

(1988) 10 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 7812, 12724 and 12767 of 1988

Bal Bharti Nursery School and Another

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 14-10-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 226

Criminal Procedure Code, 1973 (CrPC) — Section 141, 144, 144(1), 144(2), 144(3)

Defence of India Rules, 1962 — Rule 30(1)

Income Tax Act, 1961 — Section 10(22)

Penal Code, 1860 (IPC) — Section 147, 380, 420, 452, 467

Citation : (1990) CriLJ 422

Hon'ble Judges : S.K. Dhaon, J; D.S. Sinha, J

Bench : Division Bench

Advocate : Janardan Sahai and Sudhir Chandra, for the Appellant; Standing Counsel, Satish Trivedi, K.N. Misra and Umesh Narain Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dhaon, J.—In these petitions, the two petitioners, namely, Bal Bharti Nursery School and Sri Hastim Raza Ali Bakht (hereinafter referred to as Sri Bakht) are common and one of the respondents, namely, the District Magistrate, Allahabad, is common and according to the petitioners the controversies in these petitions are interlinked. Therefore, these petitions were heard together and they can be conveniently disposed of by a common judgment.

2. The District Magistrate, Allahabad, on 18th April, 1988 directed the Manager of the Syndicate Bank, Civil Lines, Allahabad, to stop the operation of the accounts of the Bal Bharti School and Sri Bakht and not to permit the withdrawal of any amount from these accounts without his prior permission (District Magistrate's). This order is being impugned in Writ Petition No. 7812 of 1988.

3. In Writ Petition No. 17724 of 1988 the allegation is that the District Magistrate directed closure of the Bal Bharti School, was intending to take over the School

and also threatening to appoint a Receiver for the benefit of the School. The Principal prayer, therefore, in this petition is that a writ in the nature of mandamus may be issued commanding the District Magistrate to forbear from interfering with the affairs of the Bal Bharti School. On 15th July, 1988, the City Magistrate purported to pass an order u/s 144 of the Code of Criminal Procedure (hereinafter referred to as the Code) in relation to the Bal Bharti School. This order is being impugned in the Writ Petition No. 12767 of 1988.

4. In Writ Petition No. 7812 of 1988, the petitioners arrayed the District Magistrate and the Syndicate Bank as the two respondents. Sri Vinod Chandra Dube made an application for being impleaded as one of the respondents. He has also filed a counter-affidavit to which a rejoinder-affidavit has been filed. Affidavits have been exchanged between the petitioners and the other respondents.

5. In Writ Petition No. 12724 of 1988 there were two respondents, namely, the District Magistrate, Allahabad and Sri Prabhat Chandra Chaturvedi (District Magistrate, Allahabad). In this petition, it appears that Sri Kamlesh Dube has got himself impleaded as one of the respondents. Affidavits between Sri Kamlesh Dube and the petitioners have been exchanged.

6. In Writ Petition No. 12767 of 1988 the petitioners have impleaded four respondents, namely, the District Magistrate, Allahabad, Sri Prabhat Chandra Chaturvedi, the City Magistrate and Sri Pankaj Gangwar (the City Magistrate). On an application made by Smt. Section Parrie, who claims herself to be the Headmistress of the Bal Bharti School, and Sarvasri Vivekahand Srivastava and Vinod Chandra Dube and Kamlesh Dube, this Court directed the implement of the aforesaid persons as respondents. Counter-affidavits have been filed by Sri Prabhat Chandra Chaturvedi (hereinafter referred to as the District Magistrate), Sri Pankaj Gangwar (hereinafter referred to as the City Magistrate) and three aforementioned respondents impleaded under our orders. Replies to these affidavits have been filed by Sri Bakht on behalf of the petitioners.

7. None of the three petitions has been formally admitted. However, with the consent of the learned counsel for the parties we heard the three petitions together with a view to finally dispose of the same. We are, accordingly, doing so.

8. Learned counsel for the parties are agreed that Writ Petition No. 12767 of 1988 may be treated as the leading case. It is to be remembered that in this petition the order passed by the City Magistrate u/s 144 of the Code has been impugned.

9. The material averments in Writ Petition No. 12767 of 1988 are these. A registered Society runs the Bal Bharti Nursary School and Bal Bharti School on its own without receiving any grant-in-aid from the State Government. The buildings in which the two schools are run are situated at Nos. 13 and 13-C Kamla Nehru Road, Allahabad. Sri Bakht is the Secretary of the Society and is also the Principal of the Bal Bharti School. Smt. S. Parrie ceased to be the Headmistress

of the School before 15th July, 1988. There is a residential portion therein where the Secretary resides. In one of the portions Sri Vive-kanand Srivastava (hereinafter referred to as Sri Srivastava) is residing as a tenant. Litigations were on between Sri Bakht and Sri Srivastava. An application had been made by Sri Bakht for release of the accommodation under the tenancy of Sri Srivastava. Sri Bakht had instituted a suit for injunction against the U.P. State Electricity Board praying therein that it be directed to disconnect the electricity of Sri Srivastava. The said suit is pending. Sri Srivastava lodged a false first information report alleging therein that Sri Bakht had entered in the portion of the accommodation under his tenancy and stole the electricity motor installed therein. This report was registered as Crime Case No. 2 of 1987 under Sections 147, 452 and 380 of the Indian Penal Code. The police submitted a final report after investigation. On 30th September, 1987 Sri Bakht lodged a complaint at the Police Station alleging that Sri Srivastava and his associates trespassed in the office of the School and took away registers, seals, letter pads etc. Sri Srivastava took the aid of Sri Vinod Chandra Dube (hereinafter referred to as Sri Dube) a former President of the Allahabad University Students Union and a political leader. Sri Srivastava and the associates of Sri Dube filed a complaint before the District Magistrate wherein allegations of irregularities having been committed in the running of the School were made. This complaint was subsequently treated to be a first information report and on its basis a Crime Case No. 2 of 1988 was registered. Sri Dube had built up a personal report with the District Magistrate, who had been openly siding with Sri Dube. The District Magistrate, in order to oblige Sri Dube, directed the Sub-Divisional Magistrate, Chail, to enquire into the aforementioned complaint made by Sri Srivastava and the associates of Sri Dube. The complainants filed certain affidavits of certain persons before the Sub-Divisional Magistrate. Three of them, namely, Mohammed Ali son of Mushtaq Ahmed, Anis Ahmad son of Chedan Mohammad and Mohammad Shakeel son of Mohammad Quil filed affidavits. The aforementioned three persons informed Sri Bakht that they had in fact not filed any affidavit before the Enquiry Officer. However, at the direction of the District Magistrate the complaint of Sri Srivastava and others were registered as Crime No. 2 of 1988 at the Police Station, Civil Lines, 468 and 471 of the Indian Penal Code. On 10th February, 1988 Sri Bakht preferred a writ petition in this court praying that crime case No. 2 of 1988 may be quashed. This Court on that very day directed that Sri Bakht shall not be arrested during the investigation of Crime Case No. 2 of 1988. It was also made clear that in case Sri Bakht had been arrested, his application for bail shall be considered on the same day on which it was presented, if possible. However, on 10th February, 1988, Sri Bakht was arrested and was enlarged on bail on 19th March, 1988 by this Court. Sri Dube took keen interest in opposing the application for bail made on behalf of Sri Bakht in the Court of Session as well as in the High Court. By a letter dated 15th April, 1988, the District Magistrate desired the Secretary/Member of the School to participate in the meeting on that very day in connection with the various problems of the Schools but on account of the indisposition of the Secretary (Sri Bakht) Smt. N. Bakht, in her capacity as the Vice-Principal of the

School, went to the residence of the District Magistrate to participate in the meeting. Smt. Bakht expected that in the meeting, apart from the District Magistrate, the Sub-Divisional Magistrate Chail, the District Inspector of Schools and the District Basic Education Officer will participate. However, Smt. Bakht found that Sarvasri Dube and Srivastava along with others were present at the residence of the District Magistrate. Seeing Smt. N. Bakht Sri Dube started making wild allegations against the running of the School and also extended threats that there should be no fresh admissions in the School, the School should be closed down indefinitely from 1st May, 1988, no further fee should be realised from the students, the fee already realised should be refunded and a Receiver should be appointed to run the School. On 18th April, 1988, the District Magistrate passed an order freezing the Bank accounts of the School as well as of Sri Bakht. On that date Sri Bakht sent a telegram to the District Magistrate which enquired from him as to under which provision of law he had exercised the said power but he received no reply. On 3rd May, 1988 this court passed an interim order in Writ Petition No. 7812 of 1988, the relevant portion of which is extracted :

"We, therefore, suspend the operation of the impugned orders dated 18-4-1988 and 26th April, 1988 passed by the District Magistrate, Allahabad subject to the condition that the petitioners shall withdraw the amount from the Bank to the extent it is required for payment of salary to the teachers and running the affairs of the institution. For withdrawal of any other amount the petitioners shall have to furnish security which shall be other than cash or bank guarantee to the satisfaction of the District Magistrate, Allahabad. We further direct that the petitioner shall keep complete and correct account of such withdrawal of money from the bank and shall make available such account as and when required by this Court. However, the alleged affairs prevailing in the petitioner institution which claims to be immune from any control of educational authorities inasmuch as serious allegations asserted in the counter-affidavit against the petitioners cannot be over-looked. We, therefore, clarify that it would be open to the respondents to proceed against the petitioner in accordance with law and this order shall not come in their way."

