STATE OF KERALA, ETC.

v.

VERY REV. MOTHER PROVINCIAL, ETC.

August 10, 1970

[M. HIDAYATULLAH, C.J., J. C. SHAH, K. S. HEGDE, A. N. GROVER, A. N. RAY AND I. D. DUA, JJ.]

Kerala University Act 9 *of* 1969—*Ss.* 48, 49, 53, 56, 58 and 63—*Constitutional validity of—Constitution of India—Art.* 30(1)—*Scope of*

The Kerala University Act 1969 was passed to reorganise the University of Kerala with a view to establishing a teaching, residential and affiliating University for the southern districts of the State of Kerala. Some of its provisions affected private colleges, particularly those founded by minority communities in the State. Their constitutional validity was challenged by some members of those communities on various grounds in writ petitions filed in the High Court.

The provisions challenged were mainly those contained in Chapters VIII & IX of the Act. By ss. 48 and 49, an 'Educational Agency' which had established and was maintaining a private college or a 'corporate management' which was managing more than one private college, were required to set up a governing body for a private college or a managing council for private colleges under one corporate management. The sections provided for the composition of the two bodies which were to include the Principals and managers of the private colleges, and nominees of the University and Government, as well as elected representatives of teachers. Sub-section (2) provided for the new bodies becoming bodies corporate having perpetual succession and a common seal. Sub-section (4) provided that the members would hold office for four years and by sub-section (5) of each section a duty was cast on the new governing body or the managing council 'to administer' the private college or colleges in accordance with the provisions of the Act. Sub-section (6) in each section laid down that the powers and functions of the new bodies, the removal of members thereof and the procedure to be followed by them, shall be prescribed by statutes.

The petitioners challenged the provisions of these two sections as also *inter alia* those of (a) sub-sections (1), (2), (3) and (9) of s. 53 which conferred on the Syndicate of the University the power to veto the decisions of the governing council; and a right of appeal to any person aggrieved by their action; (b) section 56, which conferred ultimate power on the University and the Syndicate in disciplinary matters in respect of teachers: (c) s. 58, which removed membership of the Legislative Assembly as a disqualification for teachers; and (d) s.63 (1)—which provided that whenever government was satisfied that a grave situation had arisen in the working of a private college, it could *inter alia*, appoint the University to manage the affairs of such private college for a temporary period. It was contended that these provisions of the new Act were violative of Article 30, which protects the rights of the minorities to establish and administer educational institutions of their choice as also Articles 19(1)(f), and 14 of the Constitution.

A The High Court allowed the writ petitions and declared some of the provisions of the Act invalid. On appeal to this Court,

HELD: The High Court was right in holding that sub-ss. (2) and (4) of ss. 48 and 49 are *ultra vires* Art. 30(1). Sub-section (6) of each of these two sections are also *ultra vires*: they offend more than the other two of which they are a part and parcel. The High Court was also right
B in declaring that sub-ss. (1), (2), (9) and of s. 53, sub-ss. (2) and (4) of s. 56, are *ultra vires* as they fall within ss. 48 and 49; that s. 58 (in so far as it removes disqualification which the founders may not like to agree to, and s. 63 are *ultra vires* Art. 30(1) in respect of the minority institutions. [746 E]

It is obvious that after the erection of the governing body or the managing council the founders or even the minority community had no hand
C in the administration. The two bodies are vested with the complete administration of the institutions and were not answerable to the founders in this respect. Sub-sections (2), (4), (5) and (6) of ss. 48 and 49 clearly vest the management and administration in the hands of the two bodies with mandates from the University. [743 A]

Coupled with this is the power of the Vice-Chancellor and the Syndi-
D cate under sub-sections (2) and (4) of s. 56 to have the final say in respect of disciplinary proceedings against teachers. [744 B]

Furthermore, the provisions of s.58 granting special privileges to teachers who happened to be members of the Legislative Assembly enabled political parties to come into the picture of administration of minority institutions, and coupled with the choice of nominated members left to
E Government and the University under ss. 48 and 49, it was clear there was much room for interference by persons other than those in whom the founding community would have confidence. [745 A]

