

(1968) 09 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 503 of 1967

Bishop S.K. Patro and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-1968

Acts Referred:

Constitution of India, 1950 — Article 25, 26, 29, 30, 30(1)

Citation : AIR 1969 Patna 394

Hon'ble Judges : S. Wasiuddin, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : S.N. Bhattacharyya, K.D. Chatterji, K.D. De and R.M. Misra, for the Appellant; Lal Narayan Sinha, Shreenath Singh, Nagendra Parsad Singh, K.P. Verma, Standing Counsel and Sudha Rani Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

Untwalia, J.—In this writ application we are called upon to decide a very important question of law with reference to Article 30 of the Constitution of India. It is, therefore, necessary to state briefly in the beginning as to who are the parties to the application and what led to its filing.

2. The first petitioner is Rt. Rev. Bishop S.K. Patro, Chairman of the Bhagalpur Diocesan Trust Association and ex-officio President of the Managing Committee of the Church Missionary Society Higher Secondary School, Bhagalpur, hereinafter shortly called C.M.S. School or the School. The second petitioner Ven, Archdeacon E.A.B. Hughes and the third petitioner, Rev. J.E. Ghosh are respectively Treasurer and Secretary of the Trust Association aforesaid. The fourth petitioner is Miss V.M. Peacock, Secretary of the Managing Committee of the C.M.S. School. The impugned orders are (i) order of the Secretary to the Government of Bihar, Education Department, dated 22-5-1967, a copy of which is annexure 18 to the writ application, and (ii) order of the Regional Deputy Director of Education, Bhagalpur. dated 22-6-1967, a copy of which is annexure 19 and a translation of which in English is annexure 19-A.

I propose to state some facts first from the order (Annexure 18) before I refer to the facts stated in the petition. Before coming into force of the Bihar High Schools (Control and Regulation of Administration) Act, 1960 (Bihar Act XIII of 1960) an old Managing Committee was in charge of the affairs of the School, and was running its administration from day to day. In the Managing Committee were Rev. Bishop Philip Farmer as the President of the Committee, Rev. R. W. I. Ghest as its Secretary, the Principal, a teacher's representative and five more persons, out of whom, four are respondents 6 to 9, who were added as intervenor respondents for the reasons to be stated hereinafter. The Director of Public Instruction who is also the President of the Board of Secondary Education, by his order dated 31st (sic) of April, 1962, nominated three persons for inclusion in the Managing Committee according to the rules which, he thought, governed the constitution of the Managing Committee of the School in question. After that, the Sub-divisional Education Officer, Bhagalpur, convened a meeting of the above nominees along with two nominees of the Mission, Principal and teachers' representative and got a President and Secretary elected, which election was approved by the Director of Public Instruction by his order dated 4-9-1963. It is said that the intervenor-respondents filed an appeal before the Secretary to the Government, Department of Education, and in this appeal, the Secretary took the view that the order of the Director of Public Instruction approving the election of the President and the Secretary of the School was not correct.

The School authorities also were aggrieved by that order as they claimed that this being a school established and administered by a minority within the meaning of Article 30 of the Constitution had a fundamental right to administer it in the way they thought fit and proper; the Government could not interfere. The Secretary, in his impugned order, did not decide the question as to whether the School had the protection under Article 30 of the Constitution, and hence, was not subject to Bihar Act XIII of 1960 in view of the provision contained in the 9th Section of the Act. He left it to the School authorities to get a declaration from, the proper authorities as to the character of the school to attract protection under Article 30 of the Constitution. What he did by his impugned order was that he set aside the order of the President of the Board of Secondary Education, approving the appointment of the President and the Secretary of the School.

"in accordance with the Irregular procedure adopted by the SDEO for the constitution of the Committee on receipt of DPI's decision nominating three persons on the Managing Committee".

By the time he came to pass his order, there had come into force the Bihar High Schools (Constitution, Powers and Functions of the Managing Committee) Rules, 1964 hereinafter to be referred to as the 1964 Rules. The Regional Deputy Director of Education, Bhagalpur, Region, then wrote the letter dated 21st of June, 1967, a copy of which is annexure 19, to the Secretary of the C.M.S. School, drawing his attention to the order dated 22-5-1967 passed by the Secretary to the Government to take steps to constitute the Managing

Committee in accordance with the aforesaid order. The petitioners feeling aggrieved by the direction of the Regional Deputy Director of Education and thinking that not only in view of Section 9 of Bihar Act XIII of 1960 but also because of Rule 41 of the 1964 Rules, which says--

"These rules shall net apply to the schools established and administered by the minorities whether based on religion or language.",

and claiming that their School is of the kind to which the provisions of Bihar Act XIII of 1960 and the 1964 Rules in the matter of administration of the School or constitution of the Managing Committee do not apply, moved this Court under Article 226 of the Constitution impleading in the writ application the State of Bihar as respondent No. 1, the Director of Public Instruction and President of the Board of Secondary Education as respondent No. 2, the Secretary to the Government of Bihar, Department of Education, as respondent No. 3, the Secretary, Board of Secondary Education, as respondent No, 4, and the Regional Deputy Director of Education, as respondent No. 5. The application was filed on 23-8-1967. It was admitted on 6-3-1968 and it was directed that the status quo should be preserved and the Managing Committee appointed in the year 1962 should continue to manage the C.M.S. School till the disposal of the writ application.

On the 25th of March, 1968 the four added respondents, namely, respondents 6 to 9 who were at one time, as stated above, the members of the Managing Committee of the C.M.S. School, filed an application for being added as party respondents. Their application was allowed by a Bench of this Court by order dated 1-4-1968. Thereafter they put in a long counter-affidavit on the 20th of August, 1968 along with many annexures to resist the writ application filed by the petitioners. An affidavit-in-reply and a supplementary affidavit in-reply have been put in by the petitioners. It may be stated here that no counter-affidavit has been filed bv or on behalf of the original five respondents, namely respondents 1 to 5. None appeared to show cause even at the time of the argument of the case on behalf of respondents 2 to 5. The learned Advocate-General, however, appeared for the State of Bihar, respondent No. 1. Petitioners' case was ably presented by Mr. S.N. Bhattacharyya, and cause was shown on behalf of respondents 6 to 9 by their learned Counsel, Mr. Shreenath Singh.

3. The question which has been canvassed before us and falls for our decision in this case is the following;--

Whether the C.M.S. School is an educational institution which can be held to have been established and administered by a minority within the meaning of Article 30(1) of the Constitution?

In the main, this question will have two facets-- (i) whether this is an educational institution which was established by a minority and (ii) whether it has been administered by the minority. Incidentally, a question will also arise and will be briefly referred to hereinafter as to whether the C.M.S. School is an educational

Institution of the kind which attracts protection under Article 30(1). We think it advisable to decide all the questions in this case.

4. Many points of law have been firmly settled by the Supreme Court as also by this Court in relation to educational institutions for which protection under Article 30(1) was claimed. I shall first refer to some of these decisions and the principles which have been enunciated therein, and then I shall show that the point of importance which falls for our decision in this case is still *res integra* and no authority of any court was cited to cover it.

5. In "In re The Kerala Education Bill, 1957," AIR 1958 SC 956, it was held--

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

(ii) that "Article 30(1) is wide enough to cover both pre-Constitution and post-Constitution institutions", and that the said Article "gives the minorities two rights, namely (a) to establish and (b) to administer educational institutions of their choice," and

(iii) that the "real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority Institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community."

I shall refer to some other points from this decision later.

6. In *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, it was pointed out by Shah, J., delivering the judgment on behalf of the Court, with reference to the Kerala Education Bill case already referred to, that--

".....notwithstanding the absolute terms in which the fundamental freedom under Article 30(1) was guaranteed, it was open to the State by legislation or by executive direction to impose reasonable regulations.",

but--

"The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19 it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the

minority educational institution, but of the public or the nation as a whole."

