C/M. St. John Inter College vs Girdhari Singh & Ors on 30 March, 2001

Equivalent citations: 2001 (4) SCC 296, AIR 2001 SUPREME COURT 1891, 2001 AIR SCW 1468, 2001 LAB. I. C. 1414, 2001 ALL. L. J. 883, 2001 (5) SRJ 62, 2001 (3) SERVLJ 49 SC, 2001 (2) LRI 251, (2001) 3 SERVLJ 49, 2001 (2) ALL CJ 1109, (2001) 4 JT 355 (SC), 2001 (4) JT 355, (2001) 89 FACLR 613, (2001) 45 ALL LR 600, (2001) 2 LAB LN 783, (2001) 3 SCALE 161, (2001) 3 ESC 443, (2001) 3 SUPREME 165, (2001) 2 UPLBEC 1337, (2001) 2 ALL WC 1424, (2001) 2 SERVLR 1, (2001) 3 SCJ 37, (2001) 2 SCT 623

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Bench: D.P. Mohapatra

CASE NO.:
Appeal (civil) 5397 of 1997

PETITIONER:
C/M. ST. JOHN INTER COLLEGE

Vs.

RESPONDENT:
GIRDHARI SINGH & ORS.

DATE OF JUDGMENT: 30/03/2001

BENCH:
G.B. Pattanaik & D.P. Mohapatra

JUDGMENT:

PATTANAIK,J.

L...I...T.....T.....T.....T.....T.....T.....T..J This appeal is directed against the Judgment of the Allahabad High Court, allowing the writ petition filed by the private respondents. The respondents who were the employees of the appellant institution, filed the writ petition, challenging the orders of termination dated 13.1.1989 passed by the Management. The sole ground of attack was that the prior approval of the competent authority, as required under Section 16G(3)(a) of the Uttar Pradesh

Intermediate Education Act, 1921 (herein-after referred to as the Act), not having been taken, the order of termination, is invalid and inoperative. The High Court, following the majority judgment of the said Court in the case of J.K. Kalra vs. R.I.G.S. and Ors. set aside the order of termination of services of the private respondents, passed by the Managing Committee. The institution is a minority institution within the ambit of Article 30 of the Constitution, is not disputed. In the circumstances, the question that arises for consideration is whether the provisions of Section 16G(3)(a) of the Act would have application to the minority institutions. The Full Bench of Allahabad High Court in Kalra in its majority judgment, after considering the provisions of Section 16G(3)(a) of the Act and the Regulations framed thereunder, came to hold that there are sufficient guidelines available to the authority under the said provision for according or refusing the approval to the decision of the Committee of Management, and, therefore, there is no reason to hold that the provisions will have no application to the minority institution.

Mr. P.P. Rao, the learned senior counsel, appearing for the appellant, contended that the conclusion of the High Court that Regulation 44 provides enough guidelines for exercise of the powers for approval or disapproval of the decision of the Management, is on the face of it unsustainable inasmuch as the said Regulation 44 merely prescribes the time period within which the appropriate authority is required to communicate his/her decision to the Management and further provides that if complete papers have not been received, then the approving officer may require it to resubmit its proposal in complete form. But there is no whisper, indicating the criteria on which the approving officer is required to take his decision, and, therefore, the High Court committed error in relying upon the aforesaid Regulation, as the guidelines for exercise of power by the approving authority. Mr. Rao further contended that provisions of Section 16G(3) of the Act, conferring power of approval on the District Inspector of schools, having been found to be inadequate, the Uttar Pradesh legislature enacted Uttar Pradesh Secondary Education Services Commission and Selection Board Act, 1982 (U.P.Act No. 5 of 1982). Under the 1982 Act, the power of approval has been conferred on the Commission that is to say the U.P.Secondary Education Services Commission, established under Section 3 of the said Act and no teacher would be dismissed or removed from the service or reduced in rank unless prior approval of the Commission had been obtained. Section 30 of the aforesaid Act of 1982, exempts the applicability of the said Act to the minority institutions. The legislative intent, therefore, is crystal clear that the provisions regarding the prior approval of any competent authority in a case where teacher of an institution is dismissed, removed or reduced in rank, will not apply to a minority institution. This being the position, the impugned judgment of the High Court, interfering with the order of termination of the employee of the minority institution, passed by the Board of Management, is wholly unsustainable and, therefore, the said judgment is liable to be interfered with by this Court.

