

(1986) 09 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 424 of 1986 (R)

Bishwa Budha Parishad and another

APPELLANT

Vs

The Ranchi University and Others

RESPONDENT

Date of Decision : 19-09-1986

Acts Referred:

Constitution of India, 1950 — Article 25, 25(2), 25(2)(a), 25(2)(b), 26

Citation : (1986) PLJR 568

Hon'ble Judges : P.S. Mishra, J; M.M. Prasad, J

Bench : Division Bench

Advocate : Rajendra Pd. Singh, V.P. Singh, Ramesh Chandra, A.K. Sinha and B.K. Nag., M/s. S.B. Sinha and Anil Kumar Sinha. for the University, M/s. S.K. Chattopadhyaya G.P.-1 and Prashant Kumar J.C. to G.P. 1 for the State, M/s. Kameshwar Pd. and Sunil Kumar Sinha. for Intervenor, for the Appellant; Sohail Anwar for Other Respondents Nos. 3 to 5 and 7, for the Respondent

Final Decision : Allowed

Judgement

P.S. Mishra, J.—The petitioners, who claim to belong to a religious denomination and who are a religion in minority in the state of Bihar, have moved this Court for a writ in the nature of certiorari to quash the orders appointing an ad-hoc Governing Body (annexures 1 and 26) to administer and manage the affairs of Sangmitra College at Bariatu in the town of Ranchi. The petitioners say that petitioner no. 1 is an association of people professing faith in Buddhism which is a religion having freedom to establish and maintain institution for religion and charitable purposes and to establish and administer educational institutions of their choice. Petitioner no. 2 is the Governing Body of Sangmitra College constituted by the followers of the said faith adhering to the regulations and statutes of the Ranchi University. They established a tutorial college in the year 1979 and on 14.10.1982 resolved to establish a college to impart education to women up to degree level. Accordingly, they instituted a Governing body and applied to the Ranchi University for recognition. The University appointed Inspectors who, as per University's statutes and regulations, verified from the

relevant records and ascertained relevant facts and reported on 5.3.1983 that the college was established and administered by the petitioner no. 1, which was a religious minority and recommended for affiliating the college up to degree standard. After receiving the Inspector's report, the University in its turn recommended to the Government of the State of Bihar on 7.6.1983 to accord its approval to the affiliation of the college and on 22.9.84 (vide annexure 3) the Government in its appropriate Department informed the University to grant temporary affiliation without intermediate classes and without any financial liabilities upto degree standard. On 7th February, 1986 the University informed the petitioner no. 2 about the grant of affiliation on the condition that there would be no intermediate classes in the college and there would be no financial liability either upon the University or upon the Government.

2. It appears there has been no difficulty until then, but on 30.12.1985 the petitioner no. 1 constituted a fresh Governing Body followed by representations against the administration of the college and on 11.2.1986 the President of the Ranchi University Teachers Association addressed some memorandum to the Vice Chancellor of the University making certain allegations against the petitioner no. 1. This was followed by further representations by the teachers who made allegations against the petitioners. In these representations the Vice Chancellor was requested to intervene dissolve the Governing Body and appoint an Ad hoc Committee. On 1.3.1986, the Vice Chancellor of the University ordered dissolution of the Governing Body of the College and appointed an ad hoc committee (Annexure 1). The petitioners allege that there has been interference in their right of administration and have moved this Court.

3. Although it is not necessary to go into the allegations as to who established the college and who had been administering it, since a larger question has arisen which question has been framed by a Bench of this Court on 9.4.1986, some more facts are required to be stated.