7. In a recent decision of the Supreme Court in *S. Azeez Basha and Another Vs. Union of India (UOI)*, it has been pointed out at p. 670 (column 1) that--

"The words 'establish and administer' in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it.....

If the educational institution has not been established by a minority it cannot claim the right to administer under Article 30(1)."

On a consideration of the Act which was passed by the Central Legislature in the year 1920, their Lordships came to the conclusion that the Aligarh University was not an educational institution which was established by the Muslim minority assuming that to be a minority within the meaning of Article 30. They further held that the institution, namely, the University after its establishment in the year 1920 was not being administered by the said minority, and, for both the reasons the claim of the petitioners in the Supreme Court for enforcement of fundamental right under Article 30(1) of the Constitution was negated. In regard to the point of administration, a passage was quoted from the judgment of the Supreme Court in *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, which runs thus--

"If the right to administer the properties never vested in the denomination or had been validly surrendered by it or had otherwise been effectively and irretrievably lost to it, Article 26 cannot be successfully invoked."

Applying the parity of reasonings with reference to the word "administer" occurring in Article 30 *Wanchoo, C. J.*, delivering the judgment on behalf of the Court, came to the conclusion that the Aligarh University was not administered by the minority. Their Lordships also interpreted the word "established" in Article 30(1) to mean "to bring into existence" --that is to say-- "the right given by Article 30(1) to the minority is to bring into existence an educational institution, and if they do so, to administer it. "When a question was raised before their Lordships of the Supreme Court in *S. Azeez Basha and Another Vs. Union of India (UOI)*, whether Article 26 would take in its sweep educational institutions on the ground that such institutions are for charitable purposes, they did not decide it observing, however, that there was much to be stated in favour of the contention that Article 26 will not apply to educational institution for there is a specific provision contained in Article 30(1) with respect thereto and therefore, institutions for charitable purposes in Clause (a) of Article 26 refer to institutions other than educational ones. I am referring to this aspect of the matter also as hereinafter. I shall have the necessity of deciding whether an educational institution attracts the protection of Article 26(a) of the Constitution.

8. I may refer to only one decision of this Court although there are some others and it is the Full Bench decision in *Dipendra Nath Sarkar Vs. State of Bihar* and

Others, . Relying upon the decision of the Supreme Court in Kerala Education Bill case it was pointed out by Ramaswami, C.J. at page 106 (column 2)--

"The language of the Article does not require that the majority of the students in the school must belong to the religious faith of the minority. The Article does not also impose any limitation that the subjects taught in the school must be connected with the religion of the minority

"It does not say that the minorities based on religion should establish educational institutions for teaching religion only it is open to the religious minority to establish educational institutions for the purpose of conserving its religion, language or culture. It is also open to the religious minority to establish educational institutions purely for the purpose of giving a thorough good secular education to their children."

While laying stress upon the above view I may say that the question of interpreting Article 30 with reference to Article 29 did not arise in *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, because from the facts stated in the very first paragraph of the judgment it appears that the Primary Schools and the Training College were conducted for the benefit of the religious denomination of the United Church of Northern India and Indian Christians generally, though admission is not denied to students belonging to other communities. It has been said that the teachers, trained in the Training College in regard to which the interference was sought to be made by the Government for reservation of seats for teachers, were absorbed in the Primary Schools conducted by the Gujarat and Kathiawar Presbyterian Joint Board called the Society.

9. In *Aldo Maria Patroni and Another Vs. E.C. Kesavan and Others*, a Full Bench of the Kerala High Court enunciated four propositions on the basis of the two Supreme Court decisions, namely *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, and *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, one of which is as follows: --

"(1) A school established by a minority -- whether before or after the Constitution -- will come within the ambit of Article 30(1) of the Constitution, even though what it imparts is a general education and its students are drawn not merely from the minority community but from other communities as well."

10. Now I proceed to state the facts from the petition, the counter-affidavit and the affidavit-in-reply, in the first instance for deciding the question as to when and by whom the C.M.S. School, in regard to which the controversy about the formation of the Managing Committee has arisen, was established. In the very first paragraph of the petition, it is said that the school was

"established by the Church Missionary Society. London, in 1854 now owned by the Bhagalpur Diocesan Trust Association and administered by the Bhagalpur

Diocese of the Church of India".

In the various sub-paragraphs of paragraph 3 of the petition, the history of the School and of its administration has been given. The School was established first in the year 1854 as a Primary School at Fort Nathnagar, which, as subsequently stated in the other affidavit, is known as Champanagar. In 1887 it was raised to a High School. The School shifted to Addampur in a rented building taken on lease by the Church Missionary Society by a registered deed of lease executed between the lessor and the lessee on the 5th of June, 1903; a copy of the lease is annexure 3 to the writ application. Subsequently, on the 9th of March, 1910 the property where the school was run was purchased by the Church Missionary Trust Association, a company duly incorporated and registered in England in 1885. from proprietors of Raj Srinagar; a copy of the registered sale-deed is annexure 4. About 2 bighas of land were purchased by two sale-deeds, copies of which are annexures -7 and 8. in the year 1912, for a total sum of about Rs. 2,000 by the Church Missionary Trust Association, London for the purposes of the School.

11. The case of the petitioners further is that the School has been controlled, administered and managed by the Church Missionary Society through a Managing Committee constituted from time to time retaining its Christian character and working according to the policies, decisions and directions of the Diocesan Standing Committee or Diocesan Board of Education. Copy of minutes of the Committee is annexure 9. As per special arrangements with the Government, the key posts of the president and the secretary have always been in the hands of the Church Missionary Society, the Principal of the School has all along been a Christian and representative of the Church, the School has been financed and maintained by the Church and the Church has been responsible for its control, administration and management.

12. In the year 1957 the Church Missionary Society. London, passed the following resolution as Quoted in paragraph 3 (xi) of the petition--

"That the C.M.S. having founded, supported, and assisted certain Christian Schools situated in the Bhagalpur Diocese in the State of Bihar, and having hitherto held the position of proprietor, "founder and benefactor, of these Schools, now wishes to hand over these responsibilities to the Church of India, Pakistan, Burma and Ceylon, in the said Diocese; it, therefore, appoints the Diocese, at whose head is the Bishop of Bhagalpur, who is responsible for the spiritual welfare of the same and for the proper administration of all Church affairs therein, to be the proprietor of those Schools, with full authority, through the Diocesan Trust Association or other appropriate domestic organisation, to direct their policy and carry on all negotiations with Government."

It is then asserted that though the property of the School was transferred to the trust of the Bhagalpur Diocesan Trust Association, the administration and management of the School remained in the hands of the Bhagalpur Diocese

which controls the administration of the School through its Council, Standing Committee and Education Board. The principal of the School was always appointed by the Bishop of the Diocese. The Standing Committee saw no harm in allowing the rest of the members of the managing committee to contain persons other than the representatives of the Diocese and accordingly it was allowed to be done, in deference to the desire of the Government's educational authorities.

13. As to the denominational character of the School, the facts stated in the petition are that a big cross has been fixed in the front of the School building which is conspicuous in itself and proves that the School belongs to, and is administered by, the Church. From time to time the authorities of the Education Department on inspection of the School, noted in the Visitors' Book that it is a Mission School; extracts from the Visitors' Book are annexure 20. It is further said that regular scripture classes are held in the School and lessons on the life and teaching of Lord Jesus Christ are taught and examinations are held in the subject for all students, as will appear from the examination programmes and the annual returns and the Church Missionary Gleaners 1905, 1911 and 1914, copies of which are annexures 21 to 25. Every morning, before the classes begin, the Lord's Prayers from prescribed Church books are offered by the students and staff. Each meeting of the Managing Committee of the School begins and closes with prayers from the "Book of Common prayer". Thus claiming the C.M.S. School to be a Christian religious denominational institution, it is asserted that it is not governed by the 1964 Rules; the impugned orders are ultra vires of Articles 26 and 30 of the Constitution. Upon these grounds, the petitioners have asked this Court to restrain the respondents from interfering with the right of the petitioners to control, administer and manage the affairs of the C.M.S. School.

