

(1999) 05 CAL CK 0027

In the Calcutta High Court

Case No : Writ Petition No. 19060 (W) of 1998

Bhagwandas Harlalka

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 21-05-1999

Acts Referred:

Constitution of India, 1950 — Article 15, 26, 29, 29(1), 30
West Bengal Board of Secondary Education Act, 1963 — Section 27(2), 50
West Bengal Primary Education Act, 1973 — Section 105, 106(1), 2, 38, 60

Citation : (1999) 2 ILR (Cal) 215

Hon'ble Judges : Satyabrata Sinha, J; Samarendra Nath Bhattacharjee, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharjee and Pal, for the Appellant; Gupta, for West Bengal Board of Secondary Education, L.C. Behani, for S.N. Mishra and Anowar Hossain, for the Respondent

Judgement

Satyabrata Sinha, J.

1 These appeals raise a question as to whether only because a school has been established allegedly by some Hindi speaking people, they as of right, can claim minority status with a view to get protection under Article 29 and/or Article 30 of the Constitution of India.

2. F.M.A. No. 742 of 1987 arises out of a judgment and order dated July 4, 1985 passed in Civil Rule No. 15274(W) of 1984 whereby and whereunder the writ petition filed by the 1st Respondent herein was allowed.

3. M.A.T. Nos. 4040 of 1998 and 4099 of 1998 have been filed by the Teacher-in-Charge and the members of the Managing Committee of the School in question known as Angle Hindi High School against an interim order dated November 25, 1998, passed by a Learned Single Judge of this Court whereby and whereunder an order of injunction in terms of prayer (f) and (g) the writ application was granted, inter alia, on the ground that this Court in a decision dated July 4, 1985 Bhagawandas Haralalka v. State of West Bengal and Ors.1986 (1) C.L.J. 293

declared the School to be a minority institution and, thus, is entitled to appoint its own Head Master in view of the decision of the Apex Court in N. Ammad Vs. The Manager, Emjay High School and Others, .

Facts:

4. On or about January 2, 1940 a School in the name and style of Ramrickdas Harlalka School was established. Allegedly, the School was constituted (not established) by some Hindi speaking people of Calcutta (who are Marwaries).

5. A girls" section was opened in the said School in the year 1946. In the said School there were two sections - one Bengali Medium Section and another Hindi Medium Section. Allegedly in terms of the regulation of the University thence prevailing, the Hindi Medium School was treated to be a separate School, the said School was provisionally recognised by Calcutta University on or about December 10, 1940. The name of the said School was changed in the year 1947 to Angle India High School which was also approved by the said University. The name of the said School was again changed to Adarsh Hindi School.

6. Allegedly in the year 1950, the members of the Managing Committee of the School decided to create a Trust for management of the School. A bars perusal of the deed of trust would show that the sole aim and object thereof was "to impart education".

7. A trust deed was executed on April 6, 1951 and registered on April 24, 1953. A building was purchased with the fund lying with the trust. Amongst others, one Sri M.D. Sukla was also a trustee. Admittedly, the West Bengal Board of Secondary Education in purported exercise of his power conferred upon him u/s 27(2) read with Section 50 of the West Bengal Board of Secondary Education Act, 1963 as amended, appointed Administrator in respect of other Adarsha Hindi High School. The said Trust opened up 12 branches of the School as stated in details in para. 2 of the writ petition which is the subject matter of F.M.A.T. No. 742/87.

8. Out of the 12 branches, two branches were granted special constitution, by the West Bengal Board of Secondary Education as regard formation of the Manaqinq Committee in the following manner:

1. Nominees of the Adarsha Hindi High School Trust in the Category of Doners.... 2
2. Guardians (to be elected).... 4
3. Teachers (to be elected from among the teachers of the School).... 3
4. Person interested in Education (To be elected from the Locality).... 2
5. Medical Practitional (to be elected from the locality).... 1
6. Headmistress (Ex-office).... 1

7. Director of Secondary Education.... 1

Total.... 14

9. Administrators were appointed to manage the affairs of the School by the West Bengal Board of Secondary Education on April 19, 1978, November 13, 1978, January 13, 1980 and December 23, 1980.

10. Shri Sunil Kumar Mukherjee who was appointed as Administrator on December 23, 1980 wrote a letter to the Headmistress of one of the Schools asking her to suspend all arrangements for holding election of the Managing Committee. Thereafter, a writ application was filed in this Court. This Court directed holding of election and the matter went upto the Supreme Court of India.

11. It appears that there had been disputes inter se between the trustees of the said Trust viz. Bhagawandas Haralalka and Sri M.D. Sukla. Even two suits were filed in respect of an election held in respect of reconstitution of the Managing Committee of the School being Title Suit No. 361/81 and Title Suit No. 373/81. The writ Petitioner had also allegedly been expelled from the Board of Trustees although he claims that he continued to be the Secretary of the Managing Committee of the Girls' School, Primary Section Various other proceedings had also been initiated by the parties. Ultimately a special leave application was filed before the Supreme Court of India being SLP No. 6943/84 against an order dated May 30, 1984 in F.M.A.T. No. 866/84 directing Sri R.D. Sukla to continue to act as Teacher-in Charge. By an order dated July 5, 1984 an election of the Managing Committee was directed to be held before September 30, 1984 according to the prevailing rules and thereafter to hand over the administration to the new Managing Committee, what were the "prevailing rules" became the subject matter of interpretation of the said order in F.M.A.T. No. 866/84 and by an order dated August 9, 1984 a division bench appointed one Sourendra Prosad Ghosh as Returning Officer to hold election. The West Bengal Board of Secondary Education was directed to decide the question of sanction of special constitution and the trustees were given liberty to make representation before it for the said purpose.

12. On or about August 13, 1984 the Trustees filed an application for sanction of special constitution wherein for the first time an averment was made that the School in question was a minority school. The said representation was rejected by the West Bengal Board of Secondary Education by an order dated August 14, 1984. The legality of the said order was questioned by Bhagawandas Haralalka, said to be the Secretary of said Trust in his individual capacity by filing a writ petition in this Court which was marked as C.R. No. 15274(W) of 1984. Although as noticed hereinbefore, a representation was filed by the trustees, which was rejected by the West Bengal Board of Secondary Education, the trustees did not file any writ petition questioning the said order. In the meantime an application was filed before the Supreme Court of India for modification of its earlier order which was ultimately withdrawn.

13. Even thereafter a new Primary School was opened. By reason of the impugned judgment and order dated July 4, 1985 the aforementioned writ application was allowed in terms whereof the schools in question were declared to be minority institutions. The Learned Judge by reason of the impugned order had held that even if complaints were made by the teachers and guardians against the special constitution, the same cannot be taken into consideration at all by the Board as the teachers and guardians had no locus standi in respect thereof. It was further held that the Chairman of the Board which passing its order dated August 14, 1984 ignored the order dated July 8, 1981 passed by B.C. Roy, J, (as His Lordship then was) and in any event, acted in hot taste by invoking his emergency power.