On 28th April, 1988, the District Magistrate filed a complaint before the Income Tax Department alleging that the funds of the School were being misappropriated. The District Magistrate also sent one Sri. A. C. Pandey, the Sub-Divisional Magistrate, Chail to the Assistant Commissioner of Income Tax (Sri V.K. Pandey) who happened to be a relation of the District Magistrate and he (the District Magistrate) "manoeuvred the Income Tax Department to attach the accounts of the petitioner" even though no recovery proceedings were pending and in fact the petitioner had been exempted on 27th November, 1982 u/s 10(22) of the Income Tax Act. On 29th April, 1988, the Assistant Commissioner of Income Tax attached the accounts of the Bal Bharti Nursery School and the Bal Bharti School. This order has been impugned by the petitioner by means of Writ Petition No. 1091 of 1988 which is pending in this court. In that Writ Petition a

counter-affidavit has been filed on behalf of the Income Tax Department and in paragraph 6 thereof it had been admitted that the District Magistrate had filed a complaint against the petitioners. On 28th April, 1988, the District Magistrate sent a communication to the Registrar, Firms, Societies Chit Funds in which a reference was made to an earlier complaint made by him (the District Magistrate). The District Magistrate desired the Registrar to inform him of the action taken in response to the letter sent by him (the District Magistrate) on 23rd March, 1988. By an order dated 17th May, 1988, received by the petitioners on 28th May, 1988 the Deputy Labour Commissioner directed the management of the School to deposit a sum of Rs. 22,228.74 P. and also to pay backwages to the teachers and other employees of the School. This direction had been given despite the fact that the notification of the State Government prescribing minimum wages for teachers and other employees of the School had been challenged by the petitioners in writ petition No. 19461 of 1985 wherein this court stayed the operation of the notification on the condition that the petitioners deposited with the Deputy Labour Commissioner the difference in salary actually paid and the one prescribed by the notification. The petitioners complied with the interim order. The Deputy Labour Commissioner passed the aforesaid order under the influence of the District Magistrate. Sri Rai, the Deputy Labour Commissioner, informed Sri Bakht that he had been pressurised to pass the aforesaid order by the District Magistrate. In order to secure the recognition of the School by the I.C.S.E. Board a sum of Rs. 4,00,000/- had been deposited by the petitioners with the Inspector of Anglo-Indian Schools. A no objection certificate had to be obtained from the State Government in that connection. The issue of such a certificate was being delayed at the instance of the District Magistrate. The District Magistrate, under the influence of Sri Dube and his associates, had threatened that the no objection certificate would not be issued. In that connection the District Magistrate had sent a Telex message to the Private Secretary of the Minister of Education, U.P., Lucknow. On 17th July, 1988, the District Magistrate issued a press statement that he had ordered the closure of the School. The District Magistrate had given out to the teachers of the School that after the School had been taken over by the Administration, the salary of the teachers and other employees would be enhanced liberally. As a result, a small section of teachers had stopped attending to their duties. The attempt of the District Magistrate had been to cause split amongst the teachers and the employees so that the institution may be completely paralysed. On 15th July, 1988, the petitioner had preferred a writ petition (Writ Petition No. 12724 of 1988) wherein serious allegations of mala fide had been made against the District Magistrate. In this petition Sri Chaturvedi had been impleaded in his personal capacity as one of the respondents. On that very day, the District Magistrate, in order to harass the petitioners, had pressurised the City Magistrate to pass the impugned order u/s 144 of the Code. The District Magistrate took good care not to pass the order himself and got it passed by the City Magistrate. The services of Smt. S. Parrie as Head-Mistress stood terminated with effect from 17th June, 1988. The impugned order was in fact passed on 16th July, 1988 and

was ante-dated. The City Magistrate is under the complete influence of the District Magistrate.

10. We shall first refer to the counter-affidavit of the District Magistrate. The averments are these. A complaint was filed on 17th October, 1987, by Sri Ashok Kumar and others before him (the District Magistrate). In it, serious allegations were made against Sri Bakht relating to his working as Secretary/ Member of the Bal Bharti Nursery School and of the Bal Bharti School. The District Magistrate directed Sri A. C. Pandey, IAS, Sub-Divisional Magistrate Chail to enquire into the allegations and submit his report. Sri Pandey submitted his report. The District Magistrate thereafter obtained an opinion from the Senior Prosecution Inspector, Allahabad. The Senior Public Prosecutor pointed out that serious offences punishable under Sections 420, 467, 468 and 471 of the Indian Penal Code had been clearly made out against Sri Bakht and that is why the District Magistrate directed the Senior Superintendent of Police, Allahabad, to get a case registered under the aforementioned provisions of the Indian Penal Code. Accordingly, on 3rd January, 1988, a complaint was registered as Crime case No. 2 of 1988 against Sri Bakht. The report of the Sub-Divisional Magistrate, Chail disclosed that the School was not recognised at all by any Board or other examining body under any statute. Sri Bakht realised Rs. 75/- per month as tuition fee from the students. Sri Bakht gave an impression to the guardians of the students in the School that School was a recognised one. The teachers and other staff members of the School were not being paid full salary, Sri Bakht had made a good fortune by the running of the School and the grouse of the guardians was that because of the fraud played on them by giving out that the school was a recognised one, they were faced with problems in getting their wards admitted in a recognised school for appearing in the High School examinations, the registration of the aforesaid Crime Case No. 2 of 1988 infuriated Sri Bakht and he started creating trouble within the School campus by administering threats and making assaults etc. on the members of the staff and others. This was done with a view to pressurise the District Magistrate and to put up false defence to shield his illegal actions. At the relevant time, the strength of the school was of in all about 3000 students. Sri Ashok Kumar and others, who had filed the complaint on 17th October, 1987, were the guardians of the students studying in the School. Sri Srivastava was also one of the signatories to the complaint. Sri Dube had not built up a personal rapport with the District Magistrate. He (the District Magistrate) was neither siding with Sri Dube nor was he espousing his cause. Being the Administrative/Executive Head of the district, the District Magistrate was fully authorised to entertain the complaint and get it enquired into, particularly when serious allegations of fraud, forgery, mal practices, defrauding the public by making false allegations that the School was a recognised one and charging exorbitant fee from the students on the footing that the School was recognised one had been made. The enquiry was not ordered to help Sri Dube. The action was taken on the report of the Senior Prosecuting Officer of the District. The allegation that some forged affidavits were filed before the Sub-

Divisional Magistrate had not been brought to the notice of the District Magistrate. The District Magistrate was neither instrument in getting Sri Bakht arrested nor was he in any way responsible for the dismissal of his applications for bail by the Chief Judicial Magistrate and the Sessions Judge. Since serious complaints containing allegations of irregularities being committed in the running of the school were received by the District Magistrate through a number of representations, applications of guardians and members of the staff of the School, including the teachers, a meeting of the Principal of the School and the Officers concerned, including the Sub-Divisional Magistrate, the District Inspector of Schools, Allahabad and the District Basic Education Officer, Allahabad, was convened on 15th April, 1988 by him (the District Magistrate). In the meeting the matter was discussed with Smt. N. Bakht, who claimed herself to be the Vice-Principal of the School. The District Magistrate advised Smt. Bakht to seek the recognition of the School at least from the Basic Education Officer, if it was not possible to do so from the I.C.S.E. Board, Delhi, so that the future of the students may not be marred and the School may function smoothly. However, Smt. Bakht refused to get the institution recognised and left the meeting. Smt. Bakht was neither mal-treated by anybody nor threatened by anybody in the presence of the District Magistrate. There was no proposal to appoint a Receiver of the institution. On being satisfied that Sri Bakht was indulging in defalcation, was trying to take out money from the School and was doing such acts which were likely to cause further damage to the School, the District Magistrate sent a communication to the Manager of the Syndicate Bank stopping operation of the accounts of the School and Sri Bakht except with his prior permission. However, by a communication dated 26th April, 1988, addressed to the Principal of the Bal Bharti Nursery School, the District Magistrate made it clear that withdrawals could be made for meeting the expenses and the payment of salary etc. of the staff with his prior permission (District Magistrate's). The District Magistrate was competent to issue such directions particularly when it was revealed to him that public money amounting to several lacs of rupees was being taken away without any authority from the account of the School. Further, such a direction was issued in the public interest, to safeguard the interest of School in which about 3000 students were studying and about 100 employees were working. Further, siphoning off the aforesaid amount was creating a tension amongst the guardians and the other members of the staff of the School. The District Magistrate took full responsibility of the aforesaid action to prevent the misappropriation of public money, particularly by a person against whom a criminal case under Sections 420, 467, 468 and 471 of the Indian Penal Code had been registered. More so, when the Sessions Judge recorded a prima facie finding that the Certificate produced by Sri Bakht before that Court showing that the school had been recognised by the Basic Education Officer was false. The District Magistrate received a complaint in writing from Sri Srivastava indicating therein that Sri Bakht had evaded payment of Income Tax, payment of provident fund etc. He had also violated the Rules of the Society. Feeling that a District Magistrate was duty bound to take necessary action, he (the District Magistrate)