14. The salient facts which may be noted from the counter-affidavit of Shri K.C. Mukherjee, respondent No. 7, which is the only counter-affidavit filed on behalf of respondents 6 to 9, are these. It is not correct to state that the School was established or founded by the Church Missionary Society of London and is owned by the Bhagalpur Diocesan Trust Association or that it is administered by the Bhagalpur Diocese or the Church of India. The Bihar Act XIII of 1960 and the 1964 Rules framed thereunder do apply to the School in question. The Church Missionary Society started a lower primary school in Champanagar 4 miles west of Bhagalpur. Subsequently, in course of time a High School came into being with manifold help and contributions from the public and public funds. The School may have been initially sponsored by the Society and that is the reason that it was called the C.M.S. High School. The School was originally started in a rented building belonging to Srinagar Raj. The primary school started by the Society is still in existence at Champanagar. The rented building and the compound were purchased in the year 1910 with Government grant of Rs. 10,000 besides financial help from other sources. The money was received by the School authorities on the usual conditions laid down in the rules relating to the grant in aid to native schools and further specific conditions as laid down in the aforesaid order of the Director of Public Instruction. The Managing Committee of the

School was duly constituted in accordance with the rules of the Government and properties, assets, management and administration and all the interests of the institution vested in the said Managing Committee as constituted from time to time in accordance with the Government rules. A sum of Rs. 28,200 was paid by the Government to the School authorities for the purpose of building a hall and six class rooms on certain conditions including that the School shall be governed by a regular Managing Committee, the constitution of which was to be approved by the Director of Public Instruction and it was to be in accordance with the grant-in-aid rules.

Further numerous substantial grants were made to the institution by the Government, several donations and contributions were made by various individuals including the Bakhtiarpur Estate, Sri R.N. Lal and Dipnarain Singh, large areas of land were acquired by the Government under the Land Acquisition Act for purposes of the School as public purposes and were given to the School on lease on nominal rent or otherwise. The lands acquired by the Government continued to belong to Government and they were leased out to the School on nominal rent under agreements in the form provided in Appendix A to the General Rules relating to grants-in-aid to Schools. Similarly, grants by the Government of money to the school used to be made under agreements in the form provided in appendix B to the aforesaid Rules. All properties acquired by and for the School have always been the properties of the School vested in its Managing Committee as would be evidenced by the entries in the assessment list of the Bhagalpur Municipality. The claim of the petitioners that the Bishop of Bhagalpur Diocese has always been the president and the representatives of the Missionary and the Secretary and Principal have always been appointed by the Missionary has been refuted.

It is claimed that they were elected by the Managing Committee. The School authorities submitted to the Government regulations in the years 1958 and 1959 when at their instance they separated the post of the principal and the Secretary. Some instances have been quoted to show that the principal has been removed or appointed by the Managing Committee and not by the Bishop of the Standing Committee of the Bhagalpur Diocese. The claim of the petitioners that the School maintains its Christian character by the various facts stated in the petition has been refuted in the counter-affidavit wherein it has been asserted that on the walls of the School there are inscriptions from the Hindu religious text books, in the School there is a Hindu hostel in which Hindu prayers are offered, and various other facts are asserted to attack the claim of the petitioners as to the School being of a religious denominational character.

15. In the affidavit-in-reply, It is reiterated in paragraph 3--

"it is strongly asserted that the School was established, owned and, as always it has been, administered by the said Society from beginning, and after the transfer of ownership to the above Diocese, administered by the said Diocese.",

meaning by the word "Society" with reference to the context the "Church Missionary Society, London", and by the word "Diocese" the "Bhagalpur Diocese owning the School through Bhagalpur Diocesan Trust Association". It is explained in the affidavit in reply that the present C.M.S. School is the one, which was established by the London Society in 1854, as will appear from the Bihar Government District Gazetteer, 1962 Edition, relating to Bhagalpur, extracts from pages 115 and 116 of which have been annexed as Annexure 28. The existence of a lower primary school in Champanagar is explained by the fact of establishment of another school by one Mrs. Perfect. The emblems of the School and the crest inscribed at the top of the wall have been explained in paragraph 3 (i) (e) of the affidavit in reply. As to the acquisition of property from Srinagar Raj in 1910, it is asserted that the property was purchased for Rs. 25,000/- before the Government grant of Rs. 10,000/-" was received. The sale-deed was executed on 19th of March, 1910, and registered on 14th of April, 1910. The amount of Rs 10,000/- was received from the Government in September, 1910, as is the case of the respondents also in their counter-affidavit. The document of sale, a copy of which is annexure 4 to the writ application, shows that the Society was the vendee of the property and continued to be so till 1958, when the Society transferred the said property by registered deed of transfer to the Diocese, a copy of which deed is annexure 15 to the writ application.

The definite case of the petitioners is that the School was established by the Church Missionary Society of London and its property is now legally held by the Bhagalpur Diocese. The Bhagalpur Diocese was established in 1943. Before 1943 the permanent proprietary powers to control and direct the Managing Committee of the School were exercised by the agent of the Society in Calcutta named the Calcutta Corresponding Committee, shortly known as C. C. C. Annexure 32 series to the affidavit in reply are the copies of minutes of the Board of Education and Standing Committee to substantiate the fact of control and management. Thereafter, details have been mentioned in the affidavit in reply as to how from time to time only Christian Principals were appointed in the School and that also always by the Church Missionary or the Bishop. The documents executed when the acquired lands were leased out to the School authorities or grants of money were made by the Government from time to time have been stated to be documents of guarantee to secure the payment of the money under certain circumstances which had not the effect of surrendering the administration or management of the School.

16. It may be stated here that one Shri A.K. Mukherji, who had been removed from the post of Principal of the School some years ago, had filed a writ application numbered as M. J. C. 899 of 1961 in this Court, which was dismissed by a Bench of this Court to which I was a Party. Some references to some affidavits and annexures have been made with reference to the record of M. J. C. 899/61. I do not consider it necessary to give any details from them except in regard to one annexure which will be referred to hereinafter. Some reference has been made to the filing of a title suit in court below by some persons, which,

according to the petitioners, was dismissed as being infructuous and according to the counter-affidavit of respondents 6 to 9 was withdrawn. A reference has been made to the petition of show cause filed on behalf of the Government in that suit, but I do not think it necessary even to refer to that. Over and above these facts, reference has been made by the petitioners to some resolutions of the Managing Committee passed in a meeting held in the year 1960 or later on to show that some of the respondents 6 to 9 had attended those meetings in which it was asserted that the School is a minority school and some resolutions have been used by the said respondents to show that the School authorities had submitted to be governed by the rules of the Government as then existing and had surrendered their right of claiming the School to be a minority School.

In the view which I am going to take with reference to some of the salient features, I do not think that on the principle of estoppel, waiver or acquiescence either the petitioners can be defeated in this case or the contesting respondents can be estopped from challenging the claim of the petitioners as to the character of the C.M.S. School. It is, therefore, not necessary to give the facts relating to them in any detail.