Mr. O.P. Sharma, the learned senior counsel, appearing for the respondents, on the other hand contended that the provisions of Section 16 G(3)(a) of the Act is merely a provision to check the arbitrary and capricious acts of the Management in interfering with the service conditions of employees of the institution. Such regulatory measure does not in any way affect the rights of the minority to establish and administer educational institution of their choice, engrafted under Article 30 of the Constitution. Since the Regulation provides the criteria for exercise of power by the approving authority, the said provision contained in Section 16 G(3)(a) can neither be held to be

contravening Article 30 nor does it contravene Article 14 and as such the majority judgment of Allahabad High Court in Kalras case correctly lays down the law and the same does not require any interference. According to Mr. Sharma, the Regulation provides an elaborate procedure to be followed by the punishing authority and the fact that the regulation further provides that the approving authority can call for all the necessary papers which is obviously intended for the purpose of satisfying that the punishing authority has followed the prescribed procedure and, therefore, it must be held that sufficient guidelines are available for exercise of power under Section 16 G(3)(a) of the Act. Consequently, the Division Bench of the High Court in the impugned judgment, has rightly followed the majority view in the Full Bench decision in Kalras case and there is no infirmity in the same. Mr. Sharma further urged that Section 32 of the U.P. Act 5 of 1982, unequivocally indicates that the provisions of the Intermediate Education Act, 1921 and the regulations made thereunder, in so far as they are not inconsistent with the provisions of this Act or the regulations or rules made thereunder shall continue to be in force for the purpose of selection, appointment, promotion, dismissal, removal, termination or reduction in rank of a teacher. In this view of the matter, Section 16G(3)(a) of the Act must be held to be continuing in force, which would govern the cases of dismissal, removal or termination or reduction in rank of a teacher of those institutions, which do not come within the purview of 1982 Act. Consequently, the minority institution being excluded from the purview of 1982 Act by virtue of Section 30, the provisions of Section 16G(3)(a) must apply and as such the order of termination without prior approval, as contained therein, must be held to be invalid.

The correctness of the rival submissions would depend upon the interpretation of relevant provisions of the Uttar Pradesh Intermediate Education Act, 1921, the regulations framed thereunder, the Uttar Pradesh Secondary Education Services Commission and Selection Board Act, 1982, Article 30 of the Constitution of India and in this context relevant decisions of this Court will have to be borne in mind. It would, therefore be appropriate at this stage to extract some of the relevant provisions. Prior to the Intermediate Education Act, 1921 came into force, the educational institutions including the High Schools and Intermediate education were all under the supervision of the Allahabad University. It was however felt that it would be expedient to establish a Board to take the place of Allahabad University in regulating and supervising the system of High School and Intermediate education in the united provinces and for that purpose, the Intermediate Education Act, 1921 was enacted which extended to whole of the Uttar Pradesh. The expression institution has been defined in Section 2(b) to mean a recognised Intermediate College, Higher Secondary School or High School and includes where the context so requires, a part of an institution, and Head of Institution means the Principal or Head Master, as the case may be, of such institution. The expression Recognition has been defined in Section 2(d) to mean recognition for the purpose of preparing candidates for admission to the Boards examinations. Section 15 of the Act empowers the Board to make regulations for the purpose of carrying into effect the provisions of the Act. Under Section 16A, the authority to manage and conduct the affairs of the institution vest with the Committee of Management. Section 16G provides that persons employed in a recognised institution shall be governed by such conditions of service, as may be prescribed by Regulations. Under Section 16G(3)(a) no teacher could be discharged or removed or dismissed from service or reduced in rank without the prior approval in writing of the Inspector and under Section 16G(3)(b) the Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the

notice for termination of service proposed by the management. Sections 16G(3)(a) and 16G(3)(b) are extracted hereinbelow in extenso:

> Sec.16G(3)(a): No Principal, Headmaster or teacher may be discharged or removed from service or reduced in rank or subjected to any diminution in emoluments, or served with notice of termination of service except with the prior approval in writing of the Inspector. The decision of the Inspector shall be communicated within the period to be prescribed by regulations. 16G(3)(b): The Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice for termination of service proposed by the management:
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> Provided that in the cases of punishment, before passing orders, the Inspector shall give an opportunity to the Principal, the Headmaster or the teacher to show cause within a fortnight of the receipt of the notice why the proposed punishment should not be inflicted.
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> In exercise of powers conferred upon the Governor under the provisions of the Uttar Pradesh Intermediate Education Act read with the Amendment Act of 1958, the Governor has framed a set of regulations in respect of matters covered by Sections 16A, 16B, 16C, 16E, 16F and 16G of the Intermediate Education Act, 1921. In the case in hand, the relevant regulation for our purpose is Regulation 44, which is extracted hereinbelow in extenso:
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> Regulation 44: The Inspector or Regional Inspectress shall communicate his/her decision to the management within six weeks of the receipt of its proposal in complete form for action mentioned in sub-section (3)(a) of Section 16G of the Act. If incomplete papers are received from the management the approving officer shall require it to resubmit its proposal in complete form within two weeks, and the period of six weeks prescribed in this regulation shall be reckoned from the date on which complete papers are received by the approving officer. These papers shall either be sent by registered post or by special messanger.
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> The Uttar Pradesh legislature enacted the Uttar Pradesh Seconday Education Services Commission and Selection Board Act, 1982 essentially for the purpose of establishing Secondary Education Services Commission as well as Selection Board for selection of teachers in the institutions recognised under the Intermediate Education Act of 1921. The statement of objects and reasons appended to the relevant Bill is extracted hereunder:
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> The appointment of teachers in secondary institutions recognised by the Board of High School and Intermediate Education was governed by the Intermediate Education Act, 1921 and regulations made thereunder. It was felt that the selection of teachers under the provisions of the said Act and the regulations was sometimes not free and fair. Besides, the field of selection was also very much restricted. This

adversely affected the availability of suitable teachers and the standard of education. It was, therefore, considered necessary to constitute Secondary Education Service Commission at the State level, to select Principals, Lecturers, Headmasters and L.T. Grade teachers and Secondary Education Selection Boards at the regional level, to select and make available suitable candidates for comparatively lower posts in C.T./J.T.C./B.T.C. grade for such institutions.

(2).Under Section 16-G(3) of the Intermediate Education Act, 1921, Managements were authorised to impose punishment with the approval of District Inspectors of Schools in matters pertaining to disciplinary action. This provision was found to be inadequate in cases where the management proposed to impose the punishment of dismissal, removal or reduction in rank and so it was considered necessary that this power should be exercised subject to the prior approval of the Commission or the Selection Boards, as the case may be, which would function as an independent and impartial body.

(3).Since the State Legislature was not in session and immediate action was considered necessary with a view to setting up the Commission and the Selection Boards, the Uttar Pradesh Secondary Education Services Commission and Selection Boards Ordinance, 1981 (Uttar Pradesh Ordinance No. 8 of 1981) was promulgated by the Governor on July 10, 1980.

Section 21 of the aforesaid Act of 1982 puts restrictions on dismissal, removal or reduction in rank of teachers and the aforesaid provision has a vital bearing in the present case, which is therefore quoted in extenso:

Section 21: Restriction on dismissal, removal or reduction in rank of teachers: (1)No teacher specified in the Schedule shall be dismissed or removed from service or reduced in rank and neither his employment may be reduced nor he may be given notice of removal from service by the management unless prior approval of the Commission has been obtained.

