench was right in not accepting the reason given by the learned Single Judge founded on other persons being inimical towards minority. It was expected of the Division Bench to critically analyze other reasons given by the learned Single Judge in the case of Sumanjit Kaur (supra), which had been followed in the present case. We could have had the benefit of the independent view of the Division Bench as well. Reasoning is considered as the soul of the judgment. The Bench referred to the fact that the view in the Kerala Education Bill, 1957 case (supra) was tentative but still erred in ignoring paragraph 123 of the T.M.A. Pai's case (supra) as well as the other judgments referred by us, presumably, as they might not have been brought to the notice of the Bench. The discussion does not analyze the various principles enunciated in regard to the protection available to the linguistic minorities under Article 29 of the Constitution and the result of principle of equality introduced by Article 30(2) of the Constitution. For the detailed reasons recorded in this judgment, we are unable to persuade ourselves to accept the view of the Division Bench in the Judgment under appeal.

1. A linguistic minority has constitution and character of its own. A provision of law or a Circular, which would be enforced against the general class, may not be enforceable with the same rigors against the minority institution, particularly where it relates to establishment and management of the school. It has been held that founders of the minority institution have faith and confidence in their own committee or body consisting of the persons selected by them. Thus, they could choose their managing committee as well as they have a right to choose its teachers. Minority institutions have some kind of autonomy in their administration. This would entail the right to administer effectively and to manage and conduct the affairs of the institution. There is a fine distinction between a restriction on the right of administration and a regulation prescribing the manner of administration. What should be prevented is the mal-administration. Just as regulatory measures are necessary for maintaining the educational character and content of the minority institutions, similarly, regulatory measures are necessary for ensuring orderly, efficient and sound administration. Every linguistic minority may have its own socio, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 64(1)(b), could be enforced against the general or majority category of the Government aided school but, it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to interference with their right of choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character or status. Linguistic and cultural compatibility can be legitimately

claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.

1. A linguistic minority institution is entitled to the protection and the right of equality enshrined in the provisions of the Constitution. The power is vested in the State to frame regulations, with an object to ensure better organization and development of school education and matters incidental thereto. Such power must operate within its limitation while ensuring that it does not, in any way, dilute or impairs the basic character of linguistic minority. Its right to establish and administer has to be construed liberally to bring it in alignment with the constitutional protections available to such communities. The minority society can hardly be compelled to perform acts or deeds which per se would tantamount to infringement of its right to manage and control. In fact, it would tantamount to imposing impermissible restriction. A school which has been established and granted status of a linguistic minority for years, it will not be proper to stop its grant-in-aid for the reason that it has failed to comply with a condition or restriction which is impermissible in law, particularly, when the teacher appointed or proposed to be appointed by such institution satisfy the laid down criteria and/or eligibility conditions. The minority has an inbuilt right to appoint persons, which in its opinion are better culturally and linguistically compatible to the institution.

1. To frame policy is the domain of the Government. If, as a matter of policy, the Government has decided to implement the reservation policy for upliftment of the socially or otherwise backward classes, then essentially it must do so within the frame work of the Constitution and the laws. The concept of reservation has been provided, primarily, under Article 16 of the Constitution. Therefore, it would be the requirement of law that such policies are framed and enforced within the four corners of law and to achieve the laudable cause of upliftment of a particular section of the society. In regard to the ambit and scope of reservation, this Court in the case of M. Nagaraj v. Union of India [(2006) 8 SCC 212] held as under :-

> "39. Reservation as a concept is very wide. Different people understand reservation to mean different things. One view of reservation as a generic concept is that reservation is an anti-poverty measure. There is a different view which says that reservation is merely providing a right of access and that it is not a right to redressal. Similarly, affirmative action as a generic concept has a different connotation. Some say that reservation is not a part of affirmative action whereas others say that it is a part of affirmative action.
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> 40. Our Constitution has, however, incorporated the word "reservation" in Article 16(4) which word is not there in Article 15(4). Therefore, the word "reservation" as a subject of Article 16(4) is different from the word "reservation" as a general concept.
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> 41. Applying the above test, we have to consider the word "reservation" in the context of Article 16(4) and it is in that context that Article 335 of the Constitution which provides for relaxation of the standards of evaluation has to be seen. We have to go by what the Constitution-framers intended originally and not by general concepts or principles. Therefore, schematic interpretation of the Constitution has to be applied

and this is the basis of the working test evolved by Chandrachud, J. in the Election case14."

1. Thus, the framework of reservation policy should be such, as to fit in within the constitutional scheme of our democracy. As and when the Government changes its policy decision, it is expected to give valid reasons and act in the larger interest of the entire community rather than a section thereof. In its wisdom and apparently in accordance with law Government had taken a policy decision and issued the circular dated 21st March, 1986 exempting the minority institutions from complying with the requirements of the Rule 64(1)(b) of the DSE Rules. Despite this and judgment of the High Court there was a change of mind by the State that resulted in issuance of the subsequent circular of September, 1989. From the record before us, no reasons have been recorded in support of the decision superseding the circular dated 21st March, 1986. It is a settled canon of administrative jurisprudence that state action, must be supported by some valid reasons and should be upon due application of mind. In the affidavits filed on behalf of the State, nothing in this regard could be pointed out and in fact, none was pointed out during the course of arguments. Absence of reasoning and apparent non-application of mind would give colour of arbitrariness to the state action. This aspect attains greater lucidity in light of the well accepted norm that minority institution cannot stand on the same footing as a non-minority institution.

1. Besides that, State actions should be actio quaelibet it sua via and every discharge of its duties, functions and governance should also be within the constitutional framework. This principle equally applies to the Government while acting in the field of reservation as well. It would not be possible for the Courts to permit the State to impinge upon or violate directly or indirectly the constitutional rights and protections granted to various classes including the minorities. Thus, the State may not be well within its constitutional duty to compel the linguistic minority institution to accept a policy decision, enforcement of which will infringe their fundamental right and/or protection. On the contrary, the minority can validly question such a decision of the State in law. The service in an aided linguistic minority school cannot be construed as `a service under the State' even with the aid of Article 12 of the Constitution. Resultantly, we have no hesitation in coming to the conclusion that Rule 64(1)(b) cannot be enforced against the linguistic minority school. Having answered this question in favour of the appellant and against the State, we do not consider it necessary to go into the constitutional validity or otherwise of Rule 64(1)(b) of the Rules, which question we leave open.

1. For the reasons afore-stated, we allow the appeal and hold that Rule 64(1)(b) and the circular of September, 1989, are not enforceable against the linguistic minority school in the NCT of Delhi. There shall be no order as to costs.

.....J. [DR. B.S. CHAUHAN] .....

J. [SWATANTER KUMAR] New Delhi July 8, 2010