All Bihar Christian Schools ... vs State Of Bihar And Others on 26 November, 1987

Equivalent citations: 1988 AIR 305, 1988 SCR (2) 49, AIR 1988 SUPREME COURT 305, 1988 (1) SCC 206, 1988 BLJ 538, 1987 5 JT 491, (1988) BLJ 528, (1987) 4 JT 491 (SC), (1988) PAT LJR 7, (1988) 2 SERVLR 1, (1988) 1 SCWR 28

Author: K.N. Singh

Bench: K.N. Singh, Misra Rangnath

PETITIONER:
ALL BIHAR CHRISTIAN SCHOOLS ASSOCIATION AND ANOTHER.

Vs.

RESPONDENT:
STATE OF BIHAR AND OTHERS.

DATE OF JUDGMENT26/11/1987

BENCH:
SINGH, K.N. (J)
BENCH:
SINGH, K.N. (J)
MISRA RANGNATH

CITATION:
1988 AIR 305 1988 SCR (2) 49
1988 SCC (1) 206 JT 1987 (4) 491
1987 SCALE (2)1200
CITATOR INFO :
RF 1990 SC 695 (5)
R 1990 SC1147 (7)
R 1991 SC2230 (4)
R 1992 SC1926 (7)

ACT:
Bihar Non-Government. Secondary (taking over of Management and Control) Act, 1981-Constitutional validity of.

HEADNOTE:
%
These petitions under Article 32 of the Constitution India challenge the constitutional validity of the Bihar

Non-Government Secondary Schools (taking over of Management and Control) Act, 1981 (Bihar Act No. 33 of 1982) as violative of Article 30 of the Constitution.

The petitioner No. 1, the All Bihar Christian Schools' Association, is a religious minority registered society, and the petitioner No. 2, the Secretary-cum-Treasurer of the petitioner No. 1. The petitioner-association had set up a number of secondary schools in Bihar, which were managed by the Christian dioceases societies and these institutions were recognised by the Education Department Development of the State of Bihar.

In Bihar, a number of private secondary schools were established and managed by private individuals or societies. The State Government considered it necessary to take over the management and Control of the Non-Government Secondary Schools for better organisation and development of the Secondary Education in the State, and it enacted the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981. The Act provides for the taking over of the management and control of the Non-Government Secondary Schools by the State Government for improvement, better organisation and development of the secondary education in Bihar. The scheme of the Act shows that after the take-over of the nongovernment secondary Schools by the State Government, the management and control of such schools would be carried on in accordance with the provisions of the Act.

While the impugned Act provides for taking over the management and control of the Non-Government Secondary Schools, the

50

management and control of the remaining categories of schools have not been taken over. Although the Act contained provisions for the taking over of other secondary schools, yet so far as the minority secondary schools are concerned, the Act does not provide for any compulsory acquisition or taking over of the management and control of such schools.

The petitioners contended that (i) the provisions of the Act directly interfere with the management and control of the Christian minority schools, (ii) section 3(2) of the Act which provides for the taking over of minority secondary schools by the Government interferes with the petitioners' fundamental right under Article 30(i) of the Constitution, (iii) the provisions of section 18(2) are violative of Articles 30 and 14 of the Constitution of India and (iv) the clauses (a) to (k) of section 18(3) of the Act interfere with the management of the minority secondary schools in violation of Article 30(i) of the Constitution.

The respondent urged inter alia that the Government has no intention to interfere with fundamental rights of the minority community to establish schools of its choice; the provisions of the impugned Act are directed to ensure academic excellence and good management; the management of

the minority institutions had been given free hand in managing their institutions, but in order to maintain education excellence and discipline, regulatory provisions have been made in section 18 of the Act, the purpose of which is to ensure that the minority schools are managed by the properly constituted managing committees; security of the services of the staff is ensured, and in the matter of taking disciplinary action, the managing committees should conform to the principles of natural justice, etc.

Dismissing the writ petitions, the Court,

^

HELD: By the various decisions of this Court, it is now well-settled that the minorities based on religion or language, have fundamental freedom to establish and manage educational institutions of their own choice, but the State has the right to provide regulatory provisions for ensuring educational excellence, conditions of employment of the teachers, ensuring health, hygiene and discipline and allied matters. Such regulatory provisions do not interfere with the minorities' fundamental right of administering their educational institutions; instead, they seek to ensure that such institutions are administered efficiently and that students who come out of the

51

minority institutions after completion of their studies are well equipped with knowledge and training so as to stand at par in their avocation in life without any handicap. If the regulatory provisions indirectly impinge upon minorities' right of administration of their institutions, it would not amount to interference with the fundamental freedom of the minorities as the regulatory provisions are in the interest of the minority institutions themselves. If the minority institution seeks affiliation or recognition from the State or the Education Board, the State has the right to prescribe syllabi and terms and conditions for giving such affiliation or recognition or extending the grants-in-aid. On the one hand, the State is under an obligation to ensure that educational standards in the recognised institutions must be according to the need of the society and according to the standards which ensure the development of personality of the students turning out to be civilised, useful members of the society and to ensure that the public funds disbursed to the minority institutions are properly utilised for the given purpose. On the other hand, the State has to respect and honour minority rights under Article 30(1) of the Constitution in the matter of establishing and carrying the administration of institution of their choice. In order to reconcile these two conflicting, the State has to strike a balance; the statutory provisions should serve both the objects and such statutory provisions have to withstand the test of Article 30(l) of the Constitution. These principles have to be borne in mind in considering the question of the validity of the statutory provisions relating to the

minority educational institutions. [63D-G; 64E-G]

The petitioners challenged the constitutional validity of sections 3 and 18 of the Act on the ground of interfering with their fundamental rights guaranteed under Article 30(1) of the Constitution. Section 3 provides inter alia for the compulsory taking over of the management and control of the recognised non-government secondary schools. After elaborately going through the provisions of the said two sections, dealing with the various aspects of the management, administration and working of a minority institution; the conclusion was that the two sections were not violative of Article 30(1) of the Constitution and do not encroach upon the fundamental rights of a minority institution guaranteed under Article 30(i) of the Constitution. [53D; 68E; 69G]

Guarantee of freedom to a minority institution under Article 30(l) of the Constitution does not permit the minority institution to act contrary to law and order, law of contract, industrial laws or other general laws enacted for the welfare of the society. If the minorities'
52
claim for immunity from the law of the land is upheld, that would be unreasonable and against the interest of the minority institutions themselves. [79D-E]

The impugned Act does not violate the petitioners' rights guaranteed under Article 30(I) of the Constitution. [80G]

In Re. The Kerala Education Bill, 1957(1959)SCR 995; Rev. Sidhajbhai Sabhai and others v. State of Bombay, [1963] 3 SCR 837; State of Kerala v. Very Rev. Mother Provincial, [1971] 1 SCR 734; The Ahmedabad St. Xavier's College Society JUDGMENT:

Lilly Kurian v. Sr. Lewine & Ors., [1979] 1 SCR 820; Frank Anthony Public School Employees' Association case, [1986] 4 SCC 707; Mrs. Y. Theclamma's Case, [1971] 2 SCC 516 and All Saints High School, Hyderabad v. Government of Andhra Pradesh & Ors., [1980] 2 SCR 924, referred to.

& CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) Nos. 4588-89 of 1983.

(Under Article 32 of the Constitution of India). F.S. Nariman, Jose P. Vergheese and U.S. Prasad for the Petitioners.

Jai Narain and Pramod Swarup for the Respondents. The Judgment of the Court was delivered by SINGH, J. These petitions under Article 32 of the Constitution of India challenge the constitutional validity of the Bihar Non-Government Secondary Schools (taking over of Management and Control) Act, 1981 (Bihar Act No. 33 of 1982) on the ground that the provisions of the Act are violative of Article 30 of the Constitution.

All Bihar Christian Schools' Association, petitioner No. 1, is a religious minority society registered under the Societies Registration Act. Petitioner No. 2, Sister Marianne S.C.N. is the

Secretary-cum-Treasurer of petitioner No. 1. The aims and objects of the All Bihar Christian Schools' Association are to promote education including science, literature, fine arts and libraries according to Christian ideals in the interest of national development; to foster moral and spiritual values in education; to assist and strengthen the work of Christian schools in Bihar; to promote the welfare of teachers and other staff of the member-institutions. The petitioner association has set up a number of secondary schools in the State of Bihar which are managed and administered by the Christian dioceses/societies and these institutions are recognised by the Education Department of the State of Bihar. The petitioners aver that they have fundamental right under Article 30 of the Constitution to administer the institutions established by them, according to their choice and no interference in the administration of the educational institution is permissible under the Constitution. The petitioners alleged that the provisions of the Bihar Non- Government Secondary Schools (taking over of Management and Control) Act, 1981 (hereinafter referred to as the Act) make serious inroad on the petitioners' right to establish and administer educational institutions of their choice. They have challenged constitutional validity of the provisions of the Act and particularly the provisions contained in Section 3 and Section 18 of the Act which according to them interfere with their fundamental right guaranteed by Article 30(1) of the Constitution.

In the State of Bihar a number of private secondary schools were established and managed by private individuals or societies. The State Government considered it necessary to take over the management and control of the Non- Government Secondary Schools for better organisation and development of secondary education of the State. It promulgated an ordinance on 11.8.1980, as the Bihar Non- Government Secondary Schools (Taking over of Management and Control) First ordinance. This ordinance was later on replaced by another Bihar ordinance No. 74 of 1981 on 22.4.1981. The State legislature converted the ordinance into the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981. The Act as indicated by the preamble is to provide for the taking over or management and control of the Non-Government Secondary Schools by the State Government, for improvement, better organisation and development of Secondary Education in the State of Bihar. "Non-Government Secondary School" as defined by Section 2 means a secondary school recognised as such by the Bihar Secondary Education Board Act, 1976 and the Bihar Secondary Board (Second amendment) ordinance, 1980.

> "Secondary School" means a secondary school whose management and control has been taken over by the State Government under Section 3 of the Act. "Minority Secondary School" as defined by Section 2 (c) means a secondary school established by a minority community based either on religion or language, and managed by the minority community and declared and recognised as minority school by the State Government. Section 3 provides for taking over of the management and control of recognised Non-Government secondary schools by the State Government. Sub-section (1) lays down that all recognised nongovernment secondary schools other than the minority secondary schools based on religion or language, shall be deemed to have been taken over by the State Government with effect from October 2 1980. Sub-section (2) provides that the State Government may by notification in the official gazette from a specified date, take over the management and control of a recognised minority secondary school if the managing committee of the secondary school

voluntarily makes an unconditional offer to hand over the school with all moveable or immovable assets and properties owned or possessed by the school. Section 4 provides for the consequences which ensue on the taking over of management and control of non-government secondary schools by the Government. It provides that on the taking over of the management and control of the non-government secondary schools by the Government all the movable and immovable assets and 1) properties owned and possessed by secondary schools including land, building, documents, books and registers, shall stand transferred to the State Government and deemed to have come into its possession and ownership. The services of every Headmaster, teacher or other employees of the school taken over by the State Government shall be deemed to have been transferred to the State Government with effect from the date of taking over the school and they become employees of the State Government The age of superannuation of Headmasters, teachers and other employees of the schools taken over by the State Government shall be 58 years. However, other terms and conditions of their services shall continue to be the same as they existed prior to taking over of the management and control of the school until alteration is made by the State Government. Section S provides that the management and control of the nationalised schools shall be under the Director and his subordinate officers in the manner as prescribed by the State Government. The management of every secondary school shall be under a committee constituted in accordance with the provisions of Section 6 of the Act. Section 7 enumerates powers and functions of the Managing Committee. Section 8 prescribed duties of the Headmaster. Section 9 provides that the service conditions of the Headmaster, teachers and non- teaching staffs of the nationalised secondary schools shall be determined by the State Government. Section 10 provides for the establishment of a School Service Board, a corporate body having perpetual succession and common seal. Its Chairman and the members shall be appointed by the State Government. The Board is empowered to make recommendations for appointment or promotion of Headmasters and teachers of nationalised secondary schools to the Director of Education. Section 11 creates a District Secondary Education Fund Section 12 provides that the fund shall be used for payment of salary and allowances to the Headmaster, teachers and other employees of schools including the minority secondary schools and grants for other expenditure of schools. Section 14 provides for the constitution of a Secondary Education Committee for making recommendation to the State Government on the questions relating to the taking over of management of the secondary schools, their improvement and upgradation. Section 15 confers power on the State Government to make rules for carrying out the purposes of the Act. Every rule made under this provision is required to be laid before both the Houses of the State Legislature. Section 17 provides for interim arrangement before taking over management and control of Non-Government Secondary Schools. Section 18 provides for the recognition of minority secondary schools. Under this provision, a minority secondary school already declared a minority school under the provisions of Bihar Secondary Education Board Act, 1976 shall be deemed to have been recognised under the provisions of the Act. It further provides that the State Government may by

notification recognise a minority secondary school, if the same has been established by a minority community on the basis of religion or language for the purposes of meeting the educational requirement and for the protection of culture of their section, provided it fulfils conditions prescribed for recognition. A minority secondary school shall be accorded recognition if it is managed and controlled in accordance with the provisions set out in Clauses (a) to (k) of Section 18(3). It requires every minority secondary school to have a managing committee and written bye laws. The managing committee is required to appoint teachers with the concurrence of the School Service Board The managing committee shall prescribe rules regarding the service condition of teachers based on natural justice and prevailing law and it shall have powers to remove, dismiss, terminate or discharge a teacher from service with the approval of School Service Board. The managing committee shall charge only such fees from the students as are prescribed by the State Government. No higher fees shall be charged unless prior approval of the State Government is obtained.