14. As regard the question that the minority status of the school had not yet been determined by the State, the Learned Judge observed:

An objection has also been raised by the Board that the State Government has not declared that the School was established by the minority community. The objection has no substance. The fundamental ? right of the minority community does not depend upon the declaration to be made by the State that the School was established by a person or persons belonging to the minority community, religious or linguistic. On the facts as brought on record, I am unable to hold that School was not established by a person or persons belonging to the linguistic minority thus the School is entitled to the protection of Article 30 irrespective of the fact whether the State Government has made any declaration to that effect or not. A right under Article 29 and 30 cannot depend on the declaration to be made by the State Government.

15. Upon considering various decisions of the Supreme Court the Learned Judge held that the School in question is a minority institution and further observed:

From the decisions referred to above, it is clear that the right to choose the Managing Committee or Governing body is an essential right of administration guaranteed under Article 30 of the Constitution and any interference with the said right is violative of Article 30.

16. As regard the contention that the School was not entitled to obtain grant of any special constitution as they have accepted the election conducted by the Administrator in terms of order of B.C. Roy, J. (as His Lordship then was) passed in CO. No. 8407(W) of 1981, it was held:

If there is any allegation against the Trust, any beneficiary may institute appropriate proceeding in the competent Court but that is not a ground for interfering with the internal administration of a school run by a linguistic minority.

It is also very unfortunate that an allegation has been made against late Sri S.K. Roy Chowdhury who was appointed Chairman by the Division Bench. There is not an iota of evidence and the allegation has been made only to cause certain prejudice in the mind of the Court. It is also surprising that the person stated to

be the Head Master is disputing that the School is not entitled to the Special Constitution. or the School is not entitled to protection under Article 30 of the Constitution. His conduct amply demonstrate that he is set up by interested persons to enable the Board to interfere with the internal administration which they otherwise are not entitled to do.

The Learned Judge directed:

For the aforesaid reason, the application succeeds. The Rule is made absolute. Let appropriate writ be issued.

As I have held that the Schools are run by a linguistic minority the Trust will be entitled to run the school on the basis of their own constitution so long as the Special Constitution is not granted to them by the Board.

17. The West Bengal Board of Secondary Education has filed the appeal being F.M.A. No. 742 of 1987 (F.M.A.T. No. 2711 of 1985) against the said judgment which unfortunately is pending since 1985.

18. Admittedly, the Managing Committee of the Primary Section of Adarsh Hindi High School, Bhowanipore was last constituted on July 14, 1997 comprising of the following members:

- i) Sri S.B. Goenka, President i.e. Petitioner No. 2,
- ii) Sri B. Harlalka, Secretary i.e. Petitioner No. 1,
- iii) Mrs. G.K. Singh, Benefactor,
- iv) Sri N.C. Prasad, Rector,
- v) Sri L.P. Tripathi, Person interested in education,
- vi) Sri D.N. Roy, person interested in education,
- vii) Sri S.N. Mishra, Guardian's representative,
- viii) Sri Kedar Mishra, Guardian's representative,
- ix) Sri S.K. Khukla, teacher's representative,
- x) Sri Bharat Choubey, teacher's representative,
- xi) Sri S.N. Pandey, teacher-in-charge i.e. the Respondent No. 7..
- xii) Govt. nominee (to be taken).

19. The said Managing Committee, however, was dissolved by the Trust by a resolution adopted on August 18, 1998.

20. It is also admitted that Sri Sachida Nanda Pandey was directed by the Managing Committee of the School to efficiate as teacher-in-Charge. It sought for permission of the District Inspector of School, Primary Education to fill up the post of Head Master. A list of approved teachers was directed to be submitted by

the said authority by a letter dated May 26, 1988 whereagainst a letter dated July 20, 1998 was issued by the Trust stating that no teacher had the requisite training to be appointed as Head Master and thus, permission had been sought for inviting application for appointment of a suitable candidate in the said post. The District Inspector of School on July 6, 1998 asked the Trustees to submit all relevant documents regarding the constitution of Managing Committee as also a copy of the prior Managing Committee where to a reply was sent on July 20, 1998 as contained in Annex. T to the writ application. Allegedly, Sri S.N. Pandey who was added as Respondent No. 7 appointed four persons as teachers who were related to teachers of the said School and committed various other irregularities wherefor he was suspended with immediate effect upon initiating a disciplinary proceedings. The Trust thereafter constituted an ad hoc committee consisting of the following members:

1. S.B. Goebka, President i.e. Petitioner No. 2,
2. Sri B. Harlalka, Secretary, i.e. the Petitioner No. 1,
3. Mrs. G.K. Singh,
4. Sri N.C. Prasad,
5. Sri Prabhu Nath Prasad,
6. Sri R.S. Singh, Assistant Teacher,
7. Sri S.P. Yadav, Huardian's representative.

21. By a resolution dated August 18, 1998 the writ Petitioner No. 1 was allegedly authorised to take action including legal proceedings, inter alia, to restrain the four teachers who had been appointed as Assistant Teachers from entering the School premises whereafter, a suit was filed before the Learned 4th Civil Judge, Alipore which was marked as Title Suit No. 199 of 1998.

22. The Respondent No. 7, however, circulated a notice on September 26, 1998 stating that he had been appointed as Head Teacher of the school by the District Inspector of Schools (Primary Education) on and from September 18, 1998, a copy whereof is contained in Annex. "N" to the writ application. Questioning the authority of the District Inspector of Schools (Primary Education) to appoint Head Teacher in respect of an institution which is said to be a minority institution, a writ application was filed claiming, inter alia, for the following reliefs:

a) A declaration that the Respondent No. 1 to 6 have no power and/or authority and/or jurisdiction to interfere in the matter of appointment of teachers, head teachers and other members of the staff of the schools run by Adarsh Hindi High School Trust including in particular the primary section of Adarsh Hindi High School, Bhowanipur Branch at 4, Rammoy Road, Calcutta-25 save and except to prescribe minimum qualifications and/or eligibility requirements for appointment of such teachers;

b) A declaration that the Respondent No. 1 to 6 have no power and/or authority and/or jurisdiction to" interfere in the internal management and/or administration of the school and/or to displace the Adhoc Managing Committee constituted by the Adarsh Hindi High School Trust at its meeting held on 18th August, 1998;

c) A writ of and/or in the nature of mandamus do issue commanding and directing the Respondents and each of them ;

....

f) An injunction do issue restraining the Respondents and each of them, their servants, assigns and/or agents from giving any effect and/or further effect to the impugned order purporting to appoint the Respondent No. 7 as Head Teacher of the primary section of Adarsh Hindi High School, Bhowanipur, Calcutta and/or otherwise interfering with the administration and/or management of the said school and/or from displacing and/or interfering with the functioning of the Adhoc Managing Committee the school constituted by the Adarsh Hindi High School Trust on 18th August, 1998 and/ or from rejoining and/or teaching cognizance of any other purported committee other than the said Adhoc, managing committee and/or from withdrawing D.A. payable to the approved teachers of the school;

g) An injunction do issue restraining the Respondent No. 7 Sri S.N. Pandey from acting as Head Teacher or Teacher-in-Charge of the Primary Section of Adarsh Hindi High School, Bhowanipur, Calcutta.