17. The learned Advocate General appearing for the State of Bihar conceded and, in my opinion, rightly that the present C.M.S. Higher Secondary School is the one which was established as a Primary School in the year 1854; it was established, as is the case of the petitioners, by the Church Missionary Society, London. On a consideration of the various statements made in the petition and affidavits of the parties and on going through the various annexures appended thereto, it is abundantly clear that the present educational institution, namely the C.M.S. School, in respect of which the controversy has arisen in this writ application, is the same School which was established in the year 1854 by the Church Missionary Society, London, The Lower Primary School existing at Champanagar these days is another school and not the Lower Primary School which was established by the Church Missionary Society in 1854. Even though after the School was raised to the high school standard in 1887, there was some break in the matter of recognition for a period of about 5 years as mentioned in the Gazetteer referred to by the petitioners, there was no discontinuance of the educational institution at any time. The educational institution continued without any break from 1854 and continued till to-day.

For the purpose of deciding the Question of establishment of the educational institution within the meaning of Article 30 of the Constitution, it is not quite relevant to take into consideration the subsequent acquisitions of property either by the Church Missionary Society or grant of properties by the Government by money grants or by acquiring lands under the Land Acquisition Act; endowment of properties or money by some other persons later on is also of no consequence. The educational institution, which was established in the year 1854, had no immovable property of its own. It must have started with some movable properties provided by the Church Missionary Society, London. It's not

known who were the trustees on behalf of the Society, in the second half of the 19th century. What we get however, from annexure 3 is that the leasehold interest in Adampur Premises of the School was acquired in the year 1903 in the name of a company registered and incorporated in England in 1885 under the English Companies Act having its registered office at 16, Salisbury Square, London F.C. The name of the Company was Church Missionary Trust Association and the lease was taken by the Company "for the purpose of holding therein a School for the education of Children and young persons and for other similar purposes".

This indicates that the Trust Association had become trustee of the property on behalf of the Church Missionary Society, London. There does not seem to be a dispute in this regard, and that is the reason that all the sale-deeds, copies of which are annexures 4, 7 and 8, taken in the year 1910 or 1912, were in the name of the Church Missionary Trust Association. They were for the purposes of the School. It is not necessary to examine as to who contributed the money for acquisition of the property in the year 1810. The property was acquired for Rs. 25,000. A substantial portion of it was contributed by the Church Missionary Society and other persons, who were all Christians. It is not clear as to how the sum of Rs. 10,000/- received from the Government later was utilised. Even assuming in favour of respondents 6 to 9 that it went towards the payment of the consideration money of Rs. 25,000/- in the sense that the loan which was raised for purchasing the property was liquidated by the sum of Rs. 10,000/-, the fact remains that the acquisition of property was made by the Church Missionary Trust Association which became the legal owner of -the property for the purposes of the School which was founded and established by the Church Missionary Society. The founder of the Trust was the Society; the trustee, was an incorporated company, namely, the Church Missionary Trust Association. Annexure 2 to the writ application, which is an extract from the Church Missionary Gleaner of the year 1913 to which reference was made by the learned Advocate General says--

"The C.M.S. High School is the oldest educational institution in Bhagalpur, having been started as far back as 1854 by the Rev. Mr. Droese, for the purpose of giving an Anglo-vernacular education to Indian lads desirous of obtaining such."

18. I may now refer here to one fact mentioned in the Gazeteer, certain passages from pages 115 and 116 of which were placed before us by the petitioners. But in this connection I would like to refer to a fact mentioned at page 113 wherein it is stated that in 1848 the Chaplain of Bhagalpur, the Rev. Mr. Vaux wrote to the Secretary of the Church Missionary Society in Calcutta, pleading the need of Bihar, and especially for the Paharias and Santhals, asking for a missionary to be sent there, and promising the local congregation would provide a house and a school building, and pay for the expenses of a school. The response of the Church Missionary Society (C.M.S.) in England was to send to Bhagalpur the Rev. E. Droese, a German Missionary who had been working in India since 1842 with

the Berlin Mission and had recently been ordained by Bishop Wilson of Calcutta. And then at page 115 it is said that the C.M.S. School traces its origin back to the primary school which was opened at Champanagar in 1854 by Rev. E. Droese and which was raised to high standard and affiliated to Calcutta University in 1887.

19. Nowhere in the petition or in the affidavit-in-reply it is asserted by the petitioners that the School was opened, started, founded or brought into existence, and thus established by Indian Christians. Surprisingly enough, even in regard to the present ownership and administration, nowhere it is stated by the petitioners that it is the Christian minority of the Indian citizens who are seeking protection of their School under Article 30 of the Constitution. It is not the case of the petitioners, anywhere that Indian Christians were members of the Church Missionary Society, London, or the Christians residing or domiciled in India had any hand in the establishment of the educational institution, namely, the C.M.S. School. In such a situation it has got to be held that the petitioners have failed to prove that C.M.S. School was established by the minority, which is entitled to protection under Article 30 of the Constitution. This brings us to the question as to what is meant by the term "minority" occurring in Article 30.

20. In *The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others*, when a question arose whether an artificial person, namely, a company can be held to be a citizen for the purpose of claiming the various fundamental rights recognised for the citizens only in Part III of the Constitution, it was held by the majority that the word "citizen" meant a natural person who was a citizen of India as described in Part II of the Constitution, and not an artificial or a juristic person. In that connection, B.P. Sinha, C. J., pointed out at page 1816 that some fundamental rights dealt with in Part III of the Constitution are available to "any person" whereas the other fundamental rights can be available only to all citizens. In the category mentioned in paragraph 10 of the judgment, it has been pointed out that fundamental rights engrafted in Articles 14 20 21 22 25 27 28 and 31 are available to "any persons" which term would include all sorts of persons --aliens, artificial or juristic persons --while fundamental rights stated in Articles 15 16 some of the sub-Articles of Article 18 Articles 19 and 29 are available to the citizens only. No reference was made to Articles 23 and 24 because in those Articles neither the word "person" is there nor does the term "citizen" occur.

The other two Articles omitted from the catalogue aforesaid are Articles 26 and 30. It is, however, significant to note here that except Article 25 all the other Articles, in which catalogue may be included Articles 23 and 24, give protection to all kinds of persons including aliens, because protection afforded therein has been put in a negative form. To illustrate my point, with reference to Article 31 wherein it has been provided that no person shall be deprived of his property save by authority of law, it should be borne in mind that in regard to deprivation of property no distinction has been made between a citizen or an alien or even a

juristic person, but where fundamental rights have been stated to exist in an affirmative sense, they have been mostly stated to exist for the citizens only.

21. Articles 25 to 28 occur under the heading "Right to Freedom of Religion" Article 25 states that subject to certain matters all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. That means that this right has been stated to exist not only for the citizens of India but for all persons including the aliens. The Constitution-makers, in their wisdom, decided not to interfere with the freedom of conscience and the right of all people freely to profess, practise and propagate religion. But it is important to remember that a very vital safeguard was provided for curtailing that right in Sub-Article (2) of Article 25 whereby it was provided that--

"Nothing in this article shall affect the operation of any existing law or prevent the State from making any law--

(a) regulating or restricting any economic financial, political or other secular activity which may be associated with religious practice;"

If in this background the expression "every religious denomination or any section thereof" occurring in Article 26 is interpreted, it would be quite reasonable to take the view that the word "denomination" takes in its sweep not only the citizens of India but all persons. There is no question of the denomination being a minority or a majority. In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, it has been stated at p. 1022 by Mukherjee, J., as he then was, that the word "denomination" means a collection of individuals classed together under the same name: a religious sect or body having a common faith and organisation and designated by a distinctive name. On reading the judgment of the Supreme Court in this case as well as in another case of *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, , it would be clear that Articles 25 and 26 have got to be read and interpreted together. So read and interpreted, the word "denomination" will include a denomination not only of Indian citizens but of all persons.

