

(1996) 10 KAR CK 0055

In the Karnataka High Court

Case No : W.P.s 23407 to 409, 23467- 8, 27432-3, 25611, 28332 to 6, 29692, 31263 and 44218 of 1995

Associated Managements of Primary and Secondary Schools
and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 11-10-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 29 (1), 30
Karnataka Education Act, 1983 — Section 128, 145, 3 (2) (a), 38, 41 (2) (b) (3)

Citation : (1996) ILR (Kar) 3669 : (1996) 7 KarLJ 664

Hon'ble Judges : R.P. Sethi, C.J.;S. Rajendra Babu, J

Bench : Division Bench

Advocate : B.V. Acharya, for Vijaya Shankar Associates, M.R. Shailendra and Nyayamrita and Vagdevi Associates, for the Appellant; H. Rangavittalachar, GA, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Sethi, C.J.—Alleging violation of fundamental rights, particularly, Articles 14, 19(1)(c) and (g), 29(1) and 30 of the Constitution, the petitioners who have privately owned, managed and run unaided schools have challenged the Constitutional validity of various provisions of Karnataka Education Act, 1983 (hereinafter called the "Act"). The main grievance is projected against the provisions of Section 3(2) (a to h), 7(1) (a to i), 38, 41(2) (b) (3), 41(5), 42, 43, 44, 48, 67 128 and 145 of the Act, It is prayed that the aforesaid offending sections of the Act be declared ultra vires of the Constitution and for issuance of directions to respondents restraining them from either individually or jointly enforcing the said sections.

2. In reply, the vires of the Act have been justified as not violating any fundamental right. It is submitted that the Act was enacted to achieve planned development of educational institutions, inculcation of healthy educational practice, maintenance and improvement in the standards of educational and

better organisation, discipline and control over educational institutions in the State with a view to fostering the harmonious development of the mental and physical faculties of students. It is submitted that there are 37,739 Primary and 2,147 Secondary Schools directly under the control and management of the State; there are 2,433 Aided Primary Schools and 2,538 Aided Secondary Schools and 3,197 Un-aided Primary Schools and 2,801 un-aided Secondary Schools. It is submitted that on account of the awareness of the people to educate their children and the population growth, the demand for primary and secondary schools has increased. In order to accomplish education a constitutional obligation, the State decided to pass the Act called "Karnataka Compulsory Primary Education Act, 1961" which provided compulsory education upto 7th standard. The State noticed various irregularities being committed by some of the private managements by collecting exorbitant educational fees besides appointing teachers, more often, unqualified and terminating the services of the qualified teachers. In order to do away with the irregularities, the Karnataka Primary Education Institutions (Discipline and Control) Act was passed, which provided remedies regarding the tenure of the teachers employed in such institutions. It was subsequently found that the said Act was insufficient to meet several situations. The main Act of 1983 was thereafter passed with the object as noticed hereinabove. The Government provided remedial measures as also prescribed standards of education and overall personality of the students. The Act received assent of the President on 27th October, 1993 and was published in the Karnataka Gazette Extraordinary on 20th January, 1995 which was enforced in the State with effect from 1st June, 1995. It is asserted that the Act did not violate the Constitutional guarantees as enshrined under Articles 14, 19(1)(c) and (g) of the Constitution. The Act does not discriminate between similarly situated private institutions and the same has been enacted for the purpose of rationalizing the education in the light of educational policy accepted and adopted by the Central Government. The Writ Petitions are alleged to be misconceived and liable to be dismissed.

3. It has been contended on behalf of petitioners that the Act is a colourable piece of legislation attempting to subserve the political and bureaucratic needs. The measures indicated in the Act are said to be in the nature of establishing the governmental hegemony over the private educational institutions. The Act has been made to politicise the educational atmosphere of the institutions by putting up the management against the teachers and the parents. Section 42 of the Act is alleged to be forcing the management of the private educational institutions to nominate three members from the teaching staff and two members from the parents of the students against their wish and consent which is arbitrary, unjust, unreasonable and violative of Articles 14 and 19 of the Constitution. Prohibition of appointing more than two members who are relatives as members of the Managing Committee is also alleged to be violative of Articles 14 and 19. Sections 43 and 44 of the Act are stated to be intended to oust the control of general body of the petitioner societies in the matters of appointment and