forwarded the said complaint to the respective Department with the his covering letters. A copy of the complaint was sent to the Income Tax Department. The District Magistrate did not send Sri Pandey, the Sub-Divisional Magistrate Chail, to Sri V.K. Pandey, the Asstt. Commissioner, Income Tax. No subordinate officer was asked to contact any officer of any other department personally. The Income Tax Department acted on its own in either attaching or seizing the accounts of the petitioners. The District Magistrate had no concern with the action taken by the Income Tax Department. It is true that the District Magistrate had forwarded the complaint of Sri Srivastava along with the covering letter to the Registrar Firms, Societies and Chits. The District Magistrate had not influenced in any manner the Deputy Labour Commissioner and he had no concern with the working of the officer of the Deputy Labour Commissioner. It is false to suggest that the District Magistrate pressurised the Deputy Labour Commissioner. Having come to know that Sri Bakht was trying to obtain a no objection certificate from the State Government by placing incorrect facts and taking advantage of "the political pressure of the bye-election to be held in Allahabad," the District Magistrate sent detailed information to the Education Secretary by a telex. The District Magistrate was duty bound to do so under the Government Orders so that the State Govt. may be aware of the correct position as its action was likely to affect the public interest. Bal Bharti Nursery School and the Bal Bharti School reopened on 11th July, 1988 after the Summer Vacations. On the reopening of the school, "lot of commotion and agitation was started by guardians on one hand, teachers and members of the staff on the other hand. Lot of row was being created by Bakht and his associates, causing serious law and order problem." Half of the city was under curfew. The administration was busy in maintaining law and order situation in the curfew affected areas. There was tension in the city. In the public interest as well as in the interest of maintenance of law and order the District Magistrate thought it desirable to close down the institution from 11th July, 1988 to 17th July, 1988. Such a direction had not been issued with any motive of either Gripping or causing damage to the school. The press had been informed of the action by the District Magistrate. Sri Bakht had himself seen the District Magistrate and had informed him of the agitation and Dharna etc. going on in the School since 11th July, 1988. No order in writing was passed about the closure of the Schools. The District Magistrate issued no direction to the guardians of the students to withdraw their wards from the School. The District Magistrate neither extended any promise to any teacher of the School nor ever misled any member of the staff nor had he intention to cripple the institution. On the contrary, the District Magistrate was anxious that the School should acquire recognition from some statutory body so that interest of the students could be safeguard. The District Magistrate did not pressurise the City Magistrate to pass the impugned order u/s 144 of the Code. It is incorrect to state that on account of the allegations of mala fide made against the District Magistrate he asked his subordinate, the City Magistrate, to pass the impugned order. The allegations of mala fide made against the District Magistrate by the petitioners are absolutely wrong and are emphatically denied. The District

Magistrate took all the actions in public interest and in order to maintain law and order in the district. All his actions were to meet the exigencies of the administrative situations.

11. Annexure CA-1 to the counter-affidavit of the District Magistrate is a true copy of the opinion sent by the Senior Public Prosecutor, Allahabad to the District Magistrate. We have gone through the opinion and we are satisfied that it fully corroborates the averments of the District Magistrate made in his counter-affidavit. The Public Prosecutor pointed out that the certificate of the District Inspector of Schools produced by Sri Bakht to show that the Bal Bharti School has been recognised by him (the District Inspector of Schools) was a forged one. Annexure CA-2 to the counter-affidavit of the District Magistrate is a true copy of the complaint of Sri Srivastava. It is headed "Crusade Against Economic Offenders". A reading of the same, in our opinion, again corroborates the averments made by the District Magistrate in his counter-affidavit.

12. We now advert to the rejoinder-affidavit filed by Sri Bakht to the counter-affidavit of the District Magistrate. As usual, contents of counter-affidavit have been denied and those of the writ petition have been reiterated. However, in paragraph 7 the averment is:--

"...The fee that the school is charging is in no way more than the fee charged in other English medium Schools like St. Mary's, St. Joseph's Girls High Schools and Boys High School."

It has also been emphasised that the District Magistrate directed the closure of the Bal Bharti School a done till 17th July, 1983 and no other institution in the town.

13. The City Magistrate in his counter-affidavit has made these averments. It is wrong to say that the District Magistrate (Sri P. C. Chaturvedi) in any way pressurised him to pass an order u/s 144 of the Code. The City Magistrate felt fully satisfied that a situation had arisen where, in order to prevent the disturbance to public tranquillity, in order to maintain law and order situation, an action was needed. It was the case of an emergency. It was not in his knowledge that on or before the passing of the order dated 15th July, 1988, the services of Smt. Parrie as Headmistress of the School had been terminated. No document had been placed before the City Magistrate to indicate that the School had been recognised even by the Basic Shiksha Board. No document was produced before him to indicate that any attempt had been made by the petitioners to get the School recognised by the I.S.C.E. Board, Delhi. The School imparted education up to IX Class and thereafter transfer certificates were given to the students. As the School had not been recognised by any statutory body, no recognised institution gave any credence to the transfer certificates issued by the School with the result that the students suffered in their studies and on that score the guardians of the students had a grievance. On 11th July, 1988, the Station House Officer, Police Station, Civil Lines submitted a report which was forwarded

by the Circle Officer concerned on 14th July, 1988 to the City Magistrate and on 15th July, 1988 the impugned order u/s 144 of the Code was passed. It is false to suggest that the order was actually passed on 16th July, 1988. The City Magistrate was not under the influence of the District Magistrate. He visited the School premises in connection with the law and order situation. The impugned order was passed after due application of mind. In the rejoinder-affidavit the averment of City Magistrate that he had no knowledge of termination of services of Smt. S. Parrie has not been denied.

14. The averments made in the counter-affidavit of Smt. S. Parrie are these. She is the Headmistress of the Bal Bharti Nursery School. The salary is paid by the management to the teachers of the Bal Bharti School ranging between Rs. 350/-, 450/-, 650/-. Even the teachers required to take up class IX are getting a salary of Rs. 600/ -. In some cases the management forces the teachers to append their signatures for a higher sum; where as actually a lower amount is paid. The teachers, therefore, raised a demand that their salaries should be paid through cheques. Since the management of the School was charging tuition fee equivalent to the fee charged by the English medium Schools, there was serious discontentment amongst the teachers on account of payment of very poor salary to them by the management. In the month of April, 1988, she informed Sri Bakht that the School could not be registered with the I.S.C.E. Board as it did not fulfill the basic requirement of affiliation. She emphasised that there was neither any compulsory provident fund scheme, nor any pension scheme for the members of the staff nor was there in existence a regular agreement between the management and the members of the staff. Amongst other conditions the school seeking affiliation has to satisfy the fulfillment of the following:

- (a) the school should be run by a registered society or trust for educational purposes;
- (b) it must not be run for profit;
- (c) the staff must be paid salaries and allowances not lower than those paid in comparable Government Schools in the State in which the school is located;
- (d) in the case of each member of the staff there must be an agreement duly executed by the authorities of the School and the members of the staff;
- (e) the school must have a compulsory provident fund scheme or pension scheme for all members of staff.

Smt. Parrie was being constantly pressurised by the members of the staff that they should get at least a fair salary. Sri Bakht was pressuring the teachers to execute an agreement. She resisted this move. In a meeting of the entire staff she was elected as their President. In that capacity she handed over a letter containing demands to Sri Bakht although she had put in 2,4 years of service, she was being paid only Rs. 1200/ - per month as salary. Sri Bakht had been prosecuted for giving wrong discription of the School as a recognised one. On

11th June, 1988 Sri Bakht, in a meeting of all the teachers misbehaved with teachers and also gave threat of termination of their services. He made derogatory remarks about the teachers who made a written complaint to the police and also submitted a memorandum to the District Magistrate seeking their protection. On 1st July, 1988, when Smt. S. Parrie entered the school, Sri Bakht along with several other unknown persons threatened her and the other teachers with dire consequence if they entered the School. He was very much infuriated on account of the fact that the teachers had formed an association and informed the teachers, including the Headmistress, that their services stood terminated. Some teachers were compelled to call the police and a report of the incident was lodged with the Station Officer, Police Station Civil Lines, Allahabad. Smt. Parrie did not receive any communication from Sri Bakht informing her that her services had been terminated. On 11th July, 1988, a news item appeared in the Northern India Patrika in which some reporter quoted Sri Bakht as saying that her services had been terminated.