22. In contra-distinction of Article 25 the term used in Article 29 which along with Article 30 occurs under the heading "Cultural and Educational Rights" is "Any section of the citizens". This fundamental right has not been extended to aliens. The marginal note of Article 29 is "Protection of interests of minorities" and the marginal note of Article 30 is "Right of minorities to establish and administer educational institutions". It is true that in Article 30 the expression used is "All minorities". But, in my opinion, that cannot but mean all minorities of Indian citizens. There are two reasons for this interpretation. One is, as pointed out with reference to some of the decisions of the Supreme Court and other Courts, that Article 30 has got to be read with Article 29. The second reason is that even apart from Article 29 the word "minority" necessarily suggests a contrast with the term "majority", unlike the word "denomination". As I have

said above, "denomination" may consist of people who are in majority, may consist of people who are in minority. That aspect has got no importance for the purpose of Article 26. But as soon as the Constitution makers used the word "minorities" in Article 30 obviously and undoubtedly they used it in relation to majority.

What is then meant by such comparison or contrast between minority and majority? Was it meant that the minority based on religion or language as compared to the majority of the world population based on religion or language shall have the right to establish and administer educational institutions of their choice? Or, was it meant that the minority based on religion or language as compared to the majority of the Indian citizens whose religion or language was distinct from that of the majority shall have the right to establish and administer educational institutions of their choice? The answer to my mind obviously is that by "minority" would be meant the minority of the Indian citizens based on religion or language, which shall have the right stated in Article 30(1) of the Constitution; otherwise, the comparison would be impossible. A question arose before the Supreme Court in the *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, as to what was meant by the word "minority" but on the facts which were placed before the Supreme Court with respect to the Indian citizens of Kerala the only dispute was in which particular area the comparison was to be confined. It was held by their Lordships of the Supreme Court that since they were examining the State law, the comparison should be made between minority and majority population of the State of Kerala, obviously meaning thereby the population of the Indian citizens of Kerala, This finds further support from some of the observations of S.R. Das, C. J., occurring at page 986. Learned Chief Justice said:

"So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own,"

23. One thing more may be pointed out in this connection that while no obligation has been cast under Article 26 on the State to grant any aid to institutions for religious and charitable purposes established and maintained by any religious denomination, Sub-Article (2) of Article 30 of the Constitution says--

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

It has been held that the State while granting aid to educational institution administered by a minority cannot impose restrictions so as to annihilate its power of management. The right under Article 30 has not been curtailed by any restrictive provision while the right under Article 25 and consequently under Article 26 can be subjected to some kind of restriction for the safety of the State or in the interest of the State or the general public, Can it then be said that the

right under Article 30 has been recognised to exist for all minorities irrespective of the question as to whether the minority consists of Indian citizens alone or consists of aliens also? The answer must be that the Constitution-makers could never have intended to recognise the existence of a fundamental right of the kind engrafted in Article 30 for non-citizens,

24. I may lend support to the view which I have taken above by referring to some special provision for special grants for the benefit of Anglo-Indian Community made in Article 337 of the Constitution. What is meant by "Anglo-Indian community" has been defined in Article 366(2). This was an important community which was claiming protection of its educational institutions before the Supreme Court in the *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, and reading the definition of "Anglo-Indian community" in Article 366(2), it should be clear further that what was meant by the expression "All minorities" in Article 30 was minority constituted of Indian citizens,

25. If that be so, there cannot be any doubt that a minority which seeks to establish an educational institution of its choice after the commencement of the Constitution must be a minority of Indian citizens. If aliens residing in India claiming to constitute a minority on the basis of religion or language want to establish and administer an educational institution of their choice, they cannot claim protection under Article 30. Unless there be a law forbidding them to establish an educational institution, it may well be that they can establish an educational institution. But they cannot resist interference with the administration of the institution by the Government or any law made by the State. That being so, even assuming in favour of the petitioners, although this is also not claimed by them, as I have said above, that C.M.S. School is being administered by a minority which consists of Indian citizens, namely, the Indian Christians, can it claim that it has a right to administer the School even though it was established by the Church Missionary Society of London and not by a Society of which the Indian Christians were the members?

In a situation like this, one may be tempted to take the view that the word "and" which occurs between the words "establish" and "administer" in Article 30 should be read as "or" and the two words -- "establish" and "administer" -- should be read disjunctively. But in view of the clear exposition of law by the Supreme Court in the case of *S. Azeez Basha and Another Vs. Union of India (UOI)*, it is not open to do so; the word "and" means "and" and the phrase has got to be read conjunctively,

26. The next question of difficulty then arises as to how it is to be determined whether the section of the people who established the educational institution consisted of Indian citizens or not at the time of establishment of the institution. Hidayatullah, J., as he then was, in his separate judgment but concurring with the majority, has traced the history of the law and concept of citizenship and nationality from ancient times upto the present day. In that connection his

Lordship has pointed out at page 1827 that there was no law of citizenship in India before the commencement of the Constitution, Thus comes the difficulty for giving the answer to the question just posed by me. But if the words "establish" and "administer" in Article 30 have got to be read conjunctively, the reasonable and rational answer to give to the question is this. After finding who were the persons who had established the educational institution, it has to be seen with reference to what has been stated in part II of the Constitution as to whether those persons could be deemed to be citizens of India, by a legal fiction, on application of what has been engrafted therein.

To illustrate my point with reference to the facts of the two cases before the Supreme Court, namely, the *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, and *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, if the School would have been established by a Society consisting of Indian Christians or those who were generally or ordinarily residing in India or domiciled in India one could say that the School was established by a minority consisting of persons who will be deemed to be Indian citizens and would thereby fulfil the requirement of Article 30 both of establishing and administering if that minority has been administering the institution. But, unfortunately for the petitioners, there is no statement or averment by them--and, perhaps it could not be so-- that the School was established by Christians residing in India or domiciled in India. Their case in clearest terms, as I have said above, is that the School was established by the Church Missionary Society of London. It is difficult to assume or presume in their favour that it was established by Indian Christians,

27. Although, as I have said above, the question was left open in *S. Azeez Basha and Another Vs. Union of India (UOI)*, by the Supreme Court as to whether an educational institution can be said to be an institution for religious and charitable purposes within the meaning of Clause (a) of Article 26 of the Constitution, I am under a necessity to decide this matter as, according to the view I have expressed above, the freedom guaranteed in Article 26 to establish and maintain institutions for religious and charitable purposes is available not only to Indian citizens but also to aliens. In my opinion, however, the educational institution of the kind with which we are concerned in this case cannot be and has not been claimed to be an institution for religious and charitable purposes. It is not an institution for propagation of Christianity, it is not an institution where the education mainly consists of teaching tenets of Christianity. The institution is for imparting secular education and, as I pointed out from annexure 2 to the writ application, the purpose was to give Anglo-vernacular, education to the Indian lads.

Nor was it an institution for charitable purposes in any sense of the term. It is not the claim of the petitioners that no fee is charged in the institution and education is imparted by way of charity to Indian lads. The mere fact of the Cross being there or some of the prayers at some moments being from the Bible

either in the School or in the Managing Committee and the mere fact of teaching of Bible in some period although the last fact is controverted by respondents 6 to 9 as having been introduced very late in the year 1960 or afterwards, are not sufficient to indicate that the C.M.S. School is an institution for religious or charitable purposes. The School was affiliated to the Calcutta University. Now examinations are held under the Bihar School Examination Board. Students from all communities are imparted education in the School. Hostels for Hindu students are separately situated in the School compound. It is an educational institution pure and simple for imparting secular education. And, to crown, all, nowhere it is stated on behalf of the petitioners that there is a single Christian student in the School, although from the counter-affidavit of respondents 6 to 9, it appears that some Christian students are there in the School and they reside in a separate hostel.