4. The petitioners approached the University claiming that they are a religious minority in the State of Bihar, that they had established a college and that they had been administering it. They sought affiliation on the basis that they were protected under Article 30 of the Constitution in their right to establish and administer the college. Entertaining their application for affiliation, the University appointed Inspectors, who visited the college and recommended for granting affiliation to the college, subject to its fulfilling certain conditions. The University after receiving the said recommendation requested the Government of the State of Bihar to accord its approval/sanction for granting affiliation to the college. There is nothing except the fact that the petitioners claim that they established and were administering the college and were seeking affiliation of the college as one protected under Article 30 of the Constitution until the Government's communication (annexure 3) according its sanction to the temporary affiliation of the college was received, except a reservation expressed by one of the Inspectors, namely, Dr. S.P. Lal, who added a note of his own to the report

signed by him besides four other members of the team of Inspectors, stating that the question of granting minority status may be examined separately. It appears however, that with the constitution of a new Governing Body by the sponsors of the College on 30.12.1985 dispute started and even the minority and religious status/character of the petitioners was questioned by the President of the Ranchi University Teachers' Association and some other persons.

5. Article 30 (1) of the Constitution states that a minority, whether based on religion or language, shall have right to establish and maintain a educational institution/college of their choice. Before the right under Article 30 of the Constitution is claimed, it is necessary that the persons claiming the said right belong to a minority based either on religion or language. Unlike Article 25 of the Constitution, which has enshrined the right to freedom of conscience and free profession, practice and prorogation of religion, Article 26 of the Constitution which has guaranteed freedom of managing religious affairs and Article 29 which has guaranteed the protection of interests of minority based on religion or language. Article 30 thereof has recognised the right of all minorities, whether based on religion or language to establish and administer educational institution of their choice. The right guaranteed under Article 30 (1) of the Constitution is not in any manner controlled by the rights enshrined in Articles 25, 26 or 29 of the Constitution. Even preservation or conservation of language, culture or script of a particular denomination or community and for the said purposes establishment of an educational institution, which is a right flowing from Article 29 of the Constitution, may or may not combine with the right under Article 30 of the Constitution. The law in this behalf has found expression combining the rights under Articles 29 and 30 of the Constitution in *Arya Pratinidhi Sabha v. The State of Bihar and others* AIR 1953 Pat 359 Speaking for the court, Ramaswami C.J., as he then was, has stated --

The constitutional protection under Articles 29 and 30 is, therefore, not absolute and it does not involve dispensation from obedience to general regulations made by the State for promoting the common good of the community. But in the present case the action of the Government in imposing the ad hoc committee and threatening to withdraw grant-in-aid as ordered by the respondents in Annexures A and A1 transcends these limitations, and I think it infringes the constitutional protection guaranteed under Articles 29 and 30 of the Constitution....."

Constituting a Full Bench in the case of *Dipendra Nath Sarkar Vs. State of Bihar and Others*, and considering the right of *Brahma Samaj*, Ramaswami, C.J., as he then was, again speaking for the court has said--

Under Article 30 of the Constitution the Samaj religious minority has two rights- (a) to establish a school of its choice, and (b) to administer it. 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. On the contrary the Article expressly states that the religious minority has a right to establish and administer educational institutions of its choice. The words "of its choice" are crucial, and these words supply the key to the understanding of the true meaning and import of the Article. The crucial phrase in the Article is "of their choice" and the ambit of the freedom of choice conferred by the Article is therefore as wide as the choice of the particular community may make it. The right expressly conferred by the Article on the minorities is to establish educational institutions of their choice. It does not say that the minorities based on religion should establish educational institutions for teaching religion only. What the Article says is that religious minorities should have the right to establish educational institution of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. 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. In my opinion the Article applies to both these classes of institutions....."

In the words of Ramaswami, C.J., as he then was, it is not difficult to find the distinction to which Article 30 (1) of the Constitution has taken the right of all minorities, whether based on religion or language and there in Article 30 (1) of the Constitution itself, exclusion of restrictions that may be found in the words of Article 29 and in that matter in Articles 25 & 26 of the Constitution may be noticed.

6. Once the Budhists constitute minority in the State of Bihar and they are a separate religious denomination, they shall be entitled to protection under Article 30 of the Constitution. But at this stage comes first the question framed by a Bench of this Court on 9.4.1986, "whether in view of explanation JJ of Article 25 (2) of the Constitution of India an institution established by Budhist Association can be held to be a minority institution, because Budhist religion shall be deemed to be part of Hindu religion ?". Explanation II of Article 25 of the Constitution says that in sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly. The explanation has made a reference to sub-clause (b) of clause (2) of Article 2(sic), which in its turn says --

Nothing in this article shall affect the operation of any existing law or prevent the State from making any law- (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus".