15. Annexure 1 to the counter-affidavit of Smt. S. Parrie is a memorandum dated 12th June, 1988 addressed to the District Magistrate Allahabad by the Bal Bharti Nursery School and Bal Bharti School Teachers' Association. A perusal of the same corroborates the averments made by Smt. S. Parrie in her counter-affidavit. Annexure 2 is a copy of the complaint lodged with the Station Officer, Police Station Civil Lines. In it, a complaint had been made that Sri Bakht along with 10 to 12 persons, on 7th July, 1988, hurled filthy abuses upon the teachers and threatened them that, if they tried to interfere with the management of the School, they will be shot at. In the rejoinder-affidavit of Sri Bakht it is averred that by a letter dated 18th June, 1988, the services of Smt. S. Parrie had been terminated. This letter had been sent under registered post and was returned with the endorsement "refused". It is significant that neither the number of the registration receipt has been given nor the original nor its copy has been filed. Further, the affidavit of the postman concerned too has not been filed. A perusal of the letter of 18th June, 1988, a true copy of which has been filed along with the writ petition, indicates that according to Sri Bakht the tenure of appointment of Smt. S. Parrie was till 31st July, 1988.

16. Sri Kamlesh Dube in his counter-affidavit has averred that his children are studying in the School and he is also the President of Bal Bharti Abhibhawak Sangh (Guardinas Association). He has filed a counter-affidavit and two supplementary-counter-affidavits. In the supplementary-counter-affidavit (A) the material averments are these. The petitioners published a booklet containing Rules and Regulations for students. On the front page of the same it was written "Registered under the Societies Act 20 of 1880 and recognised". The progress report given by the petitioners in the year 1986-87 to a student studying in Class II recited on its covering page. "Bal Bharti Nursery School, registered under Societies Act 20 of 1880 and recognised." A copy of the booklet and a copy of the progress report have been annexed as Annexures 1 and 2 to this affidavit. Sri Bakht gave out to the guardians of the students seeking admission in the

School that the School was a recognised one and it was on the basis of this representation that Sri Dube got his children admitted in the School. However, subsequently it transpired that the institution was not a recognised one and fraud had been practised upon him (Sri Dube) and the other guardians. In fact, the Bal Bharti Nursery Schools Society had been registered under the Societies Registration Act with its head office at 13 Kamla Nehru Road, Allahabad. A true copy of the registration certificate under the Societies Registration Act is Annexure 3 to this affidavit. A perusal of this document indicates that Bal Bharti Nursery School Society had been registered as a non-profit making society with the object of developing self expression in children in the age group 3-10 years with the primary accent on English. Before the learned Sessions Judge, in proceedings for the grant of bail to Sri Bakht, a certificate dated 8th June, 1983 had been filed by Sri Bakht to show that the School had been recognised by the District Basic Education Officer. This was disputed. On a report being called for by the learned Sessions Judge, the Basic Education Officer by a communication dated 19th February, 1988, informed that the School had not been recognised and the certificate filed by Sri Bakht was not genuine. (This fact had not been denied by Sri Bakht in his rejoinder-affidavit). Instead of utilising the funds of the School exclusively for the purposes of welfare and advancement of the School, the funds were being misappropriated by Sri Bakht. Smt. Bakht withdrew a sum of Rs. 1,20,500/-, Rs.4,00,000/-, Rupees 4,00,000/-, Rs. 10,00,000/- and Rupees 5,00,000/- on 21st August, 1986, 4th June 1987, 16th December, 1987, 11th February, 1988 and 23rd February, 1988 respectively from the account No. 176 existing in the name of Bal Bharti School. When it transpired to Sri Kamlesh Dube and other guardians that Sri Bakht was siphoning off the funds of the school, they approached the District Magistrate and sought protection of the public funds and that is how the District Magistrate intervened and directed the Syndicate Bank not to permit operation of the accounts without his prior permission. Sri Dube had also approached the Registrar of the Societies with the prayer that the registration certificate granted to the Bal Bharti Nursery School Society may be annulled as Sri Bakht had misused and misutilised the funds of the Society with mala fide intentions. The incident of 11th July, 1988, as narrated by Smt. S. Parrie in her counter-affidavit has been corroborated by Sri Dube in paragraph 28 of this affidavit. Annexure-8 to this affidavit is a copy of a statement furnished by Sri Bakht to the Assistant Registrar of Firms, Societies and Chits indicating therein that during the year 1984-85 the total income of the School was Rs. 7,28,900. In the rejoinder-affidavit no effort has been made to show as to what was the actual income during the said period.

17. The averments in the supplementary-counter-affidavit (B) of Sri Kamlesh Dube are these. The Bal Bharti Nursery School Society is running two schools, one Bal Bharti Nursery School, which imparts education from nursery class to class V and another Bal Bharti School, which imparts education from class VI to class IX. Both the schools are run in one building and the two classes are run in shifts. Neither of the two schools are recognised by any statutory body.

Sometime in the year 1987, Sri Bakht had applied to the District Basic Education Officer, Allahabad for the recognition of the schools. In that connection he made an application on a prescribed form wherein he furnished a false information to the effect that the school was charging Rs. 4.50/- p. as tuition fee from each student. (This fact too has not been controverted in the rejoinder-affidavit.) Annexure-2 to this affidavit is a copy of the application made by Shri Bakht addressed to the Basic Shiksha Adhikari, Allahabad. This is on a printed pad on which the writing was this : "Bal Bharti School I. C. S. E. (Syllabus)." (This fact has not been controverted in the rejoinder-affidavit). According to Sri Kamelsh Dube, on the basis of this pad Sri Bakht gave an impression to the guardians that the School was recognised by the I.C.S.E. Board. Annexure-3 to this affidavit is the circular issued by the council for the Indian School Certificate Examinations. It contains instructions to schools seeking affiliation. Paragraph 2 of the instructions makes it clear that the school seeking affiliation to the Council for its examination (I.S.C./ I.C.S.E.) will have to submit to the Council a certificate of recommendation/no objection certificate from the State Education Department, in the prescribed form. The other relevant conditions have already been extracted above from the counter-affidavit of Smt. S. Parrie. The application for affiliation has to be given in a pro forma. Columns Nos. 6 and 7 are important. In column No. 6 the query is : Is the school recognised by the Education Department of the State Government/Union Government? Column No. 7 provides that in the case of schools which do not fall into categories specified in column 6, the applicant is required to state the organisation or department which is responsible for control. Annexure 4-B to this affidavit is a copy of a transfer certificate issued by the Bal Bharti School to one of its students, namely, Vijay Bahadur Singh. It bears the signature of the District Basic Education Officer, Allahabad along with his seal. This seal, according to Sri Dube, is a forged one. (In the rejoinder affidavit no attempt has been made to explain the same). Annexure 5-B to this affidavit is the copy of the progress report of one Ajal Jha, a student of Class IX for the year 1987-88. A perusal of the same shows that this student was promoted from class IX to class X. On the basis of this document it has been averred by Sri Dube that the petitioners have been admitting boys up to X class without having received any recognition whatsoever from any examining body. Thus, the petitioners have not only played fraud upon the guardians and the students but have also played with the future career of the students. (No attempt has been made to explain these documents and these averments in the rejoinder-affidavit). Students of class X have no future as they cannot get a certificate of having passed the High School examination either from the U.P. Education Board or from the I.C.S.E. Board.

18. In the rejoinder-affidavits filed by Sri Bakht in reply to the counter-affidavits of Sri Kamlesh Dube the material averments are these. Sri Dube is not the President of the Bal Bharti Abhibhawak Sangh. The petitioners did not give out to any one that the institutions run by them were recognised by any statutory authority. Smt. N. Bakht is the Vice Principal of the Bal Bharti Nursery School.

She is a member of the Society and she had been authorised by the Society to operate the Bank accounts. The funds of the institution had not been misappropriated. The withdrawals made from the Syndicate Bank were covered by the resolution of the Society.

19. A counter-affidavit has been filed by Sri Dube in his behalf and on behalf of Sri Srivastava. In it, the averments are these. A small portion in the building of the School is in the tenancy of the mother of Sri Srivastava and she is residing therein for more than two decades. Shri Bhakt instituted the suit referred to in paragraph 2 of the writ petition only after the 2nd Aug. 1987, when Sri Srivastava lodged a first information report against Sri. Bakht. Neither Sri Dube nor Sri Srivastava had got the complaint filed before the District Magistrate against Sri Bakht. The complaint had in fact, been filed by the aggrieved guardians and the students. It was false to suggest that Sri Dube had built up a personal report with the District Magistrate. Sri Dube is an active worker of Janta Party, a party in opposition and he had no connection whatsoever with the District Magistrate. It is denied that the District Magistrate extended a personal favour to Sri Dube when he directed the inquiry against Sri Bakht. In fact, Sri Dube was not at all in the picture at the stage when the inquiry was ordered by the District Magistrate. Sri Dube appeared as a counsel-for the complainant before the Chief Judicial Magistrate as well as before the Sessions Judge, Allahabad, when the application for enlarging Sri Bakht on bail was considered by the two said officers. Sri Dube did not mobilise lawyers against Sri Bakht. In the meeting held at the residence of the District Magistrate on 15th April, 1988. Sri Dube was present in the capacity of the President of the Children Welfare Organisation along with other guardians. Sri Dube did not make any wild allegations in the meeting as alleged by Sri Bakht. It is false to suggest that Sri Dube extended any threat either to Sri Bakht or to the institution.