removal of Secretary who is the Chief Executive officer and in-charge of the functions of the institutions. Proviso to Section 43 has allegedly deprived the ordinary members of the petitioner society to be nominated as secretary since proviso reserves the post in favour of academic head of the institution. Such measure has been termed to be highly prejudicial to the interests of petitioner societies. Sections 3, 7, 42 and 43 are intended to prejudicially interfere and adversely affect the integrity and autonomous functioning of the petitioner societies and working of their private educational institutions. Under these provisions of the Act, State is alleged to have been conferred with vast and enormous powers which are apprehended to be exercised arbitrarily. The Act does not provide any guidelines and procedural safeguards. It is contended that the calculation of the cost of education to fix the fees cannot be done in abstract fashion, since every school has its own structure depending on where it is located and what quality of education is imparted. The Act does not even regulate the fee structure from the application and other subscription received by such institutions. The Act is said to be an instrument of unnecessary and unreasonable interference in the rights of the petitioners who run educational institutions efficiently and in the interest of education. Sections 41, 42, 43 and 44 of the Act are termed to be gratuitous interference in the common law rights of educational institutions to impart education in the best interests of students and parents. Wide unfettered and unguided powers are conferred on the State and its functionaries which render it unconstitutional. It is submitted that there is no guidance to control the framing of the rules u/s 41 of the Act.

4. A perusal of the preamble of the Act shows that the same has been enacted to provide for better organisation, development, discipline and control of the educational institutions in the State. The Act has been necessitated for providing planned development of educational institutions, inculcation of healthy educational practice, maintenance and improvement in the standards of educational and better organisation discipline and control over educational institutions with a view to fostering the harmonious development of mental and physical faculties of students and cultivating a scientific and secular outlook through education. Chapter I of the Act deals with the title, extent, application, commencement and definition of the Act, Chapter II pertains to the educational authorities and Chapter III deals/ provides for enforcement of compulsory primary education. u/s 11 of the Act, the State Government is authorised to prescribe primary education as compulsory. Section 12 deals with schemes for primary education. Section 16 makes a provision for special schools for physically or/and mentally deficient children and Section 19 declares that no fee shall be levied in respect of any child for attending an approved school which is under the management of State Government or a local authority or a school Board. Chapter IV deals with examinations and prevention of malpractices etc. Chapter V of the Act relates to classification and registration of educational institutions. The educational institutions have been classified as follows u/s 29 of the Act:

(a) State institutions, that is to say, educational institutions established or

maintained and administered by State Government;

(b) Local authority institutions, that is to say, educational institutions established or maintained and administered by a local authority; and

(c) private educational institutions, that is to say, educational institutions established or maintained and administered by any person or body of persons registered in the manner prescribed institutions established or maintained and administered by any person or body of persons registered in the manner prescribed.

Section 30 provides that save as otherwise provided in the Act, every local authority, institution and every private educational institution established on or before the date of commencement of this Act or intended to be established thereafter, shall notwithstanding anything contained in any other law for the time being in force, be registered in accordance with this Act and the rules made thereunder. Section 31 prescribes the procedure for registration of educational institutions. Section 34 of the Act deals with cancellation of registration. Section 35 provides for registration of tutorial institutions. Chapter VI of the Act deals with recognition of educational institutions and withdrawal of such recognition. Sections 40 to 46 of the Act deal with the duties of management of local authority institution, management of recognised educational institutions, the provision for Managing Committee for the recognised private educational institutions, appointment of a President and a Secretary, to the Managing Committee, removal of Secretary, holding of meetings of managing committee and powers and functions of the managing committee.

5. Chapter VIII regulates admission to recognised educational institutions and scales of fees. Chapter IX deals with the grants in aid to certain recognised institutions. Chapter X makes provision for maintenance of accounts by the educational institutions receiving grants, the annual audit of accounts, inspection or enquiry in respect of educational institutions, their accounts, buildings, laboratories, libraries, workshops, equipments and also of examinations. Prohibition of transfer of properties by aided educational institutions is incorporated in chapter XI, whereas, Chapter XII deals with taking over of management, requisitioning and acquisition of educational institutions under specified circumstances. Chapter XIII makes provision for ancillary services in recognised institutions such as medical examinations and health services, provision of meals and refreshments, provision for recreation and physical training, guidance service and library services. Chapter XIV deals/regulates the terms and conditions of the services of employees in private educational institutions. Section 102 in Chapter XV provides that the governing council of private educational institutions shall be governed by such code of conduct as the State Government may after previous publication prescribe. Every private educational institution is obliged to maintain a list of properties, both moveable and immovable owned or possessed by it. All monies collected, grants received and all property held by the management of a private educational institution is

required to be utilized for its prescribed purposes and the purposes for which they are intended and is required to be accounted for in such manner as may be prescribed in terms of Section 104 of the Act. No private educational institution shall be closed down or discontinued unless a notice as prescribed u/s 105 of the Act is issued. In the event of the private institution being closed down or discontinued or its recognition being withdrawn, the Governing Council shall hand over or cause to be handed over to the competent authority the custody of all the properties, records and accounts of the institution in his possession. Chapter XVI authorises the State Government to constitute State Educational Advisory Council for the purpose of advising the Government on matters pertaining to educational policies and programmes. Chapter XVII prescribes the penalties for contravention of various provisions of the Act and Chapter XVIII makes provision for filing revision, appeals by the aggrieved person or the Governing Council and also power of the State Government to give directions for the purposes of enforcement of various provisions of the Act. Power of inspection has been conferred upon the specified officers u/s 134 of the Act. Protection from prosecution is enshrined u/s 136 of the Act.