The provisions of s. 63 laid down elaborate procedure for management of the private colleges in which the governing body or managing Council would have no say. Furthermore sub-section 63(1) involved the transfer of right to possession of the properties to the University. The High Court
F rightly pointed out that this section provides for compulsory requisition of the properties within Art. 31(2) and (2A). To be effective the section required the assent of the President under sub-s. (3) and it was not obtained. Therefore the saving in Art 31A (1)(b) was not available. [746 A]

[The Court expressed no opinion regarding sub. ss. (1), (2), (3) and (9) of s. 53 and sub.-ss. (2) and (4) of s. 56 *vis-a-vis* Art. 30. The court
G did not go into the question of invalidity of the provisions under Art. 19(1)(f)]. [746 F]..

Propositions established in the following cases referred to and applied:

State of Bombay v. *Bombay Education Society*. [1955] I S.C.R. 568; *The State of Madras* v. *S. C. Dorairajan* [1951] S.C.R. 525; *Sidharajbhai* v. *State of Gujarat*, [1963] 3 S.C.R. 837; *Katra Education Society* v. *State*
H *of U.P. and Ors*, [1966] 3 S.C.R. 328; *In re the Kerala Education Bill* [1959] S.C.R. 995; *Gujarat University, Ahmedabad* v. *Krishna Ranganath Mudholkar and others* [1963] Supp. 1 S. C. R. 112; *Rev. Father W. Proost and Ors.* v. *State of Bihar*, [1969] 2 S.C.R. 73, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2598 to 2600 of 1969 and 21 to 53, 155 to 190, 199, 200 to 203, 273 and 324 of 1970.

Appeals from the judgment and order dated September 19, 1969 of the Kerala High Court in O.P. 1450 of 1969 etc.

Mohan Kumaramangalam, K. S. Paripooram, R. K. Garg, S. C. Agarwala and *M. R. K. Pillai,* for the appellant (in C.As. Nos. 2598 to 2600 of 1969 and 21 to 53 of 1970).

Mohan Kumaramangalam, K. S. Paripoornam and *M. R. K. Pillai* for the respondent (in C.A. Nos. 155 to 190, 199, 200 to 203. 273 and 324 of 1970).

A. K. Sen, P. C. Chandi, Joseph Vithayathil, Bhuvanesh Kumari, R. N. Banerjee, J. B. Dadachanji, O. C. Mathur and *Ravinder Kumar,* for the appellant (in C.As. Nos. 200 to 202 of 1970), respondent no. 1 (C.A. Nos. 2598 to 2600 of 1969), respondent no. 1 (in C.A. No. 21, 22, 26, 31, 32, 36. 37, 39, 43, 52, 156 to 158, 187. 160 to 164, 167, 168, 172, 173, 170, 165 to 181. 183, 186 and 189 of 1970).

Frank Anthony, P. C. Chandi, Joseph Vithayathil, E. C. Agarwal, Bhuvanesh Kumari, R. N. Banerjee, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain,* for the appellant (in C.A. No. 203 of 1970) and respondent no. 1 (in C.A. Nos. 48 and 184 of 1970).

Frank Anthony, P. C. Chandi, A. T. M. Sampath, S. R. Agarwala and *E. C. Agarwala,* for respondent No. 1 (in C.A. Nos. 23 & 159 of 1970).

M. C. Setalvad, V. A. S. Muhammad, and *A. S. Nambiar,* for the appellant (in C.A. No. 199 of 1970) and respondent No. 1 (in C.A. No. 174 and 185 of 1970).

M. C. Setalvad and *A. Sreedharan Nambiar,* for the appellant (in C.A. No. 273 of 1970).

A. Sreedharan Nambiar, for respondent No. 1 (in C.A. No. 38 of 1970).

R. Gopalakrishnan, for the appellant (in C.A. No. 324 of 1970) and respondent no. 1 (in C.A. No. 33 of 1970).

M. K. Nambyar, N. A. Subramanian and *P. K. Pillai,* for the appellant (in C.As. Nos. 155 to 190 and 199 of 1970) and the respondent (in C.A. Nos. 2598 to 2600 of 1969 and 21 to 53, 200 to 203, 273 and 324 of 1970).

