A ALL SAINTS HIGH SCHOOL, HYDERABAD ETC. ETC.

v.

GOVERNMENT OF ANDHRA PRADESH & ORS. ETC.

February 4, 1980

[Y. V. CHANDRACHUD, C.J., S. MURTAZA FAZAL ALI AND
B P. S. KAILASAM, JJ.]

Andhra Pradesh Recognised Private Educational Institutions Control Act 1975—*Sections* 3 *to* 7—*Validity of—Provisions if violate constitutional guarantee in Art.* 30(1).

Constitution of India 1950—*Article* 30(1)—*Andhra Pradesh Recognised Private Educational Institutions Control Act,* 1975—*If offends against Art.*
C 30(1).

The purported object of the Andhra Pradesh Recognised Private Educational Institutions Control Act 1975 was to regulate the service conditions of teachers in private educational institutions and for ensuring the security of service of the teachers. Section 3(1) of the Act provides : "Subject to any rule that may be made in this behalf, no teacher employed in any private educational institution shall be dismissed, removed or reduced in rank nor shall his
D appointment be otherwise terminated except with the prior approval of the competent authority". The proviso to this sub-section states that if any educational management etc. contravenes the provisions of this sub-section, the teacher affected shall be deemed to be in service. Where a proposal to dismiss etc. any teacher is communicated to the competent authority, according to sub-section (2) of this section, that authority shall, if satisfied that there are *adequate and reasonable grounds* for such proposal, approve such dismissal, removal or reduc-
E tion in rank or termination of appointment. Clause (a) of sub-section (3) of this section states that no teacher employed in any private educational institution shall be placed under suspension, except when an enquiry into the gross misconduct of such teacher is contemplated. Clause (b) provides that no such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher shall, without prejudice to the inquiry, be deemed to have been
F restored as teacher. The proviso states that the competent authority may, for reasons to be recorded in writing, extend the said period of two months for a further period not exceeding two months, if in his opinion, the inquiry could not be completed within the said period of two months for reasons directly attributable to each teacher. Section 4 gives a right of appeal to teachers employed in private educational institutions against orders of punishment imposed on them.

G Section 5 deals with special provisions regarding appeal in certain past disciplinary cases.

Section 6 which deals with retrenchment of teachers provides that where retrenchment of any teacher is rendered necessary consequent on any order of the Government relating to education or course of instructions or to any other matter, such retrenchment may be effected with the prior approval of
H the competent authority.

Section 7 provides for payment of pay and allowances to teachers in the prescribed manner.

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The appellants who were minority educational institutions established by members of the Christian community filed writ petitions before the High Court impugning various provisions of the Act as being violative of the guarantee contained in Article 30(1) of the Constitution by permitting or compelling interference with the internal administration of their private educational institutiions. In particular they challenged the provisions of sections 3 to 7 of the Act on the ground that they deprive them of their right to administer the affairs of minority institutions by vesting the ultimate administrative control in an outside authority. The contentions having been rejected by the High Court they filed appeals by special leave.

HELD s *Permajority*—(Chandrachud, C.J., and Fazal Ali, J.—Kailasam, J., dissenting.) :

Sub-sections (1) and (2) of section 3 are invalid and cannot be applied to minority institutions.

Per majority—(Chandrachud, C.J., and Kailasam J.—Fazal Ali, J. dissenting).

Clauses (a) and (b) of section 3(3) do not offend against Art. 30(1) and are valid.

By the Court : Sections 4 & 5 are unconstitutional as being violative of Art. 30(1).

Per majority (Chandrachud, C.J., and Kailasam J—Fazal Ali, J, dissenting).

Section 6 is valid.

By the Court : Section 7 is valid.

Per Chandrachud, C.J.

Section 3(1) and 3(2) are unconstitutional in so far as they are made applicable to minority institutions since in practice these provisions are bound to interfere substantially with their right to administer institutions of their choice. [937E]

1. (a) Section 3(1) gives an unqualified mandate that no teacher shall be dismissed etc. except with the prior approval of the competent authority. Under the proviso, contravention of the section results in a total invalidation of the proposed action. If the section is contravened the teacher shall be deemed to be in service. Secondly, the sub-section applies not only to cases in which the teacher is punished by an order of dismissal etc. but to cases in which the appointment is otherwise terminated. An order of termination simpliciter is also required to be submitted for the prior approval of the competent authority. All this shows that the true object of the sub-section is not that which one could liberally assume by reading down the section. [935H; 936AB]

(b) In the absence of any rules furnishing guidelines on the subject, it is difficult to predicate that in practice the operation of the section would be limited to a certain class of cases only. The absence of rules on the subject makes the unguided discretion of the competent authority the sole arbiter of the question as to which cases would fall within the section and which would fall outside it. [936 E-F]

(c) Section 3(2), under the guise on conferring the power of approval, confers upon the competent authority an appellate power of great magnitude. That authority is made a judge both of facts and on law by the conferment upon

A it of a power to test the validity of the proposal on the vastly subjective touchstone of adequacy and reasonableness. The sub-section leaves no scope for reading down the provision of section 3(1). The two sub-sections together confer upon the competent authority, in the absence of proper rules, a wide and untrammelled discretion to interfere with the proposed order whenever in its opinion the order is based on grounds which do not appear to it either adequate or reasonable. [936G-H; 937A]

B (d) Though the section provides that the competent authority "shall" approve the proposed order if it is satisfied that it is based on adequate and reasonable grounds, its plain and necessary implication is that it shall not approve the proposal unless it is satisfied. The conferment of such a power on an outside authority, the exercise of which is made to depend purely on subjective consideration arising out of twin formula of adequacy and reasonableness, cannot but constitute an infringement of the right guaranteed by article 30(1). C [937C]

State of Kerala v. *Very. Rev. Mother Provincial* [1971] 1 SCR 734, *D.A.V. College* v. *State of Punjab* [1971] Suppl. S.C.R. 688 and *Ahmedabad St. Xaviers College Society* v. *State of Gujarat* [1975] 1 S.C.R. 173; referred to.

2. (a) Section 3(3)(a) and 3(3)(b) of the Act do not offend against the D provisions of article 30(1) and are valid. [939B-C]

(b) Clause (a) contains but an elementary guarantee of freedom from arbitrariness to the teachers. The provision is regulatory in character since it neither denies to the management the right to proceed against an erring teacher nor does it place an unreasonable restraint on its power to do so. It assumes the right of the management to suspend a teacher but regulates that E right by directing that a teacher shall not be suspended unless an inquiry into his conduct is contemplated and unless the inquiry is in respect of a charge of gross misconduct. These restraints which bear a reasonable nexus with attainment of educational excellence cannot be considered to be violative of the right given by article 30(1). The limitation of the period of suspension initially to two months, which can in appropriate cases be extended by another two months, as provided in clause (b) and its proviso, partakes of F the same character as the provisions contained in clause (a). A provision founded so patently on plain reason is difficult to construe as an invasion of the right to administer an institution unless that right carried with it the right to maladminister. [938G-H]

3. Section 4 is unconstitutional as being violative of article 30(1) of the constitution. The section confers upon the government the power to provide by rules that an appeal might lie to such authority or officer as it desig- G nates, regardless of the standing or status of that authority or officer. Secondly an appeal is provided for on all questions of fact and law, thereby throwing open the order passed by the management to the unguided scrutiny and unlimited review of the appellate authority, which would mean that, in the exercise of the appellate power, the prescribed authority or officer can substitute his own view for that of the management even in cases in which two views are reasonably possible. Lastly, while a right of appeal is given to the aggrieved teacher against the order passed by the management, H no corresponding right is conferred on the management against the order passed by the competent authority under section 3(2) of the Act. In the absence of a provision for appeal against the order of the competent autho-

rity refusing to approve the action proposed by the management, the management is pleased in a gravely dis-advantageous position vis-a-vis the teacher who is given the right of appeal by section 4. [939D-H] A

Section 5 must fall with section 4. [940B]

4. Section 6 is valid. The section aims at affording a minimal guarantee of security of tenure to teachers by eschewing the passing of *mala-fide* orders in the garb of retrenchment. It is implicit in the provisions of this section B that the limited jurisdiction which it confers upon the competent authority is to examine whether, in cases where the retrenchment is stated to have become necessary by reason of an order passed by the Government, it has in fact so become necessary. The conferment of a guided and limited power on the competent authority for the purpose of finding out whether, in fact the retrenchment has become necessary by reason of a Governmental order cannot constitute an interference with the right of administration conferred by C article 30(1). [940D-F]

Section 7 is regulatory in its character and is valid. [940H]

Per Fazal Ali, J.

On an exhaustive analysis of the authorities of this Court on the various aspects of the fundamental right enshrined in article 30(1) of the Constitution the following propositions of law emerge :— D

(i) Article 30(1) enshrines the fundamental right of the minority institutions to manage and administer their educational institutions. [967H]

(ii) Although, the right conferred by this article is absolute, unfettered and unconditional, it does not mean that it gives a licence for maladministration so as to defeat the avowed object of the E article, namely to advance excellence and perfection in the field of education. [968B]

(iii) While the State or any other statutory authority has no right to interfere with the internal administration of the minority institution, it could take regulatory measures to promote the efficiency and excellence of educational standards and issue guidelines for F ensuring the security of the services of the teachers and other employees of the institution. [968C]

(iv) Under the garb of adopting regulatory measures, the State or any other authority cannot destroy the administrative autonomy of the institution or interfere with the management of the institution so as to render the right of administration of the management of the institution illusory. [968E] G

(v) By its very nature article 30 implies that where an affiliation is asked for, the university cannot refuse the same without sufficient reason or try to impose such conditions as would completely destroy the autonomous administration of the educational institution. [968G]

(vi) Induction of an outside authority in the governing body of the minority institution to conduct the affairs of the institution would H be completely destructive of the fundamental right under article 30(1), where a high authority like the Vice-Chancellor or his

A nominee is appointed in the administration, such authorities should not be thrust so as to have a controlling voice in the matter overshadowing the powers of the managing committee. [968H]

(vii) It is open to the Government or the University to frame rules and regulations governing the conditions of service of teachers in order to secure their tenure of service and to appoint a high B authority to see that the rules are not violated or the members of the staff are not victimised. In such cases the purpose is not to interfere with the autonomy of the institution but merely to improve the excellence and efficiency of education. Even so, an authority should not be given a blanket uncanalised and arbitrary powers. [969E-F]

C (viii) Where a minority institution affiliated to a university is enjoined to adopt courses of study of the syllabi or the nature of books prescribed and the holding of examination to test the ability of the students of the institution, it does not follow that the freedom contained in article 30(1) of the Constitution is violated. [970A]

(ix) Where a high authority is appointed to exercise vigilance on the D work of the teachers and to ensure security of tenure for them the authority must be given proper guidelines. Before coming to any decision which may be binding on the managing committee the head of the institution or the senior member of the managing committee must be associated and they should be allowed to have a say in the matter. [970C]

E *Kerala Education Bill,* 1957, [1957] SCR 995; *Sidhajbhai Sabhai and Ors.* v. *State of Bombay and Anr.* [1963] 3 SCR 837; *Rev. Father W. Proost & Ors.* v. *State of Bihar* [1969] 2 SCR 73; *State of Kerala etc.* v. *Very Rev. Mother Provincial etc.* [1971] 1 SCR 734; *D.A.V. College etc.* v. *State of Punjab & Ors.* [1971] Suppl. SCR 688 and *The Ahmedabad St. Xaviers College Society & Anr. etc.* v. *State of Gujarat* [1975] 1 SCR 173; referred to.

F 1. (a) Section 3 in its entirety is ultra-vires as being violative of article 30(1) and is wholly inapplicable to the appellants who are minority institutions. [975B]

(b) The proviso enjoins that any contravention of the provisions would not affect the teachers who would be deemed to be in service. It is manifest that in the absence of any rules the proviso would have no application and G even if it applied it would amount to a serious inroad on the fundamental right of the minority institutions to administer or manage their own affairs. [971H]

(c) Sub-section 2 of section 3 is unconstitutional as being violative of article 30(1). It suffers from the vice of excessive delegation of powers and confers undefined, absolute and arbitrary powers to grant or to refuse sanction to any action taken by the managing committee and almost reduces the H institution to a helpless position. [973B-C]

(d) If the State wanted to regulate the conditions of service of the teachers, it should have taken care to make proper rules giving sufficient

powers to the management in the manner in which it was to act. Induction of an outside authority into the institution and making his decision final was a blatant interference with the autonomy of the institution. The words "adequate and reasonable" are too vague and do not lay down any objective standard to judge the discretion to be exercised by the competent authority whose order would be binding on the institution. [972F-G] A

(e) While section 4 gives a right of appeal to the aggrieved teacher no such right has been given to the management to file an appeal against the order of the competent authority if it refuses to grant sanction to the order of the Managing Committee of the institution. The competent authority is only the District Educational Officer who is not a very high authority such as a Director of Public instruction or Vice-Chancellor of a University. No time limit has been fixed by the statute within which the competent authority is to give its approval. The cumulative effect of clause (a) and (b) of section 3(3) and the proviso is to interfere with the internal administration of the minority institutions and curb the power of suspension. It deprives the institution of the right of taking any disciplinary action against a teacher. The adjective "gross" before the term "misconduct in clause (a) destroys the power of suspension which the minority institution possesses. The provision contained in clause (b) of section 3(3) providing that no suspension shall remain in force for a period of more than two months from the date of suspension and if no inquiry is completed within this period the teacher would have to be reinstated, gives an unqualified right to a teacher in the matter of suspension which even a government servant does not enjoy. [973A, 974D-E] B C D

2. Section 4 is ultra-vires and is violative of article 30 of the Constitution. It does not contain any guidelines as to the manner in which the power could be exercised, nor does it contain any provision which may entitle the minority institution to be heard by the appellate authority. The conferment of an absolute and unguided power on the appellate authority would amount to a direct interference with the right enshrined in article 30(1) and makes the minority institution a powerless body. [976B; 975G] E

3. If section 4 is inapplicable to the minority institution Section 5 also follows the same fate. [976C]

4. Section 6 which contains an un-canalised and unguided power suffers from the same vice as in the case of section 3. The words "administer educational institutions of their *choice*" in article 30 clearly indicate that the institution has an absolute right to select teachers, retain them or retrench them at its sweet will according to the norms prescribed by the institution or by the religious order which has founded the institution. [976H] F

5. Section 7 is an innocuous provision and is valid. [977C]

6. Sections 8, 9, 12 and 13 are inapplicable to the minority institutions. [977D, 978B] G

7. Section 16 suffers from a serious defect namely that the provision regarding appeal to the appellate authority was valid then it completely bars the right of the management to file a suit to challenge the validity of the order of the appellant. To this extent the section makes serious inroad on the fundamental right of the minority institutions and is inapplicable to the minority institutions. [978G] H

Section 17 is inapplicable. [978F]

A *Per Kailasam, J.*

1. A reading of the various decisions rendered by this Court on the interpretation of article 30(1) of the Constitution makes it clear that while the right to establish and administer a minority institution cannot be interfered with, restrictions by way of regulations for the purpose of maintaining the educational standards of the institution can be validly imposed. For maintaining the educational standards of the institution as a whole, it is necessary B to ensure that it is properly staffed. Conditions imposing the minimum qualifications of the staff, their pay and other benefits, their service conditions, the imposition of punishment will all be covered and regulations of such a nature are valid. In the case of institutions that receive aid it is the duty of the government who grants aid to see that the funds are properly utilised. Regulations can be made by the government for ensuring the C proper conditions of service of the teachers and for securing fair procedure in the matter of disciplinary action against them. Prescribing uniformity in the conditions of service and conduct of teachers in all non-governmental colleges would promote harmony, avoid frustration and, therefore, is permissible. Rules prescribed by the university or other authority may require that no member of the teaching or non-teaching staff of a recognised or approved institution shall be dismissed etc., except after a proper enquiry. If D the regulations require the approval of the competent authority for safeguarding the rights of the teachers and for securing the procedure there can be no objection. Such authority can also interfere with the decision of the private institutions when the punishment awarded is malafide or by way of victimisation or for similar causes. [989B; 993D-G[

Kerala Education Bill [1959] SCR, 995, *Rev. Sidhajbhai Sabhai & Ors.* [1963] 3 SCR 837, *Rev. Father W. Proost and Ors.* v. *State of Bihar & Ors.* E [1969] 2 SCR 73, *State of Kerala* v. *Very. Rev. Mother Provincial* [1971] 1 SCR 734, *D.A.V. College etc.* v. *State of Punjab & Ors.* [1971] Suppl. S.C.R. 688 and *Ahmedabad St. Xaviers College Society and Anr. etc.* v. *State of Gujarat* [1975] 1 S.C.R. 173, referred to.