6. In order to properly adjudicate the rival contentions raised before us, it is necessary to have a glance into the circumstances which necessitated the enactment of the Act for the purpose as spelt out in its preamble. There cannot be two opinions that in our society, education is recognised as the pious obligation of the mankind. Imparting education in Indian society was considered a religious and charitable obligation. Education was never considered a saleable commodity, nor was it made the principle for amassing wealth. However the experience of past about half a century has brought to light, the various vices and illegalities committed in the field of education which is being exploited only for inflating the money bags of the influential and greedy people involved in the task of imparting education on, account of the failure of the State/the field of education has time and again been brought to the notice of the Courts in the country who have risen to the occasion by issuing appropriate directions. It is for the society as a whole to protect and safeguard education being exploited and from being rendered a saleable commodity. The activities connected with education cannot and should not be permitted to be carried on with the only motive of earning profits. The Apex Court in *Miss. Mohini Jain Vs. State of Karnataka and others*, . and *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, . highlighted the importance of education and dealt with the proclaimed right of the educational institutions in the activities connected with education. It was specifically observed that Indian civilisation recognised education as a pious obligation of the human society which was never treated as commerce in the country. Making education as commerce, business, is opposed to the ethos, tradition and sensibilities of the nation. "Imparting of education has never been treated as a trade or business in this country since times immemorial. It has been treated as religious duty. It has been treated as a charitable activity but never as trade or business. The said activity cannot be

called a "profession" within the meaning of Article 19(1)(9). The Apex Court further observed that teaching may be a profession but establishing an institution, employing teaching and non-teaching staff, procuring the necessary infrastructure for running a school or college is not practising profession.

7. In UNNI KRISHNAN'S CASE, (supra) the Supreme Court had noticed that private educational institutions were of necessity in the present day because Government was not in a position to meet the demand of imparting education despite the fact that education was one of the most important functions of the Indian polity. It was further held that education could not be allowed to be converted into commerce by relying upon the wider meaning of occupation. While agreeing with C.J.I. and S.P. Bhargava, J with respect to the conclusions arrived at by them, Mohan J, while delivering a separate judgment held:

"In each of these cases, depending upon the statute, either "occupation" or "business" has come to be defined. Certainly, it cannot be contended that establishment of an educational institution would be "business". Nor again, could that be called trade since no trading activities carried on. Equally, it is not a profession. It is one thing to say that teaching is a profession but, it is a totally different thing to urge that establishment of an educational institution would be a profession. It may perhaps fall under the category of occupation provided no recognition is sought from the State or affiliation from the University is asked on the basis that it is a fundamental right."

8. Reacting to the observations made by Mohan J, B.P. Jeevan Reddy and S. Ratnavel Pandian JJ in this behalf observed:

"Article 19(1)(g) of the Constitution declares that all citizens of this country shall have the right" to practise any profession, or to carry on any occupation, trade or business. Clause (6) of Article 19, however says;

x x x While we do not wish to express any opinion on the question whether the right to establish an educational institution can be said to be carrying on any "occupation" within the meaning of Article 19(1)(g) - perhaps, it is we - are certainly of the opinion that such activity can neither be a trade or business nor can it be a profession within the meaning of Article 19(1)(g). Trade or business normally connotes an activity carried on with a profit motive. Education has never been commerce in this country. Making it one is opposed to the ethos, tradition and sensibilities of this nation. The argument to the contrary has an unholy ring to it. Imparting of education has never been treated as a trade or business in the country since times immemorial. It has been treated as a charitable activity. But never as trade or business.."