Provided that, where reference for prior approval of the Inspector was made in accordance with sub-section (3) of Section 16-G of the Intermediate Education Act, 1921, before January 1, 1984, no prior approval of the Commission shall be necessary and such reference shall be dealt with in accordance with the provisions of that Act as if this Act had not come into force. (2).No teacher other than a teacher specified in the Schedule shall be dismissed or removed from service or reduced in rank and neither his emoluments may be reduced nor he may be given notice of removal from service by the management unless prior approval of the Board has been obtained.

Provided that where reference for prior approval of the Inspector was made in accordance with sub-section (3) of Section 16G of the Intermediate Education Act, 1921 before the commencement of this sub-section, no prior approval of the Board

shall be necessary and such reference shall be dealt with in accordance with the provisions of that Act as if this Act had not come into force.

(3)Every order of dismissal, removal or reduction in rank or removal from service or reduction in emoluments of a teacher in contravention of the provisions of sub-section (1) or sub-section (2) shall be void.

Date of enforcement Sub-section (1) and (3) of Section 21 come into force on 1.1.1984 vide Noti. No. 6895/XV-7-2(25)83 dated 27-12-83.

Section 30 of the said Act provides that nothing in the Act shall apply to an institution established and administered by a minority referred to in clause(1) of Article 30 of the Constitution of India. Section 32, on which Mr. Sharma, appearing for the respondents relied upon, provides that those provisions of 1921 Act which are not inconsistent with the provisions of the 1982 Act or the rules or regulations made thereunder, the same shall continue to be in force for the purpose of selection, appointment, promotion, dismissal, removal, termination or reduction in rank of a teacher. The aforesaid provision is extracted hereinbelow in extenso:

Section 32: Applicability of U.P.Act 11 of 1921. The provisions of the Intermediate Education Act, 1921 and the Regulations made thereunder in so far as they are not inconsistent with the provisions of this Act or the rules or regulations made thereunder shall continue to be in force for the purpose of selection, appointment, promotion, dismissal, removal, termination or reduction in rank of a teacher.

The very objects and reasons of the aforesaid Act which have been quoted earlier would indicate that the legislature thought that the provisions contained in Section 16G(3)(a) of 1921 Act were inadequate. Since power of approval had been conferred upon a lower educational authority called the District Inspector of Schools, it was, therefore, considered that said power could be conferred upon a Commission which could function as an independent and impartial body and thus, the Secondary Education Services Commission came into existence.

Article 30 of the Constitution confers right on a minority community to establish and administer educational institutions of their choice. The rights emanated from Article 30 are the right to establish an institution and right to administer it. The right to administer engrafted under Article 30 would not however confer a right to maladminister, as was held by this Court in the case of Bihar State Madarasa Board vs. Madarasa Hanafia, AIR 1990 SC 695. Even though, Article 30 does not lay down any limitation upon the right of a minority to administer its educational institutions, but that right cannot be said to be absolute, as was held by this Court in the case of St. Xaviers College vs. State of Gujarat, A.I.R.1974 SC 1389 and further the rights must be subject to reasonable regulations, as was held by this Court in All Saints College vs. Govt. of Andhra Pradesh, A.I.R. 1980 SC 1042, consistent with the national interest. Regulations, therefore could always be made to maintain educational

character and standard of institution and for that purpose to lay down qualifications or conditions of service, to ensure orderly, efficient and sound administration and to prevent mal-administration, to ensure efficiency and discipline of the institution and for several other objectives, which would be for the benefit of the institution and which would not offend the right engrafted under Article 30. It would always be permissible to frame regulations so long as the regulations do not restrict the right of administration of the minority community but facilitate and ensure better and more effective exercise of that right for the benefit of the institution. But such a regulatory provision will cease to be regulation where power conferred upon the appropriate authority is uncanalised or unreasonable. Regulations also cannot go to the extent of annihilating the right guaranteed by Article 30(1). The Regulation made for achieving competence of teachers or maintenance of discipline in the conditions of service or providing for an appeal against the order of termination and the like would not be held to be violative of the right to administer enshrined under Article 30 of the Constitution but nonetheless if the said provisions confer an authority on a body which is uncanalised or unreasonable or there is no guiding principle, then the same cannot be upheld. In this view of the matter, the State could impose regulations even upon a minority institution, which would be in consonance with Article 30(1) and such regulation must be reasonable and must be regulative of the educational character of the institution and conducive to making the institution an effective vehicle of education for the minority community. When any regulatory measure is assailed, it would be obligatory for the Court to find out as to whether the provision in fact secures a reasonable balance between ensuring a standard of excellence of the institution and of preserving the right of the minority to administer the institution as a minority institution, as was held by this Court in the case of St. Xaviers college vs. State of Gujarat, A.I.R. 1974 S.C. 1389, but such regulatory provision if found to have offended the provisions of Article 14, then the same has to be struck down, as was indicated in the case of Frank Anthony Employees Association vs. Union of India AIR 1987 SC 311.