A religious institution may have one of its functions of imparting of religious education as pointed out by the Supreme Court in the two cases referred to above in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, . But the kind of educational institution, pure and simple, which has been specially dealt with under Article 30 cannot be characterised as an institution for religious and charitable purposes within, the general provision of Article 26. Although in some respects in the functions of the institutions there may be some overlapping, the pith and substance of the functions of the institution of the kind with which we are concerned in this case cannot but make this to be an educational institution within the meaning of Article 30. It cannot be an institution for religious or charitable purposes within the meaning of Article 26(a). Although Article 26 has been referred to at one or two places in the petition, the facts to found the claim of protection of Article 26 are singularly lacking in the petition as also in the affidavit-in-reply. And that is the reason that all the arguments which have been advanced on behalf of the petitioners have been with reference to Article 30 of the Constitution.

28. The next argument on behalf of the petitioners was that since the establishment of the Bhagalpur Diocese in the year 1943, the Diocese came, to administer the affairs of the School. It should, therefore, be held that the institution was re-established in the year 1943 and was re-established by the Bhagalpur Diocese. This point has been stated merely, to be rejected. It is difficult--rather impossible -- to take the view that the School was established or reestablished in any sense of the term in the year 1943 when the Bhagalpur Diocese was established. Moreover, according to the case of the petitioners, as I have pointed out above, before the passing of the resolution in 1957 in pursuance of which the transfer-deed of 1958 was executed by the Church Missionary Trust Association, a company incorporated in England, in favour of the Bhagalpur Diocesan Trust Association which is incorporated u/s 26 of the Indian Companies Act, 1913, the entire management and the control of the affairs of the School was in the hands of the Church Missionary Society of London. The

Calcutta Corresponding Committee (C.C.C.) and even the Bhagalpur Diocese were all functioning on behalf of or as agents of the Church Missionary Society itself; they were not managing the affairs of the School in their own right.

That is also, clear from the resolution passed in 1957 by the Church Missionary Society, London, as quoted from paragraph 3(xi) of the petition. By the resolution, the Church Missionary Society, London, wished to hand over the responsibility of the Church of India, Pakistan, Burma and Ceylon to the Bhagalpur Diocese and appointed the Diocese at whose head was the Bishop of Bhagalpur who is responsible for the spiritual welfare of the Diocese and for the proper administration of all the Church affairs therein, to be the proprietor of the Schools, with full authority, through the Diocesan Trust Association or other appropriate domestic organisation, to direct their policy and carry on all negotiations with Government. The deed which was executed in the year 1958, a copy of which is annexure 15, was executed by the Church Missionary Trust Association Ltd., in favour of the Bhagalpur Diocesan Trust Association stating therein that the instrument of transfer was "from one trustee to another" meaning thereby that the instrument of transfer transferred the trusteeship from one trustee to another and along with that were transferred the properties not only of the educational institutions but also the other properties for other purposes belonging to the Church Missionary Society, London, or the Church Missionary Trust Association. In the recital it is said that the Church Missionary Society was for Africa and the East and the term "East" would include India too. But thereafter it is said that the Society was merely a voluntary association of persons on whose behalf the Company acted as trustee. The transferee has been made the trustee of the Trust Property in place of the transferor Company and very many properties have been transferred including the properties which existed for extension of education as mentioned in paragraph 3 of the deed.

29. The argument on behalf of the petitioners was that if not from 1943 then in any event from 1958 onwards the Bhagalpur Diocese through the Bhagalpur Diocesan Trust Association became the founder and proprietor of the School entitled to carry on its administration. I am unable to accept this argument. The word "institution" according to Webster's Third International Dictionary means "something that is instituted as a significant and persistent element (as a practice, a relationship, an organization) in the life of a culture that centres on a fundamental human need, activity, or value, occupies an enduring and cardinal position within a society and is usually maintained and stabilized through social regulatory agencies". In this background, it is to be remembered that an institution as such is not capable of being transferred in the sense of transfer of a property. It cannot be transferred from one hand to another without an element of discontinuance. The organization was not transferred as it could not be. What was transferred by annexure 15 was the trusteeship as well as the trust property including the School property. The clear case of the petitioners is that the educational institution which was established in the year 1854 continued even till today, It is not claimed, nor could it. be so claimed in law that the institution

itself was transferred.

It will be of use here to refer to Articles 1277 and 1278 at pages 612-613 of the Halsbury's Laws of England, 3rd Edition, Volume 13, as to what is meant by transfer of schools and substitution of schools. The former means a transfer of the school from one site to another and the expression "substitution of schools" has been used to mean that under certain law the Minister is entitled to allow substitution of school without discontinuance of the school. It would be clear from passages occurring therein that the notion of transferring a school from one founder to another or by one trustee to another is not known to law. To all intents and purposes, the transfer of the trusteeship or the properties of the institution may vest the right to administer the school in the transferee. Yet it is difficult to take the view that the educational organization which was founded, created or brought into existence and thus established by one founder by such transfer becomes transferred to, and re-established by, the transferee. If I may draw an analogy from our experience of religious institutions like math, temple, mosque or church, it has never been heard that the institution has ever been transferred by a transfer deed. What can be the subject-matter of transfer is the property appertaining to the institution including the right of management. But in a continuing institution when its property or trusteeship or right to management is transferred, I cannot persuade myself to take the view that by such transfer the transferee brings into existence or re-brings into existence, to quote the phrase used by the learned counsel for the petitioners, land establishes the institution within the meaning of Article 26 or 30 of the Constitution.

I am, therefore, definitely of the view that in no sense of the term the petitioners can be said to have established the C.M.S. School in the year 1958. It would have been a different matter if the institution which was brought into existence in the year 1854 was discontinued, if legally under the terms of the trust it could be discontinued and if on transfer of the trust property a new institution was established by the transferee. In that event, it was possible to take the view that it was a new institution which was established or even, to use the word "re-establish", it was re-established by the transferee of the trust properties, may be, in the same premises. In my opinion, therefore, the petitioners have failed to make out a case that the C.M.S. School is an educational institution which has been established by a minority based on religion or language within the meaning of Article 30 of the Constitution. That being so, they are not entitled to enforce the fundamental rights guaranteed under the said Article.

30. As I have said above, incidentally a question arises as to whether the educational institution is an institution of the kind which can be said to have been established by a minority for conservation of its language, script or culture within the meaning of Article 29. In that connection, I have already referred to, and extracted, passages from the Supreme Court decisions as also from the Full Bench decision of this Court, which point out that it is not necessary that all the students of such an institution should be of the minority. But that is not to say

that the protection Under Article 30 will be available even to an educational institution in respect of which there is no averment in the petition that any student belonging to the minority is receiving education in the institution. On the facts stated in the petition and in the affidavit in reply, I am inclined to hold in favour of the petitioners that the insignia of Cross is there in the School, the emblem of the School shows that it has the character of showing that this is a Missionary School in the sense of having been established by a Christian Missionary. I am also inclined to hold in their favour that prayers are held in the school from Bible and some teaching, although it may be of late, is imparted from the Bible,

The case of respondents 6 to 9 in that regard does not seem to be correct. Their explanation of the 4 things appearing in the emblem of the School seems to be ridiculous. Yet I am doubtful whether those things by themselves would be sufficient to indicate that the C.M.S. School is an educational institution established and administered by the Christian minority for the purpose of conserving! their language, script or culture when, I find, no student of the minority community is stated to be receiving education in this institution for such preservation along with the secular education. It is not claimed by the petitioners that by adopting or maintaining Christian character of the school in some respect an attempt is made, much less with any success, to convert the students of other communities or of other religion to their faith through this educational institution. The totality of the facts rather indicates the other way that no interference is sought to be made through this educational institution in the matter of conserving of their own language, script or culture.