The scheme of the Act as analysed shows that the State Government has taken over non-Government secondary schools. After the take over the management and control of the secondary schools shall be carried on in accordance with the provisions of the Act by a managing committee constituted in accordance with the provisions of the Act. All employees including teachers working in the non-Government secondary schools have become employees of the State Government. Future appointment in the secondary schools shall be made on the recommendation made by the School Service Board. Prior to the take over under this Act, it appears that there were five classes of secondary schools functioning in the State of Bihar; they were; (i) non-Government secondary schools maintained and established and administered by private individuals and societies, (ii) secondary schools established and managed by minorities community and recognised as minority schools by the State Government,

(iii) proprietory secondary schools established and maintained entirely by trusts, associations or a corporate bodies declared as proprietory schools by the State Government; (iv) centrally sponsored secondary schools established or managed by Government of India or an undertaking owned or controlled by Government of India or by any department of State Government and recognised by the Education Department of the State Government, and Iv) autonomous secondary schools, residential schools recognised by the State Government imparting education in accordance with curriculum prescribed for secondary schools and under the Rules approved by the State Government. All these five categories of secondary schools had been imparting education to students in the State of Bihar. While the impugned Act provides for taking over the management and control of the non-government secondary schools, the management and control of the remaining categories of schools have not been taken over. Although the Act contains provisions for taking over of other secondary schools if and when circumstances as contemplated by the Act are found to exist, but so far as minority secondary schools are concerned, the Act

> does not provide for any compulsory acquisition or taking over of the management and control of such schools. The management and control of non-government secondary schools taken over by the State under Section 3 of the Act are required to be carried on in accordance with the provisions contained in Section S to 17 of the Act. So far as minority secondary schools are concerned under section 18 contained special provisions for their recognition and management.

Learned counsel for the petitioners contended that the provisions of the Act directly interfere with the management and control of the Christian minority schools. He urged that Section 3(2) of the Act which provides for the taking over of minority secondary schools by the Government interferes with the petitioners' fundamental right under Article 30(1) of the Constitution The learned counsel further submitted that provisions of Section 18(2) are violative of Articles 30 and 14 of the Constitution of India. The learned counsel further urged that clauses (a) to (k) of Section 18(3) of the Act interfere with the management of the minority secondary schools in violation of Article 30 (1) of the Constitution. On behalf of the State of Bihar it was urged that the State Government has no intention to interfere with the fundamental rights of the minority community to establish schools of its choice. The provisions of the impugned Act are directed to ensure academic excellence and good management. The managements of the minority institutions have been given free hand in managing their institutions but in order to maintain educational excellence and discipline in their institutions, regulatory provisions have been made in Section 18 of the Act and the purpose of regulatory provisions is to ensure that the minority schools are managed by properly constituted managing committees, that the members of the staff of the minority institutions are paid proper salaries, their security of service is ensured, and in the matter of taking disciplinary action the managing committees should conform to the principles of natural justice. It was further urged that these provisions have been made with a view to safeguard the interest of the minority institutions themselves.

Before we advert to the submissions raised by the parties we think it necessary to consider the ambit and scope of Article 30 of the Constitution It read as under:

> "30. Right of minorities t-o establish and administer educational institutions-(1), All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
>
> (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
>
> (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."

In plain terms Article 30(1) protect the right of the minorities whether based on religion or language to establish and administer educational institutions of their choice. The Article confers a fundamental right on the minorities to protect their interest. Clause (1A) provides that the Legislature while making law for compulsory acquisition of property of any minority educational institution shall ensure that the amount of compensation paid for the acquisition of property is such as would not restrict or abrogate the right guaranteed under Clause (1) of Article 30. Clause (2) of Article 30 enjoins the State not to discriminate a minority institution in granting aid to educational institutions on the ground of it being a minority institution whether based on religion or language. The content and scope of Article 30(1) of the Constitution has been considered by this Court in detail in a number of cases. In Re. The Kerala Education, Bill, 1957, [1959] SCR 995 this Court construed Article 30(1) of the Constitution of India and held as under:-

> "The first point to note is that the Article gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the Article says and means is that the religious and the linguistic minorities should have the right to establish educational institutions of their choice. (Pages 1052-1053) ... The next thing to note is that the Article, in terms, gives all minorities, whether based on religion or language, two rights, namely, the right to establish and the right to administer educational institutions of their choice. (page 1053) .. "

Considering the extent of State's power to regulate educational standards, service conditions and discipline in the minority institutions the Court observed:

> "We have already observed that Article 30(1) gives two rights to the minorities, (i) to establish and
>
> (ii) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladministration.

The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters sub-versive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided .. .... "

> In Rev. Sidhajbhai Sabhai and others v. State of Bombay, [1963] 3 SCR 837 a Constitution Bench of this Court observed:

> "All minorities, linguistic or religious have by Article 30(l) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions: it is a right to establish and administer what are in truth educational institutions, institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational."

(Underlining by us) In State of Kerala v. Very Rev. Mother Provincial, [1971] 1 SCR 734 a Constitution Bench of this Court again considered the extent of the minorities' right with regard to the management of the affairs of the institution. The Bench held that the management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas as to how the interests of the community in general and the institution in particular will be best served The right of management cannot be taken away and vested in another body as that would be encroachment upon the guaranteed right. This right is, however, not an absolute right. It is open to the State to regulate the syllabus of the examination and discipline in the institution and allied matters. Hidayatullah, C.J. speaking for the Court observed:

> "There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others. These propositions have been firmly established in State of Bombay v. Bombay Education Society, The State of Madras v. S. C. Dorairajan, In re the Kerala Education a Bill, 1957, Sidharajbahi v. State of Gujarat; Katra Education Society v. State of U.P. & Ors. Gujarat University, Ahmedabad v. Krishna Ranganath Mudholkar & Ors. and Rev. Father W. Proost & Ors. v. State of Bihar. In the last case it was said that the right need not be enlarged nor whittled down. The Constitution speaks of administration and that must fairly be left to the minority institutions and no more."