9. Without deciding as to whether right to establish an educational institution was an occupation or not within the meaning of Article 19(1)(g) of the Constitution, the majority of the Judges decided the case on the assumption that, perhaps, it was so. The Supreme Court however, specifically distinguished between trade, commerce, profession and occupation. Relying upon The State of

Bombay Vs. R.M.D. Chamarbaugwala, , it was declared that imparting education could not be treated as a trade or business or be allowed to be converted into commerce. Such institutions could not be permitted to seek to obtain the results by relying upon the wider meaning of occupation. The content of expression "occupation" has to be ascertained keeping in mind that Clause(g) of Article 19(1) of the Constitution employs all four expressions, i.e., profession, occupation, trade and business. It was observed that their fields may overlap, but each of them did certainly have a content of its own, distinct from the others. It held "be that as it may, one thing is dear - imparting of education is not and cannot be allowed to become Commerce. A Law, existing or future ensuring against it would be a valid measure within the meaning of Clause (6) of Article 19." Therefore, the activity of establishing an educational institution could not be held to be a profession. After analysing the various aspects of the matter, the Apex Court in UNNI KRISHNAN'S CASE concluded:

"We are also of the opinion that the said activity cannot be called a "profession" within the meaning of Article 19(1)(g). It is significant to notice the words "to practice any profession". Evidently, the reference is to such professions as may be practiced by citizens i.e., individuals. Establishing educational institutions can by no stretch of imagination be treated as "practising any profession". Teaching may be a profession but establishing an institution, employing teaching and non-teaching staff, procuring the necessary infrastructure for running a school or college is not "practicing profession". It may be anything but not practising a profession. We must make it dear that we have not gone into the precise meaning and content of the expressions profession, occupation, trade or business for the reason that it is not necessary for us to do so in view of the approach we are adopting herein after, which would be evident from the succeeding paragraphs. Our main concern in the entire preceding discussion is only to establish that the activity of establishing and/or running an educational institution cannot be a matter of commerce...."

10. As noted earlier, the provision of the Act have been challenged mainly on the grounds that the offending Sections violated the guarantees as enshrined under Articles 14,19,29 and 31 of the Constitution. Article 14 of the Constitution guarantees equality before law and Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 14 is a general provision which mandates that the State shall not deny to any person equality before the law or the equal protection of laws and has to be read subject to the other provisions included in Part-III of the Constitution. Equality before law and equal protection of laws has been interpreted to be the right to equal treatment in similar circumstances both in the matter of privileges granted and the liabilities imposed. It does not mean that every law must have universal application for all citizens who may not be by nature, attainment or circumstances in the same position. The principle contains in this Article authorises the State for classifying persons or group of persons for legitimate purposes and provide differential treatment for such group of persons. Differential treatment does not "per se"

amount to the violation of the guarantee of Article 14. It is for the person approaching the Court to establish that the offending provision amounted to denial of equality and equal protection of law. If a statute or a Government order is proved to be equally dealing with the members of a well-defined class, the provisions of this Article would not affect to the reasonable discrimination between the classes which has been held to be permissible. However, discrimination amongst the persons forming the same calls in prohibited by Article 14. Jennings in his "Law of the Constitutions" (5th Ed. p.50) stated. "Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike." Dicey in his treatise, "Law of the Constitution" (10th Ed page 202) asserted equality before the law as a corollary from the famous doctrine of Rule of Law. It is acknowledged that the idea of equality is the heart and soul of the Indian Constitutional system. Equality in general cannot be universally applied and is subject to restrictions as spelt out in the Constitution itself.

11. Article 19 guarantees the freedom of speech and expression; to assemble peaceably; to form associations or unions; to move freely throughout the country; to reside and settle in any part of India and to practice any profession, or to carry on any occupation, trade or business. A peep into various clauses of this Article would reveal that Article 19 is confined to rights generally known as civil rights, natural and common law rights. Such rights are distinguishable from contractual rights, political rights and rights created by the statute. The rights conferred by this Article are subject to reasonable restrictions. Reasonable restrictions have to be determined in each case according to the peculiar facts and the circumstances. The reasonable restrictions are intended to strike a balance between the freedom guaranteed by any of the clauses of Article 19 and the social control permitted by the other clauses incorporated under the Article. Such restrictions have to be determined in an objective manner. Similarly, a restriction operating harshly would not by itself render it unreasonable. The restriction being good or bad is immaterial to determine its reasonableness.

12. Article 29 protects the interests of minorities. This Article provides that if there is a cultural minority intending to preserve its language, script and culture, the State shall not impose upon it any other culture which may be local or otherwise. It further provides that no citizen shall be denied admission into any educational institution maintained by the State or other State aided educational institutions on the grounds only of religion, race, caste or language. It may be noted that even though the offending provisions of the Act had been challenged on the ground of being violative of Article 29 of the Constitution, yet, the Learned Counsel, for petitioners did not press the plea regarding violation of Article 29.