20. In the rejoinder-affidavit filed by Sri Bakht in reply to the counter-affidavit of Sri Dube the material averments are these. The complaint before the District Magistrate was filed by the associates of Sri Dube. Sri Dube had built up a report with the District Magistrate and the District Magistrate had been openly siding with Sri Dube. On 21st , July, 1988. Sri Dube led an agitation for preventing the transfer of the District Magistrate from Allahabad and in that connection the Ganga Gomti Express was detained by the agitators led by Sri Dube. Sri Dube is not the President of the Children Welfare Organisation. In fact, no such organisation exists. The entire agitation against Sri Bakht had been engineered by Sri Dube and his associates and the District Magistrate was in connivance with them.

21. Sri Sudhir Chandra, the learned Senior Advocate appearing on behalf of the petitioner, attacked the validity of the order dated 15th July, 1988, passed by the City , Magistrate u/s 144 of the Code (hereinafter referred to as the impugned order) on two grounds. First, the order had been passed by the City Magistrate at the direction of the District Magistrate and the District Magistrate gave the

direction to that effect on account of mala fide considerations. Secondly, the order interfered with the fundamental rights of the petitioners as guaranteed under Article 19(1)(g) of the Constitution.

22. We shall first examine the argument of mala fide. We have already endeavoured to analyse the contents of the affidavits exchanged between the parties. Before going into the detail, we would like to express our opinion on the question whether the petitioners have been able to establish any nexus between the District Magistrate and the City Magistrate and between the District Magistrate and Sri Dube and his so-called associates. It is to be remembered that the City Magistrate u/s 141 of the Code has been conferred with an independent statutory power along with the District Magistrate and some other Magistrates. Therefore, it is clear that the District Magistrate himself could have passed the impugned order. It is also clear that any Magistrate other than the City Magistrate could also pass such an order. In their counter-affidavits the District Magistrate and the City Magistrate have categorically stated that neither the District Magistrate even gave any direction to the City Magistrate to pass any order nor did the City Magistrate ever receive any such order from the District Magistrate: The City Magistrate has pointed out that he passed the order on his own on receiving the relevant information from the Circle Inspector concerned. Having considered the counter-affidavits of the Dist. Magistrate and the City Magistrates we do not find any reason to disbelieve the version of the City Magistrate that he had exercised his own mind while exercising the statutory power conferred upon him under the relevant provision of law.

23. The District Magistrate has categorically denied the allegation that he had any rapport with Sri Dube. Sri Dube has as already indicated corroborated the version of the District Magistrate. It is true that in the rejoinder affidavit for the first time Sri Bakht has come out with the story that Sri Dube and his associates took personal interest in opposing the transfer of the District Magistrate from Allahabad. Such an averment should not have been in the rejoinder-affidavit. This was an important link of the story of mala fides set up by the petitioner. This fact must have been in the knowledge of the petitioners when Writ Petn. No. 12767 of 1988 was filed in this court on 18th July, 1988. We say so because there is no averment in the rejoinder-affidavit that the incident of 21st June, 1988 came to the knowledge of the petitioner subsequent to the filing of the writ petition. If an averment had been made in the petition then Sri Dube would have had an opportunity of meeting this. Even assuming that the averments made in the rejoinder-affidavit are correct, they do not in any manner advance the case of the petitioners. Sri Dube has stated in his counter-affidavit that he is a member of the Janta Party. He may have acted on political considerations. His actions were not within the control of the District Magistrate. Therefore, the District Magistrate cannot be blamed for any action taken by Sri Dube. We are, therefore, not prepared to accept the theory set up by the petitioners that the District Magistrate was either under the thumb of Sri Dube or was acting at his instance or was as hand in hand along with Sri Dube or was in any manner trying

to help Sri Dube. Assuming Sri Dube had some personal animus against Sri Bakht, the petitioners cannot take any advantage of the same for demonstrating that the District Magistrate acted mala fide. On the material on record it is difficult if not impossible to infer any nexus between the District Magistrate and Sri Dube.

24. Let us now examine the specific instances given by the petitioners for the purpose of drawing an inference that the District Magistrate acted on mala fide considerations. First, the District Magistrate went out of his way in directing the Sub-Divisional Magistrate, Chail to inquire into the allegations as contained, in the complaint which was filed before him, (the District Magistrate) on 17th October, 1987 by Sri Dube and his associates. Secondly, the District Magistrate went out of; his way in: obtaining opinion of the : Senior Public Prosecutor Allahabad upon the report submitted by the Sub-Divisional Magistrate Chail. Thirdly, his action in directing the Senior Superintendent of police to get a case registered against Sri Bakht was unusual. Fourthly, in spite of the order of this Court dated 10th February, 1988. Sri Bakht was arrested on that very day and he was enlarged on bail on 10th March, 1988 by this Court. Fifthly, Smt. N. Bakht was insulted by Sri Dube and his associates at the residence of the District Magistrate and in his presence on 15th April, 1988. Sixthly, there was no occasion for the District Magistrate to permit Sarwasri Dube and Srivastava along with others to be present at his residence on 15th April, 1988. Seventhly, Sri Dube made wild allegations against the manner in which the institution was being run and he also gave out threat to Smt. N. Bakht in presence of the District Magistrate. Eighthly, on 18th April, 1988, the District Magistrate passed an order directing the Syndicate Bank not to permit the operation of the accounts of Sri Bakht and the institution without his prior permission. Ninthly, on 28th April, 1988, the District Magistrate filed a complaint before the Income Tax Department alleging that the funds of the School were misappropriated. In that connection he sent one Sri A. C. Pandey, the Sub-Divisional Magistrate, Chail, to the Assistant Commissioner of Income Tax and the District Magistrate "manoeuvred the Income Tax Department to attach the accounts of the petitioners". Tenthly, on 28th April, 1988, the District Magistrate sent a communication to the Registrar Firms. Societies and Chit Funds in which he made an inquiry of the action taken by the Registrar on the letter dated 23rd March, 1988, sent by the District Magistrate. Eleventhly, on 7th May 1988, the Deputy Labour Commissioner passed a certain order directing the School to deposit a certain sum. This order was passed under the pressure of the District Magistrate. Twelfthly, the District Magistrate opposed the grant of a no objection certificate by the State Government in connection with the recognition of the Institution by the I.C.S.E. Board, He went to the extent of sending a Telex to the Secretary to the Government in the Education Department. Thirteenthly on 17th July, 1988, the District Magistrate issued a press statement that he had ordered the closure of the School. Fourteenthly, the District Magistrate had given out to the teachers of the School that after the School had been taken over by the

administration the salary of the teachers and other employees would be enhanced liberally. Fifteenthly, on 15th July, 1988, the petitioner had preferred a writ petition No. 12724 of 1988 in this Court wherein serious allegations of mala fides had been made against the District Magistrate and therein Sri Chaturvedi (the District Magistrate) had been impleaded as one of the respondents. On that very date the District Magistrate, in order to harass the petitioner pressurised the City Magistrate to pass the impugned order.

25. We have already analysed in detail the counter-affidavit of the District Magistrate. We may observe that the District Magistrate has come out with a straight forward version. He has not tried to conceal or sidetrack any issue. He has taken the stand that as head of the executive of the district and the administration, he felt duty bound to entertain the complaint against Sri Bakht wherein serious allegations of fraud and defalcation of accounts etc. had been made. He has taken the responsibility of getting an inquiry conducted by the Sub-Divisional Magistrate, Chail. He has also admitted the fact that he, after the receipt of the report of the Sub-Divisional Magistrate, sought for the opinion of the Senior Public Prosecutor. He has also admitted the fact that he had directed the Manager of the Syndicate Bank not to permit the operation of the bank account of Sri Bakht and the Institution without his prior permission. The District Magistrate has given reasons for taking these actions.