(Underlining by us) The scope of Article 30(1) of the Constitution of India was again considered by a nine Judges Constitution Bench of this Court in the Ahmedabad St. Xavier's College Society & Anr. etc. v. State of Gujarat & Anr., [1975] 1 SCR 173. Ray, C.J. Observed thus:-

> "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 measures 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 colour of minority A minority institution should shine in exemplary eclecticism 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.
>
> Regulations which will serve the interest of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions (Pages 196- 197) .....
>
> In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration. (Page
>
> 200)"

(Underlining by us) Mathew, J. discussing what type of action by the State would amount to the abridgement of the right guaranteed under Article 30(1) of the Constitution of India observed at pages 265-266 thus:-

> "The application of the term 'abridge' may not be difficult in many cases but the problem arises acutely in certain types of situations. The important ones are where a law is not a direct restriction of the right but is designed to accomplish another objective and the impact upon the right is secondary or indirect. Measures which are directed at other forms of activities but which have a secondary or direct or incidental effect upon the right do not generally abridge a right unless the content of the right is regulated. As we have already said, such measures would include various types of taxes, economic regulations, laws regulating the wages, measures to promote health and to preserve hygiene and other laws of general application. By hypothesis, the law, taken by itself, is a legitimate one, aimed directly at the control of some other activity.

> The question is about its secondary impact upon the admitted area of administration of educational institutions. This is especially a problem of determining when the regulation in issue has an effect which constitutes an abridgement of the constitutional right within the meaning of Article 13(2). In other words, in every case the court must undertake to define and give content to the word 'abridge' in Article 13(2)(1). The question to be asked and answered is whether the particular measure is regulatory or whether it crosses the zone of permissible regulation and enters the forbidden territory of restrictions or abridgement. So, even if an educational institution established by a religious or linguistic minority does not seek recognition, affiliation or aid, its activity can be regulated in various ways provided the regulations do not take away or abridge the guaranteed right. Regular tax measures, economic regulations, social welfare legislation, wage and hour legislation and similar measures may, of course have some effect upon the right under Article 30(l). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgement. If an educational institution established by a religious minority seeks no recognition, affiliation or aid, the state may have no right to prescribe the curriculum, syllabi or the qualification of the teachers."

In Lilly Kurian v. Sr. Lewine & Ors., [1979]] SCR 820 another Constitution Bench of this Court considered the scope, ambit and the nature of right of linguistic and religious minorities under Article 30(1) of the Constitution. A.P. Sen, J. speaking for the Court held thus :

> "Protection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minority's choice enshrined in Article 30(1) means 'management of affairs' of the institution. This right is, however, subject to the regulatory power of the State. Article 30(1) is not a charter for maladministration; regulation, so that the right to administer may be better exercised for the benefit of the-institution is permissible; but the moment one goes beyond that and imposes, what is in truth, not a mere regulation but an impairment of the right to administer, the Article comes into play and in the interference cannot be justified by pleading the interest of the general public; the interests justifying interference can only be the interest of the minority concerned."

In view of these decisions it is now well-settled that minorities based on religion or language, have fundamental freedom to establish and manage educational institutions of their own choice, but the State has right to provide regulatory provisions for ensuring educational excellence, conditions of employment of teachers, ensuring health, hygiene and discipline and allied matters. Such regulatory provisions do not interfere with the minorities' fundamental right of administering their educational institutions; instead they seek to ensure that such institution is administered efficiently, and that students who come out of minority institution after completion of their studies are well equipped with knowledge and training so as to stand at par in their avocation in life without any handicap. If regulatory provisions indirectly impinge upon minorities' right of administration of their institution, it would not amount to interference with the fundamental freedom of the minorities as the

regulatory provisions are in the interest of the minority institutions themselves. If the minority institution seeks affiliation or recognition from the State or Education Board the State has the right to prescribe syllabi and terms and conditions for giving such affiliation or recognition or extending grants in aid. Minority institutions may be categorised in three classes, (i) educational institutions which neither seek aid nor recognition from the State, (ii) institutions that seek aid from the State, and (iii) educational institutions which seek recognition but not aid. Minority institutions which fall in the first category are free to administer their institution in the manner they like, the State has no power under the Constitution to place any restriction on their right of administration This does not mean that an unaided minority institution is immune from operation of general laws of the land. A minority institution cannot claim immunity from contract law tax measures, economic regulations, social welfare legislation, labour and industrial laws and similar other measures which are intended to meet the need of the society But institutions falling within the second and third categories are subject to regulatory provisions which the State may impose It is open to the State to prescribe conditions for granting recognition or disbursing aid. These conditions may require a minority institution to follow prescribed syllabus for examination. courses of study, they may further regulate conditions of employment of teachers, discipline of students and allied matters. The object and purpose of prescribing regulations is to ensure that minority institutions do not fall below the standard of excellence expected of an educational institution and that they do not fall outside the main stream of the nation. A minority institution must also be fully equipped with educational excellence to keep in step with others in the State; otherwise the students coming out of such institutions will not be fully equipped to serve the society of the nation. While the State has every right to prescribe conditions for granting recognition or disbursing aid, it cannot under the guise of that power prescribe onerous conditions compelling the minority institution to surrender their rights of administration to the Government. On the one hand the State is under an obligation to ensure that educational standards in the recognised institutions must be according to the need of the society and according to standards which ensure the development of personality of the students in turning out to be civilized, useful members of the society, and to ensure that the public funds disbursed to the minority institutions are properly utilised for the given purpose. On the other hand the State has to respect and honour minority rights under Article 30(1) in the matter of establishing and carrying of administration of institution of their choice. In order to reconcile these two conflicting interests the State has to strike a balance and statutory provisions should serve both the objects and such statutory provisions have to withstand the test of Article 30(1) of the Constitution. These principles have to be borne in mind in considering the question of validity of statutory provisions relating to minority educational institutions.

Since the petitioners challenge the Constitutional validity of Sections 3 and 18 of the Act we consider it necessary to reproduce the same.

> "3. Taking over of the management and control:
>
> Taking over of the management and control of Non- Government secondary schools by the state government:

(1) All non-government secondary schools other than the minority secondary schools based on religion or language declared as such by the State Government and Centrally sponsored, autonomous and proprietary secondary schools recognised by the State Government, recognised permanently, provisionally or partially by the Board of Secondary Education under the Bihar Secondary Education. Board Act, 1976 (Bihar Act 25 of 1976) and the Bihar Secondary Education Board (Second amendment) ordinance, 1980 (Bihar ordinance No. 82 of 1980 shall, notwithstanding, anything contained in the said Act or the said ordinance, be deemed to have been taken over by the State Government with effect from the 2nd October, 1980. (2) The State Government may, by notification in the official gazette from a specified date, take over the management and control of such recognised minority or proprietary or autonomous secondary schools, the managing committee, trust, association or corporate body of which voluntarily makes an unconditional offer to make over the schools with all movable or immovable assets and properties owned or possessed by the school which include land, building, documents, books and registers also. The State Government may lay down its conditions for taking over management and control of schools, and before making over the management and control it shall be binding for the managing committee, trust association or corporate body of the said schools, to comply with and carry out the said conditions and it shall be valid. (3) The State Government may, by notification in the official gazette take over the management and control of such schools and on such terms and conditions as the government may deem proper which have already received permission of establishment from the Bihar Secondary Education Board or of such, schools imparting Secondary Education which have applied for permission of establish-

ment to the said Board immediately before the date of promulgation of this Act and the utility of such school is proved in the eye of the government and which fulfil within 3 years of the promulgation of the ordinance, the conditions lay down by the State Government with regard to land, building, furniture, equipments and enrollment. The qualification and suitability of teachers working against 9 posts of the school, one clerk and two orderlies of such school before the promulgation of this ordinance, shall be examined by a Committee constituted by the State Government for the purpose and if found suitable for appointment in government service they shall be appointed in the government service along with taking over the management and control of the school. "

"Section 18: Recognition of minority Secondary schools:

(1) The schools declared a minority school under the provision of the Bihar Secondary Education Board Act, 1976 (Bihar Act 25 1976) and the Bihar Secondary Education Board (Second Amendment) ordinance 1980 (Bihar ordinance 82 of 1980) shall be deemed to have been recognised under the provisions of this Act.