23. As noticed hereinbefore by reason of an order dated November 25, 1998 a Learned Single Judge of this Court has issued an, interim order in terms of Prayers (f) and (g) aforementioned.

24. Mr. Bikash Ranjan¹ Bhattacharjee, the Learned Advocate General of Tripura appearing on behalf of the Appellant Sri Surya Narain Mishra and Ors. questioned the correctness of the judgment and order passed by the Learned Single Judge which is the subject matter of F.M.A. No. 742/87 and submitted that at no point of time the alleged founders of the School had expressed their intention to establish an institution for preservation of language, culture or literature of the linguistic minority. It was submitted that the Trust in question had been running 12 Schools and it is the positive case of the Trust that two of its Schools had received special constitution. The Learned Counsel submits that no finding has been arrived at by the Learned Trial Judge to the effect that the Schools were established for the benefit of the minority community. It had further been submitted that Hindi being national language, it does not require to be preserved as such a task has been undertaken by the Central Government. According to the learned Counsel, the intention to establish a minority institution whether based on religion or language must be stated in unequivocal terms at the time of inception thereof and such a right cannot be claimed in a subsequent stage for obtaining undue benefit: It was submitted that even the Trust deed which came

into force after coming into the force of Constitution of India, did not disclose that the Schools had been established for the purposes enumerated under cl.(1) of Article 30 of the Constitution of India. Mr. Bhattacharjee, would urge that special constitution having been claimed in terms of Rule 8 of Rules for Management of Recognised Non-Government Institution (Aided and Unaided) 1969, (hereinafter referred to as "the said Rules), the Board had a right to refuse the same.

25. According to the Learned Advocate General, the authorities of the said School on the basis of the judgment of the Learned Single Judge had been treating the teachers shabbily and when the State passed an order, it came to this Court claiming minority status of the institution. The Learned Advocate General in this connection has placed strong reliance upon a Division Bench decision of this Court in Matter No. 760/79, Appeal No. 482 of 1987 (West Bengal Board of Secondary Education and Ors. v. Gyan Bharati and Ors.) disposed of on October 18, 1996 as also a decision of a Division Bench of the Andhra Pradesh High Court in Andhra Kesari Educational Society and Vs. State of Andhra Pradesh and Others, .

26. Mr. Bhattacharjee had taken us through the pleadings and submitted that on the basis thereof this Court could not have grafted the declaration of minority status to the institution as prayed for by the writ Petitioners. Referring to Rules 8(3) and 33 of the Management Rules, it was submitted that neither any application had been filed before the State for making any rule nor any other or further rules having been made in relation to the School in question, the School must be held to be governed under the general rules. It was pointed out that the School had all along been enjoying either general constitution or special constitution as granted by the Board in terms of Rule 8(3) of the Rules and not as a minority institution.

27. Mrs. Gupta, the Learned Counsel appearing on behalf of the West Bengal Board of Secondary Education also adopted the aforementioned submission.

28. Mr. Pal the Learned Senior Counsel appearing on behalf of the writ Petitioners, on the other hand, submitted that in the instant case the pleadings of the parties would clearly show that the school was established as a minority institution. In this connection our attention has been drawn to paras. 4, 6, 7, 8, 9, 10, 10A, and 10B of the Affidavit-in-Reply filed in the first case and it was submitted that the school was established by Hindi speaking people, the fund wherefor was collected by the Hindi speaking people and the medium of instruction is also Hindi. Our attention has also been drawn to the application of stay filed by Sri M.D. Sukla who claimed himself to be a founder of the school as also founder trustee for the purpose of showing that even he had stated therein that the school had been established for the benefit of the Hindi speaking people, it is stated that the statements made in paras. 1, 2, 3, 4, 5 and 6 in the second writ application had not been traversed in this stay application filed by the Appellants herein which is to be treated as an affidavit-in-opposition to the writ

application. It was submitted that from a perusal of the judgment of the Division Bench of this Court in *Gyan Bharati* it would appear that the question as to whether an institution was established for the purpose specified in CI. (1) of Article 30 of the Constitution of India or not is a question of fact and, thus, it is necessary to consider the materials brought on record-by the parties by way of affidavits.

29. Mr. Pal, submitted that the West Bengal Board of Secondary Education had all along been appointing Administrator and in fitness of things in an order dated April 18, 1984 passed in F.M.A.T. 866 of 1984 (*Bhagwandas Haralalka v. West Bengal Board of Secondary Education*) a Division Bench of this Court opined that the tenure of the Administrator was extended from time to time without any rhyme or reason. The Learned Counsel submits that a minority institution has a right to choose its own managing committee and its Head Master. In support of the said contention reliance had been placed on *N. Ammad v. Manager, Emjay High School and Ors.* (Supra). Reliance has also been placed on numerous decisions by Mr. Pal viz. AIR 1963 S.C. 540, AIR 1958 S.C. 956, *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.,*, *S. Azeez Basha and Another Vs. Union of India (UOI),*, *V. Rev. Mother Provincial, Congregation of Mother of Carmel, Carmelite Provincial House, Kovilvattam Road, Ernakulam, Cochin and Others Vs. State of Kerala and Others*, *Shri Krishna Rangnath Mudholkar Vs. Gujarat University and Others,*, *Rev. Father W. Proost and Others Vs. The State of Bihar and Others,*, *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another,*, *Dipendra Nath Sarkar Vs. State of Bihar and Others,*, *The Right Rev. Bishop S.K. Patro and Others Vs. The State of Bihar and Others,*, *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.,*, *The Hyderabad (Sind) National College Board and another Vs. The University of Bombay and others,*, *M. Mushtaque Ali Khan and Others Vs. The Magadh University and Others,*, *D.A.V. College, Vs. State of Punjab and Others,*, *The Association of Teachers in Anglo Indian School Vs. The Association of Aids of Anglo Indian School in India and others,*, *The Right Rev. Bishop S.K. Patro and Others Vs. The State of Bihar and Others,*, *N. Pararneswara Kurup (Died) and Others Vs. State of Tamil Nadu and Others,*, *K.O. Varkey Vs. State of Kerala, and Managing Committee, Baptist Church Middle English School, Berhampur and Another Vs. State of Orissa and Others,* .