Clause (2) of Article 25 of the Constitution has to be read in the context of the provision made in clause (1) thereof, which has guaranteed subject to public order morality and health and to the other provisions of Part III of the Constitution all persons equality, freedom of conscience, and the right freely to

profess, practice and propagate religion. Without the explanation none can read in the word "Hindus" in Article 25 (2) (b) any person professing the Sikh, Jain or Buddhist religion. To make the operation of any existing law possible and to empower the State to make laws providing for social welfare and reform or throwing open of a religious institution of a public character of Sikh, Jain, or Buddhist religion, to all classes of people, explanation II provides the necessary aids. Without it, the Constitution would allow the operation of any existing law or permit the State to make law providing for social welfare and reform etc., as contemplated under Article 25 (2) (a) & (b) of the Constitution in respect of people professing Hindu religion only. This could not be accomplished for people professing Sikh, Jain and Buddhist religion without the explanation. The Constitution itself has taken care to specify in explanation II itself that Sikh, Jain and Buddhist are Hindus. It has recognised them as a religion, but for the purpose of giving effect to any existing law or to empower the State to make laws for social welfare and reform like Hindus, Sikh, Jain and Buddhist are also included in Article 25 (2) (b) of the Constitution. On this alone the first question framed in the order dt. 9.4.1986, in my view, stands answered. Indeed, India has got the proud privilege of having with its faith in, Akoham (), Dwait (), Adwait () and Vedant (), faiths in many incarnations and other faiths of Hindus, Tirthankars of Jains and the Budha, the enlightened one, who all have given to their followers faiths and a religion to live for. In the same line are those who profess their faiths in the teachings of Koran, Bible, Guru Granth Sahib etc. They all are separate and independent in their faiths and practice, rites and rituals peculiar to their denomination.

7. In D.A.V. College, Vs. State of Punjab and Others, the Supreme Court has given sufficient guidelines how to determine a minority and what a linguistic minority or a religious minority may mean and quoted from Encyclopaedia Britannica, with approval (Vol. II-1968 at page 558) the passage which says --

Arya Samaj, a vigorously reforming sect, of modern Hinduism, founded in 1875 by Swami Dayanand Saraswati (1824-83) at Bombay.....The Vedas as interpreted by the method laid down by Dayanand may be said to be the theology of the Arya Samaj and are held to contain all truth and all knowledge, including the basis for modern science. The Arya Samaj is completely opposed to idolatry, is sternly monotheistic and denies the efficacy of priestly intervention. Its organisation and services are strongly reminiscent of Protestantism.....The Arya Samaj opposes the caste system based upon birth, as un-vedic and insists that caste should reflect merit.....The Arya Samaj has sought to revitalise Hindu life and to instill self confidence and national pride among Hindus. It has established a net work of excellent schools and colleges, including the Dayanand Anglo-Vedic College in Lahore, which teach rigorously in the Vedas and in modern sciences.

To show the affinity between Arya Samaj and protestantism a comparison is made in the Encyclopaedia of Religion and Ethics between Dayanand Saraswati

and Martin Luther. In Volume 2 at pages 58-59, it is said :

As Luther the German monk was a child of the European Renaissance so Dayanand the Gujarati monk was a child of the Indian Renaissance..... Luther attacked indulgences, while Dayanand attacked idolatry. Luther appealed from the Roman church and the authority of tradition to the scriptures of the Old and New Testaments. Swami Dayanand appealed from the Brahmanical Church and the authority of Smriti to the earliest and most sacred of Indian scriptures. The watch-word of Luther was "Back to the Bible" the watch word of Dayanand was "back to the Vedas".....but be it noted to the Vedas as interpreted, not by the traditional scholarship of Indian orthodoxy or by the critical scholarship of the West, but by the scholarship of the Arya Samaj alone.....The scripture basis of the Arya Samaj then, while formally the Vedas, is in reality a certain interpretation of the Vedas, which is not recognised as legitimate by a single Sanskrit scholar, either Indian or European; outside of the Arya Samaj".