26. The only question which requires consideration while examining the argument-of mala fides is whether the District Magistrate acted honestly and bona fide in passing the aforesaid orders and taking the aforementioned actions. If the District Magistrate exceeded his jurisdiction in directing the Bank not to permit the operation of the accounts, his order will be struck down on that ground. If he had passed some illegal order, but honestly and bona fide, it cannot be said that he acted mala fide. While entertaining the complaint against Sri Bakht, while directing the Sub-Divisional Magistrate, Chail, to inquire into the complaint while taking the opinion of Senior Public Prosecutor and while directing the Superintendent of police to register the complaint as a crime case he did not act mala fide. Again, he did not act mala fide in sending a complaint to the Income Tax Department to the effect that he had received information that Sri Bakht had been defrauding the Revenue. Again, the District Magistrate did not act mala fide when he asked the Registrar, Firms, Societies and Chit Funds to let him know the action taken by the Registrar upon the complaint made by him (the Dist. Magistrate). We have already pointed out that the condition precedent of the grant of a recognition by the I.C.S.E. Board to an institution was a no objection certificate by the Education Department of the State. The District Magistrate, therefore felt duty bound to send his opinion in his capacity as head of the administration of the District of Allahabad, by means of Telex, to the Secretary of the Department of Education in the Uttar Pradesh Government. In our opinion, the District Magistrate would have failed to discharge his duty if he had not sent the Telex. Therefore, no mala fide can be attributed to him on that score. The District Magistrate has categorically denied the allegation that he had

deputed some subordinate officer, a Sub-Divisional Magistrate, to see the Assistant Commissioner of Income Tax in connection with the complaint sent by him to the Income Tax Department. We see no reason to disbelieve his version on this score. The District Magistrate has denied the allegation that he pressurised the Deputy Labour Commissioner to insist upon the petitioners' depositing a certain amount. It is noteworthy that the petitioner did not muster courage to implead the Deputy Labour Commissioner as one of the respondents to any of these writ petitions. Sri Bakht has contended himself by merely alleging that the Deputy Labour Commissioner had informed him (Sri Bakht) that he had been pressurised by the District Magistrate. If the District Magistrate had really done so, there would have been no difficulty in Sri Bakht's obtaining an affidavit of the Deputy Labour Commissioner in that connection. We have, therefore, no justification for disbelieving the version of the District Magistrate.

27. Now, we are left with the allegation that the District Magistrate gave a statement to the press that he had ordered the closure of the Bal Bharti Nursery School and the Bal Bharti School till 17th July, 1988. The allegation is that the District Magistrate singled out two institutions aforementioned. In this connection reliance is placed upon the press reports appearing in Amrit Prabhat and Northern India Patrika dated 12th July, 1988. We have perused the press reports. The version printed in the Amrit Prabhat is of a Chief Correspondent and the version reported in the Northern India Patrika is of a Reporter. These cuttings of the alleged press reports, which have been filed as Annexures 11 and 12 to the writ petition, in the absence of any supporting affidavit of the Reporter the Correspondent concerned are not admissible in evidence. Therefore, no reliance can be placed upon them. We had pointed out this shortcoming to the learned counsel for the petitioners during the course of the arguments. To meet this difficulty, an attempt has been made to file an affidavit of an alleged press correspondent along with the rejoinder-affidavit of Sri Bakht, which has been filed in reply to the counter-affidavits of Sri Kamlesh Dube. To that affidavit, an affidavit of one Sri Gyan Chandra Gyan has been filed. Sri Gyan Chandra Gyan has described himself as the District Correspondent of Gorakhpur Mail Hindi Weekly. This publication, according to the affidavit, is published weekly from Gorakhpur. Sri Gyan Chandra Gyan has stated that on 11th July, 1988, he attended the press conference at Kotwali where the District Magistrate gave statement to the press. According to the deponent of this affidavit, the District Magistrate had stated that he had put a ban on opening of Bal Bharti Nursery School and Bal Bharti School till 17th July, 1988 this ban had been imposed because the School was not recognised one and also because, the Principal had committed fraud. According to this affidavit, the District Magistrate had also requested the guardian to withdraw their children from the Schools. The District Magistrate had also stated that . he would appoint a Receiver of the Schools.

28. No explanation has been offered as to what prevented the Chief Correspondent of Amrit Prabhat or the Reporter of the Northern India Patrika from filing an affidavit. It is true that Sri Gyan Chandra Gyan claims himself to be

a District Correspondent of a weekly newspaper published from Gorakhpur. We have great doubt whether a. weekly newspaper published from Gorakhpur will employ a District Correspondent at Allahabad. No publication of the Gorakhpur Mail Hindi Weekly newspaper has been produced to show that message had been sent by Sri Gyan Chandra Gyan to Gorakhpur. On the whole, the affidavit of Sri Gyan Chandra Gyan does not inspire confidence.

29. On the contrary, the version of the District Magistrate is this. The School reopened on 11th July, 1988 after the Summer Vacations. Half of the city of Allahabad was under curfew. The administration was busy in maintaining law and order situation in the curfew affected areas. There was tension in the city. In the public interest as well as in the interest of law and order, the District Magistrate considered it necessary to close down the institutions from 11th July, 1988. The press had been informed of the action taken by the District Magistrate. The District Magistrate had not given the direction of closing down the institutions from 11th July, to 17th July, 1988 with any motive of either crippling or causing damage to Bal Bharti Nursery School and Bal Bharti School. The District Magistrate had not issued any direction to the guardians of the students to withdraw their wards from the School. We have, therefore, no hesitation in rejecting the contention raised on behalf of the petitioners that the District Magistrate directed the closure of the institution concerned alone and with a view to damage the petitioners.

30. The conduct and the actions of the District Magistrate may now be examined by confining mala fides in the narrow sense, i.e. it means dishonest intention or corrupt motive. Therefore, this expression will include an administrative action which is actuated by personal animosity, spite, vengeance, personal benefit to the authority concerned or its relations or friends.

31. In *S. Pratap Singh Vs. The State of Punjab*, , the Supreme Court held that ground of attack of a particular order may be viewed from two related aspects. One of ultra vires pure and simple and the second that every power vested in a public body or authority has to be used honestly bona fide and reasonably. It also emphasised that the only question which could be considered by the Court is whether the authority vested with the power has paid attention to or has taken into account circumstances, events or matters wholly extraneous for the purpose for which the power was vested or whether the proceedings have been initiated mala fide for satisfying a private or personal grudge of the authority against the officer. In *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, the allegation was that the Road Transport Corporation had prepared a scheme for taking over certain transport routes at the direction of the Chief Minister as the Chief Minister wanted to wreck vengeance from private operators of those routes who were his political opponents. Keeping in view the events in that case and also the factor that the Chief Minister did not care to deny the allegations made against him by his own affidavit the Court took the view that mala fide on the part of the Chief Minister had been established. In

Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, the Supreme Court held:

"Bad faith in relation to exercise of statutory power comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. If discretionary power is misused for an unauthorised purpose it is immaterial whether the person exercising the power acted in good faith or in bad faith. Unreasonable action is ultra vires and void. Lack of jurisdiction may arise in many ways. Abuse of authority must appear to be reasonably probable."

The Supreme Court also approved the opinion expressed by Professor Smit that bad faith means intentional usurpation of power motivated by considerations that are incompatible with the discharge of public responsibility.

32. We have endeavoured to set out in detail the cases of the averments made by the District Magistrate and the City Magistrate and by the other respondents to the writ petition. We need not repeat them. Suffice to say that the petitioners have not been able to substantiate the allegation of malice in fact on the part of the District Magistrate either by direct evidence or by inferential evidence or by circumstantial evidence. We are also satisfied that the petitioners have not been able to establish any legal malice on the part of the District Magistrate. As already indicated, we are satisfied that the District Magistrate acted honestly and bona fide in the public interest and in the interest of the students, the guardians and the teachers and staff of the Bal Bharti Nursery School and Bal Bharti School. We may repeat that we are not satisfied that the District Magistrate exercised his power maliciously and was motivated by any personal animosity.

33. The vires of Section 144 of the Code has been upheld by the Supreme Court in the case of *Madhu Limaye v. Sub-Divisional Magistrate Monghyr*, AIR 1971 SC 2486. In paragraph 29 it was observed :--

"S. 144 is not unconstitutional if properly applied and the fact that it may be abused is no ground for striking it down. The remedy then is to question the exercise of power as being outside grant of the law."

34. Sri Sudhir Chandra has vehemently contended that the impugned order interferes with the right of the petitioner to carry on trade or business as enshrined in Article 19(1)(g) of the Constitution. In *Gulam Abbas v. State of U.P.* AIR 1981 SC 2198 the Supreme Court observed that function u/s 144 of the Code is essentially a executive (police) function. *Gulam Abbas and Others Vs. State of Uttar Pradesh and Others*, function. An order u/s 144 will have to be regarded as an executive order passed in performance of an executive function where no lis is adjudicated upon but merely an order for preserving public peace is made. It is now well settled that the six freedoms guaranteed to a citizen under Article 19 are not absolute but are subject to the imposition of reasonable restrictions. In

the case of freedom of trade etc., the restrictions may be imposed in the interest of the general public. The argument, therefore, cannot be advanced in the abstract or in vacuum. If the impugned order does not conform to the requirements of Section 144 it will be struck down as illegal as having been passed beyond the scope of the power conferred. The constitutional validity of Section 144 having been upheld and the same having not been questioned by the petitioner in this case it is not open to them to contend that the order passed therein is constitutionally invalid as infringing the right to carry on trade or business. If the order is not sustainable on merits that will be a different matter. We may at this stage also notice the second limb of the contention of the learned counsel that while passing the impugned order the City Magistrate denied to the petitioners the equal protection of laws the guarantee of which is contained in Article 14. He also contended that the District Magistrate, while directing the Manager of the Syndicate Bank not to allow the operation of accounts of Sri Bakht and the School, also denied the petitioners the guarantee of equal protection. We have not been shown any other provision under the Code under which an order of the nature contained in the impugned order could be passed. Likewise, we have not been shown any law under which the District Magistrate could pass an order directing the Syndicate Bank prohibiting the operation of the accounts by the petitioners. In such a situation the question of the denial of the equal protection of laws to the petitioners does not arise at all. We may repeat that if it is established that the impugned order could not be passed u/s 144 and if it can be established that the District Magistrate did not have any jurisdiction at all to issue directions to the Syndicate Bank, as he did in the instant case the two orders would be struck down on the ground of ultra vires namely on the ground that the same were passed without any legislative backing. But the invalidity of the two orders on that ground will have no bearing on the observance of the provisions of Article 14 of the Constitution.