30. The cultural and educational rights enshrined under Arts. 29 and 30 of the Constitution of India are required to be considered together. Article 29(1) protects the language, script and culture of sections of the citizens; while Clause (2) guarantees fundamental rights of individual citizens and not as a member of the community. Article 30(1) gave the minorities two rights, (a) to establish, and "(b) to administer educational organisation of their choice. The second right covers the right to administer pre-constitutional religious institutions. Such rights have been conferred on the linguistic minorities as well. Minorities would ordinarily establish such institution as would serve the purpose of protection of their religion and language, culture as also giving general education to their

children.

31. Whether the noble ideas of the makers of the Constitution of India and the spirit for which such provision had been made as would appear from the judgment. In re: The Kerala Education Bill, 1957 AIR 1958 S.C. 956 are being abused or misused by a section of the people is the precise question which falls for decision in this case.

32. It is not necessary for this Court to consider each and every decision of the Apex Court or the other High Courts interpreting the provisions of Arts. 29 and 30 of the Constitution of India as the same had been done in numerous cases. Most of the decisions cited by Mr. pal, had been taken note of by this Court in Gyan Bharati as also in the Association of Teachers in Anglo Indian School v. The Association of Aids of Anglo Indian¹ School in India and Ors. 1995 (1) C.L.J. 351 .

33. However, before a conclusion is arrived at as to whether the judgment passed in C.R. No. 15274(W) of 1984 dated July 4, 1985 rendered by Sengupta, J. is correct, the following facts are required to be noticed:

34. The said writ application as noticed hereinbefore was filed by Bhagwandas Harlalka alone as a Secretary of the Trust and not by the Trust. The Trust run 12 Schools. The mother tongue of the founders of the School as also most of the trustees is not Hindi but Marwari.

35. In Gyan Bharati this Court has come across a case where the members of the said community claimed that Marwari is also a language which has its own script and literature and the same was sought to be preserved with the aid of Arts. 29 and 30 of the Constitution of India. In that case this Court had taken Judicial notice of a notorious fact that various business houses have established and are running Schools on commercial basis with a view to earn profit. Articles 29 and 30 cannot be extended to protect such people and such institution.

36. The writ Petitioners clearly stated that at the time of establishment of the said School it had two sections, one Bengali medium section and another a Hindi medium one and only in terms of the directive issued by the Calcutta University, the Hindi section was treated to be a separate School. It is to be noticed that at the time of original establishment, the name of the School was Bhagwandas Harialka School which was changed to Anglo Indian High School and, then to Adarsh High School in 1947.

37. It is to be noticed that the writ Petitioner only in its affidavit-in-reply took a complete vota face by stating that hie father was a philanthropic Hindi speaking person and he along with other Hindi speaking inhabitants established a School named. Ramrijdas Harlalka"s School. The said "statements had not been made in the writ application. Even no details had been made available to this Court as to who are those other Hindi speaking people and who were associated at the time of its purported establishment. It is curious to note that the writ application proceeded on the basis that the said School and its branches were established by

the Trust. For the first time, only in affidavit-in-reply the allegation noted by the Learned Trial Judge were disclosed. No application for amendment of the writ application was filed and thus, completely a new contention was raised for the first time in the affidavit-in-reply without filing of an application for amendment of the writ application which could not have been permitted. The Respondents did not get any opportunity to traverse the allegations made therein. Such a new case which was sought to be made out should not have been allowed to be made.

38. The Learned Trial Judge, therefore, went wrong in holding that the Anglo Indian High School was established by the people belonging to the Hindi speaking community. Had the" intention of all the founders of the said School been to establish a minority institution, there was no necessity of a School being established with two sections, one, Bengali Mefdium Section and another, a Hindi Mefdium one. The fact that the School was originally established as one School is not a dispute. Therefore, the intention was to establish a School and not a School for Hindi speaking people. Only because a School has been established by a member of the minority community, the same by itself is not a proof that the same was established for the purposes enshrined under Arts. 29 or 30 of the Constitution of India. There is ablosutely no reason as to why a person belonging to a minority community in his philanthropic pursuit cannot establish a secular School or a School for the benefit of general public as contradistinguished for the interest of a minority community.

39. The Learned Trial Judge further erred in drawing an inference to the effect that the school is a minority institution within the meaning of Article 30(1) of the Constitution of India only because the teachers are Hindi speaking, the medium of instruction is Hindi, the students come from families were Hindi speaking, the trustees are all Hindi speaking people and the members of the committee nominated by the Trust are Hindi speaking people. The said criterias by themselves have no relevance in the content of Clause (1) of Article 30 of the Constitution of India. The Learned Trial Judge was also not correct in holding that the school was indisputably established for the promotion of language and cultural for particular linguistic minority without there being any materials therefor on the records of the case. In fact, such a dispute had been raised in the affidavit-in-opposition as also in the arguments advanced by the Appellants both before the learned Trial Judge as also nefore us.

40. The Apex Court in S.P. Mittal v. Union of India AIR 1983 S.C. 1, has held:

In order to claim the benefit of Article 30(1) the community must show: (a) that it is a religious linguistic minority, (b) that the institution was established by it. Without satisfying these two conditions it cannot claim the guaranteed rights to administer it.

On an analysis of the two articles, Article 29 and Article 30 and the three cases referred to above, it is evident that the impugned Act does not seek to curtail the right of any section of citizens to conserve its own language, script or culture

conferred by Article 29. The benefit of Article 30(1) can be claimed by the community only on proving that it is a religious or linguistic minority and that the institution was established by it.

In the view that we have taken that Auroville or the society is not a religious demonstration. Arts. 29 and 30 would not be attracted" and, therefore, the impugned Act cannot be held to be violative of Arts. 29 and 30 of the Constitution.

41. The Learned Trial Judge as also Mr. Pal, the Learned Counsel appearing on behalf of the writ Petitioner-Respondent have relied upon a large number of decisions as indicated hereinbefore. From the said decisions the following propositions emerge:

1. The minorities have a fundamental right to establish educational institution which would cater to the educational needs to the citizens or sections thereof. See AIR 1963 S.C. 540;

2. Article 30(1) is a necessary commitment of the right guaranteed under Article 29 of the Constitution of India. See AIR 1958 S.C. 956, paragraph 20;

3. A minority institution can be set up by a single philanthropic person but the same may not be for the benefit of the community or society thereof. See State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., ;

4. The expression "of their choice" confers a discretion upon the minority to choose the type of institutions which are considered to be the key words: Shri Krishna Rangnath Mudholkar Vs. Gujarat University and Others, , AIR 1958 S.C. 958 , Paras-22, 23 and 32, Rev. Father W. Proost and Others Vs. The State of Bihar and Others, and 12, The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, , Dipendra Nath Sarkar Vs. State of Bihar and Others, , The Right Rev. Bishop S.K. Patro and Others Vs. The State of Bihar and Others, , St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., and The Hyderabad (Sind) National College Board and another Vs. The University of Bombay and others, ;