(2) The State Government may, by notification, recognise as a minority secondary school, such secondary school which has been established by a minority community

on the basis of religion or language for the purposes of meeting the educational requirement and for the protection of culture of their section and which fulfils the prescribed condition of recognition. (3) The minority Secondary school accorded recognition under sub-sections (1) and (2) shall be managed and controlled under the following provisions:-

(a) Every minority secondary school shall have a managing committee registered under the societies registration Act, 1862 and shall have written bye- laws regarding its constitution and function

(b) According to the prescribed qualification laid down by the State Government for the teachers of the nationalised secondary schools and within the number of sanctioned posts, the managing committee of the minority secondary schools shall appoint the teacher with the concurrence of the school service board constituted under section 10 of this Act. Provided that while considering the question of giving approval to appointment of any teacher under this sub-section the board shall only scrutinise as to whether the proposed appointment is in accordance with the rules laying down the qualification and the manner of making appointment framed by the State Government has been followed or not, and no more.

(c) There shall be rules regarding the service condition of teachers of minority schools based on natural justice and the prevailing law, a copy of which shall be sent to the State Government.

(d) The Managing Committee with the approval of the School Service Board shall have powers to remove a teacher, to terminate his services, to dismiss and to discharge him from service.

Provided that for the purpose of approval any disciplinary action against the teacher by the managing committee, the Board shall scrutinise whether disciplinary proceedings have been in accordance with the rules and no more

(e) Mentally and physically in-capacitated person shall not be appointed as teacher or non-teaching staff of the school

(f) No grant shall be admissible for payment of salary of a teacher or a non-teaching staff if appointed or retained beyond 58 years of age.

(g) only such fees shall be charged from the students as are prescribed by the State Government. Prior approval of the State Government shall be necessary to charge higher fees than what is prescribed.

(h) The schools shall be open to inspection on any working day by the authorised inspecting officers of the Education Department, the civil authority and authorised officers of Health Department.

(i) It shall be their duty to obey instructions regarding, admission and transfer of the students, discipline and punishment, records and accounts, curricular and co curricular activity, rules regarding health and cleanliness issued or made by the State Government.

(j) The State Government shall have powers to issue instructions not inconsistent with the provisions of Articles 29 and 30 of the Constitution for efficient management and for improving and standard of teaching and it shall be obligatory for the recognised minority schools to comply with them.

(k) In the event of violation of this section and the rules made thereunder and the instruction issued under it, the said managing committee may make an application within sixty days of the date of the order to the officer authorised by the State Government, against the withdrawal of recognition or withholding or stopping grants and the authorised officer shall, after hearing the case, take his decision and it shall be binding. Section 3 of the impugned Act provides for compulsory acquisition or taking over of the administration or assets of non-Government secondary schools. Section 3(1) lays down that all government secondary schools other than minority secondary schools shall be deemed to have been taken over by the State Government with effect from 2nd October, 1980. There were five categories of secondary schools P functioning in the State of Bihar, and out of them, the management and control of only non-government secondary schools have been taken over by the State. The minority secondary schools, proprietary secondary schools, centrally sponsored schools and autonomous secondary schools have not been taken over by Section 3(1) of the Act. It does not affect a minority secondary school at all. As regards Section 3(2) it confers power on the State Government to take over the management and control of recognised minority schools, proprietary or autonomous secondary schools by issuing a notification in the official Gazette provided the managing committee, trust, association or the corporate body which may have been maintaining such schools makes an unconditional offer to the State Government to make over the school with all assets and properties. If the State Government accepts the offer and considers it necessary to take over the management of such a school it may lay down terms and conditions for the take over of the management and control of the school. Section 3(2) does not confer any power on the State to compulsorily acquire or take over the management of a minority school instead the management is free to maintain and carry on the administration of its school and the State has no power to interfere with its administration. The State is entitled to take over the school only if an un- conditional offer is made by the management of the school. There is, however, no compulsion on the management of a minority school to make over the school to the Government. If the management of a minority school finds it difficult to maintain its school, instead of closing down, it may, in the larger interest of the educational need of the area, hand- over the control and management of the institution to the State. Section 3(2) does not interfere with minority's rights to maintain or administer its school, it merely enables the State to take over the control and management of a minority institution only when an unconditional offer is made to it by the management of the minority institution. There is, therefore, no question of Section 3(2) infringing the rights of minority institutions.

Section 3(3) confers power on the State Government to take over the management and control of the secondary schools which may not have been recognised on the date of the enforcement of the ordinance of the Act. It provides that the State Government may take over the management and

control of such schools on terms and conditions which the Government may deem proper. These schools include those which may have received permission for establishment of the school from the Bihar Secondary Education Board or schools which may have applied for permission of establishment immediately before the date of the promulgation of the ordinance provided the State Government is satisfied with regard to the utility of such schools. Section 3(3) relates to the taking over of management and control of unrecognised schools other than minority schools. These provisions do not affect the fundamental right of minority institution. In this view Section 3 which provides for taking over of management and control of non-government secondary schools does not in any manner encroach upon the fundamental right of a minority institution.

This brings us to the question as to whether the provisions of Section 18 violate Article 30(1). Section 18(1) provides that a school declared as a minority institution under the provisions of the Bihar Secondary Education Act 1976 or under the Bihar Secondary Education Board (Second Amendment) ordinance 1980 shall be deemed to have been recognised under the provisions of the Act. This provision ensures the continuity of recognition of a minority school. Sub-section (2) provides for future recognition of a minority school, it lays down that the State Government may recognise a minority secondary school which may have been established by a minority community on the basis of religion or language for the purpose of meeting the educational requirement and for the protection of their culture provided it fulfils the prescribed conditions. Section 18(3) lays down conditions under which a recognised minority secondary school shall be managed and controlled. These terms and conditions are specified in clauses (a) to

(k). This section requires a recognised minority school to comply with the terms and conditions set out therein and in accordance with rules framed by the managing committee regulating employment of teachers and disciplinary matters. It was urged that clauses (a) to (k) of Section 18(3) make Serious inroad on the right of a minority institution to carry on its administration according to its own choice. The terms and conditions prescribed therein regulate and control the administration of a minority school, which are violative of Article 30(1) of the Constitution. We would examine each of the clauses (a) to (k) in detail to determine the crucial question, whether any of these clauses violate petitioners' fundamental right guaranteed to them under Article 30 (1) of the Constitution.