35. As a last resort, the two orders were attacked on the ground that the same had been passed arbitrarily. The recent decisions of the Supreme Court in the case of *Menaka Gandhi and others* has been pressed into service. We shall deal with these arguments as regards the order of the District Magistrate to the Manager of the Syndicate Bank a little later while disposing of writ petition No. 7812 of 1988. However, as regards the impugned order suffice it to say that the question of acting arbitrarily will not arise at all if it is found that the same had been passed within the parameters of Section 144.

36. Prima facie the material on record indicates this. Bal Bharti Nursery School was registered under the Societies Registration Act with the avowed object of imparting education on no profit no loss basis. The petitioners have amassed considerable wealth by the activity of running the Bal Bharti Nursery School and the Bal Bharti School. The petitioners gave out to the guardians of the students that the School was a recognised one. The School was not recognised by any statutory authority at any stage. The petitioners admitted students right up to the Xth Class. The students and their guardians bona fide believed that after

passing the Xth Class they will get the requisite certificate of having passed an examination from some recognised body or Board. The petitioners were not in a position to issue any such certificate. The petitioners gave an impression to the guardians and the students that the School had been recognised by the I.C.S.E. Board. No such recognition was in existence. The petitioners were realising the same amount of fee as was being charged by the other English medium Schools in the town which had been duly recognised by the I.C.S.E. Board. However, the petitioners did not pay the same salary to their teachers as was being paid to the teachers of the other English medium Schools which had been recognised. Before the learned Sessions Judge the petitioner No. 2 made an incorrect statement that the School had been recognised by the Basic Education Officer. We have deliberately refrained from expressing any concluded opinion on these matters as we are aware that there is a possibility of the petitioner No. 2 meeting certain charges in another forum. That is why we have used the expression *prima facie*. Can it be said that a person carrying out such activities has any fundamental right which may be enforced in proceedings under Article 226 of the Constitution. The answer is clearly No. 2. No person who earns money through criminal activities, through gambling, through smuggling, by running a gambling den or by carrying on the like activities can assert that he is entitled to the protection of Article 19(1)(g) of the Constitution which guarantees freedom of trade etc. We, therefore, repeat that *prima facie* the petitioner has no fundamental right under Article 19(1)(g) of the Constitution to be protected much less to be enforced. Therefore, the question of that right being infringed or threatened does not arise.

37. We now come to the submissions made by Sri K. P. Agarwal the learned Senior Advocate, appearing on behalf of the petitioners. Sri Agarwal has confined his submissions to the legality of the impugned order on the assumption that Section 144 of the Code is *intra vires*. The thrust of his argument is that the impugned order is beyond the purview of Section 144.

38. Let us first read the impugned order, which is in Hindi. The English rendering of the material averments in it is this. From a report of the Station Officer, Police Station Civil Lines dated 11th July, 1988 and other reliable sources it appeared to the City Magistrate that a grave dispute between the Manager of the School on the one hand, teachers of the School and the guardian of the students studying in the School on the other had arisen on account of which the atmosphere in the campus of the institution had been gravely disturbed. Furthermore, the future of the students of the institution had become gloomy. It had been made to appear to the City Magistrate that on account of the non-recognition of the institution either by the Department of Education or by any other competent body the future of the students was in the dark. This had caused great annoyance to the guardians of the students and on account of this public tranquillity could be disturbed at any moment. It had also been made to appear to the City Magistrate that on account of the threat given by Sri Bakht to the Head Mistress, Smt. S. Parrie, to the teachers, including the lady teachers and other employees of the institution and the attempt made by Sri Bakht to terminate their services illegally

the activities in the campus had become even more violent. In these circumstances, in the opinion of the City Magistrate, there was sufficient material for taking action u/s 144 of the Code and an immediate action was desirable. Therefore, the City Magistrate passed the following orders:--

(1) Neither Sri Bakht nor any of his agents shall in any way interfere in matters of the Bal Bharti Nursery School and the Bal Bharti School nor shall he make any attempt to interfere or cause any interference;

(2) Neither the Manager nor the management nor any representative of the two shall interfere in any manner with the working of Smt. S. Parrie as Head Mistress of the institution.

(3) Smt. S. Parrie, the Head Mistress, will take steps to secure recognition of the Bal Bharti Nursery and the Bal Bharti Schools from the competent authority.

The City Magistrate opined that since there was an emergency and immediate action was required to be taken. The giving of a notice to the parties concerned before passing the impugned order was not feasible.

39. Section 144 of the Code may also be considered at this stage. Sub-section (1), in so far as it is material, provides that in cases where, in the opinion of the Magistrate concerned there is sufficient ground for proceeding under; the section and immediate: prevention or speedy remedy is desirable, such Magistrate may, by a written order stating material facts of the case, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or any affray. Sub-section (2) provides that in the case of an emergency the order may be passed ex parte. Sub-section (3) is relevant and may be extracted :-- .

"An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area."

40. A bare reading of Section 144 will indicate that the same is intended to be availed of for preventing disorders, disturbances and annoyances and with a view to secure the public weal. The restraints envisaged in Section 144 are of a temporary nature and can be imposed in an emergency. Thus, action u/s 144 is anticipatory. Anticipatory restrictions are imposed upon particular kind of activities in an emergency.

41. Sri Agarwal has vehemently urged that from a reading of the impugned order it is crystal clear that the same had been passed merely for preventing a breach of public tranquillity and this term, according to him, has been judicially recognised to be synonymous to the public order. Reliance has been placed by the learned counsel for the petitioners upon the decisions under the preventive

laws to demonstrate as to what public order means. His submission is that the impugned order, if taken on its face value, does not even prima facie make out a case of a threat to public order. In our opinion, in the impugned order the City Magistrate has emphasised on two aspects. First, on annoyance and secondly, on public tranquillity. Assuming that the order is based on public tranquillity alone, is it correct to contend that in the context of Section 144 of the Code public tranquillity has been used in the restricted sense of public order as understood under the preventive detention laws?

42. In *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, the constitutional validity of Section 144 of the Code was under challenge. While examining the import of "public order" in the context of Section 144 wherein the expression "public tranquillity" has been used, in paragraph 16 it is observed, that the overlap of "public order" and "public tranquillity" is only partial. The terms are not always synonymous. The latter is a much wider expression and takes in many things which cannot be described in "public order". The words "public order" and "public tranquillity" overlap to a certain extent but there are matters which disturb the "public tranquillity" without disturbing the "public order". The expression "public order" includes absence of all acts which are dangerous to the security of the State but not acts which disturb the security of others.

43. In *Gulam Abbas and Others Vs. State of Uttar Pradesh and Others*, it is observed in paragraph 26 that the entire basis of an action u/s 144 is provided by the urgency of the situation and the power thereunder is intended to be availed of for preventing disorders, obstructions and annoyances with a view to secure the public weal by maintaining public peace and tranquillity. Preservation of the public peace and tranquillity is the primary function of the Government and the aforesaid power is conferred on the executive magistracy enabling it to perform that function effectively during the emergent situations. It will be thus seen that the Supreme Court in the aforementioned two cases has taken the view that public tranquillity in the context of Section 144 of the Code should not be used and interpreted or treated as synonymous to "public order" as used in the preventive detention laws. Therefore, the cases cited by the learned counsel under the preventive detention laws are not opposite.

44. We shall now consider the case of *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, on which considerable reliance has been placed by the learned counsel for the petitioners. Rule 30(1)(b) of the Defence of India Rules, 1962 authorised the passing of an order of detention for the purposes of maintenance of "public order". The order of detention passed against Dr. Lohia was for "preventing him from acting in any manner prejudicial to public safety and maintenance of law and order". The argument was that the ground of detention did not attract, "public order". Sarkar J. points out that under the Defence of India Rules, 1962, proclamation of emergency was made as the security of India was threatened by external aggression. Proclamation was the justification for the

act. The words in a statutory provision take their meaning from the context in which they are used. The context in the present case is the emergent situation created by external aggression. Maintenance of public order in the context means prevention of disorder of a grave nature. The expression in the order of detention may mean prevention of disorder of comparatively lesser gravity and of local significance only. Hidayatullah, J. points out that public order, if disturbed may lead to public disorder. Every breach of peace does not lead to public disorder. This case, therefore, was dealing with public order in the context of the detention law, namely, the Defence of India Rules. Any observation made thereunder on the scope of "public order" cannot be used for determining the, scope of "public tranquillity" in Section 144.