5. The words "For the benefit of the minority or to serve the interest of the minority" would include setting up an institution for general secular education, but the underlying purpose must be the protection of the right envisaged under Arts. 29 or 30(1) of the Constitution;

6. Any community which is numerically less than 50% of the State "is a minority community. See AIR 1958 S.C. 956 , 977, Aldo Maria Patroni and Another Vs. E.C. Kesavan and Others, , D.A.V. College, Vs. State of Punjab and Others, and The Association of Teachers in Anglo Indian School Vs. The Association of Aids of Anglo Indian School in India and others, ;

7. The right conferred under Article 30 of the Constitution applies to educational institutions established before the Constitution so far as the second part thereof

is concerned. See *The Right Rev. Bishop S.K. Patro and Others Vs. The State of Bihar and Others*, , *N. Pararneswara Kurup (Died) and Others Vs. State of Tamil Nadu and Others*, and AIR 1958 S.C. 958;

8. The right under Article 30 of the Constitution of India cannot be waived. See *K.O. Varkey Vs. State of Kerala*, , *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, and *Managing Committee, Baptist Church Middle English School, Berhampur and Another Vs. State of Orissa and Others*, .

42. The aforementioned propositions of law may not be disputed, but the question would be as to whether the writ Petitioners have made out a case in relation thereto or not.

43. The facts noticed in this case clearly show that the School in question was not established by the minority linguistic community to preserve the language, culture and literature of Hindi or a School on their choice. The Trust which allegedly took over the administration of the school was not created "for the purpose of imparting education in Hindi. The Trust deed shows that merely a general meeting of the members of the Governing Body of the School was held and not a general body of the minority community. In the said meeting nothing has been brought out to show that the Trust was created for the benefit of the minority and in fact the same had been created inter alia for processing, erecting and constructing building etc. and for collection of the fund, the object of the Trust has nothing to do with protection of interest of any community. The object of the trust was merely to impart education and not education through the medium of Hindi.

44. It is now well settled that "own choice" in Article 30 must be the choice of the community and not of any individual. The trust was formed by an agreement with the President of the School and other 7 persons for vesting all existing and future assets of the School in the trustees as also for management and administration of the trust.

45. The Managing Corrimmittee which had been reconstituted according to the revised School code as modified from time to time by the University and the Board in 1959 had N.K. Bajoria and M.K. Bhuwarka as donors and B. Harlalka as benefactors apart from 3 guardians representatives, 2 persons interested in education and medical practitioner and 3 teacher's representative including the Head Master

46. A circular No. 31/61 dated September 15, 1961 was issued regarding formation of trust deeds arid registration of trust deeds, in terms whereof all concerned were advised that recognised Secondary Schools intending to come under Trusts or to accept gift should seek approval of the Board to such of the terms and conditions of the Trust or gift as may affect the management of the Schools in any way before embodying them in a deed. The said circular refers to a Government Notification No. 3675-Edn.(G) dated September 19, 1960.

47. Although much has been argued by Mr. Pal as regard the scope and purport of Rule 8(3) vis-a-vis Rule 33 of the Management Rules to the effect that the Board had no authority to grant special constitution on the ground of minority status of an institution, admittedly special constitution in respect of the committee had been claimed only from the Board evidently in terms of Rule 8(3) and not in terms of any other rules. Such special constitution had been granted in respect of formation of Managing Committee which clearly is contrary to the argument advanced before us that the Board had nothing to show in relation to composition of the. managing committee in respect minority institution in exercise of its power under Sub- Rule (3) of Rule 8 of the Management Rules.

48. As noticed hereinbefore, there had been several litigation upto the Supreme Court of India as regards the composition of the committee and the election held therefor but at no point of time such minority status had been claimed. In fact, election had been held pursuant to the orders passed by the Supreme Court of India. Admittedly, only for the first time the Trust made such a claim in terms of its letter dated August 10, 1984 as contained in Annex. "D" to the writ application.

49. It is also relevant to note that the writ Petitioner did not verify the statements made in the. writ application. The writ Petitioner has also affirmed the affidavit-in-reply wherein, as noticed hereinbefore, the deponent had made contradictory and inconsistent statements vis-a-vis the writ application and verified the statements made therein as true to his knowledge in para. 43 thereof which is to the following terms:

That the statements contained in paragraphs No. 1 to 42 of the said Affidavit are true to my knowledge and the statement contained in paragraph 42 of the said Affidavit are my humble submissions before this Hon"ble Court.

50. The said affidavit is not an affidavit in the eye of law. The said affidavit was affirmed on May 4, 1985. The Petitioner on that date claimed himself to be aged 57 years, thus, he was born in 1928. It is, therefore, evident that when the School was established; he was aged merely 12 years and, thus, he cannot be said to have any personal knowledge whatsoever. Furthermore, keeping in view the fact that he had tried to mislead this Court in the writ application, there cannot be any doubt whatsoever that the statements made by him in the affidavit-in-reply must be taken to be an afterthoughts whereupon no relevance can be placed at all. The subsequent conduct of the School authorities in running the said School under the general constitution and asking for special constitution only in respect of a few branches in terms of Rule 8(3) of the Management Rules clearly shows that they never intended to administer the School as a minority institution.

51. This aspect of the matter has been considered in Gyan Bharati wherein almost in identical situation the Court has held that no minority status can be claimed by such an institution.

52. Mr. Pal, inter alia, submitted that whereas Gyan Bharati was established in the year 1960 i.e. after coming into force the Constitution of India, the school in question was established in the year 1940 i.e. prior to the enactment of the Constitution. It is true that Article 30 not only applies to those Schools which were established after the Constitution but also those in view of second part of cl. (1) of Article 30 but as indicated hereinbefore even in the matter of administration of the school no claim had ever been made to the effect that the school in question was for the benefit of a minority community. The Trust deed which was made after coming into the force of the Constitution of India even does not say so.

53. In *Andhra Kesari Educational Society v. State of Andhra Pradesh and Ors.* (Supra), Jeevan Reddy. J, (as His Lordship then was) upon taking into consideration various decisions including the decision rendered by *Chikkala Samuel Vs. District Educational Officer, Hyderabad and Another*, held:

For this reason it was held that before an institution can claim to be a minority institution, "it should be shown that it serves and/or promotes the interests of the minority community in some manner, whether by promoting the religious tenets, philosophy, or culture or literature of that community, as the case may be, or otherwise....". The words "or otherwise" in the said observations were explained to mean that the institution, though imparting general secular education, must in some manner serve or promote the religious, economic or social interest of that community or a sizable section thereof in some manner, the same problem confronts this Bench again.

54. Referring to *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, it was held that although a minority educational social can be founded by a single philanthropic individual, qualified the same by saying that the institution so established must be for the benefit of the minority community.