31. Now coming to the second question which falls for our decision, as stated earlier in this judgment, as to whether the C.M.S. School has been administered by the minority assuming that it has been established by the minority, I do not propose to refer to the numerous facts as they appear from the various petitions and affidavits and their annexures as. I think, it is not necessary to refer to all of them. I however propose to take up the salient facts with reference to which arguments have been advanced by learned counsel for respondents 6 to 9 in a different way and the learned Advocate-General in a different form.

32. It has already been stated that the School was being managed for day to day affairs by a Managing Committee. It is not known whether there was any grant of money or property by the Government or any member of the public between the year 1854 and 1909. During that period, undoubtedly the School was under the exclusive control of the Church Missionary Society or its delegates or agents. When the Bakhtiarpur Estate or any other member of the public donated any land or any amount to the institution, it is not claimed that in pursuance of that donation any special rights were claimed by, or conferred on, them giving them a seat in the Managing Committee as a matter of right or even otherwise. The only thing which requires consideration is as to what were the conditions imposed by the Government when grants of money were made by it or when lands were

leased out to the school after acquiring them under the Land Acquisition Act for public purposes. It is not necessary to enter into the controversy of there being any deed or instrument on all the occasions of the grants. It will be sufficient to refer to only two documents which are on the records of this case. Before I do so, I would like to refer here to the general rules relating to grant in aid to schools in Bihar and Orissa payable from Provincial revenues as published in the Bihar and Orissa Gazette, February 3, 1915, Part I, page 113; the notification is dated the 29th January 1915. The general conditions attachable to grants are to be found in Appendix A appended to the rules in form of agreement for grant of land or building under Rule 7(4) of Section 1, In Appendix B is given the form of agreement for grant of money to extend existing buildings or construct buildings on land belonging to an educational institution under Rule 7(4) of Section 1. The salient terms from these forms have been quoted in the counter-affidavit as also verbatim are to be found in the two documents which I am going to refer.

33. Annexure G/1 to the counter-affidavit is a copy of the reply to the supplementary affidavit filed on behalf of the School authorities in M.J.C. 899/61 along with the annexures. Annexure 2 of the said reply is a true copy of the trust deed executed on 10-2-1916 by Rev. E.T. Sandys, constituted Attorney of the Church Missionary Trust Association and members of the Managing Committee of the School, of whom Rev. E.T. Sandys was one. This document was executed when a grant of Rs. 28,200 was made to the School. Out of this grant, the price of the acquired land was paid by the School authorities. The condition of the grant is--

"(a) Save as the Local Government may permit the said building shall not be used by the School authority for any other than educational purposes prior to the lapse of a period of 20 years from the date on which the said sum of Rs.28,200 is paid to the School authority.

(b) The said School shall be governed by a regular managing committee, the constitution of which shall be approved by the Director of Public Instruction and shall be in accordance with the grant-in-aid rules.

X X X X (g) The School shall be managed as regards control, maintenance, staff, fees, free studentships, curriculum, discipline residential arrangements and in all other respects in accordance with the Government grant-in-aid rules and to the satisfaction of the local Government."

34. Ext. G is an indenture executed on 18-11-1919 by Rev. E.T. Sandys and others as members of the Managing Committee of the School and the Secretary of State acting through the Collector of Bhagalpur. The deed is a deed of agreement and the facts of mutual agreement are enumerated in it. It was executed when a piece of land acquired was leased out to the School. The important conditions to be noted from this deed are as follows:--

"(1) Save as the local Government shall permit the said land shall be used solely for the purposes of the school,

(2) The school shall be governed by regular Managing Committee the constitution of which shall accord with the Rules of the Education Department of Bihar and Orissa for the time being in force, governing schools in receipt of grants-in-aid.

X X X X (6) The School shall be managed as regards control, maintenance, staff, fees, free studentships, curriculum, discipline, residential arrangements and in all other respects in accordance with the Rules of the Education Department of Bihar and Orissa for the time being in force, governing schools in the receipt of grants and to the satisfaction of the local government,"

35. The sum and substance of the conditions imposed are that the Managing Committee was to govern the school, the Managing Committee was to be constituted with the approval of the Director of Public Instruction, it was to be constituted in accordance with the rules governing schools receiving grants-in-aid and it was to be constituted according to the rules for the time being in force, For violation of the terms of the deed of 1916, it was provided that in case of remediable defects the school authorities shall remedy them on demand, and if they fail to do so, they were to be bound to repay to the Secretary of State the said sum of Rs. 28,200 or the portion thereof, and the Secretary of State shall have the power at his option either to have the defect caused by such breach remedied at the expense of the School authority or to require or sue for the repayment of the said amount by the School authority. In the deed of 1919 it was provided that if the conditions at any time were broken from any cause whatsoever then the Secretary of State shall be entitled to re-enter upon the said land and the school authority shall be bound to give him or any officer authorised in his behalf quiet and peaceable possession of the said land and of all buildings on certain further conditions provided in the deed.

36. On the basis of these documents Mr. Shreenath Singh submitted that the case is covered by the principles of law laid down by the Supreme Court in paragraph 37 of its judgment in *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, the relevant lines from which as quoted in the judgment of the Supreme Court in *S. Azeez Basha and Another Vs. Union of India (UOI)*, have already been quoted by me. The learned Advocate-General, however, submitted that he was not prepared to go so far as to say that the right to administer the school never vested in the minority or had been voluntarily surrendered by it or had otherwise been effectively or irretrievably lost to it, but the Government grants in the form of either land or money were conditioned by the term that the School will be maintained by a Managing Committee which will be constituted according to the rules as mentioned therein in force from time to time. The grant being subject to those conditions, the trustees or the school authorities receiving the grant are bound by those conditions. The conditions were not matters of law but of contract. Learned Advocate General, therefore, submitted that even after the commencement of the Constitution those conditions appended to the grant have got to prevail and to be given effect to.

The conditions of contract of the grant cannot be held to be void because they infringed the fundamental right guaranteed under Article 30 of the Constitution.

37. I may, however, refer here to Annexure 10 to the writ application which is dated 3-5-1918. This is a copy of the resolution of the Managing Committee of the C.M.S. High School held on the 3rd May, 1918. On a consideration of the model rules for Managing Committee sent by the Director of Public Instruction, it was resolved to point out to the Government certain modifications in those rules. The modifications suggested were--

"The Church Missionary Society reserve to themselves the right to have the following Ex-Officio members in and appoint the President and Secretary of the Managing Committee:--

1. The Secretary of the C.M.S.
2. The Senior C.M.S. Missionary in Bhagalpur as President of the Committee.
3. The C.M.S. Missionary Principal as Secretary of the Committee."

Annexure 11 is the copy of the letter dated 21-9-1918 from the officiating Inspector of Schools, Bhagalpur Division, communicating to the Secretary of the C.M.S. School that the modifications proposed in the case of the C.M.S. High School at Bhagalpur as stated in the letter of the Secretary dated 4th of May, 1918, which must have been written in pursuance of the resolution dated 3-5-1918, were approved. Annexure 35 to the affidavit-in-reply is a copy of the minutes of the Managing Committee meeting held on 25th June, 1919. The rule sent by the Inspector of Schools with the modifications incorporated therein were read in the meeting and sanctioned, and it is specifically stated that they were so done with the approval of the Director of Public Instruction.