A *A. S. R. Chari, N. Sudhakaran* and *K. M. K. Nair,* for the intervener (in C.As. No. 199 to 203 of 1970).

The Judgment of the Court was delivered by

Hidayatullah, C.J. These appeals by certificates granted by the High Court of Kerala under Arts. 132(1) and 133(1)(c) of B the Constitution are directed against a common judgment, September 19, 1969, declaring certain provisions of the Kerala University Act, 1969 (Act 9 of 1969) to be *ultra vires* the Constitution of India while upholding the remaining Act as valid. They were heard together. This judgment will dispose of all of them. The validity of the Act was challenged in the High Court by diverse C petitioners in 36 petitions under Art. 226 of the Constitution. Some parts of the Act were declared *ultra vires* the Constitution As a result there are cross appeals. 36 appeals have been filed against the several petitioners by the State of Kerala. Another 36 appeals have been filed by the University of Kerala which made common cause with the Government of Kerala. 7 appeals have D been preferred by seven original petitioners, who seek a declaration that some other provisions of the Act, upheld by the High Court as valid, are also void.

The Kerala University Act 1969 (which repealed and replaced the Kerala University Act 1957 (Act 14 of 1957) was passed to reorganise the University of Kerala with a view to establishing a E teaching, residential and affiliating University for the southern districts of the State of Kerala. Some of its provisions affected private colleges, particularly those founded by minority communities in the State. They were consequently challenged on various grounds. The petitions were consolidated in the High Court and were decided by the judgment and order under appeal.

F

Before we begin to discuss these appeals we may say a few words about them. 33 petitioners belong to different denominations of the Christian community; 8 are Superiors of different Catholic Religious Congregations; 8 are Catholic Bishops representing their dioceses; 3 are Vicars of Catholic parishes; 5 are Boards of Associations constituted by different Catholic demno- G minations for establishing colleges and other educational institutions and 3 are Bishops of the Malankara Orthodox Church. 4 petitions have been filed by the Metropolitan of the Marthoma Syrian Church and 2 by the Madhya Kerala Diocese of the Church of South India. The remaining 3 petitions are respectively by private colleges founded and administered by Sri Sankara College H Association Kalady, Sree Narayana Trusts Quilon and the Nair Service Society Changannacherry. The petitioners in the 33 petitions specially invoke the provisions of Art. 30 of the Constitution which protects the right of the minorities to establish and adminis-

ter educational institutions of their choice. All the 36 petitions invoke Arts. 19(1)(f), 31 and 14 of the Constitution.

The impugned Act consists of 78 sections divided into 9 chapters. The main attack in the petitions is against Chapter VIII headed 'private colleges' consisting of ss. 47 to 61 and some provisions of Chapter IX particularly s. 63. The High Court has declared that sub-ss. (2) and (4) of s. 48, Sub-ss. (2) and (4) of s. 49, sub-ss. (1), (2), (3) and (9) of s. 53, sub-ss. (2) and (4) of s. 56, s. 58 (except to some extent) are offensive of Art. 19(1)(f) in so far as citizen petitioners are concerned and additionally, in so far as the minority institutions are concerned, offensive to Art. 30(1), and therefore void. The petitions were, therefore, allowed except two petitions (O.P.S. No. 2339 and 2796 of 1969) filed by Sree Sankara College Association and the Nair Service Society since the petitioners were companies and were not entitled to the benefit of Art. 30(1) not being minority institutions and not entitled to Art. 19(1)(f) not being citizens. Section 63 was, however, held to offend Art. 31(2) and not saved by Art. 31A(1)(b) and this declaration was in favour of all the petitioners. It was also declared void as offending Art. 30(1) in so far as the minority institutions were concerned. The rest of the Act was declared to be valid and the challenge to it was rejected. There was no order about costs.