55. The Court also relied upon the decision in *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, wherein it was held that the Government, the University and ultimately the Court have the undoubted right to pierce the minority veil with due apologies to the Corporate Lawyers and discover whether there is lurking behind it no minority at all and in any case, no minority institution. The object of cl.(1) of Article 30 is not to allow bogies to be raised by pretenders but to give the minorities a sense of security and a feeling of confidence not merely by guaranteeing the right to profess, practice and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms.

The Learned Judge added:

Article 30 was intended to protect, preserve and promote the interests of

linguistic and religious minorities. The idea was that in a democracy the majority can look after itself,, for the simple reason that it is a majority. It is the minorities who need protection, and religious and linguistic minorities are of a permanent nature (in contra-distinction to political minorities). Certain special rights were thus conferred upon the minorities as such to protect, preserve and promote their religious, cultural and linguistic rights and interests. The idea could never have been to discriminate between an individual and individual - or for that matter, a group of individuals and another group of individuals - on the basis of either religion, or language. Such discrimination is expressly prohibited by Article 15. Article 30 is ultimately a facet of equality, as pointed out repeatedly by the Supreme Court; (see paras. 9 and 77 in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*,). (Mathew, J, of course says, in para. 132 that the equal protection doctrine is to be deemed to be qualified by Article 30 but his approach and understanding of this right (Article 30) is itself rather restricted. The Learned Judge understands the said Article as directed towards propagation and preservation of religious tenets and culture of the minority. Moreover, he alone takes this view. Other Judges treat Article 30 as a facet of equality). And it must be remembered that equality is the single most important goal of our Constitution. This brings us to the question whether minorities have an unrestricted right to establish educational institutions of their choice?

56. It is, therefore, clear that a minority status can be claimed by the persons who intend to achieve their purposes by establishing or administering a minority institution for the purposes stated in Article 30(f) but the same cannot be taken aid of for the purpose of obtaining a benefit which there does not exist. Minority status cannot claim as a ruse or camouflage.

57. Although a great deal of argument has been advanced that in terms of Rule 33 the State Government can make any further rule only in the event an application is filed therefore a bare perusal thereof would show that the general rules would apply in all cases subject of course to make any further or other rule for the composition, powers, function of the managing committee or institution or class of institution, on the application of any institution or the class of institution to which provision of Arts. 26 and 30 of the Constitution of India may apply. The words "further or other rules" are significant. It does not show that in absence of any special rules, the minority institution would not abide by the general rules but only the general rules which come in conflict with minority status of the institution would be inapplicable. Thus, only upon an application of any institution or class of institution, other or further rules can be made for the purposes laid down therein by the State Government in terms of its aforementioned power. While doing so, there cannot be any doubt whatsoever that it will be open to the State to arrive at a finding as to "whether the same conforms to the provision of Article 26 or Article 30 of the Constitution of India. If it does not conform to the provision of Arts. 26 and 30 of the Constitution of India, such application should be rejected. We may, however, hasten to add that

the decision of the State Government is not binding and ultimately it is for the Court to decide whether the institution in question is a minority or not.

58. However, we agree with the Learned Trial Judge that the, order dated August 14, 1984 as contained in Annex. "E" to the writ application was passed in hot haste and the same violates the principles of natural justice. As a long time elapsed and the School in question had been running in terms of the Constitution framed by the School in terms of the order passed by the Learned Trial Judge, we are of the opinion that the representation of the Petitioner dated August 10, 1984 as contained in Annex. "D" to the writ application should be considered afresh upon giving an opportunity of hearing to him. Such a decision may be taken by the appropriate committee of the Board and/or the Board as the case may be in accordance with law at an early date and not later than 3 months from the date of communication of this order.

59. Let us now consider the other two appeals.

These two appeals were filed out of an order dated November 25, 1998 passed by a Learned Single Judge of this Court whereby the said Learned Judge passed an interim order, which is to the following effect:

Prima facie the institution in question appears to be a Minority Institution as held by this Court in *Bhagwandas Haralalka v. State of West Bengal and Ors.* reported in 1986(1) C.L.J 293. The said judgment was with reference to the Secondary School administered by the Petitioner trust.

The appointment of Headmaster in the case of Minority Institution, the choice is essentially that of the Managing Committee of the Minority institution *N. Ammad Vs. The Manager, Emjay High School and Others*, .

Keeping in view the submissions made by the Petitioner that the Respondent No. 7 was placed under suspension pending enquiry into the charges levelled against him and in respect whereof a disciplinary proceeding is pending, I am, prima facie, of the view that the State authorities cannot appoint the said Respondent No. 7 herein as the Head Teacher of the Primary Section of the school as that would be an interference with the right of administration of the Minority Institutions. Whether the proceedings initiated against the Respondent No. 7 are valid in law is a matter which may be required to be considered in an appropriate proceeding or in this proceedings at a later stage.

Prima facie case has been made out for grant of an interim injunction and accordingly there shall be an interim order of injunction in terms of prayers (f) and (g) to the writ petition.

Liberty is granted to the Respondent to apply for modification and/or variation of the above interim orders upon filing an appropriate application with notice to the otherside.

The Respondents shall file their affidavit-in-opposition within four weeks from

date and reply thereto, if any, be filed within one week thereafter.

Liberty to mention for early listing for hearing.

Let a xerox certified copy of this order be given to the Learned Advocate for the parties, if applied for, by the concerned department.

60. However, as the said order was passed in terms of the judgment dated July 4, 1985 in Civil Rule No. 15274(W) of 1984 as agreed to by the Learned Counsel for the parties the entire writ application was taken up for hearing.

61. The stay applications filed by the opposite parties as prayed for by them were considered to be their respective affidavits-in-opposition filed on their behalf to which affidavits-in-reply had been filed by the writ Petitioners.

62. The writ Petitioners are three in numbers. The first writ Petitioner had filed the earlier writ application being C.R. 15274(W)/84 which was the subject matter of F.M.A. No. 742/87. This Court in the said application has held that the school in question namely Adarsh Hindi High School is not a minority institution. As the said" decision of this Court shall operate as Res Judicate, the questions which are necessary to be considered in this matter are very limited. With the aforementioned background, the fact of the matter may be noticed. The School in question is a Primary School. It appears that after the judgment was delivered by Sengupta, J. Rules were framed by the Trust as contained in Annex. C to the writ application. It appears that the School in question was recognised on January 31, 1977. One of the conditions of recognition of the said School was that no teacher should be appointed, suspended or dismissed without obtaining prior approval of State Government. Other conditions for recognition were also similar to the conditions which are imposed for grant of recognition of the general school. The School at the relevant point of time when the recognition was sought for, did not state that it is a minority institution. The school in question is a D.A. getting School. The Director of School Education addressed a letter dated May 25, 1983 to the District Inspector of Schools in relation to Adarsha Primary School as regard prayer for administrator and grant of special constitution in favour of Adarsha Hindi Primary School situated at 4, Rammoy Road, Calcutta-25 and other three Schools situated in Calcutta wherein with reference to several Memos issued by the addressee, it was stated:

With reference to the subject mentioned above the undersigned has to request him to ask the existing management of the Schools to reconstitute the managing committee of the Schools in accordance with their own rules and procedures. This Education Directorate will be in a position to look into the management of the Primary Schools only after introduction of Free Primary Education Scheme for which existing management is required to apply through District Inspector of Schools (Primary Education) concerned in the prescribed proforma.