Shri Motilal Setalvad, Learned Advocate for the Respondents contends that there is nothing to indicate that the Arya Samajis should be Hindus."

"The passages read above show beyond doubt that the Arya Samaj by "rejecting the manifold absurdities found in Smriti and in tradition and in seeking a basis in the early literature for a purer and more rational faith" can be considered to be a religious minority, at any rate as part of the Hindu religious minority in the State of Punjab".

This judgment of the Supreme Court is also an authority for the law that to determine a religious or linguistic minority one has to see what that minority is in relation to the particular legislation which is sought to be impugned. If it is a State legislation, whether the particular community is a minority in that State alone has to be seen and if it is a legislation by the Union, it has to be seen whether it is a minority in relation to the Union of India or not.

8. It appears to me reasonable therefore, to hold that denominations of various kinds may exist in a religion and each denomination may distinguish itself in its faith and in that sense constitute a separate religion of itself It is in that sense that amongst Hindus Brahma Samaj constitute a religion and in relation to a certain legislation in a certain State or in the country as a whole they may stand as a religious minority. The same principle has to be applied to the Arya Samaj and if that be so, there is no reason why the same cannot be applied to Sikh, Jain and Buddhist.

9. The first question framed in the order dated 9.4.1986, therefore, has to be answered thus. Explanation II of Article 25 (2) of the Constitution has given to the words "Hindu" and "Hindu religion" an extended meaning for the purpose of that article alone and extended meaning includes Sikh, Jain and Buddhist as well, which in themselves are religion. For the purpose of Article 30 of the Constitution "religion" means faith of a particular denomination or association of people, who for many purposes may belong to yet another larger association, or

denomination but in themselves have separate and distinct characteristics of a religion. Budhists in all respects, qualify as a religion other than Hindus for Article 30 of the Constitution.

10. Since the answer to question no. 2 framed in the order dated 9.4.1986 is intermingled with the answer to the main contention of Learned Counsel for the University. I shall take up the same along with the contentions of the Learned Counsel.

11. The third question, whether before the questions aforesaid are decided by this Court, it is necessary that the State Government should be directed so consider the same is not at all a question in itself. It is only a suggestion which on its conclusions the Court may accept or reject.

12. It is not in dispute that the college and the University are governed by the Bihar State Universities Act, 1976 (hereinafter referred to as the Act.) A Mahavidyalaya or college has been defined in sub-section (f) of section 2 of the Act to mean an institution affiliated for the privileges of the Act or maintained or controlled by the University or institutions maintained by the State Government in which instructions are given, subject to the provisions contained in Clause (16) of section 4, to the students, under conditions prescribed in the statutes. Affiliated college has been defined in Section 2(c) of the Act to mean educational institution having received privileges of the University according to the provisions of the Act and University statutes relating thereto. Section 60 of the Act speaks of the Governing Body of a college. It provides, inter alia, that there shall be a Governing Body for the management and administration of each affiliated college other than a college owned and maintained by the State Government or a college established and administered by a minority community on the grounds of religion or language or an affiliated technical or medical college. Sub-section (4) of section 60 of the Act says :

The Syndicate shall constitute an ad-hoc committee for management of the college so long as a Governing body is not constituted in accordance with the provisions contained in sub-section (1)".

Confining to these provisions, the University shall have no authority to appoint an ad-hoc committee for management of a college established and administered by a minority community on the grounds of religion or language.