The State of Kerala and the University challenge the judgment in so far as it declares the provisions of the Act to be void and the petitioners in the 7 counter appeals challenge the judgment in so far as it has rejected the attack on some other provisions. We shall deal first with the contentions urged on behalf of the State of Kerala and the University of Kerala and then deal with the contentions of the majority institutions and the challenge to the surviving portions of the impugned Act by the appealing original petitioners.

In the matter of the minorities the main attack comes from Art. 30(1) of the Constitution. This clause reads :

> "30. Right of minorities to establish and administer educational institutions.
>
> (1) All minorities, whether based on religions or language, shall have the right to establish and administer educational institutions of their choice.
>
> . . . . ".

It declares it to be a fundamental right of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice. It is conceded by the petitioners

A representing minority communities before us (and indeed they could not gainsay this in the face of authorities of this Court) that the State or the University to which these institutions are affiliated may prescribe standards of teaching and the scholastic efficiency expected from colleges. They concede also that to a certain extent conditions of employment of teachers, hygiene and physical B training of students can be regulated. What they contended is that here there is an attempt to interfere with the administration of these institutions and this is an invasion of the fundamental right. The minority communities further claim protection for their property rights in institutions under Arts. 31 and 19(1)(f) and the right to practise any profession or to carry on any occupation, C trade or business guaranteed by sub-cl. (g) of the latter article. The majority community which is also the founder of private colleges (of which three instances are before us) do not claim the right stemming from Art. 30(1) but they claim the other rights mentioned above and further seek protection of equality in law with the minority institutions and thus freedom in the establishment and administration of their institutions.

D

The claim of the majority community institutions to equality with minority communities in the matter of the establishment and administration of their institutions leads to the consideration whether the equality clause can at all give protection, when the Constitution itself classifies the minority communities into a separate E entity for special protection which is denied to the majority community. This is not a case of giving some benefits to minority communities which in reason must also go to the majority community institutions but a special kind of protection for which the Constitution singles out the minority communities. This question, however, does not fall within our purview as the State, at the hearing announced that it was not intended to enforce the provi- F sions of the law relating to administration against the majority institutions only, if they could not be enforced against the minority institutions. Therefore, we have to consider the disputed provisions primarily under Art. 30(1) and secondarily under Arts. 31 and 19 where applicable.

Article 30(1) has been construed before by this Court. With- G out referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, founds H the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant

that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.

The next part of the right relates to the administration of such institutions. Administration means 'management of the affairs' of the institution. This 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 of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

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 the *State of Bombay* v. *Bombay Education Society*(1), *The State of Madras* v. *S. C. Dorairajan*(2), *In re the Kerala Education Bill* 1957(3), *Sidharajbhai* v. *State of Gujarat*(4), *Katra Education Society* v. *State of U.P. & Ors.*(5), *Gujarat University, Ahmedabad* v. *Krishna Ranganath Mudholkar and Ors.*(6) and *Rev. Father W. Proost & Ors.* v. *State of Bihar*(7) 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. Applying these principles we now consider the provisions of the Act.

The Act as stated already consists of 78 sections arranged under 9 Chapters. Chapter VIII is headed 'Private Colleges' and

(1) [1955] 1 S. C. R. 568. (2) [1951] S.C.R. 525.
(3) [1959] S. C. R. 995. (4) [1963] 3 S. C. R. 837
(5) [1966] 3 S.C.R. 328. (6) [1963] Supp 1 S. C. R. 112.
(7) [1969] 2 S. C. R. 73.