2. It is not only reasonable but proper that a restricted meaning is given F to the power of prior approval conferred on the competent authority under section 3 of the Act. It is a well established principle of interpretation that the statement of objects and reasons could be referred to for the limited purpose of ascertaining the conditions prevalent at the time which actuated the sponsor of the Bill to introduce the same and the extent of urgency and the evil sought to be remedied. Clearly the legislation was intended to regulate the service conditions of teachers employed in the private educational institutions and for G the security of service of the teachers. The power contained in section 3(1) and 3(2) is restricted to regulating the service conditions of teachers and for ensuring their security of service. [1001C; 998A-B]

3. While interpreting a provision of law the Court will presume that the legislation was intended to be *intra vires* and also reasonable. The section ought to be interpreted consistent with the presumption which imputes to the legislature an intention of limiting the direct operation of its enactment to the H extent that is permissible. A reading down of a provision of a statute puts into operation the principle that so far as it is reasonably possible to do so, the legislation should be construed as being within its power. It has the principle effect

that where an Act is expressed in language of generality, which makes it capable, if read literally, of applying to matters beyond the relevant legislative powers, the Court will construe it in a more limited sense so as to keep it within power. [998E-F] A

The State of West Bengal v. *Subhodh Gopal Bose and Ors.* [1954] SCR 587, *Att. Genl.* v. *HRH Prince Earnest Augstas of Hanover*, [1957] A.C. 436, *Keshavananda Bharti* v. *State of Kerala* [1973] Suppl. S.C.R. 1, 101, *Towns* v. *Bigner* 245 U.S. 413-62 L.ed. 372, 376 and *Kedar Nath Singh* v. *State of Bihar* [1962] 2 Suppl. SCR 769; referred to. B

In the instant case it must be presumed that the legislature was conscious of the limitations of the power which the competent authority can have in granting or withholding approval in the case of disciplinary proceedings conducted by private institutions. The object of the legislation in this case was very different from other cases in which the legislation was aimed at depriving the minority institutions of all their powers. Its only aim is to provide security of service. There are sufficient guidelines in the objects and reasons as well as in the preamble. [1001 B-C] C

4. (a) The contention that section 3(1) and (2) lack guidelines and have conferred a blanket power cannot be accepted. Section 3(1) and (2) must be read together. The words "adequate and reasonable" should be given a restricted meaning so as to validate the provisions of the section. The approval of an order contemplated by sub-section (2) will have to be read with sub-section (1). Sub-section (2) required the competent authority to approve such a proposal if it is satisfied that there are adequate and reasonable grounds for such proposal. The words "adequate and reasonable" furnish sufficient guidelines. The competent authority can interfere if there are no materials at all for sustaining the order of punishment or when on the materials found the charge is completely baseless and preserve. The word "adequate" will have to be understood as being confined to such examination of the proposal. The word "reasonable" would indicate that the power of the competent authority is confined to the power of an authority to interfere with the enquiry and the conclusions arrived at by the domestic tribunal. It cannot be understood as conferring absolute power to interfere with the enquiry by the tribunal as a Court of appeal on merits. [1002E; 1001G-H] D E F

(b) The plea that the "competent authority" may be any petty officer cannot be upheld because it is defined in section 2(1) to mean "any authority, officer or person authorised by notification performing the functions of competent authority". The officers of the educational department who are incharge of the administration of educational institutions in the area cannot be called petty officers. [1002H] G

(c) Clauses (a) and (b) of sub-section (3) cannot be said to interfere with the right of administration of the private institutions. The two clauses are regulatory in nature and are intended to safeguard the teachers from being suspended for unduly long periods without there being an enquiry into "gross mis-conduct." [1003C] H

(d) Sub-section (4) of section 3 which states that every teacher placed under suspension shall be paid subsistence allowance at such rates as may be

A prescribed during the period of his suspension is purely regulatory in nature and, therefore, un-objectionable. [1003D]

5. Section 4 is invalid. The vice contained in this section is that the right of appeal which is confined only to the teachers is not available to institutions. 1003F]

6. Section 5 which confers power on the competent authority to hear
B appeals in certain past disciplinary cases will have to fall along with section 4. [1003G]

7. Section 6 is also regulatory in nature and its validity cannot be questioned. [1003H]

8. Section 7 is regulatory in nature and is intended for securing regular payment to the teachers. [1004A]

C

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1280, 1279, 1327-1330 of 1978 and 35 of 1979.

Appeals by special leave from the Judgment and Order dated 2-8-1978 of the Andhra Pradesh High Court in Writ Petition Nos. 718, 5505, 3618, 5506, 5518, of 1975 and 604/78 and 4814/1975.

D

L. N. Sinha, K. Srinivasa Murthy, Naunit Lal and *M. Panduranga* for the Appellants in CA Nos. 1279, 1280, 1327-1330/78.

S. N. Kackar, Sol. Genl., Venkatarao and *G. N. Rao for* R. 1 in CA 1280, RR 1-3 in CAs. 1327 & 1329 and RR 1 & 2 in 1328 & 1330.

E

H. S. Gururaja Rao and *S. Markendaya* for RR 2-3 in CA 1280 and R. 4 in CA 1279.

K. M. K. Nair for R. 4 in CA 1329

S. Balakrishnan for R. 8 in CA 1329

F *G. Narasimhulu* for R. 3 in CA 1330

B. Parthasarthi for the Appellant in CA 35/79.

B. Kanta Rao for the RR 4-5 in CA 35/79.

The following Judgments were delivered

G CHANDRACHUD, C.J.—Article 30(1) of the Constitution provides:

> All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

H The question which arises in these appeals is whether certain provisions of the Andhra Pradesh Recognised Private Educational Institutions Control Act, 11 of 1975, offend against the fundamental right

conferred on minorities by Art. 30 (1). The appellants are unquestionably minority educational institutions, having been established by members of the Christian community. A

My learned Brothers, Murtaza Fazal Ali and Kailasam, have examined the authorities bearing on the question before us. The reasons which impelled me to write a separate judgment are my inability to agree wholly with the various observations made by Justice Fazal Ali and with some of the propositions which he has formulated as emerging from the decisions referred to by him, as also with the conclusion to which Justice Kailasam has come. I do not consider it necessary to examine all the decisions of this Court in which Art. 30(1) has received a full and careful consideration. These decisions are reported in *Re Kerala Education Bill*(1) 1957, *Rev. Sidhajbhai Sabhai* v. *State of Bombay*(2) *Rev. Father W. Proost* v. *The State of Bihar*(3) *State of Kerala* v. *Very Rev. Mother Provincial*(4) *D. A. V. College* v. *State of Punjab*(5) *The Ahmedabad St. Xaviers College Society* v. *State of Gujarat*(6) *Gandhi Faizeam College Shahajahanpur v. University of Agra*(7) *and Lilly Kurian* v. *Sr. Lewina*(8) Almost each succeeding judgment has considered and analysed the previous judgment or judgments. I regard the matter arising before us as well-settled, especially after the 9-Judge Bench decision in *Ahmedabad St. Xaviers College Society* (supra) and the recent judgment of the Constitution Bench in *Lilly Kurian,*(8) All that we have to do in this case is to apply the law laid down in these decisions. B C D E

These decisions show that while the right of the religious and linguistic minorities 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 the excellence thereof can be validly prescribed. For maintaining educational standards of an institution, it is necessary to ensure that it is competently staffed. Conditions of service which prescribe minimum qualifications for the staff, their pay scales, their entitlement to other benefits of service and the laying down of safeguards which must be observed before they are removed or dismissed from service or their services are terminated are all permissible measures F G

(1) [1959] S.C.R. 995.
(2) [1963] 3 S.C.R. 837.
(3) [1969] 2 S.C.R. 73.
(4) [1971] 1 S.C.R. 734.
(5) [1971] Supp. S.C.R. 688.
(6) [1975] 1 S.C.R. 173.
(7) [1975] 3 S.C.R. 810.
(8) [1979] 1 S.C.R. 820. H

A of a regulatory character. As observed by Das C.J., in *Re: Kerala Education Bill,* (supra) "Right to administer cannot obviously include the right to mal-administer", and in the words of Shah J., in *Rev. Sidhajbhai,* (supra) "The right is subject to reasonable restrictions in the interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like". Hidayatullah C.J. said in *Very Rev. Mother Provincial* (supra) that "Standards of education are not a part of management as such", that the "minority institutions cannot be permitted to fall below the standard of excellence expected of educational institutions" and that "the right of the State to regulate education, educational standards and the allied matters cannot be denied". Justice Jaganmohan Reddy, in *D. A. V. College* (supra) reiterated while upholding clause 18 of the Guru Nanak University, Amritsar Act, 1961 that regulations governing recruitment and service conditions of teachers of minority institutions, which are made in order to ensure their efficiency and excellence do not offend against their right to administer educational institutions of their choice.

In the case of institutions that receive State aid, it is the duty and obligation of the Government which grants aid to see that public funds are usefully and properly expended. If the expenditure incurred for paying the emoluments of the staff is subsidised or financed from out of State funds, it becomes the duty of the State to see that no one who does not possess the minimum qualifications is appointed on the staff, the pay and other emoluments of the staff are guaranteed and their service conditions secured. Minority institutions which receive State aid cannot complain of conditions subject to which the aid is granted, so long as such conditions do not amount to discrimination against them on the ground of language or religion and so long as the aid is not made to depend upon the performance or observance of conditions which amount to deprivation of the right guaranteed by article 30(1). There is also no doubt that minority institutions cannot be discriminated against in the matter of granting State aid.

No institution, minority or majority, has a fundamental right to recognition by the State or affiliation to the University, but since recognition and affiliation are indispensable for an effective and fruitful exercise of the fundamental right of minorities to establish and administer educational institutions of their choice, they are entitled to recognition and affiliation if they agree to accept and comply with regulatory measures which are relevant for granting recognition and affiliation, which are directed to ensuring educational excellence of

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the institution concerned and which, largely and substantially, leave unimpaired the right of administration in regard to internal affairs of the institution. A

The impugned Act, by reason of section 1 (3), applies to all private educational institutions, whether or not they are established by minorities. The appellants' contention is that several provisions of the Act violate the guarantee contained in Art. 30(1) by permitting or compelling interference with the internal administration of private educational institutions established by minorities. The appellants are particularly aggrieved by the provisions of sections 3 to 7 of the Act, the validity whereof in challenged on the ground that they deprive the appellants of their right to administer the affairs of minority institutions by vesting the ultimate administrative control in an outside authority. These contentions having been rejected by the High Court of Andhra Pradesh, the appellants have filed these appeals by special leave. B C

Section 3 (1) of the Act provides that, subject to any rule that may be made in this behalf, no teacher employed in any private educational institution shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated, *except with the prior approval of the competent authority.* The proviso to the section says that if any educational institution contravenes the aforesaid provision, the teacher affected by the contravention shall be deemed to be in service. Section 3 (2) requires that where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher employed in any private educational institution is communicated to the competent authority, that authority shall approve the proposal, if it is satisfied that there are *adequate and reasonable grounds* for the proposal. D E F

For appreciating their true meaning and effect, sections 3 (1) and 3 (2) have to be read together. The requirement of prior approval of the competent authority to an order of dismissal, removal, etc. may not by itself be violative of article 30 (1) because it may still be possible to say, on a reasonable construction of the provision laying down that requirement, that its object is to ensure compliance with the principles of natural justice or the elimination of *mala fides* or victimisation of teachers. But I find it difficult to read down section 3 (1) so as to limit its operation to these or similar considerations. In the first place, the section does not itself limit its operation in that manner; on the contrary, it gives an unqualified mandate that no teacher shall be dismissed, removed, etc. except with G H

A the prior approval of the competent authority. Under the proviso, contravention of the section results in a total invalidation of the proposed action. If the section is contravened the teacher shall be deemed to be in service. Secondly, section 3 (1) not only applies to cases in which a teacher is, what is generally termed as 'punished', by an order of dismissal, removal or reduction in rank, but it also B applies to cases in which an appointment is otherwise terminated. An order of termination *simpliciter* which involves no stigma or aspersion and which does not result in any evil consequences is also required to be submitted for the prior approval of the competent authority. The argument that the principles of natural justice have C not been complied with or the argument of *mala fides* and victimisation has seldom any relevance if the services are terminated in accordance with the terms of a contract by which the tenure of the employment is limited to a specified period. This shows that the true object of section 3 (1) is not that which one could liberally assume by reading down the section.

D Section 3 (1) is subject to any rules that may be made in behalf of the matter covered by it. If the State Government were to frame rules governing the matter, there would have been some tangible circumstances or situations in relation to which the practical operation of section 3(1) could have been limited. But in the absence E of any rules furnishing guidelines on the subject, it is difficult to predicate that, in practice, the operation of the section will be limited to a certain class of cases only. The absence of rules on the subject makes the unguided discretion of the competent authority the sole arbiter of the question as to which cases would fall within the section and which would fall outside it.

F Any doubt as to the width of the area in which section 3(1) operates and is intended to operate, is removed by the provision contained in section 3 (2), by virtue of which the competent authority "shall" approve the proposal, "if it is satisfied that there are adequate and reasonable grounds" for the proposal. This provision, under G the guise of conferring the power of approval, confers upon the competent authority an appellate power of great magnitude. The competent authority is made by that provision the sole judge of the propriety of the proposed order since it is for that authority to see whether there are reasonable grounds for the proposal. The authority is indeed made a judge both of facts and law by the conferment upon it of H a power to test the validity of the proposal on the vastly subjective touch-stone of adequacy and reasonableness. Section 3 (2), in my opinion, leaves no scope for reading down the provisions of section

3 (1). The two sub-sections together confer upon the competent authority, in the absence of proper rules, a wide and untrammelled discretion to interfere with the proposed order, whenever, in its opinion, the order, is based on grounds which do not appear to it either adequate or reasonable. A

The form in which Section 3 (2) is couched is apt to mislead by creating an impression that its real object is to cast an obligation on the competent authority to approve a proposal under certain conditions. Though the section provides that the competent authority "shall" approve the proposed order if it is satisfied that it is based on adequate and reasonable grounds, its plain and necessary implication is that it shall *not* approve the proposal *unless* it is so satisfied. The confernment of such a power on an outside authority, the exercise of which is made to depend on purely subjective considerations arising out of the twin formula of adequacy and reasonableness, cannot but constitute an infringement of the right guaranteed by Art. 30 (1). B C D

I find it difficult to save sections 3 (1) and 3 (2) by reading them down in the light of the objects and reasons of the impugned Act. The object of the Act and the reasons that led to its passing are laudable but the Act, in its application to minority institutions, has to take care that it does not violate the fundamental right of the minorities under Art. 30(1). Sections 3(1) and 3(2) are in my opinion unconstitutional in so far as they are made applicable to minority institutions since, in practice, these provisions are bound to interfere substantially with their right to administer institutions of their choice. Similar provisions were held to be void in *Very Rev. Mother Provincial, D. A. V. College* and *Lilly Kurian.* (supra) There is no distinction in principle between those provisions and the ones contained in sections 3 (1) and 3 (2). E F

For these reasons, I am in agreement with Brother Fazal Ali that Sections 3 (1) and 3 (2) of the impugned Act cannot be applied to minority institutions, since to do so will offend against Article 30 (1). G

Section 3 (3) (a) provides that no teacher employed in any private educational institution shall be placed under suspension except when an inquiry into the gross misconduct of such teacher is contemplated. Section 3 (3) (b) provides that no such suspension shall remain in force for more than a period of two months and if the inquiry is not completed within that period the teacher shall, without prejudice to the inquiry, be deemed to have been restored as H

A a teacher. The proviso to the sub-section confers upon the competent authority the power, for reasons to be recorded in writing, to extend the period of two months for a further period not exceeding two months if, in its opinion, the inquiry could not be completed within the initial period of two months for reasons directly attributable to the teacher.

B

With respect, I find it difficult to agree with Brother Fazal Ali that these provisions are violative of article 30 (1). The question which one has to ask oneself is whether in the normal course of affairs, these provisions are likely to interfere with the freedom of minorities to administer and manage educational institutions of their C choice. It is undoubtedly true that no educational institution can function efficiently and effectively unless the teachers observe at least the commonly accepted norms of good behaviour. Indisciplined teachers can hardly be expected to impress upon the students the value of discipline, which is a *sine qua non* of educational excellence. They can cause incalculable harm not only to the cause of education D but to the society at large by generating a wrong sense of values in the minds of young and impressionable students. But discipline is not to be equated with dictatorial methods in the treatment of teachers. The institutional code of discipline must therefore conform to acceptable norms of fairness and cannot be arbitrary or fanci- E ful. I do not think that in the name of discipline and in the purported exercise of the fundamental right of administration and management, any educational institution can be given the right to 'hire and fire' its teachers. After all, though the management may be left free to evolve administrative policies of an institution, educational instruction has to be imparted through the instrumentality of the teachers; F and unless, they have a constant assurance of justice, security and fair play it will be impossible for them to give of their best which alone can enable the institution to attain the ideal of educational excellence. Section 3 (3) (a) contains but an elementary guarantee of freedom from arbitrariness to the teachers. The provision is regulatory in character since it neither denies to the management the G right to proceed against an erring teacher nor indeed does it place an unreasonable restraint on its power to do so. It assumes the right of the management to suspend a teacher but regulates that right by directing that a teacher shall not be suspended unless an inquiry into his conduct is contemplated and unless the inquiry is in respect of a charge of gross misconduct. Fortunately, suspension of teachers H is not the order of the day, for which reason I do not think that these restraints which bear a reasonable nexus with the attainment of educational excellence can be considered to be violative of the right given

by Art. 30 (1). The limitation of the period of suspension initially to two months, which can in appropriate cases be extended by another two months, partakes of the same character as the provision contained in section 3 (3) (a). In the generality of cases, a domestic inquiry against a teacher ought to be completed within a period of two months or say, within another two months. A provision founded so patently on plain reason is difficult to construe as an invasion of the right to administer an institution, unless that right carried with it the right to maladminister. I therefore agree with Brother Kailasam that sections 3 (3) (a) and 3 (3) (b) of the Act do not offend against the provisions of Art. 30 (1) and are valid.

Section 4 of the Act provides that any teacher employed in a private educational institution (a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated; or (b) whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage, may prefer an appeal to such authority or officer as may be prescribed. This provision in my opinion is too broadly worded to be sustained on the touchstone of the right conferred upon the minorities by Art. 30 (1). In the first place, the section confers upon the Government the power to provide by rules that an appeal may lie to such authority or officer as it designates, regardless of the standing or status of that authority or officer. Secondly, the appeal is evidently provided for on all questions of fact and law, thereby throwing open the order passed by the management to the unguided scrutiny and unlimited review of the appellate authority. It would be doing no violence to the language of the section to interpret it to mean that, in the exercise of the appellate power, the prescribed authority or officer can substitute his own view for that of the management, even in cases in which two views are reasonably possible. Lastly, it is strange, and perhaps an oversight may account for the lapse, that whereas a right of appeal is given to the aggrieved teacher against an order passed by the management, no corresponding right is conferred on the management against an order passed by the competent authority under section 3 (2) of the Act. It may be recalled that by section 3 (1), no teacher can be dismissed, removed, etc. except with the prior approval of the competent authority. Section 3 (2) confers power on the competent authority to refuse to accord its approval if there are no adequate and reasonable ground for the proposal. In the absence of the provision for an appeal against the order of the competent authority refusing to approve the action proposed by the management, the management is placed in a gravely disadvantageous position *vis-a-vis*

A the teacher who is given the right of appeal by section 4. By reason of these infirmities I agree with the conclusion of my learned Brothers that section 4 of the impugned Act is unconstitutional, as being violative of article 30 (1).