13. Learned Counsel for the University has, however, placed reliance upon sub-section (5) of section 60 of the Act, which says "The Governing Body/Managing Committee for the management and administration of college owned and maintained by the State Government, or established and administered by a minority community, on the ground of religion or language and declared, from time to time, as such by the State Government according to yardsticks laid down by it, or of an affiliated technical or medical college, shall be constituted in accordance with the provisions prescribed in the Statutes". Sub-section (5) in itself provides for Governing Body/Managing Committee for the management and

administration of a college, which is excluded by express words used in sub-section (1) of section 60 of the Act, where it is said that there shall be a governing body for the management and administration of each affiliated college other than a college owned and maintained by the State Government or a College established and administered by a minority community on the grounds of religion or language or an affiliated technical or medical college. Article 171 (1) of Chapter X-IA of the statute of the Ranchi University begins with the reiteration of the words used in sub-section (1) of section 60 of the Act and ends with a proviso in respect of the colleges owned and maintained by the Government and another proviso in respect of the college established and administered by a minority community.

14. The first proviso is not relevant for us. The second proviso says "provided further that in the case of colleges established and administered by a minority community or based on religion or language on Medical or Engineering College other than those maintained by the Govt., the Governing body/Managing committee consisting of seven members shall be constituted by the Syndicate in consultation with the sponsors/authorities of the colleges concerned. Where, however, the Syndicate is able to satisfy itself about the bonafide of the sponsors/authorities of any such college it may constitute an adhoc committee consisting of not more than five members". It is obvious that the last sentence of the proviso above has not been happily worded. What it may mean is, however, hidden in it and is that the Syndicate may appoint an ad hoc committee in respect of affiliated college belonging to the categories mentioned therein, if the syndicate is satisfied that the sponsors/authorities of any such college are mal-administering it.

15. It is, however, to be noted that in subsection (5) of section 60 of the Act there are additional words ".....and declared, from time to time, as such by the State Government according to yardsticks laid down by it." attached to the colleges established and administered by a minority community on the ground of religion or language. It is not enough in terms of subsection (5) of section 60 of the Act, that the college is one established and managed by a minority community on the ground of religion or language. Governing body is to be constituted for it in accordance with the provisions prescribed in the statute, when it is one in respect of which there is a declaration by the State Government according to the yardsticks laid down by it.

16. We are informed at the Bar that no yardsticks have been laid down but such declarations are made by the State Government and since such declarations are made by the State Government, the petitioners have also applied to the State Government for declaring the college as one established and administered by a minority community on the ground of religion.

17. In the instant case, however, the declaration is yet to come, but a temporary affiliation has been granted to the college by the University and the Government of the State of Bihar. This affiliation has been granted on the basis of the

application by the petitioners that they had established and were administering the college. Sub-section (1) of section 60 of the Act; which does not have the words like declared from time to time as such by the State Government" in it and which provision contemplates constitution of a Governing body for the management and administration of each affiliated college, will have no application, unless it is assumed or proved that the college in question has not been established and administered by a minority community on the ground of religion.

18. The moot question, therefore, is-can it be said only on the ground that the State Government is yet to declare the college having been established and administered by a minority community on the ground of religion or language, that the college has got no character of an institution established and administered by a minority community on the ground of religion and it shall have such character or status only when the State Government shall so declare it -

19. To my mind to deny to the petitioners, if they are found to have established and administered the college, the right under Article 30 (1) of the Constitution, solely on the ground that for one reason or the other the declaration by the State Government about its minority status has been put in abeyance, will amount to denying the status or character which is enshrined in the institution only by virtue of it being established by a religious minority and administered by it. To read in this context "declaration by the State Government" for giving to the institution status for protection under Article 30 (1) of the Constitution will amount to reading in Article 30 (1) of the Constitution itself the words which are introduced in subsection (5) of section 60 of the Act. I have already noticed that Article 30 (1) of the Constitution says no less and no more than saying that all minorities, whether based on religion or language, shall have the right to establish and administer institutions of their choice. How then one can even imagine that without a declaration by the State Government that a certain institution has been established by a religious minority or linguistic minority, the right under Article 30 of the Constitution shall not be extended to it ?