The Schools are also to be intimated that unless they follow the Departmental Rules applicable to such Schools financial help to these Schools in the form of

grant of Government D.A. to the teachers may be withheld and if necessary recognition of such Schools may be withdrawn. Hence the Schools may be advised to follow the Departmental Rules.

63. Thereafter the aforementioned judgment dated July 4, 1985 was rendered. Yet again on September 28, 1994 the District Inspector of Schools, Primary Education, informed the Head Master of the School that the new managing committee which was reconstituted as per Memo No. 1598/1 (c)/SP/P dated May 24, 1983 in accordance with their own rules and procedures, could continue to work on the condition that it would obey the rules and regulations prescribed for D.A. getting School in the following term:

In connection with the subject noted above he is informed that as he reconstituted the Managing Committee as per Memo No. 1598/1 (3)/SC/P dated 24.5.83 of the Director of Primary Education, West Bengal in accordance with their own rules and procedure his new committee may work on condition that the new managing committee will be bound to obey rules and regulations prescribed for D.A. getting Schools.

The said order has not been questioned.

64. One N.C. Prasad, was appointed as Head Master on October 10, 1994. Sri S.N. Pandey was appointed as Teacher-in-Charge on a temporary basis until appointment of a regular Head Teacher. On July 1, 1997 Sri Pandey was asked to hand over the charge to N.C. Prasad who was to join the School. However, according to the Petitioners Sri Prasad neither appointed nor took charge. The Managing Committee was reconstituted on July 14, 1997 and its term expired in June/July 2000. A meeting was conducted on September 22, 1997. The President of Trust informed D.I. of Schools about the constitution of the Managing Committee by a letter dated September 24, 1997. A meeting of the Managing Committee took place on December 4, 1997 where S.N. Pandey was asked to produce accounts. On December 8, 1997 Sri B.D. Harlalka wrote a letter to the Secretary of the D.I. of schools seeking prior permission to appoint Headmaster of the Bhowanipur Branch. The case of the Respondent, however, is that on May 2, 1998 six members of the Managing Committee made a representation to B.D. Harlalka for convening a Managing Committee meeting to consider the appointment of Headmaster and 4 Teachers which, according to the writ Petitioners, have been denied as false. However, allegedly six members of the Managing Committee made a representation to the President for convening a Managing Committee meeting on May 14, 1998 which has also been denied and disputed by the writ Petitioners. On May 26, 1998 the District Inspector of Schools in answer to the letter of Sri B.D. Harlalka dated December 8, 1997 granted permission to appoint a Head Teacher from the senior most and most trained teacher as per the rules. On July 5, 1998 an alleged meeting was held wherein out of 10 members, 6 members were present and therein a resolution was adopted that Sri S.N. Pandey would be appointed as the Head Teacher and a selection committee would be constituted to appoint 4 Teachers after proper

notification and interview of eligible candidates.

65. On July 6, 1998 a letter was issued from the D.I. of Schools to the Primary Section of the Trust requesting supply of information as to whether Managing Committee was controlled by Trustees and if so to submit relevant papers and documents regarding the constitution of the Managing Committee and the approval of the prior Managing Committee, to which a reply was given on July 20, 1998 stating that the said School was being managed by the Trust. On July 22, 1998 the Trust wrote a letter to the D.I. of school stating that none of the teachers had the requisite training for teaching in a Primary School and hence sought permission of D.I. to appoint a Head Teacher after completing the normal procedure, i.e. appointment after an advertisement inviting applications from suitable candidates. This fact, however, is not very relevant for the purpose of deciding the points at issue. Allegedly four teachers were, however, appointed and they joined the School.

66. On August 5, 1998 another purported meeting was held wherein B.D. Harlalka was replaced by Sri S.N. Mishra as Secretary of the School. To that effect a letter was issued on August 6, 1998. In the meantime, the Secretary of the Primary School issued show-cause notice to S.N. Pandey directing him to show cause within 15 days as to why his appointment as a Teacher-in-Charge would not be cancelled. He was placed under suspension till completion of the enquiry and Sri P.N. Prasad was handed over the charge of the Assistant Teacher in relation where to an appointment letter was issued on August 7, 1998 but Sri Pandey refused to hand over charge. Sri S.N. Pandey in terms of his letter dated August 8, 1998 stated that issuance of show-cause notice and the commission of inquiry was without any authority in law. The trust allegedly received complaint that Sri Pandey forcibly took the Cash Register and Ledger from the Accountant-cum-Teacher and started collecting fees from the students through his son. The purported Secretary (Sri S.N. Mishra) in terms of his letter dated August 13, 1998 sought for approval of appointment of Sri S.N. Pandey as Head Teacher. On August 18, 1998 Trustees held a meeting wherein a resolution was adopted dissolving the existing committee and constituted an ad hoc committee in terms of Rule 9 of its rules and regulations and the said fact was intimated to the District Inspector of Schools on August 19, 1998. As two parallel committees had started administering the Schools, various legal proceedings had been initiated. One of the other resolution had been passed by one committee or the other. In the meantime the impugned order dated September 24, 1998 was passed approving the appointment of Sri Pandey as Head Teacher. Thereafter the writ application was filed.

67. Mr. Pal, the Learned Counsel appearing on behalf of the Petitioner, inter alia, submitted that in view of the rules framed by the Trust which is contained in Annex. "C to the writ application the meetings held are illegal. Our attention has been drawn to the following provisions of the Rules:

Quorum: Four members present shall form a quorum but the presence of at least

the President or Secretary will be essential.

Meeting of Committee: A meeting of the Committee shall be called by the Secretary at least once in every three months except during vacation. Not less than 7 days notice of the meeting will be given with the consent of the President. If so required, the president may of his own call a meeting of the committee on giving even short notice for the meeting.

68. It was, therefore, submitted that as the meeting was not called by the Secretary, the purported meetings whereby and whereunder Sri S.N. Pandey has been appointed as a Teacher-in-Charge, Sri S.R. Mishra was appointed as a Secretary of the School which was illegal. Our attention has further been drawn to Rule 9 of the said rules which is to the following effect:

The Trust may supersede the School Committee if in its opinion there are sufficient reasons to do so and appoint an ad-hoc committee to discharge all the functions and exercise all the powers of the school Committee pending its reconstitution.