13. Similarly, Article 30 of the Constitution guarantees the right of minorities to establish and administer educational institutions of the State Government. It provides that the State Government shall not, in granting aid to educational

institutions, discriminate against any educational institution on the ground that it is under the management of the minority, whether based on religion or language. It further provides that in making any law providing for compulsory acquisition of any property of an educational institution established and administered by a minority, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under the Article. Even though various provisions of the Act were challenged on the ground of alleged violation of provisions of Article 29 and 30 as evident from the pleadings, yet during the course of the arguments, the Learned Counsel did not press the plea on this count. No arguments were addressed regarding the violation of the various provisions of the Act, on account of the violation of these Articles. The arguments were restricted only to urge that the Act had violated the guarantees as enshrined in Articles 14 and 19 of the Constitution.

14. In the light of scope, object, limitations and restrictions imposed by Articles 14 and 19 of the Constitution of India, as noted hereinabove, let us now examine various sections of the Act which have been urged to be ultra vires on the ground of being violative of the provisions of the aforesaid Articles. Section 3(2) of the Act provides that the State Government may for the purposes of the Act:

- (a) establish and maintain educational institutions;
- (b) permit any local authority or a private body of persons to establish educational institutions and maintain them according to such specifications as may be prescribed;
- (c) require registration of educational institutions including tutorial institutions;
- (d) recognise educational institutions;
- (e) grant aid to any recognised educational institutions in furtherance of the objects of the Act;
- (f) regulate the admission including the minimum or maximum number of persons to be admitted to any course in any educational institution or class of such institutions and the minimum age for such admission;
- (g) prescribe the conditions for eligibility of or admissions to any educational institution or class of such institutions;
- (h) establish hostels or recognise private hostels and frame rules for grant-in-aid to recognise private hostels;
- (i) permits or establish institutions imparting education in arts, crafts, music, dance, drama or such other fine arts, physical education including sports;
- (j) permit and establish institutions or centers for pre-primary education, adult education and non-formal education; and
- (k) take from time to time such other steps as they may consider necessary or

expedient.

It is submitted that the powers assumed by the State Government under Clauses (a to h) of Section 3(2) of the Act interfere with the rights of the petitioners to manage, carry on the establish education institutions which were violative of both Articles 14 and 19 of the Constitution. The argument is without any substance in as much as no discrimination is contemplated under the Section. The Learned Counsel for petitioners has not been in a position to refer to any hostile discrimination / treatment amongst the member of the same class similarly situated. In the light of the various pronouncements of the Apex Court as noted hereinabove, it cannot be said that the classification made u/s 3(2) was in any way violative of guarantees of Article 14 of the Constitution. Similarly, this sub-section cannot, be held to be violative of Article 19(1)(c) and (g) of the Constitution in as much as it has been authoritatively pronounced that no person or citizen has a vested right to establish educational institution which has rightly been held to be not a trade, occupation profession or business. Even though, establishment of an educational institution is held to be an occupation, it is not understandable how the provisions interfere with such occupation. Regulation of educational institutions for the purpose and to achieve objects as noted earlier and as incorporated under the preamble of the act cannot be held to be violative of any clause mentioned in Article 19 of the Constitution. There is no vice in this sub-section requiring interference.

15. Section 7 of the Act authorises the State Government to prescribe the curricula, syllabi and textbooks for any course of instruction; the duration of such course; the medium of instruction; the scheme of examinations and evaluations; the number of working days and working hours in any academic year; the rates at which tuition and other fees, building fund or other amount may be charged from students or on their behalf; the staff pattern and the other qualifications for different posts; the facilities to be provided such as buildings, sanitary arrangements, playgrounds, furniture, equipment, library, teaching aid, laboratory and workshops under such institutions and such other matters as may be considered necessary to carry on the purposes of the Act, regulatory provisions intended to be incorporated for carrying on the object of planned development of educational institutions that is the declared purposes of inculcation of healthy educational practices for the purpose of maintenance and improvements in the standards of educational and better organisation discipline and control over education institutions cannot be termed to be arbitrary or discriminatory or violative of any of the fundamental rights enshrined in Part III of the Constitution of India. The main grievance of the petitioners appears to be the power and authority of the State Government to regulate prescribing the rates of tuition and other fees. No person or authority can claim the fundamental right of prescribing any tuition or other fees in an educational institution and if such tuition or other fee is regulated, cannot have any grievance to allege that prescribing of such fee amounted to interference with his right to carry on a trade, business or profession. In the instant case, no such averment can be

traced. The Apex Court as earlier noted, has equivocally held that establishment of educational institution was neither a trade, nor a profession/business. The provisions incorporated in the section being regulatory, reasonable and within the constitutional limits, cannot be stretched to the extent, of holding them unconstitutional on the alleged ground of violation of fundamental rights.