38. I would now refer to two letters copies of both of which are contained in annexure 36 to the affidavit-in-reply. The first is the letter dated 12th September, 1944 from the Secretary, Board of Secondary Education, Bihar, written to the Inspector of Schools, copy of which was forwarded to the Secretaries of the nongovernment High Schools in the Bhagalpur Division. A query was made on the assumption that proprietary schools did not raise any subscription or donation, whether the proprietors of such schools were willing to transfer the school buildings to the Managing Committee by deed of gift. The reply given by the Secretary of the C.M.S. High School is dated October 20, 1944. The letter is addressed to the Inspector of Schools wherein it is said that the proprietors would not consider it wise to transfer the school buildings to the Managing Committee by deed of gift, nor would the Managing Committee desire to undertake the responsibility of holding possession of the buildings.

39. I may also note here that on a consideration of the various matters stated by the parties in the various affidavits, the clear picture which emerges is this, that even after the Government grants which, as stated on behalf of respondents 6 to 9, were quite substantial having been made from time to time, the President of

the School was always the head of the Missionary who was the Bishop after the establishment of the Bhagalpur Diocese in the year 1943, and the Principal, although he was not always a Missionary, was invariably a Christian. He was acting as the Secretary also but in the year 1958 the two posts were bifurcated at the instance of the Government and Rev. Ghest was eventually made the Secretary of the School. From the copies of the resolution of the Standing Committee of the Diocese or the Education Board, some of which have been appended to the writ application, and some to the affidavit in reply, it is clear that the Bishop of the School as the head of the Missionary had the dominating hand in the management of the School.

It is not correct to say that the Principal was appointed, suspended or dismissed by the Managing Committee. The Managing Committee, as it appears, was merely carrying out --formally in effect -- the decisions of the Diocese or the Bishop. The Managing Committee was electing the Bishop as the President of the Managing Committee but that was also a mere formality as even in the resolution it was said that the President was elected ex-officio, meaning thereby that the Managing Committee had no volition in the matter; it was merely to accept the Bishop as its President by a formal resolution. Even after the separation of the posts of Principal and Secretary, the Secretary was a representative of the Church. It is, therefore, abundantly clear that the modification rules suggested and approved in the year 1918 and 1919 were always given effect to. The pivotal decisions were taken by the representative or the nominee of the Church Missionary.

Under the rules which were stated in the Government notification dated 29-1-1915 for constitution of the Managing Committee it was provided that the members of the Committee should be representative of the various classes of the community. The number of members of the Managing Committee has been varied from time to time. In that notification the minimum fixed was 6 and the maximum was 10. The constitution of a committee of a school seeking a grant-in-aid or the renewal of a grant-in-aid should be approved by the authority competent to renew the grant after consultation with the District Magistrate or the Director of Public Instruction as provided in the deeds of 1916 and 1919. All intermediate resignations, removals or appointments were to be reported to the Inspector and all such appointments should be approved by the Inspector in consultation with the District Magistrate. Even though in regard to some of the matters, under the terms of the grant the authorities of the School were obliged to constitute the Managing Committee according to the grant-in-aid rules but that was in no way tantamount to the effect that the Church Missionary Society had voluntarily surrendered its right of administering the School or it was otherwise irretrievably lost to it.

Allowing some interference with the constitution of the Managing Committee in accordance with the grant-in-aid rules, and that also not to the fullest extent but truncating it to the considerable extent by the modifications made in 1918 and

1919, to my mind, it is clear, cannot lead to that conclusion. The Church has been administering the School and although for getting Government grant it allowed governmental interference as it was obliged to do in the management of the day to day School affairs, it is difficult to say that it surrendered its right of management. The facts of the Durgah Committee case were so very different that it is difficult to apply the principle laid down by the Supreme Court in that case to the facts of the instant case.

40. The argument put forward by learned Advocate-General is also not acceptable to me. Reading the two documents -- one of the year 1916 and the other of the year 1919 -- separately but as a whole, I am not prepared to hold that the grants conditioned with certain terms had the effect of creating a trust impressed with those conditions which must be fulfilled in any event. If such conditions are sought to be imposed by the Government today on an educational institution established by a minority entailing refusal of the grant if such conditions are not accepted, it is manifest, the imposition will be hit by Article 30(2) of the Constitution. There was no such fundamental right in existence at the time the documents of 1916 and 1919 were executed. The conditions imposed therein were not of a kind which can be said to be enforceable for all times to come. Certain rights were given to the Government for recovery of the money or the taking back of the land on breach of the conditions. It is remarkable in this case that no counter-affidavit has been filed, as stated above, by respondents 1 to 5 claiming the enforcement of the conditions on the basis of the documents of 1916 and 1919. No show cause petition has been filed on their behalf.

One could appreciate the arguments put forward on behalf of the learned Advocate-General to defeat the petitioners on the first point, but it is difficult to follow his argument on the second point with the aid of some of the annexures appended to the counter-affidavit filed on behalf of respondents 6 to 9. On the other hand, as stated in paragraph 3(xvi) of the petition, in Title Suit 81 of 1962 the Director of Public Instruction who is respondent No. 2 had filed a show cause petition in which the stand taken by the Education Department was that the School was started by the Church Missionary Society, London, and was managed by the said Society and that the Church had control over the School and was represented in the Managing Committee by the President, Secretary and Principal of the School. This statement of the Director of the Public Instruction in the show cause petition filed in Title Suit 81 of 1962 cannot help the petitioners on the first point, but surely it does help them on the second point which I am at present discussing and specially in absence of any other affidavit in the present writ proceeding.

In answer to our query, the learned Advocate-General could not tell us any reason as to why a counter-affidavit has not been filed on behalf of respondents 1 to 5. I am constrained to observe that if the School in question could be held to be an educational institution established by a minority within the meaning of

Article 30. on the materials as they are and in absence of a counter-affidavit on behalf of respondents 1 to 5, an attempt to defeat the fundamental right to administer the School by the minority, in any event, should not have been made on behalf of respondents 1 to 5. The case made out by respondents 6 to 9 is not such as to defeat the claim of the petitioners if otherwise they were entitled to succeed. At one time they were members of the Managing Committee. They did not claim that they had made any contribution of money or land to the institution at any time. It is remarkable that they have taken upon themselves, ostensibly for a public cause but may be for a different reason, the burden to defeat the rights of the minority, if it could be held to be so, in administering the C.M.S. School,

It is a common place, as even stated by the learned Advocate-General that the Christian Missionaries have rendered yeoman service through their educational institutions of the kind with which we are dealing in this case by virtue of their efficient administration of such institutions. I am sorry to say that we have still to reach our cherished goal of having even an equally efficient administration of an educational institution with the governmental interference and the goal of an abler administration seems to be lost in remote future.

41. In my opinion, one short point also gives a complete answer to the contention of the learned Advocate-General. If the School was to be administered by the rules for the time being in force according to the deed of 1916 or 1919, the rules in force at the present moment are the 1964 Rules, Rule 41 of which clearly shows that they do not apply to the Schools established and administered by the minorities whether based on religion or language. If this School could be held to have been established and administered by the minority, under the present Rules of 1964 even under the terms of the deeds of 1916 and 1919, it will be exempt from being governed under the said Rules. As I have said above, the School was administered by the Church Missionary Society or the Bhagalpur Diocese, some amount of interference was not tantamount to non-administration of the School by them and, therefore, under Rule 41, if otherwise they were entitled to the protection, I would have felt no difficulty in giving this protection to the C.M.S. School from interference with its administration on the second ground urged either on behalf of respondents 6 to 9 or by the learned Advocate-General on behalf of the State. Mainly on the first point decided by me against the petitioners and somewhat on the incidental point decided by me against them, as stated above, I have come to the conclusion that the C.M.S. School is not an educational institution which can be held to have been established by a minority nor does it seem to be an educational institution of the kind which can be given protection under Article 30 of the Constitution.

42. In the result, the application is dismissed but there will be no order as to cost.

Wasiuddin, J.

43. I agree.