69. It was urged that as in terms of the said rules a new ad hoc committee has been constituted and thus, the order of D.I. dated September 24, 1997 must be held to be arbitrary in view of the facts as stated in the writ application.

70. Mr. L.C. Behani, the Learned Counsel appearing on behalf of Sri S.N. Mishra submitted that there was no special constitution in relation to the School in question as the same had been granted only in relation to the High School.

71. Mr. Anowar Hossain, the Learned Counsel appearing on behalf of the State, however, submitted that a suit has been instituted in relation to the self-same subject matter and, thus the writ application should not be allowed to continue. It is stated that in the said Suit a prayer for interim order was made, which was refused whereagainst a Miscellaneous Appeal was filed and it was also dismissed and thereafter this writ application was filed.

72. Mr. Bikash Ranjan Bhattacharjee, the learned Counsel appearing on behalf of Sri S.N. Pandey has drawn our attention to a circular letter dated October 21, 1970 providing for constitution of the Managing Committee. The Learned Counsel, however, submitted that keeping in view the fact that the majority have convened a meeting in terms whereof Sri S.N. Pandey was appointed as a Head Teacher and Sri S.N. Mishra has been appointed as a Secretary of the Managing Committee, the writ application was not maintainable.

73. It remains admitted that after the judgment was delivered by Sengupta, J, the school framed its own rules. Thus, there cannot be any doubt whatsoever that ex facie the meeting held on May 2, 1998 which was not at the instance of the Secretary or the President of the Trust, was illegal. There cannot further be any doubt that appointment of all the four teachers were illegal as the same did not conform to the provisions of the Recruitment and Leave Rules, 1991 framed by the State of West Bengal in exercise of its power conferred upon it under Sub-

section (1) of Section 106 of the West Bengal Primary Education Act, 1973. The authorities of the school in view of the aforementioned provision cannot have any right to appoint any teacher whatsoever whether by way of advertisement or otherwise inasmuch as in terms of Rule 5, the Chairman of the respective Council shall be the appointing authority which means a Primary School Council constituted under the said act. Rule 6 of the said Rules provides for the qualification for appointment as a teacher. Rule 7 provides for composition of the Staff Selection Committee and Rules 8 and 9 provide for the manner in which such selection have to be made.

74. The management of the Primary school used to be governed by the two Acts, the Bengal (Rural) Primary Education Act, 1930 and the West Bengal (Urban) Primary Education Act, 1963. The Schools situated in Calcutta, however, were not governed by the said Acts. It is not necessary to consider the legislative history and the various circulars issued by the concerned authorities in relation to the management of the School and appointment of the teachers as the same had been considered by this Court in *Bijoy Bahadur Singh v. D. Ghosh* ILR 1996(2) Cal. 438. However, both the 1930 Act and 1963 Act were repealed and replaced by the West Bengal Primary Education Act, 1973 (hereinafter referred to as the said Act). The said Act has been enacted to make better provision for the development, expansion, management and control of Primary Education with a view to making it universal, free and compulsory.

75. Sub-sections (xvii), (xviii), (xvix) and (xxia) of Section 2 of the said Act read thus:

(xvii) - Primary Education means education in such subjects and upto such standard as may be prescribed;

(xviii) - Primary school means a school or a department of a school giving instruction in primary education recognised or deemed to be recognised as a primary school under this Act, (and includes a Junior Basic School);

(xix) - Primary School Council means a Primary School Council established under this Act and includes the primary school council for the subdivision of Siliguri;

(xxia) - Teacher means a person who holds a teaching post in a primary school or in a Junior Basic Training Institution on a regular and whole time basis and is paid either wholly or in part from the funds under the control of the State Government in the Education Department.

76. Chapter-II provides for constitution of the Board. Chapter-III provides for powers and functions of the Board and the President. Chapter-VII provides for committees of the Primary School Council including the Disciplinary Committee and the Appeal Committee.

77. Section 38 of the said Act provides for constitution of Calcutta Primary School Council. The duties of the Primary School Council has been set out in Section 60 of the act.

78. Sub-sections (b), (h), (k) and (l) s, 60 of the said act read thus:

(b) to maintain in such manner and containing such particulars as may be prescribed a register of teaching and non-teaching staff of all primary schools under its management;

(h) to maintain an adequate number of primary schools within its jurisdiction ;

(k) subject to the prescribed conditions, to appoint teachers and other staff in primary schools, to transfer any such teacher or other staff from one primary school to another primary school within the jurisdiction of the same Primary School Council and to pay to teachers and other staff salaries and allowances, if any, at such rates as may be fixed by the State Government;

(l) to grant recognition to primary schools with or without conditions or to withdraw recognition and to grant financial aid to any such primary schools or to withdraw such aid, in such manner, as may be prescribed.

Sections 64, 65, 66 of the said act provide for taking over the schools.

79. However, prima facie, it appears that no such scheme or notification has been made or issued as the management of the school in question has not yet been taken over.

80. Section 93 provides for constitution of ad-hoc Committee to discharge the functions of Primary School Council until it is established. Section 95 provides for provisions for removing difficulty which reads thus:

If any difficulty arises in giving effect to the provisions of this Act, the State Government may take such steps or issue such orders, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for the purpose of removing such difficulty.

81. In *West Bengal Board of Primary Education v. State of West Bengal and Ors.* 1997(1) C.L.J. 165, it has clearly been held that the 1973 Act and 1991 Rules have come into force and any appointment must be made in terms of the said rules.

82. As the school in question had not been taken over, the Managing Committee of all aided Primary Schools must be constituted in terms of the circular letter dated October 21, 1970 which still holds the field in view of the provisions contained in Section 105 of the 1973 Act. The fact that school in question is an aided school is not in dispute. In view of our findings aforementioned the school in question is not a minority institution, the Managing Committee must be constituted on terms of the aforementioned circular letter dated October 21, 1970. As indicated hereinbefore, Managing Committee has been constituted in terms of the rules framed by the Trust which must be held to be non est in the eye of law as the judgment of Sengupta, J, to the aforementioned effect has been set aside.

83. The District Inspector of Schools must, therefore, take steps to see that a Managing Committee is constituted in accordance with law. However, keeping in view the fact that no managing committee in law exists, the Director of School Education (Primary Education) is hereby directed to appoint an Administrator/Ad-hoc Committee to run the said School till the Managing Committee is constituted in accordance with law. Till such Administrator/Ad-hoc Committee is appointed the school shall be run in terms of the interim order passed by this Court dated February 1, 1998, in terms whereof the administration of the School shall be continued to be run by the authority which used to run the same immediately prior to November 25, 1998. The District Inspector of Schools is hereby directed to supervise the administration of the School.

84. These appeals and the writ application are disposed of with the aforementioned directions. In the facts and circumstances of this case the parties shall pay and bear their own costs.

S.N. Bhattacharjee, J.

85. I agree.