20. I have failed to understand despite my sincere efforts the logic of Learned Counsel for the University that until a declaration is made by the State Government, no minority status can be recognised by the University and the University shall in such a situation be obliged to treat an institution established even by a religious or linguistic minority as any other affiliated college. Even if one is aware of the principles of interpretations of statutes and undoubtedly a court of law has got a duty to harmoniously construe the various provisions of law, yet when it comes to a right, particularly in part III of the Constitution and a right which has been acknowledged as fundamental and basic in respect of the religious and linguistic minorities any legislation containing a provision to conflict with what is contained in the Constitution must for that reason alone has to be ignored. When I say, so I do not mean that sub-section (5) of section 60 of the Act where it speaks of the declaration by the State Government is ultra vires It

can still be sustained and can be so sustained by reading the law as it has been worded by the framers and construing the words in each part of the Statute as they are used. I have already indicated that in sub-section (1) of section 60 of the Act, the words "declared from time to time as such by the State Government according to the yardsticks laid by it", are not to be found with the words established and administered by a minority community on the ground of religion or language. These words are conspicuous by their absence in sub-section (1) of section 60 of the Act. Sub-Section (1) of the section 60 of the Act alone is a provision in respect of affiliated colleges for constituting governing bodies as provided therein. Sub-section (4) of section 60 of the Act by categorically indicating that the Syndicate shall constitute an ad hoc committee for management of the colleges so long as a Governing body is not constituted in accordance with the provisions contained in sub-section (1) has confined the Syndicate's power to the affiliated colleges other than colleges owned and maintained by the State or colleges established and administered by a minority community on the grounds of religion and language or affiliated technical or medical colleges. Constitution of a Governing body of a college excluded in section 60 (1) of the Act is "governed by subsection (5) thereof". In that, of course, before a Governing Body is constituted in accordance with the provisions of the statutes, a declaration of the State Government may be required. But that in itself cannot mean that until such a declaration is made by the State Government, the University shall extend its power under sub-section (4) of section 60 of the Act and remove the Governing body appointed by the sponsors and appoint an ad hoc committee. The relevant statute under Article 171 also read in the context of the discussions made by me above will stand the test of vires and in no way conflict with the right of religious or linguistic minority to establish and administer their own educational institution.

21. Although no specific argument has been advanced before us on behalf of the University that it shall have a right to appoint an ad hoc committee in a college established and administered by a minority community on the ground of religion and language, and the second proviso to Article 171 of Chapter XIA of the Statutes has not been invoked for the said purpose before us, I feel, before parting with the above contention of Learned Counsel for the University, something should be said about it.

22. To "administer" shall always mean to "administer in accordance with the norms laid down for the institutions that impart education to the students including the regulations for maintaining the standard of teaching and appointment of qualified teachers. "Administration" can never mean mal administration. The moment there is a mal administration and there are reasons to hold so, competent authority shall have to interfere to ensure that administration is restored at in par with the standard of the educational institution of the kind with which they are concerned. It is in that sense that second proviso in Article 171 of Chapter XIA of the Statutes of the University is relevant and the Syndicate of the University may in a given case be required to

act even in respect of a college established and administered by a minority community.

23. In the instant case, however, there is no necessity to investigate, whether there were any material before the University that the Governing body appointed by the sponsors of the college had mal administered it, because the stand of the University before us is that until there is a declaration by the State Government that the college is one established and administered by the minority community, the college has to be treated as any other affiliated college and accordingly the power has been exercised by the University and the Vice Chancellor has exercised his emergency power followed by approval of the syndicate to appoint the ad hoc committee in terms of sub-section (1) of section 60 of the Act. This power the University could not exercise and the Vice Chancellor and the Syndicate of the University, in my view, acted without jurisdiction in appointing the ad hoc committee by issuing notification contained in annexures-1 and 26.

24. On the findings above, I have no hesitation in holding that the University's order i.e. the order, of the Vice Chancellor and that of the Syndicate, as contained in annexures 1 and 26, are without jurisdiction and that alone is enough to decide the matter before us. But there is yet another infirmity about which the petitioners have made a grievance before us and it will be proper to take notice of the same also.

25. It is well settled that no person should be visited with any civil consequence which has got the effect of adversely affecting ones right without giving opportunity of hearing to him.