Let us now notice some of the decisions of this Court. In Kerala Education Bill, 1957, (case 1959 S.C.R., 995) this Court had observed the Constitutional right to administer an educational institution by the minority of their choice does not necessarily militate against the claim of the State to insist that it may prescribe reasonable regulations to ensure the excellence of the institutions. In Sidhajbhai Sabhai and Ors. vs. State of Bombay, 1963(3) S.C.R.837, a Constitution Bench observed that Regulations made in the true interests of efficiency of instructions, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed and such regulations are not restrictions on the substance of the right which is guaranteed; they secure the proper functioning of the institution, in the matters educational. In State of Kerala vs. Very Rev. Mother Provincial, 1971(1) S.C.R., 734, it had been stated that the right of management in respect of a minority institution cannot be taken away and vested with somebody else, as that would be encroachment upon the guaranteed right but that right is not an absolute one and it is open to the State to regulate the syllabus of

the examination and discipline for the efficiency of the institution and the right of the State to regulate the education or educational standards and allied matters cannot be denied. In St. Xaviers College Society & Anr. etc. vs. State of Gujarat and Anr., 1975(1) S.C.R. 173, this Court had observed: Regulations which would serve the interest of the students, regulations which would 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. In Lilly Kurian vs. Sr. Lewine and Ors., 1979(1) S.C.R. 820, the Court had observed:

Protection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minoritys 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 mal-administration; 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 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 Frank Anthony Public School Employees Association vs. Union of India & Ors., 1987(1) S.C.R. 238, the Court was examining the validity of Section 12 of Delhi School Education Act. Sections 8(1), 8(3), 8(4) and 8(5) were held not to have encroached upon any right of the minority to administer their educational institutions.

But Section 8(2) which stipulated that no employee of a recognised private school shall be dismissed, removed or reduced in rank nor his services will be terminated except with the prior approval of the Director was held to have interfered with the right of the minority, and therefore, the said provision was held to be inapplicable to the minority institutions. The aforesaid dictum, no doubt, was in respect of an unaided minority institution. The conspectus of the aforesaid decision would indicate that there would be no bar for the Government to have regulatory measures for ensuring a standard of excellence of the institutions and such a measure would not in any way affect the right of the minority to administer its institutions engrafted in Article 30 of the Constitution. But notwithstanding the same, if the so called regulatory measures conferring power on any specified authority, without indicating any guidelines for exercise of that power, then exercise of such power by the appropriate authority would offend the provisions of Article 14 and would not be allowed to be retained, as that would amount to an arbitrary inroad into the right of the minority, in the matter of administering its institutions. In another words, if the regulatory provision conferring power on the educational authority is uncanalised and unguided and does not indicate any guidelines under which the educational authority could exercise the said power, then in such a case, the conferment of a blanket power on the educational authority would interfere with the right of control of the employer-minority institution in the matter of exercising disciplinary control over the employees of the institution. So adjudged, we are unable to find any guideline in Section 16G(3)(a) of the Uttar Pradesh Intermediate Education Act to be followed by the Inspector in the matter of approving or