Section 18(3) provides that recognised minority secondary schools shall be managed and controlled in accordance with the provisions contained in clauses (a) to

(k). Clause (a) requires a minority secondary school to have a managing committee registered under the Societies Registration Act 1862 and to frame written bye-laws regulating constitution and functions of the managing committee. The bye-laws regarding the constitution of the managing committee are required to be framed by the minority institution itself. The State or any other authority has no power or authority to impose any terms or conditions for the constitution of the managing committee. If a society running a minority institution frames written bye-laws providing for the constitution of managing committee entrusted with the function of running and administering its school it would ensure efficient administration. This clause is in the interest of the minority institution itself, as no outsider is imposed as a member of the Managing Committee, there is no interference with the minorities right to administer its school. Clause (b) provides for two

things, firstly it requires the managing committee of a minority school to appoint teachers possessing requisite qualifications as prescribed by the State Government for appointment of teachers of-other nationalised schools, secondly, the managing committee is required to make appointment of a teacher with the concurrence of the School Service Board constituted under Section 10 of the Act. Proviso to clause

(b) lays down that the School Service Board while considering the question of granting approval to the appointment of a teacher, shall ascertain if the appointment is in accordance with the rules laying down qualifications, and manner of making appointment framed by the State Government. The proviso makes it clear that the School Service Board has no further power to interfere with the right of managing committee of a minority school in the appointment of a teacher. Under clause (b) the managing committee is required to make appointment of a teacher with the concurrence of the school service board. The expression 'concurrence' means approval. Such approval need not be prior approval, as the clause does not provide for any prior approval. Object and purpose underlying clause (b) is to ensure that the teachers appointed in a minority school should possess requisite qualifications and they are appointed in accordance with the procedure prescribed and the appointments are made for the sanctioned strength. The selection and appointment of teachers is left to the management of the minority school, there is no interference with the managerial rights of the institution. In granting approval the School Service Board has limited power. The appointment of qualified teachers in a minority school is a sine qua non for achieving educational standard and better administration of the institution. Clause (b) is regulatory in nature to ensure educational excellence in the minority school. Clause (c) requires a minority school to frame rules regulating conditions of service of its teachers, such rules should be consistent with principles of natural justice and the prevailing law. The clause further requires the minority institution to submit a copy of such rules to the State Government. This clause in substance lays down that the management of a recognised minority school shall frame Rules, regulating conditions of service of teachers and such rules shall conform to principles of natural justice and prevailing law. These provisions are directed to avoid uncertainty and arbitrary exercise of power. If Rules are framed by the management those rules would bring uniformity in administration and there would be security of employment to teachers. In a civilised society the observance of principles of natural justice is an accepted rule, these principles contain basic rules of fair play and justice and it is too late in the day to contend that while administering a minority school the management should have right to act in contravention of the princi-

ples of natural justice. Clause (c) is regulatory in nature which requires the managing committee to frame rules of employment consistent with principles of natural justice and the prevailing law. No outside agency is required to frame rules of employment of teachers instead the management itself is empowered to frame rules. There is therefore no element of interference with the management's right to administer a minority school.

Learned counsel for the petitioner took serious objection to the provisions contained in clause (d) of Section 18(3) which lays down that the managing committee of a minority institution shall have power to remove, terminate, dismiss or discharge a teacher with the approval of the School Service Board. It was urged that School Service Board has been imposed as a higher authority over the

management, if the Board refused to grant approval to the disciplinary action taken by the management against a teacher, the management's right of administration would be affected adversely. The School Service Board enjoys blanket power on the management's right to take disciplinary action against its employees and therefore clause (d) infringes with the minority's right of management. We do not find any substance in the submissions. Indisputably power to remove, dismiss, terminate or discharge a teacher from service is an essential attribute of management's right but clause (d) does not invest that power on any outside agency. The power to take disciplinary action vests in the managing committee of the minority school, it is required to exercise that power in accordance with the rules framed by it. Clause (d) requires that the managing committee shall take approval of the School Service Board in removing, terminating, dismissing or discharging a teacher from service. The managing committee is not required to obtain prior approval from the School Service Board, instead it may seek approval of the School Service Board after taking action. The School Service Board while considering the question of granting approval does not enjoy any unlimited power it is required to consider if the managing committee, has taken the disciplinary action in accordance with the rules framed by the managing committee itself. If the Board finds that managing committee has taken action in accordance with Rules the School Service Board has no option but to accord approval, but if the disciplinary action is taken contrary to the rules framed by the minority school itself, the School Service Board will be justified in refusing to accord approval. The School Service Board is not invested with any veto or blanket power without any guidance, on the other hand it has limited power and guidelines are prescribed for the exercise of such powers. Such a provision is reasonable to ensure that rules framed by the minority school are followed and security of employment of teachers, is maintained and there be no arbitrary exercise of power. Clause (d) of Section 18(3) expressly provides that while considering the question of granting approval to the disciplinary action taken by the management of a minority institution the School Service Board shall scrutinise whether disciplinary proceedings had been taken in accordance with the rules and no more. Regulatory provisions requiring approval of disciplinary action taken by the management of a minority institution have been upheld by this Court in a number of cases.

In Re Kerala Education Bill case this Court upheld the validity of clauses 11 and 12(4) of the Bill. Clause 11(1) required a recognised minority institution to appoint teachers selected by the State Public Service Commission. While Clause 12(4) laid down that no teacher of an aided school shall be dismissed, removed, reduced in rank or suspended by the management without previous sanction of the authorised officer. This Court held that these clauses were designed to give protection and security to the teachers who are engaged in rendering service to the nation and were permissible regulations which the State could impose on the minorities as a condition for granting aid to their educational institutions. The court further held that since these aforesaid clauses of the Bill were regulatory, they do not violate Article 30(1) of the Constitution. Section 8(4) of the Delhi School Education Act 1973 which require a managing committee of recognised private school to obtain approval of the Director for suspending an employee was upheld in its application to the minority institutions by this Court in Frank Anthony Public School Employees' Association, [1986] 4 SCC 707 case and Mrs. Y. Theclamma's [1987] 2 SCC 516 case. In the latter case this Court observed that while the right of the minority to establish and administer educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purpose of ensuring educational standards and maintaining excellence thereof can validly be prescribed. Regulations can be made for

ensuring proper conditions of service for the teacher and also for ensuring a fair procedure in the matter of disciplinary action. Section 8(4) of Delhi Act was designed to afford some measure of protection to teachers of the minority institutions without interfering with the management's right to take disciplinary action.