Section 5 is consequential upon section 4 and must fall with it.

B Section 6 provides that where any retrenchment of a teacher is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter, such retrenchment may be effected with the prior approval of the competent authority. With respect, I find myself unable to share the view C of Brother Fazal Ali that retrenchment of teachers is a purely domestic affair of minority institutions and that the decisions of the management in the matter of retrenchment of teachers is beyond the scope of statutory interference by reason of Art. 30 (1). Section 6 aims at affording a minimal guarantee of security of tenure to teachers by eschewing the passing of *mala fide* orders in the garb of retrench- D ment. As I look at the section, I consider it to be implicit in its provisions that the limited jurisdiction which it confers upon the competent authority is to examine whether, in cases where the retrenchment it stated to have become necessary by reason of an order passed by the Government, it has in fact so become necessary. It is a matter of common knowledge that Governmental orders E relating to courses of instruction are used as a pretence for terminating the services of teachers. The conferment of a guided and limited power on the competent authority for the purpose of finding out whether, in fact, a retrenchment has become necessary by reason of a Government order, cannot constitute an interference with the right F of administration conferred by Art. 30 (1). Section 6 is therefore valid. I would, however, like to add that in the interests of equal justice, the legislature ought to provide for an appeal against the orders passed by the competent authority under section 6. If and when the provision for an appeal is made, care must be taken to ensure that the appeal lies to an officer not below the prescribed G rank.

Section 7 provides that the pay and allowances of a teacher shall be paid on or before such day of a month, in such manner and by or through such authority, officer or person, as may be prescribed. I agree with my learned Brothers that this provision is regulatory in H character and is, therefore, valid.

These are all the sections the validity of which was questioned in the Writ Petitions filed in the High Court. It is therefore not neces-

sary to consider whether the other provisions of the Act are valid or not. A

I concur in the final order proposed by Brother Kailasam that we need not go into the merits of each of the Writ Petitions filed in the High Court. Learned counsel appearing for the schools sought the decision of the High Court on the constitutional issue only. He specifically asked the High Court not to decide each case on its merits. That may, accordingly, be left to the High Court to decide in the light of the majority opinion rendered by us. We have, by a majority, held that sections 3 (3) (a), 3 (3) (b), 6 and 7 are valid while sections 3 (1), 3 (2), 4 and 5 are invalid in their application to minority education institutions. It must follow that such institutions cannot be proceeded against for violation of provisions which are not applicable to them. B C

In conclusion, all the Civil Appeals before us will go back to the High Court of Andhra Pradesh for final disposal on merits in the light of our decision. There will be no order as to costs. D

FAZAL ALI, J. : This batch of civil appeals by special leave is directed against the judgment of the Andhra Pradesh High Court before whom the appellants filed writ petitions under Article 226 of the Constitution challenging the constitutional validity of several sections of the Andhra Pradesh Recognised Private Educational Institutions Control Act, 1975, hereinafter referred to as the Act which contained 21 sections in five Chapters and was brought into force with effect from 5th October, 1974. This Act was also applicable to 19 Educational Institutions situated in the State of Andhra Pradesh and the appellants being admittedly minority educational institutions within the meaning of Article 30 of the Constitution of India have challenged the vires various sections of the Act which we shall indicate later. E F

Some of the appeals have been filed by Christian Schools established by Roman Catholic Church and some by Christian Colleges established by the Christian community :

The main grounds of challenge are that the provisions of the Act directly interfere with the internal management of the institutions and has completely curbed the constitutional freedom which has been guaranteed to them by Article 30(1) of the Constitution of India and being violative of Article 30(1) of the Constitution are ultra vires and therefore, wholly inapplicable to the appellants institutions. G H

It is now well settled by a long course of decisions of this Court that our Constitution which seeks to establish a secular State contains

A sufficient checks and balances, safeguards and guarantees to protect the rights of the minorities, the establishment of educational institutions being one of them. Article 46 which contains the constitutional directive to promote educational and economic interests of the weaker sections runs thus :—

B

> "46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections :
>
> The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the
C Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 30(1) confers a fundamental rights on the minorities to establish and administer educational institutions of their choice. Article 30(2) enjoins on the State that in granting aid to the educational
D institutions it shall not discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. Thus, it would appear that Article 30(2) extends the guarantee contained in Article 30(1) even in the matter of receiving aid by the educational institution established by the minority community. While adverting to this aspect of the
E matter this Court in *Re : Kerala Education Bill,* 1957(1) observed as follows :—

> "Nevertheless, in determining the scope and ambit of fundamental rights relied on by or on behalf of any person or body the court may not entirely ignore these directive
F principles of State policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible".

Another important factor which has to be noticed is that the terms
G in which Article 30 is couched are absolute and unconditional as compared to Article 19 which is hedged in by reasonable restrictions which may be imposed by the State in public interest. Thus, in a way the fundamental right contained in Article 30 is more effective and wider than the fundamental rights contained in Part III of the Constitution. This, however, does not mean that the State is com-
H pletely deprived of even the right to regulate the working of the minority institutions and to make rules in order to improve the standards.

(1) [1959] S.C.R. 995.

of education imparted therein so as to achieve excellence and efficiency in the educational standards of these institutions. Regulatory measures cannot in any sense be regarded as placing restrictions or curbing the administrative autonomy of the institutions concerned. But care must be taken by the State to see that in passing regulatory measures it does not transcend its limits so as to interfere with the internal administration of the management of the institutions concerned so as to violate the spirit and policy of Article 30. The question of the scope and ambit of Article 30 of the Constitution of India was very exhaustively considered as far back as in 1959 in *Re : Kerala Education Bill* (Supra). This case arose when the President of India called for the opinion of the Supreme Court on a Reference being made to it under Article 143(1) of the Constitution of India. The Reference was heard by 7 Judges of this Court out of which 6 of them excepting Venkatarama Aiyar, J. gave a unanimous opinion regarding various clauses of the Bill. The provisions of the Kerala Education Bill are not *pari materia* with the provisions of the Act with which we are concerned in this case, but this Court while delivering its opinion has laid down a number of salutary principles which throw a flood of light on the scope and interpretation of Article 30 of the Constitution of India.

A B C D

I would, therefore, like to extract certain important passages from the opinion of the Court which dealt with the scope and application of Article 30. I would, however, like to mention that some of the principles laid down by this Court in the aforesaid case may not apply to the present day conditions because there have been numerous changes in all aspects of life and even the concept of equality has undergone a revolutionary change. But the observations made by this Court would afford a very valuable guideline to determine the question in controversy in the present case. While indicating the width of the right conferred on the minority institutions by Article 30(1) this Court pointed out that the right to administer does not envisage a right to indulge in mal-administration. In this connection, Das, C.J. speaking for the majority observed as follows :—

E F G H

> "The right to administer cannot obviously include the right to maladminister. 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 subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to ad-

A minister 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".

B Again, while sounding a note of caution to the Government that no step should be taken by it which amounts to the institution surrendering its personality merely because the institution is receiving aid from the State, said the Chief Justice thus :—

> "No educational institution can in actual practice be carried on without aid from the State and if they will not get
C it unless they surrender their rights they will, by compulsion of financial necessities, be compelled to give up their rights under Article 30(1) .....
>
> The State Legislatures cannot, it is clear, disregard or override those provisions merely by employing indirect
D methods of achieving exactly the same result. Even the Legislature cannot do indirectly what it certainly cannot do directly".

Considering the provisions of the *Kerala Education Bill* particularly Clauses 6, 7, 9, 10, 11, 12, 14 and 15 the Court held that al-
E though these provisions constitute serious inroads on the right of administration of the institution and appear perilously near violating that right, yet in view of the peculiar facts of that case and having regard to the fact that clauses 9, 11 and 12 were designed to give protection and security to the ill paid teachers who are engaged in rendering service to the nation and protect the backward classes the
F Court as at present advised may treat these clauses as permissible regulations. These observations were based on the peculiar circumstances of the provisions of the Education Bill and the objects which they sought to sub-serve may not be applicable to the present case where the circumstances are quite different because admittedly most
G of the appellant institutions are not receiving any aid from the Government. Even so, this Court found it impossible to support clauses 14 and 15 which according to them were totally destructive of the rights guaranteed by Article 30(1).

In this connection, the Court observed as follows :—

H "But considering that those provisions are applicable to all educational institutions and that the impugned parts of clauses 9, 11 and 12 are designed to give protection and

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security to the ill paid teachers who are engaged in rendering service to the nation and protect the backward classes, we are prepared, as at present advised, to treat those clauses 9, 11(2) and 12(4) as permissible regulations which the State may impose on the minorities as a condition for granting aid to their educational institutions. We, however, find it impossible to support cls. 14 and 15 of the said Bill as mere regulations. The provisions of those clauses may be totally destructive of the rights under Article 30(1)".

The Court had made it very clear that the observations extracted above applied to those categories of educational institutions which had sought not only recognition but also aid from the State. In the instant case. however, most of the appellant institutions have been established by mustering their own resources and have not been receiving substantial aid from the Government. Similarly, the Court made it clear that although the minority institutions had no fundamental right to recognition by the State yet to deny recognition on terms which may amount to complete surrender of the management of the institution to the Government would be violative of Article 30(1) of the Constitution. In this connection, Das, C.J. observed as follows :—

"There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Article 30(1). We repeat that the legislative power is subject to the fundamental rights and the legislature cannot indirectly take away or abridge the fundamental rights which it could not do directly and yet that will be the result if the said Bill conteining any offending clause becomes law".

Again dwelling on the special character of the minority institutions Das, C.J. speaking for the Court observed thus :

"It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Article 30(1) which has hereinbefore been quoted in full."

A Describing the nature of the fundamental rights enshrined in Article 30 the Court observed as follows :—

> "There can be no manner of doubt that our Constitution has guaranteed certain cherished rights of the minorities concerning their language, culture and religion. These concessions must have been made to them for good and valid reasons. Article 45, no doubt, requires the State to provide for free and compulsory education for all children, but there is nothing to prevent the State from discharging that solemn obligation through Government and aided schools and Article 45 does not require that obligation to be discharged at the expense of the minority communities. So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own."

Similarly, Venkatarama Aiyer, J. who gave a dissenting opinion agreed however with the scope of Article 30 as expounded by the majority opinion. In this connection, the learned Judge observed as follows :—

> "Article 30(1) belongs to the same category as Arts. 25, 26 and 29, and confers on minorities, religious or linguistic, the right to establish and maintain their own educational institutions without any interference or hindrance from the State. The true intention of that Article is to equip minorities with a shield whereby they could defend themselves against attacks by majorities, religious or linguistic, and not to arm them with a sword whereby they could compel the majorities to grant concessions."

Various shades and aspects of the matter were again considered by this Court in the case of *Rev. Sidhajbhai Sabhai and Ors.* v. *State of Bombay & Anr.*(1) In this case it appears that the Government of Bombay issued an order directing the concerned institution which was controlled by the United Church of Northern India to reserve 80% of the seats in the training colleges run by the institution for teachers in non-Government training colleges. These teachers, were to be nominated by the Government. Accordingly, the Educational Inspector ordered the Principal of the Training College not to admit without specific permission of the Education Department private students in excess of 20% of the total strength in each class. The institution took

(1) [1963] 3 S.C.R. 837.

serious exception to this order of the Government as amounting to direct interference in the management of the affairs of the institution. The institution filed a writ petition under Article 32 of the Constitution before this Court which was heard by 6 Judges who after considering the facts of the case and the nature of the order passed by the Government observed as follows :—

> "Unlike Article 19, the fundamental freedom under clause (1) of Article 30, is absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Article 19 may be subjected to. All minorities, linguistic or religious have by Article 30(1) 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.....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".

This Court refused to uphold the order of the Government on the ground, that this was only a regulatory measure. The Court pointed out that the regulation in order to be valid must satisfy a dual test, namely, (1) that it should be reasonable, (2) that it should be purely regulative of the educational character of the institution so as to make the institution an effective vehicle of education for the minority community. This Court observed thus :—

> "The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable

A because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be put a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making
B the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test—the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community
C or other persons who resort to it."

On an examination of the provisions of the impugned Act in the instant case, it is manifest that the Act contains provisions harsher and more offensive than the order passed by the Government of Bombay
D in the *Bombay case* (supra) referred to above.

In the case of *Rev. Father W. Proost & Ors.* v. *The State of Bihar and Ors.*(1) Hidayatullah, C. J. speaking for the Court observed as follows :—

"In our opinion, the width of Article 30(1) cannot be
E cut down by introducing in it consideration on which Article 29(1) is based. The latter article is a general protection is given to minorities to conserve their language, script or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution seeking to conserve language, script
F or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstance irrelevant for the application of Article 30 (1) since no such limitation is expressed and none can be implied. The two Article create two separate rights, although
G it is possible that they may meet in a given case."

The extent to which the State could interfere with the administrative autonomy of the minority institutions in view of the guarantee contained in Article 30(1) of the Constitution was again fully discussed and explained in the case of *State of Kerala etc.* v. *Very Rev.*
H *Mother Provincial etc.*(2). In this case the Court was considering the

(1) [1969] 2 S.C.R. 73.
(2) [1971] 1 S.C.R. 734.

constitutionality of certain provisions of the Kerala University Act, 1969 which was passed with a view to reorganise the University of Kerala and establish a teaching, residential and affiliating University of private Colleges including institutions founded by the minority community. The Court was concerned only with some of the provisions of the aforesaid Act and struck down the offending provisions as amounting to a blatant interference with the rights guaranteed to the minorities under Article 30(1) of the Constitution. Before analysing the facts of that case, I might indicate that in the instant case it is not disputed by the parties that all the appellants are minority institutions and had a governing body of their own. It is also not disputed that apart from the Christians others were also admitted to the institutions and received education. Even some of the members of the staff were also non-Christians. In the background of these facts. I have to see how far the decision of this Court referred to above applies to the present appeals. While explaining the scope and ambit of management or administration Hidayatullah, C.J. speaking for the Court observe as follows :—

> "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 the 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

A follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others".

These observations, therefore, establish three important tests which would determine whether or not the action of the Government amounts B to interference with the management of the institution (1) In order that the management of the institution is free from outside control, the founders must be permitted to mould the institution as they think fit; (2) no part of the management could be taken away by the Government and vested in another body without an encroachment upon the guaranteed right enshrined in Article 30(1) of the Constitution; C (3) There is however an exception to this general rule which is that the Government or the University can adopt regulatory measures in order to improve the educational standards which concern the body politic and are dictated by considerations of the advancement of the country and its people, so that the managing institution may not under the guise of autonomy or exclusive right of management be allowed to D fall below the standard of excellence that is required of educational institutions.

Having laid down these tests the Court proceeded to analyse some of the offending sections of the Kerala Act and came to the conclusion that according to some of the sections the governing body set up by E education society was to consist of 11 members and the Managing Council of 21 members. 11 members of the government body were (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 statute (iv) a person F nominated by the Government and (v) a person elected in accordance with the procedure laid down on the Act. Sub-section (2) had the effect of making these bodies into bodies corporated having perpetual succession and a common seal. Sub-section (6) laid down the powers and functions of the governing body, the removal of members thereof and the procedure to be followed by it, including the delegation of its G powers to persons prescribed by the Statutes. Sub-section (7) laid down that the decision in either of the two bodies shall be taken at the meetings on the basis of simple majority of the members present and voting. Thus, if these provisions were to apply to the minority institutions, it is manifest that it would amount to a direct interference in the internal management of the institution and would tantamount to the H institution surrendering its educational personality. In other words, the governing body appointed by the University would replace the governing body of the founders of the institutions and thus the founders

would have no right to administer the institution in any way they like. Adverting to this aspect of the matter Hidayatullah, C.J. observed as follows :—

> "These sections were partly declared *ultra vires* of Article 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 election 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.....
>
> The Constitution contemplates the administration to be in the hands of the particular community. However desirable it might be to associate nominated members of 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 by them. It is, therefore, clear that by the force of subsections (2), (4) and (6) of sections 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."

Their Lordships then proceeded to consider the vires of sub-sections (2) and (4) of section 56 which laid down the conditions of service of the teachers of private colleges. Sub-section (2) provided that no teacher of a private college could 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. Further sub-section (4) provided that 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 reme-

dial measures as it deems fit, and the governing body or managing council, as the case may be, shall comply with the order. It is thus obvious that in view of the provisions of sub-sections (2) and (4) of section 56 the managing body had no discretion in the matter and the right of the management was completely taken away and vested in some other body. In the instant case, although the Act does not at all provide any rules or regulations by which the conditions of service of the teachers are to be governed yet it prohibits dismissal or removal of teachers without prior sanction of a competent authority to be declared by the Government. Similarly, it provides for an appeal to an appellate authority without laying down any guidelines and no right of appeal is given to the management. These provisions are contained in section 3, sub-sections (2), (3) and (4) and section 4. This Court also considered the effect of section 58 of the Kerala Act by which a teacher of a college who was elected as a member of the Legislative Assembly or Parliament could not be debarred on his election, but would be allowed to continue. Upholding the decision of the High Court and commenting on the unconstitutionality of section 56 sub-sections (2) and (4) and section 58 this Court observed as follows :—

> "These provisions clearly take away the disciplinary action from the governing body and the managing council and confer it upon the University."

> "This enables political parties to come into the picture of the administration of minority institutions which may not like this interference. 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."

In the end while making it clear that there was no element of malafides in the Act passed by the Legislature, the provisions of the Act unfortunately robbed the founders of their right of administration and were, therefore, hit by Article 30(1) of the Constitution. In this connection, the Court observed as follows :—

> "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 guarantees".