16. Section 38 of the Act deals with the recognition of existing institutions. The Constitutional validity of the section has been challenged on the ground that it discriminates between the educational institutions established and run by the State Government or by the authority sponsored by the Central Government or by local authority and approved by the competent authority on the one hand; and the private educational institutions imparting education which were in existence at the time of commencement of the Act but had not been recognised in accordance with the rules in force immediately before the commencement and in existence at such commencement, on "the other hand. It is submitted that the educational institutions which were not private educational institutions have been deemed to be educational institutions recognised under the Act whereas the private educational institutions have been put under an obligation to seek recognition. As in the absence of such recognition within a specified time, such institutions are debarred from continuing to impart education, they have been subjected to discriminatory treatment. The argument is without any substance in as much as it is clearly established that the private educational institutions have been treated as a distinct class, such institutions are really distinguishable from the other educational institutions covered under Clauses (a) and (b) of Sub-section (1) of Section 38 of the Act. The classification is not only reasonable but also based upon definite rational criteria. The educational institutions referred to under Clauses (a) and (b) of Sub-section (1) of Section 38 are deemed to be held under regulatory control on account of having been established and run by State Government, Central Government or the local authority, whereas no such regulatory provisions was shown to be existing with respect to private educational institutions imparting education. As the private educational institutions imparting education have been held to be performing the functions of the State Government, they are required to be regulated and controlled by putting restrictions and conditions which are however required to be not unreasonable or arbitrary. The Learned Counsel appearing for petitioners has not shown us any unreasonable condition imposed by Sub-section (2) of Section 38 of the Act violating the rights conferred by Article 19 of the Constitution.

17. Similarly, Section 39 of the Act which only authorises the competent authority to withdraw recognition of an educational institution cannot be held to be arbitrary because the power of withdrawal of recognition can be exercised only on proof of violation of conditions mentioned in Clauses (a) to (f) of Sub-section (1) of Section 39 of the Act. No unreasonable or unguided powers have been conferred upon the competent authority as alleged.

18. The validity of Section 41 of the Act has been challenged on the ground that

it interferes with the right of the petitioners to manage the affairs of their institutions in accordance with their own rules, bye-laws and guidelines. It is submitted that subjecting the aforesaid institutions to the control of the State Government amounts to interference with the right of the educational institutions as allegedly conferred upon them by Article 19(1)(c) and (g) of the Constitution. The submission is without any substance and based upon misappreciation of the mandate of Article 19. In order to achieve the objects of the Act, the State Government has power to frame rules in the manner prescribed for the purpose of prescribing qualifications for posts of teaching and non-teaching employees; the manner of recruitment of teaching and non-teaching employees" scales of pay and allowances admissible to them; leave, pension, provident fund, insurance and other benefits; maintenance and enforcement of discipline of employees; powers, functions and responsibilities of the management; duties and responsibilities of the secretary and the maintenance and submission of records, accounts and other returns to the prescribed authority. None of the conditions sought to be prescribed and noted hereinabove can be termed to be unreasonable, unguided or unbridled. The petitioners have failed to discharge the burden of showing that the alleged classification was either arbitrary or unconstitutional. It was noticed by the Apex Court in UNNI KRISHNAN'S CASE (supra) that the policy of the Central Government is bound to involve private and voluntary effort in this sector of education, in conformity with accepted norms and goals, To achieve the objective of imparting education the Central Government formulated a policy in the year 1986 which was modified in 1992. The relevant extracts from the policy necessary for determining the rival contentions in this case are reproduced herein below:

"In the interests of maintaining standards and for several other valid reasons, the commercialisation of technical and professional education will be curbed. An alternative system will be devised to involve private and voluntary effort in this sector of education, in conformity with accepted norms, and goals.

Non-Government and voluntarily effort including social activist groups will be encouraged, subject to proper management and financial assistance provided. At the same time, steps will be taken to prevent the establishment of institutions set up to commercialise education."

In view of what has been noted hereinabove, it cannot be said that Section 41 of the Act is violative of any of the provisions of the Constitution.

19. The validity of Section 42 of the Act has also been challenged on similar grounds alleging that the provision made therein amounts to interference with the right of the educational institutions to constitute their Managing Committee. It is submitted that the State Government did not have the jurisdiction to direct the Constitution of Managing Committee in the manner prescribed under Sub-section (8) of Section 42 of the Act. This submission is without any substance in the light of facts and the position of law noted hereinabove.