disapproving the order of termination of a service of an employee of the aided educational institution. We are unable to accept the reasonings of the majority judgment of the Full Bench of Allahabad High Court that Regulation 44 provides the guidelines. The said Regulation 44 merely prescribes the period within which the Inspector or Regional Inspectress is required to communicate his/her decision to the Management and further in a case where all the papers have not been received from the Management, the said Inspector/Inspectress could call for the papers from the Management. But that by no stretch of imagination can be held to be providing the guidelines for exercise of power in the matter of approval or disapproval of the order of termination passed by the Management. Since no appropriate guidelines have been provided for exercise of power under Section 16G(3)(a) of the Act, it must be held that such an uncanalised power on the Inspector or the Inspectress would tantamount to an inroad into the power of disciplinary control of the Managing Committee of the minority institution over its employees and as such the said provision would not apply to the minority institution, as was held by this Court in Frank Anthonys case. In this view of the matter, the majority view in the Full Bench Judgment of Allahabad High Court must be held to be erroneous and cannot be sustained.

The second submission of Mr. Rao on the basis of the coming into force of the Uttar Pradesh Secondary Education (Services Selection Boards) Act, 1982 is also of great force. The Statement of Objects and Reasons of the aforesaid U.P. Act No. 5/82, unequivocally indicates that the earlier provisions contained under Section 16G(3)(a) of the Intermediate Education Act, 1921 were found to be inadequate, where the Management proposed to impose the punishment of dismissal, removal or reduction in rank. In other words, the legislature thought that the power of approval or disapproval to an order of punishment imposed by the management should not be vested with a lower educational authority like District Inspector of Schools but should be vested with an independent Commission or Board which could function as an independent and impartial body. With the aforesaid objective in view, the legislature having enacted the Uttar Pradesh Secondary Education (Services Selection Boards) Act, 1982 and the Service Selection Board having brought into existence in exercise of power under Section 3 of the aforesaid Act, the power of the Inspector/Inspectress under Section 16G(3)(a) of the Intermediate Education Act, 1921 no longer could be exercised, as it would be inconsistent with the provisions of U.P. Act No. 5/82 and would frustrate the very object for which the legislation has been enacted. Section 32 of the U.P. Act 5/82 provides:

> Sec.32. Applicability of U.P.Act II of 1921.- The provisions of the Intermediate Education Act, 1921 and the Regulations made thereunder in so far as they are not inconsistent with the provisions of this Act (or the rules made thereunder) shall continue to be in force for the purposes of selection, appointment, promotion, dismissal, removal, termination or reduction in rank of a teacher.
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> MR. Sharma, appearing for the respondents, vehemently urged before us that though for all other institutions, the power of approval or disapproval against an order of termination of an employee of an aided educational institution had been vested with the selection board under U.P. Act 5/82, but in respect of the minority institution, it must be held to have been vested with the Inspector/Inspectress and that power still vested with those authorities, notwithstanding the coming into force the U.P. Act

5/1982. We are unable to accept this submission, as in our view, there cannot be any rational for conferring the power of approval or disapproval of an order of termination of an employee of a minority institution with the Inspector/Inspectress and with all other institutions with the Service Selection Board. Having conferred the power of approval/disapproval with the Selection Board under U.P. Act 5/82, the legislature made it crystal clear by inserting Section 30 therein which states: Nothing in this Act shall apply to an institution established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution of India. The legislative intent is thus apparent that the legislature never intended to subject the order of termination of an employee of a minority institution to the approval/disapproval of the Selection Board. In this view of the matter, it is difficult for us to hold that an order of termination of an employee of a minority institution cannot be given effect to, unless approved by either the Inspector/Inspectress, as provided in Section 16G(3)(a) or by the Selection Board, as provided under U.P. Act 5/82. Under the provisions, as it stand, the conclusion is irresistible that question of prior approval of the competent authority in case of an order of termination of an employee of a minority institution does not arise. In the aforesaid premises, the majority view in the Full Bench Judgment of Allahabad High Court is set aside and this appeal is allowed. The writ petition filed, stands dismissed.

J. (G.B. PATTANAIK) J. (D.P. MOHAPATRA) March 30, 2001.