In the case of *D.A.V. College etc.* v. *State of Punjab & Ors.* (1) this Court was considering the provisions of Chapter V Clauses 2(1)(a), 17 and 18 read with clauses 1(2) and (3). Clause 2(1) (a) provided that a college applying for admission to the privileges of the University had to send a letter of application to the Registrar and would have to satisfy the Senate (1) that the College shall have a regularly constituted governing body consisting of not more than 20 persons approved by the Senate (2) that among those persons there should be two representatives of the University and the Principal of the College Exofficio. Clause 17 provided that any staff initially appointed shall be approved by the Vice-Chancellor and any subsequent changes made must be reported to the University for approval. It was also provided that in the case of training institutions the teacher pupil ratio shall not be less than 1:12. The constitutional validity of these provisions was challenged before this Court on the ground that it violated Article 30(1) of the Constitution because the College was a minority institution being a College established by the Arya Samaj. On a consideration of these provisions, this Court upheld the contention of the appellants and observed thus:—

> "It will be observed that under clause 1(3) if the petitioners do not comply with the requirements under 1(a) their affiliation is liable to be withdrawn. Similarly it is stated that clause 17 also interferes with the petitioners right to administer their College as the appointment of all the staff has to be approved by the Vice-Chancellor and that subsequent changes will also have to be reported to the University for Vice-Chancellor's approval. We have already held that the Petitioners institutions are established by a religious minority and therefore under Article 30 this minority has right to administer their educational institutions according to their choice. Clause 2(a)(a) and 17 of Chapter V in our view certainly interfere with that right."

The matter was again fully considered by this Court by a Bench consisting of 9 Judges in all its aspects. In the case of *The Ahmedabad St. Xaviers College Society & Anr. etc.* v. *State of Gujarat & Anr.* (2) and this is the leading case on the subject. This case has been relied on by counsel for both the parties in support of their respective contentions. In this case it appears that certain provisions of the Gujarat University Act 1949 were challenged. Section 5 of the Act provided

(1) [1971] Supp. S.C.R. 688.
(2) [1975] 1 S.C.R. 173.

A that no educational institution situated within the University could be associated in any way with or seek admission to any privilege of any other University save and except with the sanction of the State Government. Section 33A(1)(a) of the Act provided that every college other than a Government college or a college maintained by the Government shall be under the management of a governing body which includes
B among others, the Principal of the College, a representative of the University nominated by the Vice-Chancellor and (ii) in the case of selection of a member of the teaching staff of the College a selection committee would be constituted consisting of the Principal and a representative of the University nominated by the Vice-Chancellor. Sub-
C section (3) of the section provided that the provisions of section 33A (1) shall be deemed to be a condition of affiliation of every College referred to in that sub-section. In other words, according to this provision, even the Colleges which were minority institutions would fall within the mischief of the section. Section 39 provided that within the University area all post-graduate instruction, teaching and training shall
D be conducted by the University or by such affiliated College or institution and in such subjects as may be prescribed by statutes. Section 40(1) enacted that Court of the University may determine that all instructions, teaching and training in the courses of studies in respect of which the University was to hold examination shall be conducted by the University and shall be imparted by the teachers of the Uni-
E versity. Section 41(1) stated that all Colleges within the University area which were admitted to the privilege of the University under section 5(3) and all Colleges within the said area which may hereafter be affiliated to the University shall be constituent colleges of the University, and their relations with the University would be governed by statutes made by the University in that behalf.

F As regards the conditions of service of the teachers appointed by the University section 51A(a)(b) enacts that no member of the teaching or other academic and non teaching staff of an affiliated college shall be dismissed, or removed or reduced in rank except after an enquiry in accordance with the procedure prescribed in clause (a)
G and the penalty to be inflicted on him is to be approved by the Vice-Chancellor or any other officer of the University authorised by the Vice-Chancellor in this behalf. Section 52A(1) provided that any dispute between the governing body and any member of the teaching staff shall on a request of the governing body or of the member concerned be referred to a Tribunal or arbitration consisting of one
H member nominated by the governing body of the college, one member nominated by the member concerned and an umpire appointed by the Vice-Chancellor. In view of the provisions referred to above,

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the question that fell for consideration in that case was whether these provisions interfere with the internal management of the minority institutions so as to compel them to surrender all their administrative powers to the University or the Vice-Chancellor or the officers nominated by the Vice-Chancellor. There can be no doubt that if these provisions are construed against the background of the objective of the Act the idea was not to leave any controlling voice either in the courses of studies or in the matter of disciplinary action against the staff and the teacher in the management of the institution but to take over the entire management by the University authorities giving nominal representation to the management of the institution.

Before we analyse the decision in *St. Xaviers* case (supra) we must note that as far back as 1959 in *Re Kerala Education Bill* this Court had clearly pointed out that while the minority institution had no constitutional right to be affiliated to any college or University the right to be affiliated flowed from the language of Article 30(1) of the Constitution and the University concerned could not either refuse affiliation or impose such conditions which may result in complete surrendering of the management of the minority institution. Thus, the central question to be decided in this case was whether by virtue of the provisions of the Act set out above, Article 30(1) had been violated and if so to what extent.

So far as the question of affiliation was concerned the entire court held that although there was no fundamental right to affiliation but recognition or affiliation was necessary for meaningful exercise of the right to establish and administer educational institution conferred on the minority institutions under Article 30(1) of the Constitution. In this connection, the Court observed as follows :—

> "The consistent view of this Court has been that there is no fundamental right of a minority institution of affiliation. An explanation has been put upon that statement of law. It is that affillation must be a real and meaningful exercise for minority institutions in the matter of imparting general secular education. Any law which provides for affiliation on terms which will involve abridgement of the right of linguistic and religious minorites to administer and establish educational institutions of their choice will offend Article 30(1). The educational institutions set up by minorities will be robbed of their utility if boys and girls cannot be trained in such institutions for University degrees. Minorities will virtually lose their right to equip their children for ordinary careers if affiliation be on terms which would

> make them surrender and lose their rights to establish and administer educational institutions of their choice under Article 30.... ....
> The establishment of a minority institution is not only ineffective but also unreal unless such institution is affiliated to a University for the purpose of conferment of degrees on students".

Relying on the previous decision in the case of *State of Kerala etc.* v. *Very Rev. Mother Provincial etc.* (supra) Ray, C.J. reiterated the principles laid down by the previous case and observed as follows :—

> "When minority applies for affiliation, it agrees to follow the uniform courses of study. Affiliation is regulating the educational character and content of the minority institutions. These regulations are not only reasonable in the interest of general secular education but also conduce to the improvement in the stature and strength of the minority institutions.... ....
> ....
> Affiliation mainly pertains to the academic and educational character of the institution. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30".

Thus, to a limited extent affiliation of the minority institution to the University or Colleges concerned was held to be a regulatory measures provided it was aimed at improving the educational standards and laying down the conditions of employment of the teachers. This Court repeated that the minority institutions have the right to administer the institution and shorn of some checks and balances in the shape of regulatory measures the right to administer cannot be tampered with. In this connection, Ray, C.J. observed as follows :—

> "The minority institutions have the right to administer institutions. The right implies the obligation and duty of the minority institutions to render the very best to the students. In the rights 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 eclectism in the administration of the institution..... 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 effciency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions".

As regards the provision of the Act concerned by which the minority institution became a constituent College this was expressly struck down by this Court where Ray, C.J. speaking for the Court observed as follows :—

"Once an affiliated college becomes a constituent college within the meaning of section 41 of the Act pursuant to a declaration under section 40 of the Act it becomes integrated to the university. A constituent college does not retain its former individual character any longer. The minority character of the college is lost. Minority institutions become part and parcel of the university. The result is that section 40 of the Act cannot have any compulsory application to minority institutions because it will take away their fundamental right to administer the educational institutions of their choice".

Explaning what the concomitants of an autonomy in administration meant Ray, C.J. observed as follows :—

"Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is a part of the administration. The university will always have a right to see that there is no mal-administration. If there is mal-administration, the university will take steps to cure the same. There may be control and check on administration in order to find out whether the

A minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students ..... The provisions contained in section 33A(1)(a) of the Act have the effect of displacing the management and entrusting it to a different agency. The autonomy in administration B is lost. New elements in the shape of representatives of different type are brought in. The calm waters of an institution will not only be disturbed but also mixed. These provisions in section 33A(1)(a) cannot therefore apply to minority institution".

C It follows from what had been held in the aforesaid case was that there should be no interference in the right of day to day administration of the institution of in the choice of the personality of the managing committee or governing body of the institution. This Court struck down section 33A(1)(a) of the Gujarat Act on the ground that the management of the college was completely displaced and was D substituted by the university authorities. In other words, the position appears to be that although the university to which the minority institution was affiliated may exercise supervision in so far as the syllabi or the courses of studies are concerned, it cannot be allowed to be associated with the managing committee or the governing body of the institution so as to have a controlling voice in the matters at E issue and thereby destroy the very administrative autonomy of the minority institution. This appears to be the main reason why Ray, C.J. was of the opinion that section 33A(1)(a) was violative of Article 30(1), and, therefore, not applicable to the minority institutions. The Court then dealt with the provisions of sections 51A and 52A of the Gujarat Act. Under section 51A no member of the F teaching, other academic and non-teaching staff of an affiliated college should be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges and given a reasonable opportunity of being heard and until he had been given a reasonable opportunity of making a representation on any such G penalty proposed to be inflicted on him and the penalty to be inflicted on him was to be approved by the Vice-Chancellor or any officer of the University authorised by him. This Court held that this is a blanket power given to the Vice-Chancellor without any guidance, and observed as follows :

H "The approval of the Vice-Chancellor may be intended to be a check on the administration. The provision contained in section 51A, clause (b) of the Act cannot be said to be a permissive regulatory measure inasmuch as it confers

arbitrary power on the Vice-Chancellor to take away the right of administration of the minority institutions, Section 51A of the Act cannot, therefore, apply to minority institutions."

Dealing with the provisions contained in Section 52A of the Gujarat Act which contemplated a reference of any dispute between the governing body and any member of the teaching or academic and non-teaching staff of an affiliated college which was connected with the conditions of service of such member to a Tribunal of Arbitration consisting of one member nominated by the governing body of the college, one member nominated by the member concerned and an Umpire appointed by the Vice-Chancellor, the learned Chief Justice was of the opinion that the introduction of such an arbitration to a Tribunal would start a spate of fruitless litigation and was likely to impair the excellence and efficiency maintained by the educational institution concerned. In this connection, the learned Chief Justice observed as follows :—

> "These references to arbitration will introduce an area of litigious controversy inside the educational institution. The atmosphere of the institution will be vitiated by such proceedings. The governing body has its own disciplinary authority. The governing body has its domestic jurisdiction. This jurisdiction will be displaced. A new jurisdiction will be created in administration. The provisions contained in section 52A of the Act cannot, therefore, apply to minority institution."

Jaganmohan Reddy, J. agreeing with the majority judgment delivered by the Hon'ble Chief Justice endorsed his conclusions regarding the constitutional validity to sections 40, 41, 33A(1)(a), 33A(1)(b), 51A and 52A of the Act and observed thus :—

> "We agree with the Judgment of Hon'ble the Chief Justice just pronounced and with his conclusions that sections 40, 41, 33A(1)(a), 33A(1)(b), 51A and 52A of the Act violate the fundamental rights of minorities and cannot, therefore, apply to the institutions established and administered by them."

Dwelling on the importance of the fundamental right enshrined in Article 30, the learned Judge held that the right under Article 30

A could not be exercised in vacuo, and in this connection observed as follows :—

> "The right under Article 30 cannot be exercised in vacuo. Nor would it be right to refer to affiliation or recognition as privileges granted by the State. In a democratic system of Government with emphasis on education and enlightenment of its citizens, there must be elements which give protection to them. The meaningful exercise of the right under Article 30(1) would and must necessarily involve recognition of the secular education imparted by the minority institutions without which the right will be a mere husk. This Court has so far consistently struck down all attempts to make affiliation or recognition on terms tentamount to surrender of its rights under Article 30(1) as abridging or taking away those rights. Again as without affiliation there can be no meaningful exercise of the right under Article 30(1), the affiliation to be given should be consistent with that right, nor can it indirectly try to achieve what it cannot directly do."

Similar view was taken by Khanna, J. who also held that management of a minority institution should be kept free from governmental or other interference because the words "of their choice" appearing in Article 30 have special significance and would actually lose their value and utility if too much interference or unnecessary curbs are placed in the administration of the affairs of the minority institution. The learned Judge observed thus :

> "Administration connotes management of the affairs of the institution. 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 of how the interest of the community in general and the institution in particular will be best served. The words "of their choice" qualify the educational institutions established and administered by the minorities need not be of some particular class; the minorities have the right and freedom to establish and administer such educational institutions as they choose".

Similarly, explaining the scope and ambit of Articles 29 and 30 the learned Judge observed as follows :

> "The broad approach has been to see that nothing is done to impair the rights of the minorities in the matter of their

educational institutions and that the width and scope of the provisions of the Constitution dealing with those rights are not circumscribed. The principle which can be discerned in the various decisions of this Court is that the Catholic approach which led to the drafting of the provisions relating to minority rights should not be set at naught by narrow judicial interpretation. The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution. The same generous, liberal and sympathetic approach should weigh with the courts in construing Articles 29 and 30 as marked the deliberations of the Constitution-makers in drafting these Articles and making them part of the fundamental rights".

The learned Judge held that although it was permissible for the authority concerned to prescribe regulations but such regulations should not impinge upon the right conferred on the minority institutions under Article 30(1). A just balance had to be struck between the two objectives, namely, passing of regulatory measures and preserving the fundamental rights of the minority institutions. The learned Judge observed as follows :—

"It is, therefore, permissible for the authority concerned to prescribe regulations which must be complied with before an institution can seek and retain affiliation and recognition. Question can arise whether there is any limitation on the prescription of regulations for minority educational institutions. So far as this aspect is concerned, the authority prescribing the regulations must bear in mind that the Constitution has guaranteed a fundamental right to the minorities for establishing and administering their educational institutions. Regulations made by the authority concerned should not impinge upon that right. Balance has, therefore, to be kept between the two objectives, that of ensuring the standard of excellence of the institution and that of preserving the right of the minorities to establish and administer their educational institutions. Regula-

A tions which embrance and reconcile the two objectives can be considered to be reasonable."

The learned Judge further held that any law which interferes with the minorities choice of a governing body would be violative of Article 30(1) and observed thus :—

B "In the light of the above principles, it can be stated that a law which interferes with the minorities choice of a governing body or management council would be violative of the right guaranteed by Article 30(1)."

Criticising the constitutional validity of Section 52A of the Gujarat Act Khanna, J. shared the view taken by Ray, C.J. which has been C referred to above. The learned Judge observed as follows :—

"The provisions of section 52A would thus not as a spoke in the wheel of effective administration of an educational institution. It may also be stated that there is nothing objectionable to selecting the method of arbitration for D settling major disputes connected with conditions of service of staff of educational institutions. It may indeed be a desideratum. What is objectionable, apart from what has been mentioned above, is the giving of the power to the Vice-Chancellor to nominate the Umpire. Normally in such disputes there would be hardly any E agreement between the arbitrator nominated by the governing body of the institution and the one nominated by the concerned member of the staff. The result would be that the power would vest for all intents and purposes in the nominee of the Vice-Chancellor to decide all disputes between the governing body and the member of the staff F connected with the latter's conditions of service. The governing body would thus be hardly in a position to take any effective disciplinary action against a member of the staff. This must cause an inroad in the right of the governing body to administer the institution. Section 52A should, therefore, be held to be violative of Article 30(1) so far as G minority educational institutions are concerned."

Similarly, while striking down sections 40 and 41 of the Gujarat Act, the learned Judge found that the affiliated colleges would become constituent colleges as a result of the provisions of these sections and held that these provisions could not apply to the minority institutions. H In this connection, Khanna, J. observed as follows :—

"A provision which makes it imperative that teaching in under-graduate courses can be conducted only by the Uni-

versity and can be imparted only by the teachers of the University plainly violates the rights of minorities to establish and administer their educational institution. Such a provision must consequently be held qua minority institutions to result in contravention of Article 30(1). I would, therefore, strike down section 40 so far as minority educational institutions are concerned as being violative of Article 30(1)".

Mathew, J. while striking down the constitutional validity of section 33A(1) of the Gujarat Act observed as follows :—

"The heart of the matter is that no educational institution established by a religious or linguistic minority can claim total immunity from regulations by the legislature or the university if it wants affiliation or recognition; but the character of the permissible regulations must depend upon their purpose.....In every case, when the reasonableness of a regulation comes up for consideration before the court, the question to be asked and answered is whether the regulation is calculated to subserve or will in effect subserve the purpose of recognition or affiliation, namely, the excellence of the institution as a vehicle for general secular education to the minority community and to other persons who report to it. The question whether a regulation is in the general interest of the public has no relevance, if it does not advance the excellence of the institution as a vehicle for general secular education as, *ex-hypothesi*, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards."

Similarly, the learned Judge took strong exception to the provisions of section 33A which required that the college should have a governing body which should include persons other than those who are members of the society of Jesus, struck provisions of section 33A and observed as follows :—

"We think that the provisions of sub-sections (1)(a) and (1)(b) of section 33A abridge the right of the religious minority to administer educational institutions of their choice. The requirement that the college should have a governing body which shall include persons other than those who are members of the governing body of the society of Jesus

A would take away the management of the college from the governing body constituted by the Society of Jesus and vest it in a different body. The right to administer the educational institution established by a religious minority is vested in it. It is in the governing body of the Society of Jesus that the religious minority which established the
B college has vested the right to administer the same. The requirement that the college should have a governing body including persons other than those who constitute the governing body of the Society of Jesus has the effect of divesting that body of its exclusive right to manage the
C educational institution.....

The learned Judge further pointed out that under the guise of preventing mal-administration the right of the governing body to manage the affairs of the minority institution should not be taken away and in the same token observed as follows :—

D "Under the guise of preventing mal-administration, the right of the governing body of the college constituted by the religious minority to administer the institution cannot be taken away. The effect of the provision is that the religious minority virtually loses its right to administer the institution it has founded. "Administration" means
E '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 according to their way of thinking and in accordance with their idea of how the interests of the community in general and the institution in particular will be best served. No
F part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right."