20. President and Secretary of every Managing Committee is required to be appointed from among its members with the condition that no employee of the private educational institution other than its academic head shall be chosen as the Secretary; It is further, provided that every person, who on the date of commencement of the Act was exercising the powers of the Secretary shall be deemed to be the Secretary of the institution. The Secretary is deemed to be the Chief Executive of the institution subject to the general superintendence and control of the Managing Committee. All acts done by the Secretary in connection with the affairs of the educational institution shall be binding on the governing council unless the council modifies or cancels such action of the secretary within a period specified under Sub-section (2) of Section 43 of the Act It is further provided that the Secretary shall be the custodian of all property and records of the institution and responsible for their proper custody, maintenance and safety. The provisions of this Section are in conformity with the statement and object of the Act, its preamble and the mandate of law as declared in various judgments earlier noted herein. The grievance of the petitioners is that the condition of the Secretary being only such employee of the educational institution who was an academician, interferes with the right of petitioners to manage the Committee, which is without any basis. No management can insist for having a secretary who has no background of being an academician, particularly when the institution is duly managed and controlled by the Managing Committee of the educational institution established with the purpose and object as noted hereinabove. The plea of the petitioners is without any substance and liable to be rejected.

21. Section 44 which empowers the competent authority to remove the Secretary cannot be termed to be illegal or unconstitutional or arbitrary. This Section refers to the conditions for and prescribes the procedure under which the Secretary can be removed. It specifically provides that if the competent authority is satisfied that the secretary was not managing the private educational institution in accordance with the provisions of the Act and the rules, it may direct the governing council to replace the Secretary by another person. The governing council which is admittedly the apex body, has been, put under an obligation to comply with the directions of the competent authority. Once the exercise of the power is required to be invoked upon the existence of the circumstances indicated in the section itself, the exercise of such power cannot be termed to be arbitrary. The mere apprehensions and suspicions cannot be made a basis for declaring the enactment of this Section to be unconstitutional as has been prayed for on behalf of the petitioners.

22. Challenging the vires of Sections 41 to 44 of the Act, the Learned Counsel for the petitioners has submitted that as the aforesaid provisions amounted to interference with the right of the management of the voluntary organisation, the same is violative of Article 19(1)(c) and (g) of the Constitution. Reliance is placed upon the judgments of the Apex Court in Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, . and The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, .

23. In Damyanti's case (supra), it was held;

" It is true that it has been held by this Court that after an association has been formed and the right under Article 19(1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire."

In the peculiar circumstances of the case, the Court however held that such rule was not applicable in that case, because the impugned Act did not merely regulate the administration of the affairs of the Society but in fact, it altered the composition of the Society itself, the result of which was that the members, who voluntarily formed the Association were compelled to act in that association with other members who had been imposed as members by the Act and in whose admission to membership, they had no say. Such alteration in the composition of the Association itself was held to be interfering with the right to continue to function as members of the association which was voluntarily formed by the original founders. The Court further held "the right to form an association, necessarily implies that the persons forming the association had also the right to continue to, be associated with "only those whom they voluntarily admit in the association." Any law, by which members are introduced in the association, without any option being given to the members to keep them out or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. In that case, the vires of the Hindu Sahitya Sammelan Act, 1962, were challenged which inter alia provided that first Governing Body of the Sammelan was to be constituted u/s 8 of the Act and was to consist of a Chairman, a Secretary and 13 other members. The 13 members were to be chosen as follows:

" (1) One member to represent the Ministry of the Central Government dealing with education;

(ii) One member to represent the Ministry of the Central Government dealing with finance;

(iii) Not more than three members from among the former Presidents of the Society; and

(iv) the remaining number from among persons who are, in the opinion of the Central Government eminent in the field of Hindi language or Hindi literature."

In the context of the circumstances, the Court found " the number of such new members could even be so much as to leave the original members in a small minority with the result that those members could become totally ineffective in the Society." In the instant case, the composition of the Managing Committee has not been altered to the extent as was noticed by the Supreme Court in Damyanti's case (supra). Under the Act, the Managing Committee has to consist of not less than 11 and not more than 15 members nominated by the Governing Council, of whom not less than three including the academic head of the

institution and two members of the teaching staff are to be representatives of the teachers of the institution and at least two others to be representatives of parents selected in accordance with the prescribed rules. Members of the Staff are to be nominated by rotation according to seniority for a period of two years each. Where the institution has less than three members of the teaching staff, all of them are representatives of the teachers. Not more than two persons who are closer relations are to be nominated as members of the Managing Committee. Upon an analysis, it is found that no outsider is intended to be appointed as member of the Managing Committee as was noticed by the Supreme Court in Damyanti's case (supra) where one member was to be appointed representing the Ministry of Central Government dealing with education; one member representing the Ministry of Central Government dealing with finance and three members from among the former Presidents of the Society; and remaining members from among the persons who were, in the opinion of the Central Government eminent in the field of Hindi language or Hindi literature. No other admissions had been left for the management. On the contrary, nothing has been taken away from the management in the instant case. All powers have been vested in the Governing Council and members to be appointed to the Managing Committee from amongst the staff of the Management, their relations and parents of the children. The reliance on DAMYANTI'S CASE (supra) placed by the Learned Counsel is of no help to the petitioners.