45. The second attack on the impugned order is that the City Magistrate could not issue simultaneous direction to Sri Bakht and his agents etc. and to Smt. S. Parrie. This submission is founded on the words "direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management" as used in Sub-section (1) of Section 144 of the Code. The cloud, if any, is at once removed if the aforequoted words are read along with Sub-section (3) of Section 144 which have been already extracted above. This provision enjoins that an order u/s 144 may be directed to a particular-individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area. Nothing, therefore, will turn on the use of pronoun "his" in Sub-section (1) of Section 144. A combined reading of Sub-section (1) and Section (3) takes the matter beyond the pale of any controversy that an order u/s 144 may be passed against more than one person. Also, one person may be abstained from doing a certain act and another person may be directed to take a certain order. Direction can be given to another person with regard to a certain property either in his possession or under his management. In the instant case, apart from the direction to Sri Bakht, a specific direction had been given to Smt. S. Parrie in her capacity as the Head Mistress of the Institution. If she was the Head Mistress on the relevant date, the institution was certainly under her management within the meaning of Section 144. We have already indicated above that on the date when the impugned order was passed, there was ample material before the City Magistrate to indicate that Smt. S. Parrie was the Head Mistress. On the other hand, the City Magistrate in his counter-affidavit has pointed out that there was no material at all to indicate the contrary. Even Sri Agarwal has made his submission on the assumption that on the relevant date Smt. S. Parrie was the Head Mistress.

46. Considerable reliance has been placed by Sri Agarwal upon the case of Gulam Abbas (AIR 1987 SC 2198) (supra). The observation made in that case and pressed into service are these. The exercise of power u/s 144 must be in aid of those rights and against those who interfere with the lawful exercise thereof and even in cases where there are no declared or established rights the power should not be exercised in a manner that would give material advantage to one party to

the dispute over the other but in a fair manner ordinarily in defence of legal rights, if there be such and the lawful exercise thereof rather than in suppressing them. In other words, the Magistrate's action should be directed against the wrong-doer rather than the wronged. Furthermore, it would not be a proper exercise of discretion on the part of the executive magistrate to interfere with the lawful exercise of the right by a party on a consideration that those who threaten to interfere constitute a large majority and it would be more convenient for the administration to impose restrictions which would affect only a minor section of the community rather than prevent a larger section more vociferous and militant. Legal rights should be regulated and not prohibited altogether for avoiding breach of peace or disturbance of public tranquillity.

47. It is to be remembered that the Supreme Court was dealing with a case which had a chequered history. Before it, there was a time honoured dispute between the Shia Community and the Sunnis. There were numerous decrees of the Civil Court recognising the rights of the Shia Community to perform their religious rites, and practise observances and functions on certain plots. In earlier proceedings the Supreme Court had issued necessary directions to the executive, to see to it that the members of the Shia Community were allowed to exercise their rights. It was in that context that the observations relied upon were made. The earlier observations of the Supreme Court are opposite. It observes:--

"The entire basis of action u/s 144 is provided by urgency of the situation and the power thereunder is intended to be availed of for preventing disorders, obstructions and annoyance with a view to secure public weal by maintaining public peace and tranquillity. Preservation of the public peace and tranquillity is the primary function of the Government and the aforesaid power is conferred on the executive magistracy enabling it to perform that function effectively during emergent situations and as such it may become necessary for the executive magistrate to override temporarily private rights and in a given situation the power must extend to restraining individuals from doing acts perfectly lawful in themselves, for, it is obvious that when there is a conflict between the public interest and private rights the former must prevail."

48. Here, we may state at once that the impugned order fully satisfies the requirements as laid down by the Supreme Court in the passage referred to above. The Supreme Court also emphasised that the paramount consideration in proceedings u/s 144 is the maintenance of public peace and tranquillity. It is true that the Supreme Court has said that ordinarily the magistracy must act in a fair manner in defence of legal rights but the Supreme Court has also emphasised that there should be a legal right and there should be a lawful exercise of that legal right. We have already expressed our prima facie opinion about the manner in which the petitioners have been exercising their alleged legal rights. Whether they have been exercising their legal rights lawfully is a big question mark and, as already indicated, we have deliberately refrained from expression any final opinion on that question. We have no hesitation in taking the view that in the

instant case the City Magistrate did not transgress the observations made by the Supreme Court in *Gulam Abbas* and upon which reliance is placed on behalf of the petitioners.

49. The last submission made, by Sri Agarwal is that the impugned order violates the fundamental right of the petitioners to form associations or unions as guaranteed under Article 19(1)(c) of the Constitution. As all other rights enshrined in Article 19, this right too is subject to reasonable restrictions in the interest of public order or morality. The impugned order does not in any manner interfere with the rights of the petitioners to form an association. The Bal Bharti Nursery School has been registered under the Societies Registration Act. No interference has been made with that registration by the impugned order. No one has either been deprived of his membership nor any member has been included in the association. Therefore, there is no inroad into the fundamental right at all. If an association or a society enters into a trade or a commercial activity, such an activity is not guaranteed by Article 19(1)(c), if at all, Article 19(1)(g) comes into the picture. We have already dealt with the impact of the impugned order upon the rights of the petitioners, if any, under Article 19(1)(g).

50. In *Smt. Damyanti Naranga v. Union of India*, AIR 1971 SC 966 it was held that after an association has been formed and the right under Article 19(1)(c) has been exercised by the members joining it, they have no right to claim that the activities must also be permitted to be carried on in the manner they desire. This part of the observation, on which reliance has been placed by the learned counsel for the petitioners, is opposite for the purposes of deciding the validity of the impugned order on the anvil of Article 19(1)(c).

51. The observations upon which reliance is placed by, the learned counsel for the petitioners are these. The Act does not merely regulate the administration of the affairs of the Society; what it does is to alter the composition of the Society itself. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. 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 vountarily admitted in this Association. In that case the Registrar had introduced certain persons as members of the Association (*Hindi Sahitya Sammelan*). It was in that context that the aforementioned observation was made. There can be no quarrel with the proposition laid down by the Supreme Court. Here, by the impugned order there is no change in the membership of the Association. Nobody has been forced into the association. The composition of the Association has not been touched at all by the impugned order. This case, therefore, is not Opposite.

52. Now we come to writ petition No. 7812 of 1988. In this petition, as already stated, the order dated 18th April, 1988, passed by the District Magistrate directing the Manager of the Syndicate Bank not to permit the petitioners to operate the accounts is being impugned.

53. The short ground on which this order is liable to be set aside is that it has been passed for an indefinite period. In this shortcoming the element of arbitrariness is apparent. We do not consider it necessary to go deep into the matter and examine other contentions raised on behalf of the petitioners assailing this order as in our opinion this order has, in fact, lost its efficacy. On 29th April, 1988, the Assistant Commissioner of Income Tax, Special Investigation Circle, Allahabad, passed an order directing the Manager of the Syndicate Bank, Civil Lines, Allahabad to provisionally attach the accounts of Bal Bharti School and Bal Bharti Nursery School. It also directed that those accounts were not to be operated without his prior permission. This order has been challenged by the petitioners by means of a writ petition No. 1091 of 1988, which is pending in this Court.

54. The net result is that in view of the order passed by the Assistant Commissioner of Income Tax the petitioners cannot operate their accounts. However, on the ground stated above, the impugned order is quashed. However, we make it clear that this order will have no bearing upon the order passed by the Assistant Commissioner of Income Tax.

55. In writ petition No. 12724 of 1988 the principal prayer is that a writ in the nature of mandamus be issued directing the District Magistrate, Allahabad and Sri Prakash Chandra Chaturvedi, who was then the District Magistrate, Allahabad, not to interfere with the affairs of petitioners Nos. 1 and 2. We may point out that Sri Prakash Chandra Chaturvedi has been transferred outside Allahabad. This petition relates to the alleged order of closure of the School passed by the District Magistrate, Allahabad. We have already dealt with this order in the earlier part of this judgment and we have already held that the District Magistrate did not pass an order for the closure of the petitioner School alone. The District Magistrate had in his counter-affidavit stated that he had no intention to interfere with the management of the institution. In view of this stand of the District Magistrate, no order is needed in this petition.

56. In writ petition No. 12767 of 1988 we had, on 31st August, 1988, delivered the operative portion of our judgment and order and had reserved our right to give reasons later on. We have given reasons in this judgment.

57. Writ petition No. 12724 is dismissed. Writ petition No. 7812 of 1988 is allowed and the impugned order dated 18th April, 1988, passed by the District Magistrate Allahabad, is quashed.

There shall be no order as to costs in all the three writ petitions.