Similarly, analysing various provisions of the Gujarat Act like sections 51A(1)(a) and 51A(1)(b) etc. the learned Judge observed
G as follows :—

"The relationship between the management and a teacher is that of an employer and employee and it passes one's understanding why the management cannot terminate the services of a teacher on the basis of the contract of employment. Of course, it is open to the State in the exer-
H cise of its regulatory power to require that before the services of a teacher are terminated he should be given an opportunity of being heard in his defence. But to require

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that for terminating the services of a teacher after an inquiry has been conducted, the management should have the approval of an outside agency like the Vice-Chancellor or of his nominee would be an abridgement of its right to administer the educational institution. No guidelines are provided by the legislature to the Vice-Chancellor for the exercise of his power. The fact that the power can be delegated by the Vice-Chancellor to any officer of the university means that any petty officer to whom the power is delegated can exercise a general power of veto. There is no obligation under the sub-sections (1)(b) and (2)(b) that the Vice-Chancellor or his nominee should give any reason for disapproval. As we said a blanket power without any guideline to disapprove the action of the management would certainly encroach upon the right of the management to dismiss or terminate the services of a teacher after an enquiry."

Beg, J. speaking in the same strain observed as follows :—

"It is true that, if the object of an enactment is to compel a minority institution even indirectly, to give up the exercise of its fundamental rights, the provisions which have this effect will be void or inoperative against the minority institution. The price of affiliation cannot be a total abandonment of the right to establish and administer a minority institution conferred by Article 30(1) of the Constitution. This aspect of the matter, therefore, raises the question whether any of the provisions of the Act are intended to have that effect upon a minority institution. Even if that intention is not manifest from the express terms of statutory provisions, the provisions may be vitiated if that is their necessary consequence or effect."

Even Dwivedi, J. who had sounded a discorded note held that so far as section 33A(1)(a) was concerned it was obnoxious to Article 30(1) of the Constitution.

In the case of *Gandhi Faizeam College Shahajahanpur* v. *University of Agra and Anr.*(1) the majority judgment consisting of V. R. Krishna Iyer and A. C. Gupta, JJ. observed as follows :—

"What is the core of the restriction clamped down by Statute 14-A? What is the conscience and tongue of Article 30? If the former is incongruous with the latter, it

(1) [1975] 3 S.C.R. 810.

A withers as void; otherwise, it prevails and binds. That is the crux of the controversy."

"The thrust of the case is that real regulations are desirable, necessary and constitutional but, when they operate on the 'administration' part of the right, must be B confined to chiselling into shape, not cutting down out of shape, the individual personality of the minority."

Mathew, J. who gave a dissenting opinion and whose opinion follows the principles laid down by the Court in *St. Xavier's* case (supra) observed as follows :—

C "The determination of the composition of the body to administer the educational institution established by a religious minority must be left to the minority as that is the core of the right to administer. Regulations to prevent mal-administration by that body are permissible. As the right to determine the composition of the body which will ad- D minister the educational institution is the very essence of the right to administer guaranteed to the religious or linguistic minority under Article 30(1), any interference in that area by an outside authority cannot be anything but an abridgement of that right. The religious or linguistic minority must E be given the freedom to constitute the agency through which it proposes to administer the educational institution established by it as that is what Article 30(1) guarantees. The right to shape its creation is one thing : the right to regulate the manner in which it would function after it has come into being is another. Regulations are permissible to F prevent mal-administration but they can only relate to the manner of administration after the body which is to administer has come into being."

The entire case law as fully reviewed by this Court recently in the case of *Lilly Kurian* v. *Sr. Lewina & Ors.*(1). In this case, Sen, G J. speaking for the court and after a deep dischotomy and adroit analysis of *St. Xavier's* case (supra) and the cases which preceded that case summed up the law thus :—

"An analysis of the judgments in *St. Xaviers College's* case (supra) clearly shows that seven out of nine Judges held that the provisions contained in clauses (b) of sub-sections (1) H and (2) of section 51A of the Act were not applicable to an educational institution established and managed by

(1) [1979] 1 S.C.R. 820.

religious or linguistic minority as they interfere with the disciplinary control of the management over the staff of its educational institutions. The reasons given by the majority were that the power of the management to terminate the services of any members of the teaching or other academic and non-academic staff was based on the relationship between an employer and his employees and no encroachment could be made on this right to dispense with their services under the contract of employment, which was an integral part of the right to administer, and that these provisions conferred on the Vice-Chancellor or any other officer of the University authorised by him, uncanalised, unguided and unlimited power to veto the actions of the management."

"The power of appeal conferred on the Vice-Chancellor under Ordinance 33(4) is not only a grave encroachment on the institution's right to enforce and ensure discipline in its administrative affairs but it is uncanalised and unguided in the sense that no restrictions are placed on the exercise of the power. The extent of the appellate power of the Vice-Chancellor is not defined; and, indeed, his powers are unlimited. The grounds on which the Vice-Chancellor can interfere in such appeals are also not defined. He may not only set aside an order of dismissal of a teacher and order his reinstatement, but may also interfere with any of the punishments enumerated in items (ii) to (v) of Ordinance 33(2); that is to say, he can even interfere against the infliction of minor punishments. In the absence of any guidelines, it cannot be held that the power of the Vice-Chancellor under Ordinance 33(4) was merely a check on maladministration.

As laid down by the majority in *St. Xaviers College's* case (supra) such a blanket power directly interferes with the disciplinary control of the managing body of a minority educational institution over its teachers".

Thus, on an exhasutive analysis of the authorities of this Court and the views taken by it from time to time during the last two decades on various aspects, shades and colours, built-in safeguards, guarantees, scope and ambit of the fundamental right enshrined in Articles 30(1), the principles and propositions that emerged may be summarised as follows :—

1. That from the very language of Article 30(1) it is clear that it enshrines a fundamental right of the

A minority institutions to manage and administer their educational institutions which is completely in consonance with the secular nature of our democracy and the Directives contained in the Constitution itself.

2. That although unlike Article 19 the right conferred on the minorities is absolute, unfettered and unconditional but this does not mean that this right gives a free licence for maladministration so as to defeat the avowed object of the Article, namely, to advance excellence and perfection in the field of education.

3. While the State or any other statutory authority has no right to interfere with the internal administration or management of the minority institution, the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards and issue guidelines for the purpose of ensuring the security of the services of the teachers or other employees of the institution.

4. At the same time, however, the State or any University authority cannot under the cover or garb of adopting regulatory measures tend to destroy the administrative autonomy of the institution or start interfering willy nilly with the core of the management of the institution so as to render the right of the administration of the management of the institution concerned nugatory or illusory. Such a blatant interference is clearly violative of Article 30(1) and would be wholly inapplicable to the institution concerned.

5. Although Article 30 does not speak of the conditions under which the minority educational institution can be affiliated to a college or University yet the section by its very nature implies that where an affiliation is asked for, the University concerned cannot refuse the same without sufficient reason or try to impose such conditions as would completely destroy the autonomous administration of the educational institution.

6. The induction of an outside authority however high it may be either directly or through its nominees in the governing body or the managing committee of the minority institution to conduct the affairs of the institution would be completely destructive of the fundamental right guaranteed by Article 30(1) of the

Constitution and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Article 30 of the Constitution. Perhaps there may not be any serious objection to the introduction of high authorities like the Vice-Chancellor or his nominee in the administration particularly that part of it which deals with the conditions of service of the teachers yet such authorities should not be thrust so as to have a controlling voice in the matter and thus over-shadow the powers of the managing committee. Where educational institutions have set up a particular governing body or the managing committee in which all the powers vest, it is desirable that such powers should not be curbed or taken away unless the Government is satisfied that these powers are grossly abused and if allowed to continue may reduce the efficacy or the usefulness of the institution.

7. It is, therefore, open to the Government or the University to frame rules and regulations governing the conditions of service of teachers in order to secure their tenure of service and to appoint a high authority armed with sufficient guidance to see that the said rules are not violated or the members of the staff are not arbitrarily treated or innocently victimised. In such a case the purpose is not to interfere with the internal administration or autonomy of the institution, but it is merely to improve the excellence and efficiency of the education because a really good education can be received only if the tone and temper of the teachers are so framed as to make them teach the students with devotion and dedication and put them above all controversy. But while setting up such an authority care must be taken to see that the said authority is not given blanket and uncanalised and arbitrary powers so as to act at their own sweet will ignoring the very spirit and objective of the institution. It would be better if the authority concerned associates the members of the governing body or its nominee in its deliberation so as to instil confidence in the founders of the institution or the committees constituted by them.

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8. Where a minority institution is affiliated to a University the fact that it is enjoined to adopt the courses of study or the syllabi or the nature of books prescribed and the holding of examination to test the ability of the students of the Institution concerned does not violate the freedom contained in Art. 30 of the Constitution.

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9. While there could be no objection in setting up a high authority to supervise the teaching staff so as to keep a strict vigilance on their work and to ensure the security of tenure for them, but the authority concerned must be provided with proper guidelines under the restricted field which they have to cover. Before coming to any decision which may be binding on the managing committee, the Head of the institution or the senior members of the managing committee must be associated and they should be allowed to have a positive say in the matter. In some cases the outside authorities enjoy absolute powers in taking decisions regarding the minority institutions without hearing them and these orders are binding on the institution. Such a course of action is not constitutionally permissible so far as minority institution is concerned because it directly interferes with the administrative autonomy of the institution. A provision for an appeal or revision against the order of the authority by the aggrieved member of the staff alone or the setting up of an Arbitration Tribunal is also not permissible because Ray, C.J. pointed out in *St. Xaviers* case (supra) that such a course of action introduces an arena of litigation and would involve the institution in unending litigation, thus imparing educational efficiency of the institution and create a new field for the teachers and thus draw them out of purely educational atmosphere of the minority institutions for which they had been established. In other words, nothing should be done which would seek to run counter to the intentions of the founders of such institutions.

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These are some of the important principles that have been clearly laid down by the Supreme Court in the cases discussed above. I shall now endeavour to examine the provisions of the impugned Act in the light of the principles enunciated above. I shall point out hereafter that some of the provisions of the Act are so harsh and arbitrary and

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confer uncanalised powers on some of the authorities appointed under the Act so as to amount to a direct and thoughtless interference with the management of the institution. A

Coming to the provisions of the Act one significant feature may be noticed here. Unlike other Acts passed by some of the States the impugned Act, while it takes within its sweep even the minority institutions, does not at all lay down any rules, regulations governing the conditions of service of the teachers of the institution, nor does it provide any guidelines on the basis of which the rules could be made, nor does it contain a mandate directing the minority institution to frame proper rules and conditions of service of its teachers. Mr. Lal Narayan Sinha appearing for the appellants submitted that this is a most serious lacuna in the Act which makes it completely violative of Article 30 of the Constitution and other provisions read in the light of this lacuna also lose their legal sanctity. B C

Section 1(3) provides that the Act applies to all private educational institutions that is to say including minority institutions. In the instant case all the appellants are institutions established by the Christian community. Sub-section (4) of section 1 says that the Act shall be deemed to have come into force on the 5th October, 1974. Sections 2 is the definition clause which defines various terms used in the Act and it is not germane for our purpose to deal with the various definitions which is more or less a formality. Learned counsel appearing for the appellants has challenged the constitutional validity of sections 3, 4, 5, 6, 7, 10, 11, 12, 16 and 17 of the Act. D E

Section 3(1) of the Act may be extracted thus :—

> "3(1) Subject to any rule that may be made in this behalf, no teacher employed in any private educational institution shall be dismissed removed or reduced in rank nor shall his appointment be otherwise terminated, except with the prior approval of the competent authority.;
>
> Provided that if any educational management, agency or institution contravenes the provisions of this sub-section, the teachers affected shall be deemed to be in service". F G

A perusal of this section would clearly reveal that while no rules regulating the conditions of service of the teachers employed in private institutions had been made, the power to do so has been reserved with the Government. The proviso enjoins that any contravention of the provisions would not affect the teachers who would be deemed to be in service. It is manifest that in the absence of any rules the proviso would have no application. Even if the proviso applies it would H

A amount to a serious inroad on the fundamental right of the minority institutions to administer or manage their own affairs. Thus s. 3(1) as also the proviso is clearly violative of own affairs Art. 30 is wholly inapplicable to the minority institutions. Serious exception has been taken by counsel for the appellants to sub-sections (2), (3) and (4) of section 3.

B Section 3(2) may be extracted thus :—

> "3(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher employed in any private educational institution is communicated to the competent authority that authority shall, if it
> C is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment".

This sub-section seeks to control the power of the institution concerned in the matter of dismissal, removal or reduction in rank or termination of the appointment of any teacher employed by any private
D educational institution and enjoins that any action taken against the teacher will be of no consequence unless it is approved by the said competent authority. It will be rather interesting to note that the competent authority has not been given any guidelines under which it can act. The Solicitor General (Mr. S. N. Kacker) sub-
E mitted that the word 'satisfy' as used in the section is a strong term and regulates the powers of the competent authority and the words "adequate and reasonable grounds" contain sufficient guidelines to exclude exercise of any arbitrary power. I am, however, unable to agree with this contention. In the first place, it was the inherent and fundamental right of the institution to deal with its employees
F or teachers and take necessary action against them. If the State wanted to regulate the conditions of service of the teachers it should have taken care to make proper rules giving sufficient powers to the management in the manner in which it was to act. Secondly, the induction of an outside authority over the head of the institution and making its decision final and binding on the institution was
G a blatant interference with the administrative autonomy of the institution. Sub-section (2) does not contain any provision that while giving approval the competent authority was to ascertain the views of the governing body or the managing committee so as to know their view point and the reason why action has been taken against a particular teacher or teachers. Similarly, the words "adequate and
H reasonable" are too vague and do not lay down any objective standard to judge the discretion which is to be exercised by the competent authority whose order will be binding on the institution. Thirdly,

while section 4 gives a right to the aggrieved teacher to file an appeal before the appellate authority, no such right has been given to the management to file an appeal against the order of the competent authority if it refuses to grant sanction to the order of the managing committee of the institution. Thus, in my opinion, sub-section (2) suffers from the vice of excessive delegation of powers and confers undefined, uncanalised, absolute and arbitrary powers to grant or to refuse sanction to any action taken by the managing committee and almost reduces the institution to a helpless position. Such a provision, therefore, not only interferes with the right of the management of the institution but is completely destructive of the right conferred on the institution under Article 30(1) of the Constitution. Even the competent authority mentioned in the sub-section is merely the District Educational Officer and it appears from the record that it is not a very high authority such as the Director of Public Instruction or the Vice-Chancellor which may be presumed to act objectively and reasonably. Another material defect in section 3(2) is that no time limit has been fixed by the statute within which the competent authority is to give its approval. If the competent authority either due to over work endeavours or some other reason chooses to sit over the matter for a pretty long time a stalemate would be created which will seriously impair the smooth running of the institution. Indeed if sub-section (2) would have been cast in a negative form so as to provide that the sanctioning authority was bound to give approval to any action taken by the institution against its teachers unless it was, after hearing the teacher and the management of the institution, satisfied that the order passed by the institution or the action taken by it was in violation of the principles of natural justice, against the statutory provisions of law or tainted with factual or legal malice no objection could be taken. If the section would have been worded in this manner, then its validity could have been upheld on the ground that it was a sound regulatory measure which does not destroy the administrative autonomy of the institution but is meant to ensure the security of tenure of the teaching staff of the institution. But as this is not so, the validity of the provision cannot be supported. For these reasons, therefore, I am satisfied that sub-section (2) is unconstitutional being violative of Article 30(1) of the Constitution and would have no application to any minority institution.

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Sub-section (3) of section 3 runs thus:—

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"3 (3) (a) No teacher employed in any private educational institution shall be placed under suspension, except

A when an inquiry into the gross misconduct of such teacher is contempleted.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within
B that period, such teacher shall, without prejudice to the inquiry, be deemed to have been restored as teacher.

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two
C months, for a further period not exceeding two months, if, in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher".

These provisions deprive the minority institution of the power to
D suspend any teacher unless an inquiry into the gross misconduct of such teacher is contemplated. One could understand if the word 'misconduct' alone was used in sub-section (3) (a) but as it is qualified by the adjective gross, it almost destroys the power of suspension which the minority institution might possess. Even so, sub-section (3)(b) makes it clear that no suspension shall remain in
E force for a period of more than two months from the date of suspension and if no inquiry is completed within this period, the teacher would have to be reinstated. This is indeed a most peculiar provision and gives an unqualified right to a teacher in the matter of supension. Even a Government servant to whom Article 311 of the Constitution or the statutory rules apply does not enjoy such a
F liberal facility. Moreover, the rules make a mockery of any order of suspension passed pending an inquiry. It is very difficult to predicate how long an inquiry would last and yet to limit the period of suspension to two months irrespective of the nature, length and the scope of the inquiry to only two months is really to completely curb the power of suspension.

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The proviso to section 3(3) again empowers the competent authority to extend the period of suspension. Thus the cumulative effect of sub-sections (3) (a), 3(b) and the proviso is to interfere with the internal administration of the minority institution and curb the power of suspension and thus deprive the institution
H of the right of or taking any disciplinary action against the teacher to such an extent that the institution becomes almost a figure-head. Such a provision, therefore, cannot be upheld as it is clearly violative

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of Article 30(1) of the Constitution of India. It is obvious that whenever an institution suspends a teacher, it is bound to pay subsistance allowance and any express provision like sub-section (4) of section 3 is wholly unnecessary and makes a serious inroad on the internal autonomy of the institution. Thus, in our opinion, section 3 in its entirety is *ultra vires* as being violative of Article 30(1) of the Constitution and is wholly inapplicable to the appellants who are admittedly minority institutions.

Section 4 of the Act may be quoted thus :—

"4. Any teacher employed in any private education institution—

(a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated; or

(b) whose pay or allowances or any of whose conditions or service are altered or interpreted to his disadvantage, by any order;

may prefer an appeal against the order to such authority or officer as may be prescribed; and different authorities or officers may be prescribed for different classes of private educational institutions.

Explanation : In this section, the expression 'Order' includes any order made on or after the date of the commencement of this Act in any disciplinary proceeding which was pending on that date".