Learned counsel for the petitioner placed reliance on the decision of this Court in State of Kerala v. Very Rev. Mother Provincial, [1971] 1 SCR 734; Ahmedabad St. Xaviers College Society & Anr. v. State of Gujarat and Anr., [1975] 1 SCR 173 and Liliy Kurian v. Sr. Lewina & Ors., [1979] 1 SCR 820 and All Saints High School, Hyderabad v. Government of Andhra Pradesh & Ors., [1980] 2 SCR 924 in support of his contention that the clauses (c) and (d) of Section 18(3) interfere with the minorities right of managing their institution. On a careful consideration of the ratio of these decisions we are of the opinion that these authorities do not support the petitioners' submissions. In State of Kerala v. Very Rev. Mother Provincial, [1980] 2 SCR 924 the High Court of Kerala had declared Sections 48 and 49 of the Kerala University Act 1969 unconstitutional on the ground that those provisions violated fundamental right of a minority institution guaranteed under Article 30(1) of the Constitution. In appeal this Court upheld the view taken by the High Court on the ground that Sections 48 and 49 contained provisions regulating the constitution of governing body of an affiliated college in accordance with the statutes and ordinances framed by the University. The statutes and ordinances so framed designated and nominated persons to function as members of the governing body of an affiliated college. The effect of those provisions was that outside agencies were inducted into the managing committee of a minority institution. This Court held that effect of Sections 48 and 49 was to displace the administration of the college by giving it to a distinct corporate body which was in no way answerable to the minority institution. The Court further held that the managing committee constituted under the statute and the ordinances was an alien authority, for the management of the minority institution which was in clear violation of Article 30(1) of the Constitution.

In Ahmedabad St. Xaviers College Society & Anr. etc. v. State of Gujarat and Anr., this Court held that Sections 51A and 52 of the Gujarat University Act 1949 as amended in 1972 could not be made applicable to a minority institution as under the aforesaid provisions no punishment could be inflicted by the management of an affiliated college on a member of the staff unless it obtained approval of the Vice- Chancellor or an officer authorised by him. The Court held that the provision relating to grant of approval conferred blanket power on an outside authority without laying down any guidelines, it directly interfered with the minorities right to administer their institution. In Lilly Kurian v. Sr. Lewina & Ors., this Court again held that ordinance 33 framed under the Kerala University Act 1969 conferring right of appeal against the disciplinary action taken by a minority institution to the Vice-Chancellor was constitutionally invalid as it interfered with the disciplinary power of a minority educational institution. The Court further held that ordinance 33 conferred a right of veto in disciplinary matters of minority institution, it did not lay down any guidelines instead, it conferred an uncanalised and unguided power on the appellate authority. The Court held that conferment of uncanalised and unguided appellate power on the Vice-Chancellor resulted into grave encroachment on the right of the minority institution to enforce and cover its discipline in its administration. The Court emphasised that since the Vice-Chancellor's power was unlimited and undefined he could interfere with the orders of the minority institution inflicting punishment

without there being any justified ground. The ordinance was struck-down as it contained no guidelines for the exercise of the appellate power. In All Saints High School, Hyderabad v. Government of Andhra Pradesh & Ors., this Court held that Section 3(l) and (2) of the Andhra Pradesh Recognised Private Educational Institution Control Act, 1975 could not be applied to a minority institution as the provisions contained therein encroached upon the fundamental right of minorities guaranteed to them under Article 30(1) of the Constitution. Section 3(1) contained an unqualified mandate that no teacher shall be dismissed except with the prior approval of the competent authority. Section 3(2) conferred appellate power on an outside authority to interfere with the disciplinary action taken by the managing committee of an educational institution. This Court (majority) held that the unqualified power conferred on an outside authority which was made a judge of both, facts and law, the exercise of which was made to depend purely on subjective considerations, constituted an infringement' of the right guaranteed by Article 30(1) of the Constitution. These decisions do not affect the view taken by us. As already discussed clauses (c) and (d) of Section 18(3) of the Act are regulatory in nature to ensure the educational standard of security of employment of teachers and no unguided, uncanalised, blanket power in the nature of veto or appellate power has been conferred on any outside agency against the disciplinary action taken by the management of a minority institution. The School Service Board is vested with limited power to see that the person proposed to be appointed possesses the requisite qualifications prescribed and that the prescribed method of selection was followed by the management.

The choice of the person for appointment continues to vest in the managing committee of the minority school. Similarly in disciplinary matters also the managing committee of a minority school has full power to remove, terminate or discharge a teacher, but it has to obtain the approval of the School Service Board, here again the Service Board has a limited power to ascertain whether the disciplinary proceedings have been taken in accordance with the rules framed by the management itself, the School Service Board has no. Other power in the matter. These provisions do not suffer from the legal infirmities as pointed out in the aforesaid decisions.

Clause (e) of Section 18(3) merely provides that mentally and physically in-capacitated person shall not be appointed as teacher or non-teaching staff of the school. If mentally and physically incapacitated person are appointed to a minority institution it will serve no useful purpose instead the institution will suffer, therefore appointment of disabled persons will not be. in the interest of the administration of a minority school itself. Clause (f) of Section 18(3) provides that the State shall not pay any grant towards the payment of salary of a teacher or other employee of a minority institution if he is appointed or permitted to be retained beyond 58 years of age. In 1) the State of Bihar the age of superannuation is fixed at 58 years for its employees. Consistent with that policy this clause provides that public funds of the State shall not be used for the employment of a person in service who may have crossed 58 years of age. This however, does not place any restriction on the right of the management of the minority institution to employ or retain a person beyond 58 years of age, the management is free to do so but if the management does so, the State shall not be responsible for paying grants towards the salary of such teacher or employee. This provision does not in any way interfere with the minorities right of administration of its institution. Clause (g) provides that only such fees shall be charged from the students as prescribed by the State Government P and the management is not permitted to charge higher fees except with prior

approval of the State Government. In the counter affidavit filed on behalf of the State it has been stated that education upto matriculation is free in the State and therefore no fees is charged from the students. Consistent with the general policy the State has made it a condition of recognition to a minority school in providing that fees shall be charged from the students as prescribed by the State Government and if the management decides to charge higher fees it must seek the approval of the State Government. This provision is regulatory in nature it would not be in the interest of the minority schools to charge higher fees as that would be against the interest of the institution itself. If the managing committee finds that circumstances exist to charge higher fees to meet the need of the institution.

it may place the necessary facts and circumstances before the State Government and in that event the State Government shall consider the question of granting permission.