A Chapter IX 'Miscellaneous'. Chapter I contains the short title and commencement (s. 1) and definitions (s. 2). We are concerned with some definitions in s. 2 and Chapters VIII and IX. The other chapters lay down the constitution of University and contain matters relating thereto. They are not in dispute. The High Court in its judgment has carefully summarized the impugned provisions B and it is not necessary for us to cover the same ground. We shall content ourselves by mentioning the important aspects briefly. "College" in the Act means an institution maintained by, or affiliated to, the University, in which instruction is provided in accordance with the provisions of the Statutes, Ordinances and Regulations. These are framed by the University. 'Educational Agency' C means any person or body of persons who or which establishes and maintains a private college. 'Private College' means a college maintained by an agency other than the Government or the University and affiliated to the University. 'Principal' means the head of a college. By 'teacher' as used in the Act is meant a Principal, Professor, Assistant-Professor, Reader, Lecturer, Instructor or such other person imparting instruction or supervising research D and whose appointment has been approved by the University in any of the colleges or recognised institutions. 'Recognised teacher' means a person employed as a teacher in an affiliated institution and whose appointment has been approved by the University. There is much overlap between 'college', 'teacher' and 'recognised teacher' but there is no antinomical confusion which might have E otherwise resulted. These definitions by themselves are not questionable but in the context of the provisions of Chapters VIII and IX, about to be referred to, the insistence on the recognition by the University is claimed to be interference with the freedom of management. Chapter VIII embraces ss. 47 to 61. It begins with the definition of 'corporate management' which means a person or body of persons who or which manages more than one private F college. Sections 48 and 49 deal respectively with (a) the governing body for private colleges not under corporate management and (b) with managing council for private colleges under corporate management. In either case the education agency (by which term we denote the educational agency of a private college as also corporate management, that is to say, the person or body of persons G who or which manages more than one private college) is required to set up a governing body for private college or a managing council for private colleges under one corporate management. The two sections embody the same principles and differ only because in one case there is but one institution and in the other more than one. Both consist of 7 sub-sections. Under these provisions the educa- H tional agency or the corporate management has to establish a governing body or a managing council respectively. The sections give the compositions of the two bodies. The governing body set up by the educational agency is to consist of 11 members and the

managing council of 21 members. The 11 members of the governing body are (i) the principal of the private college (ii) the manager of the private college (iii) a person nominated by the University in accordance with the provisions in that behalf contained in the Statutes (iv) a person nominated by the Government (v) a person elected in accordance with such procedure as may be prescribed by the Statutes of the University from among themselves by the permanent teachers of the private college and (vi-xi) not more than six persons nominated by the educational agency. The composition of the managing council consists of a principal in rotation from the private colleges, manager of the private colleges, the nominees of the University and the Government as above described, two elected representatives of the teachers and not more than 15 members nominated by the educational agency. The Act ought to have used the expression 'corporate management' instead of 'educational agency' but the meaning is clear.

It will thus be seen that a body quite apart from the educational agency or the corporate management is set up. Sub-section (2) in either section make these bodies into bodies corporate having perpetual succession and a common seal. The manager of the college or colleges, as the case may be, is the Chairman in either case [sub-s. (3)]. Sub-section (4) then says that the members shall hold office for a period of 4 years from the date of its constitution. Sub-section (5) then says as follows :

> "It shall be the duty of the *Governing body*/ (Managing council) to administer the *private college* (all the private colleges under the corporate management) in accordance with the provisions of this Act and the Statutes, Ordinances, Regulations, Bye-laws and Orders made thereunder."

(We have attempted to combine the two provisions here. In the case of governing body the sub-section is to be read omitting the words in brackets and in the case of managing council the underlined words are to be omitted and the sub-section read with the words in brackets.)

Sub-section (6) then lays down that the powers and functions of the governing body (the managing council), the removal of members thereof and the procedure to be followed by it, including the delegation of its powers, shall be prescribed by the Statutes. Sub-section (7) lays down that decisions in either of the two bodies shall be taken at meetings on the basis of simple majority of the members present and voting.

These sections were partly declared *ultra vires* of Art. 30(1) by the High Court as they took away from the founders the right

to administer their own institution. It is obvious that after the erection of the governing body or the managing council the founders or even the community has no hand in the administration. The two bodies are vested with the complete administration of the institutions. These bodies have a legal personality distinct from the educational agency or the corporate management. They are not answerable to the founders in the matter of administration. Their powers and functions are determined by the University laws and even the removal of the members is to be governed by the Statutes of the University. Sub-sections (2), (4), (5) and (6) clearly vest the management and administration in the hands of the two bodies with mandates from the University.