This section gives a right of appeal to a teacher who is dismissed, removed or reduced in rank and whose services are terminated. No guidelines are provided in which manner this power is to be exercised nor does it contain any provision which may entitle the minority institution to be heard by the appellate authority. No principles or norms are laid down on the basis of which the order passed by the institution could be examined by the appellate authority. Even what would amount to misconduct has not been defined or qualified in sections 2, 3 or 4. It is, therefore, difficult to understand how the appellate court would exercise this power in deciding whether or not the teacher was guilty of misconduct and what is the correlation between the degree of misconduct and the appropriate punishment which may have been awarded by the institution and approved by the competent authority. The conferment of such an

absolute and unguided power on the appellate authority which if passed against the management it cannot even file a civil suit to set aside this order amounts not only to a direct interference with the right enshrined in Article 30(1) of the Constitution but makes the minority institution a limp, lifeless and powerless body incapable of effective teaching and/or attaining excellence in the standards of education. Such a course of action is bound to hurt the feelings of the founders of the institution. For these reasons, therefore, I am of the opinion that section 4 is also *ultra vires* as violative of Article 30 of the Constitution and would, therefore, have no application to the minority institutions who are appellants in this case.

Section 5 merely provides for transfer of an appeal pending before any authority to the appellate authority and if section 4 falls and is inapplicable to the minority institution section 5 also follows the same fate and will not apply to the minority institution.

Section 6 runs thus :—

> "6. Where any retrenchment of any teacher employed in any private educational institution is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter, such retrenchment may be effected with the prior approval of the competent authority".

This section deals with the contingencies under which the institution may be compelled to retrench any teacher employed in the school. Whatever be the position in other private educational institutions so far as the minority institution is concerned, this is purely a domestic matter of the institution and cannot be interfered with by any statute. The words "administer educational institutions of their *choice*" clearly indicate that the institution has an absolute right to select teachers, retain them or retrench them at its sweet will according to the norms prescribed by the institution or by the religious Order which has founded the institution. As almost all the minority institutions in the present case are not receiving any substantial aid from the Government but have established the institution by their own moneys and are bearing all the expenses themselves, it is none of the business of any outside authority to interfere with or dictate to the institution as to which member of the staff should be retrenched and which should be retained. The provisions of section 6 directly interfere with this valuable right of the institution by providing that the retrenchment shall be made with the approval of the competent authority. The power is uncanalised and unguided and suffers from the same vices as has been pointed out in the case of

section 3 of the Act. For these reasons, therefore, section 6 will have no application to the institution.

Section 7 may be extracted thus :—

> "7. The pay and allowances of any teacher employed in any private educational institution shall be paid on or before such day of every month, in such manner and by or through such authority, officer or person, as may be prescribed".

This is purely an innocuous provision which is meant for the benefit of the institution itself by providing how the salaries of the employees of the institution should be paid and is purely a regulatory measure which does not at all touch or effect the administrative autonomy of the minority institution.

So far as sections 8 and 9 are concerned, they would obviously not apply to the minority institutions because these institutions do not receive any aid from the Government and are, therefore, not liable to maintain or furnish accounts to the University authorities or to the Government, nor the prescribed authority has any right to inspect or pass audit of the accounts kept by the institution. For these reasons, sections 8 and 9 also do not apply to the minority institutions.

Section 10 relates to the inspection or inquiry in respect or private educational institution, its buildings, laboratories etc., or any other matter connected with the institution which may be necessary. Subsections (2), (3) and (4) of section 10 provide the mode in which the inspection or inquiry is to be made and a report submitted to the concerned authority. These provisions are also in the nature of sound regulatory measures and appear to be in the larger interest of the functioning of the institution itself and, therefore, do not offend Article 30 of the Constitution.

Section 11 runs thus :—

> "11. Every educational agency shall, within such time or within such extended time as may be fixed by the competent authority in this behalf, furnish to the competent authority such returns statistics and other information as the competent authority may, from time to time require."

This section also contains purely a regulatory measure and is in the best interest of the institution and cannot be said to violate Article 30(1) of the Constitution.

A Section 12 and 13 relate to penalties for contravention of the provisions of the Act which have been held by me to be violative of Article 30 and, therefore, inapplicable to the appellants because that would amount to destroying the very foundation and personality of the minority institution. These sections are also not applicable to the minority institution except n respect of provisions of the Act B which have been upheld by me.

Section 15 contains the revisional power and provides that the Government may delegate its powers, or make rules regarding the exercise of such a power. I have already pointed out that the setting up of a competent authority to sanction or approve the order passed C by the institution in respect of a member of the staff where sufficient guidelines and grounds for approval have been prescribed is purely a regulatory measure and does not attract Art. 30 of the Constitution. The conferment of a right of revision against any order of the minority institution under the Rules framed which provide sufficient guidelines and allow the minority institutions an opportunity to be D heard, is an innocuous provision and does not impinge on the autonomy of the minority institution. I am, therefore, of opinion that such a provision is in the best interests of the institution and does not in any way harm the personality of the institution or destroy the image so as to interfere with its autonomous functioning. I, therefore, hold that section 15 is constitutionally valid and I might hasten E to add that its constitutionality was not challenged before this Court.

Section 16 bars a civil court from deciding the questions which fall under this Act and section 17 contains an indemnity clause. As I have held that almost all the operative and important provisions of F this Act are ultra vires, these sections also would have no application to the minority institution. In fact, section 16 suffers from a serious defect, viz., that if it was held by me that the provision regarding appeal to the appellate authority was valid then section 16 completely bars the right of the management to file a suit to challenge the validity G of the order of the appellate authority. To this extent, therefore, this Section makes a serious inroad on the fundamental right of the minority institution and must be held to be inapplicable to the minority institution.

I have gone through the judgment of the High Court which does H not apear to have considered the various aspects and features of the matter set out by me, nor has it properly applied the propositions summarised by me as culled out from the various decisions of this

Court starting from 1959 (Re : *Kerala Education Bill's* case) (supra) to 1979 (*Lily Kurian's* case) (supra). A

For these reasons, I hold the sections 3 (alongwith its sub-section), 4, 5, 6, 8, 9, 12, 13, 16 and 17 are violative of Article 30 of the Constitution and have no application to the appellants which are minority institutions and which fall within the protection guaranteed by the Constitution under Article 30. I accordingly allow all these appeals, set aside the order of the High Court and quash all the directions which may have been issued by the Government or other authorities under the Act to the appellants except such steps as are taken under those provisions of the Act which have been upheld by me, viz., sections 7, 10, 11, 14 and 15. In the peculiar circumstances of the case, I leave the parties to bear their own costs. B C

KAILASAM, J. These appeals are by special leave against the judgment of the High Court of Judicature at Andhra Pradesh.

Several writ petitions questioning the validity of certain provisions of the Andhra Pradesh Recognised Private Educational Institutions Control Act, 1975 (hereinafter called the Act) were heard. These writ petitions were disposed of by a common judgment by the Andhra Pradesh High Court. Aggrieved by the judgment of the High Court holding that the impugned sections of the Act is *intra vires* of the Constitution, not void and operative on schools and institutions of the minorities, the present appeals by special leave have been preferred. D E

The purpose of the legislation is set out in the Statement of Objects and Reasons to the Bill. It is stated :—

> "Of late, several instances have come to the notice of the State Government regarding the various irregularities committed by the managements of private educational institutions in matters relating to suspension, dismissal, removal or otherwise termination, of members of the teaching staff on flimsy grounds without framing charges and without giving an opportunity to explain. The said managements are also flouting the orders or instructions of Director of Public Instruction or the Universities or the Government in respect of such matters. Having regard to the above circumstances, the Government have decided to regulate the service conditions of teachers employed in the private educational institutions to ensure security of service of the said teachers, and also to exercise certain control on such institutions in the matter of their accounts, etc., by undertaking suitable legislation in this regard." F G H

A The salient features of the Bill are given as under :—

(i) to safeguard the service conditions of teaching staff in the recognised private educational institutions in the matter of suspension, removal, dismissal and retrenchment;

B (ii) to make it compulsory for the private managements to obtain the prior permission of the competent authority before a teacher is visited with any of the aforesaid major penalties;

(iii) to provide that the suspension of a teacher pending C enquiry, should be for a period of two months only after which the teacher should be deemed to have been restored to duty, unless the competent authority extends the suspension period by another two months; thereby making it specific that in any case the teachers shall not be under suspension for more D than four months;

(iv) to provide that no teacher should be retrenched without the prior permission of the competent authority;

(v) to provide for payment of salaries to teachers on the specified day of the month in such manner and by or E through such authorities, officer or persons, as may be laid down in the rules;

(vi) to provide for conducting enquiries into the affairs of the recognised private educational institutions and also for issue of suitable directions to the manage- F ments of such institutions based on such enquiry, which shall be binding on the managements.

The writ petitions challenged the validity of sections 3 to 7 of the Act. Sections 3 to 7 occur in Chapter II relating to terms and conditions of service of teachers. It is necessary to set out the impugned G sections :—

"Dismissal, removal or reduction in rank or suspension of teachers employed in private educational institutions.

3(1). Subject to any rule that may be made in this behalf, no teacher employed in any private educational institution shall be dis- H missed, removed or reduced in rank nor shall his appointment be otherwise terminated, except with the prior approval of the competent authority.

Provided that if any educational management, agency or institution contravenes the provisions of this sub-section, the teachers affected shall be deemed to be in service.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher employed in any private educational institution is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.

(3a) No teacher employed in any private educational institution shall be placed under suspension, except when an inquiry into the gross misconduct of such teacher is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher shall, without prejudice to the inquiry, be deemed to have been restored as teacher.

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months for a further period not exceeding two months, if, in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher.

(4) Every such teacher as is placed under suspension under sub-section (3) shall be paid subsistence allowance at such rates as may be prescribed during the period of his suspension.

Appeal against orders of punishment imposed on teachers employed in private educational institutions.

4. Any teacher employed in any private educational institution—

(a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated; or

(b) whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage, by any order;

may prefer an appeal against the order to such authority or officer as may be prescribed; and different authorities or officers may be prescribed for different classes of private educational institutions.

Explanation—In this section, the expression 'order' includes any order made on or after the date of the commencement of this Act in any disciplinary proceeding which was pending on that date.

Special provision regarding appeal in certain past disciplinary cases.

A 5. (1) If, before the date of the commencement of this Act, any teacher employed in any private educational institution has been dismissed or removed or reduced in rank or his appointment has been otherwise terminated and any appeal preferred before that date—

(a) by him against such dismissal or removal or reduction in rank
B or termination; or

(b) by him or the educational agency against any order made before that date in the appeal referred to in clause (a); is pending on that date, such appeal shall stand transferred to the appellate authority prescribed under section 4.

C (2) If any such appeal as is preferred in sub-section (1) has been disposed of before the date of the commencement of this Act, the order made in any such appeal shall be deemed to be an order made under this Act and shall have effect accordingly.

Retrenchment of teachers.

6. Where any retrenchment of any teacher employed in private
D educational institution is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter, such retrenchment may be affected with the prior approval of the competent authority.

Pay and allowances of teachers employed in private educational
E institution to be paid in the prescribed manner.

7. The pay and allowances of any teacher employed in any private educational institution shall be paid on or before such day of every month, in such manner and by or through such authority, officer or person, as may be prescribed."

F The object of the legislation in general and the impugned provisions in particular is to regulate the service conditions of the teachers and to ensure their security of service.

The main attack on the validity of the impugned sections is that the provisions are violative of the rights conferred on the minorities to
G establish and administer their institutions under Arts. 29 and 30 of the Constitution. The plea is that their right to administer their institutions is taken away by imposing unjustified and complete control with the authorities specified in the Act.

Before considering the provisions of each of the sections impugned it is necessary to refer to the nature of the right conferred on the mino-
H rities. The relevant article is Art. 30 of the Constitution and it is necessary to refer to the Art. and the important decisions rendered by this Court under the Article.

"Right of minorities to establish and administer educational institutions. A

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

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

The educational institutions established and administered by the minorities in the exercise of the rights conferred under Art. 30 may be C classified into 3 categories (1) those which do not seek either aid or recognition from the State or affiliation from the University; (2) those which seek aid and (3) those that seek either recognition or affiliation but not aid. We are not concerned with institutions which do not seek either aid or recognition from the State or affiliation from the University. D The institutions which require aid may again be classified into two classes namely those which are by Constitution expressly made eligible for receiving grants and (2) which are not entitled to any grant by virtue of the express provisions of the Constitution. Here again we are not concerned with the first category. We are only concerned with the institutions which are not entitled to any grant by any express E provision in the Constitution.

Articles 28(3), 29(2) and 30(2) deal with educational institutions receiving aid out of State Funds. Certain restrictions are placed and obligations cast on institutions recognised by the State or receiving aid Art. 28(3) provides "No person attending any educational institutional F recognised by the State or receiving aid out of State funds shall be required to take part in any religious instructions that may be imparted in such institutions or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto. Under the sub-article a person attending an institution G recognised by the State or receiving aid cannot be compelled by the institution to take part in any religious instruction or to attend religious worship without his consent. Art. 29(2) provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Under Art. 29(2) in institu- H tions receiving aid, a citizen is entitled to seek admission and the institutions is forbidden to deny admission to a citizen on grounds of

A religion, race, caste or language. While Art. 28(3) and 29(2) impose certain restrictions on institutions receiving aid, Art. 30(2) forbids the State from discriminating against any educational institution in granting aid on the ground that it is under the management of a minority, whether based on religion or language. The Constitution does not confer any right on the institution to receive any aid. It however forbids
B the State in granting aid to educational institutions from discriminating an educational institution on the ground that it is under the management of a minority whether based on religion or language. This would imply that the State has right to grant or not to grant aid. It may be that the State is not in a position to grant aid to education institutions. In such circumstances nobody can force the State to grant aid. But if
C the State grants aid to educational institutions there should not be any discrimination. It is open to the State to prescribe relevant conditions and insist on their being fulfilled before any institution becomes entitled to aid. No institution which fails to conform to the requirements thus validly prescribed would be entitled to any aid. Educational institutions
D receiving aid whether they are managed and administered by minorities or not have to conform to the requirements prescribed by the State in order to enable the institutions to receive aid. The requirements prescribed shall not be discriminatory on the ground that it is under the management of a minority whether based on religion or language. The character of the minority institution should not also be destroyed. The
E right of the State to ensure that its funds are properly spent cannot be denied.

In Re : *Kerala Education Bill,*(1) at p. 1062 Chief Justice Das ruled that "the minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without
F any competent teachers possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars."

The learned Chief Justice proceeded to observe :—

> "It stands to reason, then, that the constitutional right to
G 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 institution to be aided."

The scope of the reasonable regulations that can be imposed is clearly
H explained by the question framed by the Attorney General and the answer furnished by the Court at p. 1063. The State cannot say "I

(1) [1959] S.C.R. 995.

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have money and I shall not give you any aid unless you *surrender* to me *your right of administration*" (emphasis supplied) The Court held that regulations prescribed under the various clauses except sub-clause (5) of Cl. 3 which made the educational institutions subject to clauses 14 and 15, valid.

The Kerala Education Bill which was referred to this Court for the purpose of opinion contained several clauses. A summary of the clauses is given in the judgment from pages 1023 to 1030 of the Reports, Clauses 6, 7, 9, 10, 11, 12, 14, 15 and 20 relate to the management of aided schools. The Court expressed its view that the provisions in clauses 7, 10, 11(1), 12(1), (2), (3) and (5) may easily be regarded as reasonable regulations or conditions for the grant of aid. (Vide p. 1064). Clause 7 is extracted at p. 1025. It confers powers enumerated in the clause on the managers. Clause 10 requires the Government to prescribe the qualifications to be possessed by persons for appointment as teachers in Government Schools and in private schools which by the definition means aided or recognised schools. The State Public Service Commission is empowered to select candidates for appointment as teachers in Government and aided schools according to the procedure laid down in cl. 11. Clause 12 prescribes the conditions of service of the teachers of aided schools obviously intended to afford some security of tenure to the teachers of aided schools. It provides that the scales of pay applicable to the teachers of Government schools shall apply to all the teachers of aided schools whether appointed before or after the commencement of this clause. Rules applicable to the teachers of the Government schools are also to apply to certain teachers of aided schools as mentioned in sub-cl. (2). Sub-cl. (4) provided that no teachers of an aided school shall be dismissed, removed or reduced in rank or suspended by the Manager without the previous sanction of the authorised officer. With regard to sub-cl. 12(1)(2) and (3) which related to conditions of service and security of tenure, the Court held that the purpose may easily be regarded as reasonable regulations or conditions for grant of the aid. It was submitted that clauses 9, 11(2) and 12(4) went beyond the permissible limit as by taking over the collections of fees, etc. and by undertaking to pay the salaries of the teachers and other staff the Government is in reality confiscating the school fund and under cl. 11 the power of management is taken away by providing that the appointment of a teacher should be out of the panel to be prepared by the Public Service Commission. Similarly it was submitted that by requiring previous sanction by the authorised officer before dismissal, removal or reduction in rank of a teacher, the right to administer was taken away. Chief Justice Das observed at p. 1064 of the Reports : "These are no doubt serious inroads on the right

A of administration and appear perilously near violating that right. But considering that those provisions are applicable to all educational institutions and that the impugned parts of cls. 9, 11 and 12 are designed to give protection and security to the ill paid teachers who are engaged in rendering service to the nation and protect the backward classes, we are prepared, as at present advised, to treat these clauses 9, 11(2) and B 12(4) as permissible regulations which the State may impose on the minorities as a condition *for granting aid* to their educational institutions." It is clear that so far as aided institutions are concerned conditions similar to those that are mentioned can be validly imposed on the institutions. The only prohibition is that the conditions should not C be of such a nature as to deprive the character of the minority institutions in their exercise of the rights conferred on them as minority institutions. So long as there are rules for the purpose of maintaining the excellence of educational institutions and not discriminating against the minority educational institutions they will be valid.