This principle of natural justice varies from case to case and fact to fact, but its compliance in one form or the other is recognised as a rule which must be followed even by authorities exercising administrative power or powers vested in them by the statutes. The thin line that once existed between the administrative and quasi judicial actions, as pointed out in various pronouncements of the Supreme Court, has almost obliterated and in administrative actions visiting a person with civil consequences, requirements of natural justice are noticed as inherent. How and in what way that requirements will be complied with, of course, shall depend upon the facts of the case.

26. In the instant case the petitioners have claimed that they are a religious minority and they have established the college and they have been administering it. It is they who appointed the Governing Body which administered the college untill the order contained in annexure-1 was issued. On their claim, appointment of the ad hoc committee without disclosing the facts why actions were taken by the University to remove the Governing Body appointed by them and without assigning any reason, was without complying with the requirement of natural justice. In that view also the impugned order annexure 1 is without jurisdiction. The Syndicate of the University which came to consider whether to accept or to reject the order of the Vice Chancellor of the University also gave no opportunity

to the petitioners, and one opportunity to comply with the requirements of natural justice before the order contained in annexure 1 was approved by the Syndicate of the University was also not given to them by the respondents. The respondents acted in violation of the principle of natural justice in every sense.

27. Learned Counsel for the University has however, drawn our attention to the fact that when the University received the representation of the President of the teachers' union it asked for the comments of the Governing body of the college and, according to him, the Vice Chancellor of the University decided to appoint the ad hoc committee after looking into the allegations and the comments thereon by the Governing body. There is nothing in annexure 1 suggesting that the Vice Chancellor of the University, while deciding to appoint the ad hoc committee, looked into the allegations levelled against the Governing body and/or applied his mind to the allegations and for good reasons concluded that the ad hoc committee should be appointed. As the rule that an opportunity of hearing should be given is recognised, so the rule that the order, by which some right is sought to be affected, should be a speaking order is recognised, like the rule of audi alteram partem the rule that the order by which a right is determined, must state reasons explicitly is recognised as an inherent right of the person affected by the order. Annexure 1 or even in that matter annexure 26 are not in consonance with the rules of natural justice. Moreover, it is not clear whether in asking for the comments the respondent University was conscious of the rule and/or decide that it had to take action against the petitioners in accordance with the second proviso to Article 171 (1) of the Statutes.

28. Another contention still remains to be decided. Is it necessary that the Government of the State should declare and until that declaration is made the status of the college should remain suspended for the college established and administered by a religious minority ? There may be a case in which there is no dispute at all. Facts are so beyond doubt that a declaration by the Government may come as a matter of course. There may be another case in which although a claim is advanced that the institution has been established by a religious minority and is being administered by it, but it is not so, I would have endeavoured to determine on facts whether the claim of the petitioners that they have established the college and they have been administering it, is true or not, but I am not doing so for the simple reason that the State with its agencies available to it at every level can more competently and comprehensively go into this aspect of the matter and determine on facts, whether the college has been established by the petitioners or not and whether they have been administering it or not.

29. I, however, make it clear that there can be no doubt that the petitioners, who have claimed to be Buddhist are a religious minority for the purposes of Article 30 of the Constitution. The only question that may require State's attention is to find out whether they have established it or not and they are administering it or not. The Government of the State of Bihar, while going into this aspect of the

matter would be keeping in mind that. I have given no finding in regard to the claim of the petitioners that they have established the college and they have been administering it, except for the purposes of limited question, whether before the declaration by the State Govt. is made, they are entitled to manage the affairs of the college or not.

30. But one complaint has come before us, rather, seriously against the management by the sponsors as also by the ad-hoc committee and I propose to deal with it. Mr. Kameshwar Prasad, who has appeared for the interveners, has brought before us various records to show that teachers of the college have rather, been treated shabbily by all concerned. They have not been paid due emoluments, they have not been given their due place, and they have been denied the privileges which a teacher of an affiliated college, whether administered by the Govt. of the State or by a religious or linguistic minority, is entitled to get.