In attempting to save these provisions Mr. Mohan Kumaramangalam drew attention to two facts only. The first is that the nominees of the educational agencies or the corporate management have the controlling voice and that the defect, if any, must be found in the Statutes, Ordinances, Regulations, Bye-laws and Orders of the University and not in the provisions of the Act. Both these arguments are not acceptable to us. The Constitution contemplates the administration to be in the hands of the particular community However desirable it might be to associate nominated members o. the kind mentioned in ss. 48 and 49 with other members of the governing body or the managing council nominees, it is obvious that their voice must play a considerable part in management. Situations might be conceived when they may have a preponderating voice. In any event, the administration goes to a distinct corporate body which is in no way answerable to the educational agency or the corporate management. The founders have no say in the selection of the members nominated or selected except those to be nominated by them. It is, therefore, clear that by the force of sub-ss. (2), (4) and (6) of ss. 48 and 49 the minority community loses the right to administer the institution it has founded. Sub-section (5) also compels the governing body or the managing council to follow the mandates of the University in the administration of the institution. No doubt the Statutes, Ordinances, Regulations, Rules, Bye-laws and Orders can also be examined in the light of Art. 30(1) but the blanket power so given to the University bears adversely upon the right of administration. This position is further heightened by the other provisions of the Act to which a reference is now needed.

Section 53, sub-ss. (1), (2) and (3) confer on the Syndicate of the University the power to veto even the action of the governing body or the managing council in the selection of the principal. Similarly, sub-s. (4) takes away from the educational agency or the corporate management the right to select the teachers. The insistence on merit in sub-s. (4) or on seniority-*cum*-fitness in sub-s. (7) does not save the situation. The power is exercised not by

the educational agency or the corporate management but by a distinct and autonomous body under the control of the Syndicate of the University. Indeed sub-s. (9) gives a right of appeal to the Syndicate to any person aggrieved by the action of governing body or the managing council thus making the Syndicate the final and absolute authority in these matters. Coupled with this is the power of Vice-Chancellor and the Syndicate in sub-ss. (2) and (4) of s. 56. These sub-sections read :

> "56. Conditions of service of teachers of private colleges.
>
> (1) ....
>
> (2) No teacher of a private college shall be dismissed, removed or reduced in rank by the governing body or managing council without the previous sanction of the Vice-Chancellor or placed under suspension by the governing body or managing council for a continuous period exceeding fifteen days without such previous sanction.
>
> (3) ....
>
> (4) A teacher against whom disciplinary action is taken shall have a right of appeal to the Syndicate, and the Syndicate shall have power to order reinstatement of the teacher in cases of wrongful removal or dismissal and to order such other remedial measures as it deems fit, and the governing body or managing council, as the case may be, shall comply with the order."

These provisions clearly take away the disciplinary action from the governing body and the managing council and confer it upon the University. Then comes s. 58 which reads :

> "58. Membership of Legislative Assembly, etc., not to disqualify teachers.—
>
> A teacher of a private college shall not be disqualified for continuing as such teacher merely on the ground that he has been elected as a member of the Legislative Assembly of the State or of Parliament or of a local authority :
>
> Provided that a teacher who is a member of the Legislative Assembly of the State or of Parliament shall be on leave during the period in which the Legislative Assembly or Parliament, as the case may be, is in session."

This enables political parties to come into the picture of the administration of minority institutions which may not like this inter-

A ference. When this is coupled with the choice of nominated members left to Government and the University by sub-s. (1)(d) of ss. 48 and 49, it is clear that there is much room for interference by persons other than those in whom the founding community would have confidence.