D The decisions rendered subsequent to the Kerala Education Bill case may now be referred to see how far the views expressed had been modified. In *Rev. Sidhajbhai Sabhai & Ors.* v. *State of Bombay & Anr.*(1) a Bench of 6 Judges held that the order of the Government directing that 80% of seats in the training colleges should be reserved for Government nominee with a threat that if the order was disobeyed, E grant and recognition would be withdrawn, was invalid. The Court laid down that reasonable restrictions in the interest of the efficiency of instruction, discipline, health, sanitation and the like may be imposed as those regulations will not be restrictions on the substance of the right guaranteed, for they secured the proper functioning of the institution in educational matters. The Court held that "if every order which F while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institutions, the right guaranteed by Art. 30(1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of G receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. The dual test prescribed is the test of reasonableness and the test that is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of the education of the minority community or the persons who H resort to it. The requirements of reservation of 80% of the seats will

destroy the right to management as a minority institution and as such cannot be imposed even in the case of institutions receiving aid. Conditions of such a nature that would result in surrender of the fundamental right to administer cannot be imposed. After referring to the decision in the Kerala Educational Bill case, the Court observed that it did not decide that a regulation would be deemed unreasonable only if it was totally destructive of the right of the minority to administer the educational institution. This view was affirmed in the *St. Xavier's College case* [1975] 1 SCR 173. The test laid down requires that the regulation must be for regulating the educational institution *for the minority committee as well other persons who resort to it.* (emphasis supplied)

The case of *Rev. Father W. Proost and Ors.* v. *The State of Bihar and Ors.*(1) relates to affiliation. This Court was considering the validity of s. 48-A of the Bihar University Act. Under s. 48-A a University Service Commission for affiliated Colleges was established. It was provided amongst others that subject to the approval of the University, appointments, dismissals, removals, termination of service or reduction in rank of teachers of an affiliated college not belonging to the State Government shall be made by the governing body of the College on the recommendation of the Commission. While the petition was pending before this Court the Governor of Bihar promulgated an Ordinance by inserting Sec. 48-B which exempted Colleges established and administered by the minorities from the operation of the provisions of clauses (6), (7), (8), (9), (10) and (11) of s. 48-A. After the introduction of s. 48-B the petitioners before this Court claimed protection under S. 48-B and submitted that affiliated Colleges established by minorities are exempt from the operation of the impugned provisions of s. 48-A. It may be noted that under s. 48-B the governing body of an affiliated college established by a minority shall be entitled to make appointments, dismissals, removals, termination of service or reduction in rank of teachers or take other disciplinary action subject only to the approval of the Commission and the Syndicate of the University. The petitioners did not challenge the provisions which provided that appointments, dismissals, removals, termination of service and reduction in rank of teachers or other disciplinary measures will be subject to the approval of the Commission and the Syndicate of the University. What was objected to was the provisions under s. 48-A which established an University Service Commission on whose recommendations alone appointments, dismissals, removals, terminations of service or reduction in rank of teachers of an affiliated college

(1) [1969] 2 S.C.R. 73.

A can be effected. A provision requiring prior approval of the Commission or Syndicate was not challenged as objectionable.

In *State of Kerala* v. *Very Rev. Mother Provincial*(1), the constitutional validity of certain provisions were challenged on the ground that they interferred with the rights of the minority institutions. The B Kerala University Act, 1979 was passed to re-organise the University of Kerala with a view to establishing a teaching, residential and affiliating University for the Southern Districts of the State of Kerala. Ss. 48 and 49 dealt with the Governing Bodies of private colleges. The Educational Agency of a private College was required to set up a Governing Body for a private College or a managing council for C private-colleges under one corporate management. The section provided for the composition of two bodies so as to include Principals and Managers of private colleges, nominees of the University and Government as well as elected representatives of teachers. Sub-s. (2) provided that the new bodies would be having corporate perpetual succession and the members would hold office for four years. Sub-section D cast a duty on the new governing body or the managing council to administer the private college or colleges in accordance with the provisions of the Act. The provisions of s. 53, sub-ss. (1), (2), (3) and (9) conferred on the Syndicate of the University power to veto the decision of the Governing Council. A right of appeal was provided E for any person aggrieved. Section 56 conferred ultimate power on the University and the Syndicate in disciplinary matters in respect of teachers. This Court held that sub-s. (2) and (4) of Ss. 48 and 49 as *ultra vires*. The Court agreed that the High Court was right in declaring that sub-ss. (1) and (2), (9) and of s. 53, sub-ss. (2) and (4) of s. 56 as *ultra vires*.

F

In *D.A.V. College etc.* v. *State of Punjab & Ors*(2) the validity of cl. 18 which required that non-governmental Colleges shall comply with the requirements laid down in the ordinances governing service of teachers in non-governmental Colleges as may be framed by the University was considered. Clause 18 so far as it is applicable to the G minority institutions empowered the University to prescribe by regulation governing the service of teachers which is enacted in the larger interest of the institution to ensure their efficiency and excellance. The Court held : "It may for instance issue an ordinance in respect of age of superannuation or prescribe minimum qualifications for teachers to H be employed by such institutions either generally or in particular sub-

(1) [1971] 1 S.C.R. 734.
(2) [1971] Supp. S.C.R. 688.

jects. Uniformity in the conditions of service and conduct of teachers in all non-Government Colleges would make for harmony and avoid frustration." A

A reading of the decisions referred to above make it clear that while the right to establish and administer a minority institution cannot be interferred with restrictions, by way of regulations for the purpose of maintaining the educational standards of the institution can be validly imposed. For maintaining the educational standard of the institution as a whole it is necessary to ensure that it is properly staffed. Conditions imposing the minimum qualifications of the staff, their pay and other benefits, their service conditions, the imposition of punishment will all be covered and regulations of such a nature have been held to be valid. In the case of institutions that receive aid it is the duty of the Government who grants aid to see that the funds are properly utilised. As the Government pays for the staff it is their bounden duty to see that well-qualified persons are selected their pay and other emoluments are guaranteed and service conditions secured. So far as the institutions receiving aid are concerned if the regulations are made for the purpose of safeguarding the rights of the staff the validity cannot be questioned as long as the regulations do not discriminate the minority institution on the ground of religion or language. B C D

The minority institutions have no fundamental right to demand recognition by the State or affiliation by the University but as recognition and affiliation is necessary for the effective exercise of the fundamental right of minorities to establish and administer their institutions, they are entitled to recognition and affiliation if reasonable conditions that are imposed by the Government or the University relevant for the purpose of granting recognition or affiliation are complied with. Before granting recognition or affiliation it is necessary that the concerned Government or the University is satisfied that the institution keeps up with the required minimum standard. As has been held by Das C.J., "Right to administer cannot obviously include the right to mal-administer" and in the words of Shah, J. "The right is subject to reasonable restrictions in the interest of efficiency of instruction, discipline, health, sanitation and the like." Justice Jaganmohan Reddy has made it clear in upholding cl. 18 of the Guru Nanak University, Amritsar Act, 1961 that regulations relating to the recruitment and service conditions of the teachers of the institution are valid. E F G

The decision of 9 Judges' Bench in *The Ahmedabad St. Xaviers College Society & Anr. etc.* v. *State of Gujarat & Anr.*(1) may now H

(1) [1975] 1 S.C.R. 173.

A be considered. All the 9 Judges were unanimous that the right to aid or recognition was not a fundamental right but that aid or recognition cannot be offered on conditions which would involve a surrender of those rights. But the rights of recognition and affiliation are subject to regulations which are necessary for maintenance of the educational institutions. In the *St. Xaviers College* case (supra), S. 33A(1)(a) B was challenged. It provided that every college was to be under the management of a governing body which must include a representative of the University and representatives of teachers, non-teaching staff and students of the college. Eight of the nine Judges held that S. 33A (1)(a) violated Art. 30(1) and could not be applied to minority institutions. This Court in a subsequent decision in *G.F. College Shahajahanpur* v. *University of Agra and Anr.*(1) held that it would not be C unconstitutional to direct that the Principal and the Senior Teacher appointed by the Governing body itself be taken into the managing committee. The Court in *St. Xavier's College* case also considered the validity of S. 51-A(1)(a), (2)(a) and 51-A(1)(b). Section D 51-A(1)(a) and (2)(a) provided that no member of the teaching, other academic and non-teaching staff was to be dismissed, removed or reduced in rank except after an inquiry in which he had been informed of the charges against him and had been given a reasonable opportunity of being heard and making a representation on the penalty proposed to be inflicted. No termination of service not amounting to E dismissal or removal was to be valid unless such member had been given a reasonable opportunity of showing cause against the proposed termination. The two clauses were held to be valid, as being reasonable. However, the Court held that S. 51-A(1)(a) and (2)(b) as violative of Art. 30(1). Section 51-A(1)(b) provided that the penalty to be inflicted on him must be approved by the Vice-Chancellor F or any other officer of the University authorised by the Vice-Chancellor in this behalf. Similarly, S. 51-A(2)(b) provided that "such termination is approved by the Vice-Chancellor or any officer of the University authorised by the Vice-Chancellor in this behalf." Section 51-A(1)(b) required the approval of the Vice-Chancellor, or other G officer authorised by him, for the penalty to be inflicted under sub-s. 1(a), and S. 51-A(2)(b) required similar approval for the termination of service under sub-s. (2)(a). The Court also held that S. 52-A which required that any dispute between the governing body and any member of the teaching, other academic and non-teaching staff of an affiliated college, connected with the terms of service of such member, H must be referred to a Tribunal of Arbitration consisting of one member each appointed by the governing body and by the member of the

(1) [1975] 3 S.C.R. 810.

staff and an umpire appointed by the Vice-Chancellor was not valid. Seven out of 9 Judges held that S. 52-A violated Art. 30(1) and could not be applied to minority institution.

Minority institutions seeking affiliation will have to follow statutory measures intended to regulate the conduct of the educational institution. Ray, C.J. p. 193 held :—

> "With regard to affiliation a minority institution must follow the statutory measures regulating educational standards and efficiency the prescribed courses of study, courses of instructions and the principles regarding the qualification of teachers, educational qualifications for entry of students into educational institutions etc. When a minority institution applies to a University to be affiliated, it expresses its choice to participate in the system of general education and courses of instruction prescribed by that University****** Therefore, the measures which will regulate the courses of study, the qualifications and appointment of teachers, *the conditions of employment* of teachers, ********** are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Art. 30" (emphasis supplied)

Ray C.J. held that s. 51A(1)(b) and S. 51A(2)(b) is not applicable to minority institutions as they "cannot be said to be permissive regulatory measures inasmuch as it confers arbitrary power on the Vice-Chancellor to take away the right of administration of the minority institutions."

Agreeing with the view of the Chief Justice, regarding his conclusion about S. 51A(1)(a) and (2)(b), Khanna, J. at p. 243 observed :—

> "Although disciplinary control over the teachers of a minority educational institution would be with the governing council, *regulations in my opinion, can be made for ensuring proper conditions of service of the teachers and for securing a fair procedure in the matter of disciplinary action against the teachers.* Such provisions which are calculated to safeguard the interest of teachers would result in security of tenure and thus inevitably attract competent persons for the posts of teachers. * * * * * Regulations made for this

A purpose should be considered to be in the interests of minority educational institutions and as such they would not violate Art. 30(1)". (emphasis supplied)

Regarding S. 51A, the learned Judge while holding that provisions under Cl. (a) of sub-ss. (1) & (2) of s. 51A which make provision B for giving a reasonable opportunity of showing cause against a penalty to be proposed on a member of the staff would be valid. Cl. (b) of the sub-s. which gives a power to the Vice-Chancellor and officer of the University authorised by him to veto the action of the managing body of an educational institution in awarding punishment to a member of the staff, interferes with the disciplinary control of the managing C body over its teachers. He was of the view that the power conferred on the Vice-Chancellor or other officer is a blanket power and no guidelines were laid down for the exercise of that power and it is not provided that the approval is to be withheld only in case the dismissal, removal, reduction in rank or termination of service is mala fide by way of victimisation or other similar cause. The conferment of such D blanket power on the Vice-Chancellor or other officers authorised for vetoing the disciplinary action of the managing body of a educational institutional made serious inroads on the right of the managing body to administer an educational institution.

E Mathew, J. in dealing with S. 51A(1)(a) and (b) at p. 273 observed :—

> The exact scope of the power of the Vice-Chancellor or of the officer of the University authorised by him in this subsection is not clear. *If the purpose of the approval is to see that the provisions of sub-section 51A(1)(a) are complied* F *with, there can possibly be no objection in lodging the power of approval even in nominee of the Vice-Chancellor.* But an uncanalised power without any guidline to withhold approval would be a direct abridgement of the right of the management to dismiss or remove a teacher or inflict any G other penalty after conducting an enquiry." (emphasis supplied)

The learned Judge proceeded to observe :

> "Of course it is open to the State in the exercise of its regulatory power to require that before the services of a H teacher are terminated, he should be given opportunity of being heard in his defence. But to require that for terminating the services of a teacher after

an enquiry has been conducted, the management should have the approval of an outside agency like the Vice-Chancellor or of his nominee would be an abridgement of its right to administer the educational institution. No guidelines are provided by the legislature to the Vice-Chancellor for the exercise of his power. The fact that the power can be delegated by the Vice-Chancellor to any officer of the university means that any petty officer to whom the power is delegated can exercise a general power of veto. There is no obligation under the sub-sections 1(b) and 2(b) that the Vice-Chancellor or his nominee should give any reason for disapproval. As we said a blanket power without any guideline to disapprove the action of the management would certainly encroach upon the right of the management to dismiss or terminate the services of teacher after an enquiry".

The extracts from the judgments of Ray, J. Khanna, J. and Mathew, J. show that regulations can be made for ensuring the proper conditions of service of the teachers and for securing fair procedure in the matter of disciplinary action against them. Prescribing uniformity in the conditions of service and conduct of teachers in all non-governmental colleges would promote harmony, avoid frustration and is permissible. It is thus seen that the university or the authority granting recognition can prescribe the conditions of service of teachers providing them with security of service. The rules may require that no Principal of the teaching or non-teaching staff of a recognised or a approved institution shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed the charges against him and given a reasonable opportunity of being heard in respect of those charges and making representation on any penalty proposed to be inflicted on him. The Government which grants recognition or the University which gives affiliation are entitled to see that proper conditions of service of the teachers are ensured and fair procedure is observed by the institutions when disciplinary action is taken against them. If the regulations require the approval by the competent authority for safeguarding the rights of the teachers and for securing the procedure there could be no objection. Such authority can also interfere with the decision of the private institutions when the punishment is awarded mala fide or by way of victimisation or for similar causes.

In Kerala Education Bill, 1957 Cl. 14(4) provided that no teacher of an aided school shall be dismissed, removed or reduced in rank or

A suspended by the Manager without the previous sanction of the authorised officer. This requirement of sanction related to schools that sought aid from the Government. While upholding the validity of cl. 14, Das C.J. observed that there could be no doubt that these are serious inroads in the right of the administration and appear perilously near violating that right. But considering that those provisions are B applicable to all educational institutions and that the impugned parts of cls. 9, 11 and 12 are designed to give protection and security to the ill-paid teachers who are engaged in rendering service to the nation and protect the backward classes we are prepared, "as at present advised to treat clauses 9, 11 (2) and 12 (4) as permissible regulations the State may impose on the minorities as a condition for granting aid to their educational institutions. Ray C.J. in *St. Xavier College case*, observed that though the opinion was given in Kerala Education Bill on an order of reference under Art. 143 is not binding on this court in any subsequent matter wherein a concrete case the infringement of the rights under any analogous provision may be called in D question, it is entitled to great weight. Ray C.J. proceeded to observe that nonetheless the exposition of the various facets of the rights under Art. 29(1) and 30 by Das, C.J. speaking for the majority, with utmost clarity, great perspicuity and wisdom has been the text from which Court has drawn its sustenance in the subsequent decisions. To the extent that this Court has applied these principles to concrete cases E there can be no question of there being any conflict with what has been observed by Das, C.J. Ray, C.J. was of the view that similar provisions were held to be invalid as they fell with S. 48 and 49 of the Kerala Education Act, which was similar to cl. 12(4) was held invalid. Mathew, J. was of the view that though in the Kerala Education Bill case, the Court upheld the provisions similar to those in S. 51A(1)(b) F and 51(A)(2)(b), the subsequent decisions of this Court left no doubt that the requirement of subsequent approval for dismissing or terminating the services of teachers would be offending Art. 30. (Learned Judge referred to *D.A.V. College* case).

G

In the Kerala Education Act case (supra), the validity of sub-ss. 2 & 4 of S. 48, S. 49, S. 53, Sub-ss. 1-9 and sub-ss. 2 and 4 of S. 56 were challenged. Hidayatullah, C.J. speaking for the Court observed that after the erection of the Governing Body of the Managing Council, the founders or even the minority community had no hand in the ad- H ministration. The two bodies were vested with the complete administration of the institution and were not answerable to the founders in this respect. Sub-ss. (2), (4) and (5) and (6) of ss. 48 and 49 clearly

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vest the management and administration in the hands of the two bodies with mandates from the university. Coupled with this is the power of the Vice Chancellor and the Syndicate under sub-sections (2) and (4) of S. 56 to have the final say in respect of disciplinary proceedings against the teachers. In striking down clauses (2) and (4) of S. 56, the Learned Chief Justice at p. 746 stated that the result was that sub-ss. (2) and (4) of S. 56 are ultra vires as they fail with ss. 48 and 49. The Scheme of the Act was that a Governing Body or Managing Council was to be set up for private colleges and it was provided that the composition of the bodies were to include Principals, Managers of private Colleges and nominees of the University and Government as well as elected representatives of the teachers. This outside body was entrusted with the administration. These two sections 48 and 49 which provide for administration by the Governing Body or the Managing Council was held to be ultra vires. Apart from it, the powers were conferred on the Syndicate of the University to veto the decision of the Governing Council. Regarding disciplinary matters, S. 56 conferred ultimate power on the University and the Syndicate in respect of teachers. As the power to take disciplinary action was taken away from the Private or the Minority Institutions and conferred on the Governing Body or the Managing Council constituted under the Act and a provision was made requiring the previous sanction on the Vice-Chancellor and provided an unrestricted right to the Syndicate. It will be noted that the Chief Justice found Ss. 56(2) and (4) ultra vires as they had to fail alongwith Ss. 48 and 49 which deprived the institution of the right to manage its own affairs.