24. In AHMEDABAD ST. XAVIER'S COLLEGE CASE, (supra), the Apex Court noted the distinction between the restriction on right of administration and a regulation prescribing the manner of administration. Hon'ble Ray, C.J. speaking for himself and Palekar J, in that case observed;

"The ultimate goal of a minority institution to imputing general secular education is advancement of learning. This Court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education."

The law laid down in ST. XAVIER'S COLLEGE CASE (supra) is also of no help to the Learned Counsel for petitioners.

25. Section 48 of the Act regulates the collection of fees or charges or donations or other payments. Prescription of rate at which fees are to be collected has been regulated for a specific purpose and objective as noticed in the preamble of the Act. The illegalities committed by the private educational institutions in the matter of collection of fees and donations was noticed by the Apex Court in Unni Krishnan's case (supra). Collection of fees or charges including the exorbitant donations cannot be held to be the fundamental right of any person. The right to levy, collect and charge fees, donations and other payments has not been taken away but only regulated. This regulation of collection of fees donations cannot be held to be unconstitutional allegedly on account of interference with the management of the educational institutions.

26. Who pays or who can be made to pay for establishment, expansion and improvement/diversification of a private educational institution? Can an individual or body of persons be permitted to collect amounts according to their choice? Who should work out the economics of each institution? - these were the questions which were noted by the Supreme Court in UNNI KRISHNAN'S CASE(supra) and replies to the questions were:-

" Any solution evolved has to take into account all these variable factors. But one thing is clear: commercialisation of education cannot and should not be permitted. The Parliament as well as State Legislatures have expressed this intention in unmistakable terms. Both in the light of our tradition and from the stand point of interest of general public, commercialisation is positively harmful; it is opposed to public policy."

In the light of the above, provisions of Section 48 of the Act, do not suffer from any constitutional infirmity.

27. The Constitutional validity of Section 67 cannot be challenged on the ground of discrimination in terms of Article 14 in as much as it deals with all educational institutions irrespective of whether they are privately managed or managed by local authority or by the State. Taking over of the management of educational institution has been made permissible only in public interest which can be resorted to in accordance with the procedure prescribed under the section. This Section mandates: Where the State Government is of the opinion that the management of educational institution was required to be taken over, it may, after giving one month's notice to the person or body of persons in charge of the management of such institution, afford them an opportunity to make representation, and thereafter, direct by notification, that the management of the said educational institution shall with effect from the date specified therein vest in the State Government until the said educational institution is acquired. The acquisition of the educational institutions is regulated by the provision of Section 74. Article 31 which provided for prohibition regarding acquisition of property was deleted vide 42nd amendment made to the Constitution. Acquisition of property has been acknowledged to be legally valid and Constitutional. The provisions made for acquisition of property in the Act is neither unreasonable nor unguided. The powers conferred upon the State Government under Sections 67 to 74 are regulated by the provisions contained therein and have a definite purpose which cannot be termed to be either illegal or unconstitutional. The omission of the aforesaid Sections from the scheme of the Act would render the provisions of the Act ineffective and unworkable. The rule of interpretation of the statutes cannot be applied in a manner which defeats the object for which the enactment is made and thereby render the Statute unworkable. The provisions do not, in any way, violate the guarantee as of Article 14 or Article 19 of the Constitution.

28. No serious arguments were addressed regarding the Constitutional validity of Sections 128 and 145 of the Act, and no other point was argued.

29. After having considered the statements of objects and reasons, the preamble of the Act, the educational policy of the State Government and Central Government, the pronouncement made by the Apex Court and various cases pertaining to the subject -"education" and detailed critical examination of the impugned provisions, we have come to the conclusion that the grievances projected by the petitioners are without any basis. No alleged offending provision contravenes any Constitutional guarantee, as enshrined in Articles 14, 19(1)(C) and (g), Articles 29 and 30 of the Constitution. The aforesaid provisions of the Act are reasonable, fair and intra vires of the Constitution. The apprehensions expressed by the petitioners are farfetched and do not require any interference. There is no merit in these Writ Petitions which are accordingly dismissed with costs assessed at Rs. 500/- in each petition.