Clause (h) provides for the inspection of minority secondary school by the authorised inspecting officer of Education Department and officers of Health Department. The object and purpose of inspection is to ensure that the money from the public funds given to a minority school as grants-in-aid, is utilised for the purpose it is given and inspection by officers of Health Department would ensure hygiene, cleanliness and health of the students in the institution. Clause (h) in our opinion does not in any way trespass upon the minorities fundamental right. Clause (i) of Section 18(3) provides that it shall be the duty of the minority institution to obey instructions regarding admission and transfer of the students, discipline and punishment, records and accounts, curricular and co-curricular activities, rules regarding health and cleanliness issued or made by the Government. This clause is wide and general in nature, it contemplates framing of rules by the State Government regarding health, cleanliness, and accounts. It further requires the minority institution to obey instructions issued by the State regarding admission and transfer of students, discipline, and maintenance of accounts. The instructions which may be issued under this clause relating to admission, transfer of students and discipline, punishment or maintenance of accounts must be in confirmity with the minorities freedom under Article 30(I) of the Constitution. Under the guise of this power the State Government cannot trespass on the forbidden field of minorities right of administration of their schools. These instructions must relate to secure the efficiency in educational standard, and should be regulatory in nature to achieve efficiency in the administration. Laying down principles and methods relating to admission and transfer of students and discipline and punishment and maintenance of record and accounts and essential to maintain the efficiency in the administration of the institution, and no exception can be taken to instructions relating to these matters unless they interfere with the right of administration. No instructions or rules, as contemplated by clause (i) of Section 18(3) were placed before us by the petitioners, which may have tendency to interfere with the minorities right of administration of their institutions. However, we would like to express our view that if the State Government in exercise of its powers under clause (i) of Section 18(3) issues instructions or frames rules, interfering with the minorities right such instructions or rules would be violative of Article 30(1) of the Constitution but if the instructions and rules are issued with the object and purpose of securing efficiency in the administration or in securing the educational standard the same would be valid. It must be borne in mind that as the aided minority institutions receive money from public revenues the State Government is entitled to issue instructions or frame rules for the maintenance of records and accounts and such instructions

or rules would not interfere with the minorities right under Article 30(l) of the Constitution. Similarly, no exception can be taken to instructions or rules regarding health and cleanliness such instructions or rules would be in the interest of the institution itself.

Clauses (j) and (k) of Section 18(3) confer power on the State Government to issue instructions consistent with the provisions of Articles 29 and 30 of the Constitution for efficient management and for improving the standard of teaching and a minority school is required to comply with those instructions. The State Government has no unrestricted power to issue instructions on the other hand these clauses expressly refer to Articles 29 and 30 and provide that instructions shall not be inconsistent with the constitutional provisions. The State Government has power to make regulatory provisions for achieving efficiency in the management and improving the standard of education in the minority schools, it may therefore issue instructions for securing that purpose. If instructions are issued for the better management of the minority schools, no grievance to their validity can be raised, as now, it is well-settled by a number of authorities of this Court that a minority institution has right to administer its educational institution but it has no right to maladministration. Any rule or instruction issued by the Government to prevent mal- administration would be valid. Clause (k) provides that if any instructions are issued by the State or any of its authority or rules are framed, or if any officer authorised by the State Government issues any order for the withdrawal or recognition or withholding or stopping of grants to a minority school the managing committee of the minority school has right to raise a grievance before an officer authorised by the State Government within sixty days. It further provides that the authorised officer shall after hearing the case take his decision which shall be binding on the parties. This clause confers a right on the management of the minority school to challenge any arbitrary exercise of power by an authority of the State in withdrawing recognition or with-holding or stopping the disbursement of aid to the institution. Apparently clause (k) has been enacted by the Legislature to safeguard the interest of the minority school and it does not in any manner violate Article 30(1) of the Constitution Clauses (a) to (k) of Section 18(3) lay down terms and conditions for granting recognition to a minority school. and these are regulatory in nature which seek to secure excellence in education and efficiency in management of schools. These provisions do not confer any unguided blanket or veto power on any outside agency or authority to veto the decision of the management of the school. Instead minority's right to manage its school in accordance with rules framed by it is fully preserved. The Legislature has taken care to confer a limited power on the School Service Board for granting approval to appointment and dismissal of a teacher which are necessary in the interest of educational need and discipline of the minority school itself. The terms and conditions applicable to a recognised minority school do not compel the management of a minority school to surrender its right of administration instead the management is free to administer its school in accordance with the rules framed by it.

Guarantee of freedom to a minority institution under Article 30(1) of the Constitution does not permit the minority institution to act contrary to law and order, law of contract, industrial laws or other general laws which are enacted for the welfare of the society. If the minorities claim for immunity from the law of the land is upheld that would be unreasonable and against the interest of the minority institutions themselves. In Christian Medical College Hospital Employees' Union & Anr v. Christian Medical College Vellore Association & Ors., (Civil Appeal No. 8818 of 1983, decided on 20th October 1987) a question arose whether Sections 9A, 10, 11A, 12 and 33 of the Industrial

Disputes Act, 1947 were applicable to educational institutions established and administered by minorities which are protected by clause (1) of Article 30 of the Constitution. This Court answered the question in affirmative. The Court held that the labour legislation was applicable to the management of a minority educational institution and it observed thus:-

> "These rights which are enforced through the several pieces of labour legislation in India have got to be applied to every workman irrespective of the character of the management. Even the management of a minority educational institution has got to respect these rights and implement them. Implementation of these rights involves the obedience to several labour laws including the Act which is under consideration in this case which are brought into force in the country. Due obedience to those laws would assist is the smooth working of the educational institutions and would facilitate proper administration of such educational institutions. If such laws are made inapplicable to minority educational institutions, there is every likelihood of such institutions being subjected to mal-administration. Merely because an impartial tribunal is entrusted with the duty of resolving disputes relating to employment, unemployment, security of work and other conditions of workmen it cannot be said that the right guaranteed under Article 30(1) of the Constitution of India is violated. If a creditor of a minority educational institution or a contractor who has built the building of such institution is permitted to file a suit for recovery of the money or damages as the case may be to him against such institution and to bring the properties of such institution to sale to realise the decretal amount due under the decree passed in such suit is Article 30(1) violated? Certainly not. Similarly the right guaranteed under Article 30(1) of the Constitution is not violated, if a minority school is ordered to be closed when an epidemic breaks out in the neighbourhood, if a minority school building is ordered to be pulled down when it is constructed contrary to town planning law or if a decree for possession is passed in favour of the true owner of the land when a school is built on a land which is not owned by the management of a minority school. In the same way if a dispute is raised by an employee against the management of a minority educational institution such dispute will have necessarily to be resolved by providing appropriate machinery for that purpose. Laws are now passed by all the civilised countries providing for such a machinery."

We accordingly hold that the impugned Act does not violate petitioners' rights guaranteed under Article 30(l) of the Constitution. In the result petitions fail and are accordingly dismissed but there will be no order to costs.

S.L. Petitions dismissed.