In the case of *D.A.V. College* v. *State of Punjab* (supra), cl. 17 provided that the staff initially appointed shall be approved by the Vice-Chancellor and all subsequent changes shall be reported to the University for Vice-Chancellor's approval. S. 17 does not, in fact, confer on the Vice-Chancellor the power to veto the disciplinary action taken by the private institution.

In *St. Xavier College* case, also the management of the institution was completely taken away under Ss. 40 and 41 of the Act. The Private Institution was required to be a constituent College of the University and was to be governed by the Statutes that may be framed by the University. Ss. 31A (1) (a) set up a Governing Body which to include amongst its Principals the representatives of the University nominated by the Vice-Chancellor and representatives of the Teachers of the non-teaching staff and students of the college. In the circumstances, the Court held that the right to administer and to conduct the affairs of the institution, were taken away from the institution. The

A disciplinary proceedings which were to be conducted against the teachers was required to obtain approval of the Vice-Chancellor or any other officer of the University authorised by the Vice-Chancellor. Apart from the objection to the power conferred on the Vice-Chancellor to nominate any of its subordinate, the power conferred on the Vice-Chancellor was found to be unconstitutional as it was a blanket B power unguided and uncanalised.

In *Lilly Kurian* v. *Sr. Lewina and Ors.*(1), the provisions of Ordinance 33, Chapter 67 of the Ordinances framed by the Syndicate of the University of Kerala, under S. 19 (1) of the Kerala University Act, 1957 was challenged. S. 33 (1) C provided that the management may at any time place a teacher under suspension where a disciplinary proceedings against him is contemplated or is pending. He shall be paid subsistence allowance and other allowances by the Management during the period of suspension at such rates as may be specified by the university. The teacher shall have the right to appeal against the order of suspension to the Vice- D Chancellor of the University within a period of two months from the date on which he receives the order of suspension. Cl. 4 of Ordinance 33 provided that the teacher shall be entitled to appeal to the Vice-Chancellor of the University against any order passed by the Management in respect of the penalties referred to in items (ii) to (v). Ordinance 33(4) conferred a right of appeal on the teacher to prefer an E appeal against the order of Management to the Vice-Chancellor in respect of the penalties imposed on him. Ordinances 33(1) and 33(4) were struck down by this Court on the ground that the conferment of right of appeal an outside authority like the Vice-Chancellor under Ordinance 33(4) took away the disciplinary power of the minority institution. The Vice-Chancellor was given power to veto the F disciplinary control which amounted to clear interference with disciplinary power of the minority institution. It was found to be a fetter on the right of administration conferred under Art. 30(1). The main ground on which the powers were found to be violative of the right conferred under Art. 30 was that the right of appeal was provided without defining the scope of the appellate authority. In the cases G referred to, namely, *Very Rev. Mother Provincial, D.A.V. College* and *Lilly Kurian,* the powers conferred on the Vice-Chancellor were held to be blanket power, unguided and uncanalised. The background of the decisions was that the minority institutions were deprived of the powers of administration by forming a body which deprived the insti- H tution of all its powers. In such circumstances, it was found that the power was uncanalised. In the case of *Rev. Father W. Proost and*

(1) [1979] 1 S.C.R. 820.

Ors. (supra), S. 48 was enacted providing that the minority institution shall be entitled to make appointments, dismissal, removal, termination of service and reduction in rank of teachers, subject only to the approval of the Syndicate of the University, which was not challenged. The institution claimed exemption under s. 48B. Bearing the facts of the cases set out above, we have to consider the impugned Act and determine whether the impugned provisions infringe the rights conferred on the minority institutions under Art. 30.

The statements of object and reasons and the salient features of the bill as stated in the objects and reasons and the impugned sections have been set out in full at the beginning of the judgment. The main object of the legislation is to regulate the service conditions of the teachers in the private educational institutions and for ensuring the security of service of the teachers. It is further stated that private institution were punishing teachers on flimsy grounds without framing charges and without giving an opportunity to explain. In the preamble it is also stated that the Act is to provide for terms and conditions of service of teachers and to control of the recognised private educational institution. S. 3 of the Act provides that no teacher employed in any private educational institution shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority. S. 3(2) will have to be read alongwith S. 3(1) which provides that when a proposal to dismiss, remove or reduced in rank or otherwise terminate the appointment of any teacher employed in any private educational institution is communicated to the competent authority, the competent authority shall if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment. The Proviso to S. 3(1) states that if any educational management, agency or institution contravenes the provisions of this sub-section, the teacher affected shall be deemed to be in service. This section was challenged as conferring a power of taking disciplinary proceedings on an outside authority and as such it should be held as violative of the rights conferred on the minority institutions. If the power of approval conferred on the competent authority is a blanket power uncanalised and without guidelines, it will have to be held as invalid.

The question, therefore, arises whether the section provides sufficient guidelines for the exercise of the power by the competent authority. In *the State of West Bengal* v. *Subodh Gopal Bose and Ors.*(1) it was held that the statement of objects and reasons could be referred to

(1) [1954] S.C.R. 587.

A for the limited purpose of ascertaining the conditions prevalent at the time which actuated the sponsor of the bill to introduce the same and the extent of urgency and the evil which he sought to remedy since these matters were relevant for deciding whether the restrictions were reasonable within the meaning of Art. 19(2) to (6). The object and reasons for the legislation make it very clear that the legislation B was intended to regulate the service conditions of teachers employed in private educational institutions and for the security of service of the said teachers. The preamble is also an aid in construing the provisions of the Act. The House of Lords in *Att. Gen.* v. *H.R.H. Prince Earnest Augustus of Hanover*(1), held that when there is a C preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is, therefore, permissible to have recourse to it as an aid to construing the enacting provisions. The preamble states that the Act it to provide for terms and service conditions of teachers. If the power conferred under S. 3(1) and s. 3(2) is restricted to regulating the service conditions of teachers and D for ensuring their security of service, the power conferred would be valid. It was submitted by Mr. Lal Narain Sinha the learned counsel for the appellants that the power is uncanalised because the approval can be withheld even on merits which would in fact deprive the disciplinary powers of the minority institutions.

It is a well settled rule that in interpreting the provisions of a E statute, the court will presume that the legislation was intended to be intra vires and also reasonable. The rule followed is that the section ought to be interpreted consistent with the presumption which imputes to the legislature an intention of limiting the direct operation of its enactment to the extent that is permissible(2). Maxwell on Interpretation of Statutes, Twelfth Edn., P. 109 under the Caption : "Restric- F tion of Operation" States :—

> "Sometimes to keep the Act within the limits of its scope, and not to disturb the existing law beyond what the object requires, it is construed as operative between certain persons, or in certain circumstances, or for certain pur- G poses only, even though the language expresses no such circumscription of the field of operation."

The following passage in *Bidie* v. *General Accident, Fire and Life Assurance Corporation*(3) was cited with approval in *Kesavananda Bharti* v. *State of Kerala* (4) :

H (1) [1957] A C. 436.
(2) Street on Doctrine of Ultra Vires 1930 Edn. P. 444.
(3) [1948] 2 All. E. R. 995, 998.
(4) [1973] Supp. S.C.R. 1 (101).

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> "The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words *in vacue,* so to speak, and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of prima facie meaning which may have to displace or modify. It is to read the statute as a whole and ask oneself the question : "In this state, in this context, relating to this subject-matter, what is the true meaning of that word ?"

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According to Holmes, J. in *Towne* v. *Eigner*(1), a word is not crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used. Gwyer, J. in *Central Provinces and Berar Act*(2), held :

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> "A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implication of the context, and even by the considerations arising out of what appears to be the general scheme of the Act."

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To the same effect are the observations of this Court in *Kedar Nath Singh* v. *State of Bihar* :(3)

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> "It is well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to supress. (*The Bengal Immunity Co. Ltd.* v. *The State of Bihar* [1955] 2 S.C.R. 603 and *R.M.D. Chamaurbaugwalla* v. *The Union of India* [1957] S.C.R. 930 cited with approval."

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This Court has in several cases adopted the principle of reading down the provisions of the Statute. The reading down of a provision of a statute puts into operation the principle that so far as it is reason-

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(1) 245 U. S. 418=62 L. ed. 372, 376.
(2) [1939] F. C. R. 18 & 12.
(3) [1962] 2 Suppl. S.C.R. 769.

A ably possible to do so, the legislation should be construed as being within its power. It has the principle effect that where an Act is expressed in language of a generality which makes it capable, if read literally, of applying to matters beyond the relevant legislative power, the Court will construe it in a more limited sense so as to keep it within power.

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Applying the principles laid down in the cases cited above, the power conferred under S. 3(1) and (2) of the impugned Act will have to be construed. This Court has in *St. Xavier's College* case (supra) held that the provisions of S.51A(1) of the impugned Act in that case which provided that no member of the other academic C and non-teaching staff of an affiliated college and recognised or approved institution shall be dismissed, or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and until he has been given a reasonable opportunity of making representation on any such penal- D ty proposed to be inflicted on him, as a valid condition. Mathew, J. affirmed that if the purpose of the approval is to see that the provisions of sub-sec. 51 (A)(1) (a) are complied with, there can possibly be no objection in lodging the power of approval even in nominee of the Vice-Chancellor. Khanna, J. has held that if the power is confined only E to cases of dismissal, removal or reduction in rank or termination of service as mala fide and by way of victimisation, the power would be valid. Regarding the power of interference with the conclusion of a domestic tribunal in disciplinary matters, this Court has held that the decision can be interfered with if there is want of good faith or when there is victimisation or when the management has been guilty of basic F error or violation of principles of natural justice or when the material findings are completely baseless or perverse (*Indian Iron and Steel Co. Ltd.* v. *Their* Workmen(1). It has also been held that the authority interfering is not a Court of Appeal and cannot substitute its own judgment.

G The impugned legislation was passed in the year 1975. It must be presumed that the legislature was conscious of the limitations of the power which the competent authority can have in granting or withholding approval in the case of disciplinary proceedings conducted by private institution. cl. 12(4) of the *Kerala Education Bill* (supra) was held to be valid on the ground that it was designed to give protection H and security to the ill-paid teachers who are engaged in rendering service to the nation and protect the backward classes. If the power is

(1) [1958] S.C.R. 667.

constrused as conferring unrestricted power and if the provisions are held invalid, it will result in considerable mischief and would result in depriving the protection that is available to the poor teacher regarding their security of service. The legislation was for the specific purpose of regulating the service conditions and providing security of service and for preventing teachers from being punished on flimsy grounds without framing charges and without giving an opportunity to explain. It is very different from other cases, in which the legislation was aimed at depriving the minority institutions of all its powers. The only aim of the impugned legislation is to provide security of service. As pointed out there are sufficient guidelines in the objects and reasons in the legislation as well as in the preamble. In the circumstances, it is not only reasonable but proper that a restricted meaning is given to the power of prior approval conferred on the competent authority under s.3.

S.3(1) and (2) will have to be read together. The procedure contemplated is that when the educational insitution proposes to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher it should communicate to the competent authority its proposal. The latter part of S.3(2) mentions that the competent authority shall if it is satisfied that there are adequate and reasonable grounds for such proposal approve such dismissal, removal, reduction in rank or otherwise termination of appoinment. The approval of an order of dismissal or removal etc. will have to be read alongwith S.3(1) which provides that no teacher shall be dismissed etc. without the previous approval of the competent authority. When a domestic enquiry has been conducted and the teacher is given an opportunity to rebut the charges and show cause against the punishment proposed and when fair procedure has been followed and the authority comes to the conclusion that the disciplinary action should be taken against the teacher the proposal will have to be sent to the competent authority. The competent authority will examine the proposal alongwith the procedure adopted by the institution and such dismissal, removal or reduction in rank or termination of appointment. Sub. s(2) requires the competent authority to approve such a proposal if it is satisfied that there are adequate and reasonable grounds for such proposal. The two words "adequate and reasonable" in our opinion furnish sufficient guidelines. The competent authority can interfere if there are no material at all for sustaining the order of punishment or when on the materials found the charge is completely baseless and perverse. The word "adequate" in sub-section will have to be understood as being confined to such examination of the proposal. The word "reasonable" would indicate the power of the competent authority is confined to the power of an authority to inter-

A fere with the enquiry and conclusions arrived at by the domestic Tribunal. The competent authority may satisfy itself that the rules of natural-Justice has been satisfied, that the teacher was given an opportunity to defend the charges against him and to show cause against the punishment proposed to be awarded to him and that a fair procedure has been observed. The authority may also be entitled to interefere when B the punishment was imposed by the institution due to *mala fides* or with a view to victimised him or such like grounds. The word "reasonable" cannot be understood as conferring a power to interfere with the enquiry by the domestic tribunal as a Court of Appeal on merits. The law relating to the circumtances under which the proceedings of C the tribunal can be interferred with has been clearly laid down. Sufficient guidelines are discernible from the Statements of objects and reason which state that the enactment was for the purpose of preventing private institutions from taking disciplinary action on flimsy grounds without framing charges and without giving an opportunity to explain and for regulating the service conditions of teachers and for ensuring D their security of service. We are satisfied that sufficient guidelines are indicated in the Act. The words "adequate and reasonable" should be given a restricted meaning so as to validate the provisions of the section. Thus, understood, the objection raised by Mr. Lal Narain Sinha, learned counsel for the appellant, that S.3(1) and (2) lack guidelines and have conferred a blanket power, cannot be upheld.

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It was next contended by Mr. Lal Narain Sinha that no question of principles of natural justice arised when the conditions of service between the institution and the teacher are regulated by contract. We are unable to accept this contention for the legislature is competent F to enact provisions limiting the power of dismissal and removal. The Legislature has given security of service to employees in industries and in other institutions. It was submitted by the learned counsel that the offence of misconduct has not been classified in the Act and that no procedure for conducting disciplinary enquiry has been prescribed. Such details are not essential. It is within the jurisdiction of the institution to G conduct an enquiry and impose punishments. It is also the right of the competent authority to withhold approval on adequate and reasonable grounds. The plea that the competent authority may be any petty officer cannot also be upheld as the competent authority is defined under S.2(1) as meaning any authority, officer or person authorised by notification performing the functions of competent authority under this Act. H The competent authority or officers of the educational department who are incharge of administration of educational institutions in the area, cannot be called petty officers.

Section 3(3)(a) and 3(3)(b) relate to suspension of a teacher Sub. s.3(a) requires that a teacher employed in a private institution shall not be placed under suspension. Without an enquiry into the gross-misconduct of such teacher is contemplated and sub. s.3(b) requires that the period of suspension shall not exceed two months. If it exceeds two months and the enquiry is not completed within that period, such teacher shall, without prejudice to the enquiry, be deemed to have been restored as teacher. But the proviso enables the authority to extend the period of suspension for another two months if in his opinion the enquiry could not be completed within the period of two months. Sub. ss.(a) & (b) of S. 3 which relate to suspension are regulatory in nature and are intended to safeguard the teachers from being suspended for unduly long periods without there being an enquiry into gross misconduct. We are unable to say that these provisions interfere with the right of administration of the private institutions. S.3(4) states that every teacher placed under suspension shall be paid subsistence allowance at such rates as may be prescribed during the period of his suspension. This sub-section is purely regulatory in nature and unobjectionable.

S.4 confers a right of appeal against the order of punishment imposed on teachers employed in private educational institutions. A teacher who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated or whose pay and allowances or any of the whose conditions of service are altered or interpreted to his disadvantage may prefer an appeal to such authority as may be prescribed. This section was challenged by Mr. L. N. Sinha, learned counsel, on the ground that the right of appeal conferred is a blanket power without any restriction. In any event, the submission that the right of appeal is conferred only on the teacher and not on the institution. Though no restriction are placed on the appellate power, we feel it may be possible to read down the section. But the learned counsel is on firm ground when he submits that the right of appeal is confined only to the teachers and not available to institution. This infirmity invalidates S.4.

Section 5 is consequential of S.4 in which power is conferred on the competent authority to hear appeal in certain past disciplinary cases. S.5 also will have to fail alongwith S.4. S.6 relates to retrenchment of teachers under certain conditions. It provides that when any retrenchment is rendered necessary, consequent on any order of the Government relating to educational institutions or course of instruction or any other matter such retrenchment may be effected with the prior approval of the competent authority. This section is also intended to provide security of service of the teachers and is regulatory in nature and

A the validity of which cannot be questioned. S. 7 requires the pay and allowances of any teacher employed in any private educational institution shall be paid on or before such day of every month, in such manner and by or through such authority, officer or person as may be prescribed. This section is also regulatory in nature and is intended for securing regular payment of the teachers.

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The validity of other sections was not questioned in the writ petitions, and, therefore, it is not permissible to go into it.

In the view we have taken, we do not think that we should go into the merits of each of the cases. In C.A. No. 1280 of 1978—*The All Saints High School Hyderabad* v. *The Govt. of Andhra Pradesh and Ors.*—the learned counsel appearing for the school before the High Court sought the decision only on the legal issues and the questions emanating from the provisions of the Act and specifically requested the court not to decide the merits of the case. In some of the petition the facts have been gone into but we would refrain from going into the facts for it has to be decided as to whether the competent authority has acted within the restricted jurisdiction which have been stated with in our judgment. If the competent authority had exceeded its jurisdiction, it would be open to the aggrieved institution to question the validity of such action. These matters will have to be decided on merits. In the circumstances, we remit all the Civil Appeals to the High Court for disposal on merits in the light of this Judgment.

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ORDER

In the view of the majority, sections 3(3) (a), 3(3) (b), 6 and 7 of the Andhra Pradesh Recognised Private Educational Institutions Control Act, 1975 are valid while sections 3(1), 3(2), 4 and 5 of the Act are invalid in their application to minority educational institutions. It must follow that such institutions cannot be proceeded against for violation of provisions which are not applicable to them. The matters are remanded to the High Court of Andhra Pradesh for final disposal on merits in the light of the judgments.

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G There will be no order as to costs.

N.K.A.