B To crown all there is the provision of s. 63(1) which reads :

> "63. Power to regulate the management of private colleges.
>
> (1) Whenever Government are satisfied on receipt of a report from the University or upon other information that a grave situation has arisen in which the working of a private college cannot be carried on for all or any of the following reasons, namely :—
>
> (a) default in the payment of the salary of the members of the staff of the college for a period of not less than three months;
>
> (b) wilful closing down of the college for a period of not less than one month except in the case of the closure of the college during a vacation;
>
> (c) persistent default or refusal to carry out all or any of the duties imposed on any of the authorities of the college by this Act or the Statutes or Ordinances or Regulations or Rules or Bye-laws or lawful orders orders passed thereunder;
>
> and that in the interest of private college it is necessary so to do, the Government may, after giving the governing body or managing council, as the case may be, the manager appointed under sub-section (1) of section 50 and the education agency, if any, of the college a reasonable opportunity of showing cause against the proposed action and after considering the cause, if any, shown, by order, appoint the University to manage the affairs of such private college temporarily for a period not exceeding two years;
>
> Provided that in cases where action is taken under this sub-section otherwise than on a report from the University, it shall be consulted before taking such action.
>
> . . . ."

H The remaining provisions of this section lay down an elaborate procedure for management in which even the governing body or the managing counc'' have no say. Sub-section 63(1) involves

the transfer of right to possession of the properties to the University. The High Court rightly pointed out that this section provides for compulsory requisition of the properties within Art. 31(2) and (2A). To be effective the section required the assent of the President under sub-s. (3) and it was not obtained. Therefore the saving in Art. 31A(1)(b) is not available.

Mr. Mohan Kumarmangalam brought to our notice passages from the Report of the Education Commission in which the Commission had made suggestions regarding the conditions of service of the teaching staff in the universities and the colleges and standards of teaching. He also referred to the Report of the Education Commission on the status of teachers, suggestions for improving the teaching methods and standards. He argued that what has been done by the Kerala University Act is to implement these suggestions in Chapters VIII and IX and particularly the impugned sections. We have no doubt that the provisions of the Act were made *bona fide* and in the interest of education but unfortunately they do affect the administration of these institutions and rob the founders of that right which the Constitution desires should be theirs. The provisions, even if salutary, cannot stand in the face of the constitutional guarantee. We do not, therefore, find it necessary to refer to the two reports.

The result of the above analysis of the provisions which have been successfully challenged discloses that that High Court was right in its appreciation of the true position in the light of the Constitution. We agree with the High Court that sub-ss. (2) and (4) of ss. 48 and 49 are *ultra vires* Art. 30(1). Indeed we think that sub-ss. (6) of these two sections are also *ultra vires*. They offend more than the other two of which they are a part and parcel. We also agree that sub-ss. (1), (2), (3) and (9) of s. 53, sub-ss. (2) and (4) of s. 56 are *ultra vires* as they fail with ss. 48 and 49. We express no opinion regarding these sub-sections *vis-a-vis* Art. 30(1). We also agree that Section 58 (in so far as it removes disqualification which the founders may not like to agree to) and Sec. 63 are *ultra vires* Articles 30(1) in respect of the minority institutions.

The High Court has held that the provisions (Except s. 63) are also offensive to Art. 19(1)(f) in so far as the petitioners are citizens of India both in respect of majority as well as minority institutions. This was at first debated at least in so far as majority institutions were concerned. The majority institutions invoked Art. 14 and complained of discrimination. However, at a later stage of proceedings Mr. Mohan Kumaramangalam stated that he had instructions to say that any provision held inapplicable to minority institutions would not be enforced against the majority institutions also. Hence it relieves us of the task of considering the matter under Art. 19(1)(f) not only in respect of minority institutions

A but in respect of majority institutions also. The provisions of s. 63 affect both kinds of institutions alike and must be declared *ultra vires* in respect of both.

The result is that the Judgment under appeal is upheld. The appeals of the State Government of Kerala and of the University are dismissed with costs. One set of hearing fees. For the reasons B given by the High Court we do not accept the contentions of the seven appellants who have challenged some of the other provisions of the Act except ss. 48 (6) and 49(6) and do not consider it necessary to repeat what is said by the High Court. These appeals are dismissed except as to those sections but without costs.

R.K.P.S. *Appeals dismissed.*