31. I have no manner of doubt that who so ever is responsible for the administration and management of the affairs of the college is liable to pay to the teachers their due emoluments and to give to them necessary protection of service extended by various regulations, provisions of the statutes and other provisions made by the University and the law makers. By stating in the order granting temporary affiliation that the Government of the State took no financial liability and communicating that to the management of the college the State and the University cannot cease to have the liability to pay to the teachers of the college their due, just and legal claims. A mere glance to Article 30 (2) of the Constitution will make the position abundantly, clear that notwithstanding the fact that a college is established by a religious or linguistic minority, its right to receive grant-in-aid from the State is protected. The Government of the State of Bihar is liable in terms of Article 30 (2) of the Constitution to extend to the college such grant-in-aid which it pays to other colleges similarly established by other religious minorities. The University in that matter shall have to bear the same responsibility and if the teachers' emoluments are subsidised, whether they are working in the colleges established and administered by a minority or otherwise by any group of sponsors, the University will have to bear the cost and pay to the teachers of Sangmitra college also.

32. Keeping in view this position in law, we wanted from the University information as to who are the teachers appointed in the college in accordance with the regulations and who fulfilled the requisite criteria. The University has, however, given an incomplete list, but we are informed that there are thirteen teachers whose appointments are concurred with by the College Service Commission and there are thirteen other teachers who are working on the second post in one or other subjects, including Smt. Annapurna Sinha, who is working as the Prof-in-charge.

33. What has made me suspicious is the fact that in the notification appointing the ad hoc committee, two members of the syndicate are named along with

others to constitute the ad hoc committee. How could the Syndicate of the University appoint one or other member of the syndicate itself, that is to say, appoint itself as the ad hoc committee of a college when it was sitting as a judge to decide whether to dissolve the Governing body appointed by the sponsors or not and when such Governing Body is dissolved who should manage the affairs of the college. Even their entry as ad hoc committee to manage the affairs of the college could bring no improvement in the administration is demonstrated in the fact that despite there being members of the ad hoc committee teachers of the college have not been paid their due emoluments. If the Governing body of the sponsors was responsible for neglecting the lot of the teachers, the ad hoc Governing body is equally blame worthy. It is high time that bodies like syndicate should know that with the responsibility and power they get as members of the syndicate, they have to act with more caution and show that they do not only act fairly but their acts appear to be fair. Their appointing themselves as the members of the adhoc committee after dissolving the Governing body of the college shall always be suspect and that in itself may be a ground to quash the appointment of the ad hoc committee, in which they name themselves as members.

34. Coming to the teachers of the college, I propose to add that henceforth the Governing Body of the College shall be obliged to pay to them emoluments in accordance with the scale of pay determined for their respective categories and in that if the University has got the liability to pay such subsidy in lieu of salary, the Governing body shall make a claim and the University shall be obliged to pay the same to the Governing Body.

35. I have already said that the Government of the State has got the liability to pay grant in aid which is guaranteed in favour of the sponsors of the college under Article 30 (2) of the Constitution. To make their lot satisfied and inspire them to work, it is necessary to order that the teachers shall be paid their emoluments each month by transfer of their monthly salary and other emoluments to their respective Bank accounts and keeping a record for the same available for inspection by the University and by any officer of the Govt. of the State of Bihar. Since as a result of my judgement today, the Governing Body appointed by the sponsors will come to hold the right to administer the college, the liability to pay the emoluments of the teachers shall ipso facto be upon them and accordingly they shall be paying their salary each month by transferring their respective emoluments in their favour in their respective Bank accounts. The Governing Body, however shall be entitled to the grant in aid and if they demand, the State of Bihar and the University shall be obliged to meet the same. In the result this application is allowed, the orders contained in annexures 1 and 26 are quashed. As a consequence the Governing body of the petitioners shall be entitled to administer the college until such time the matter is finally decided by the Govt. of the State of Bihar and/ or the constitution of the Governing body is altered by the competent authority or sponsors in accordance with law. The Governing body of the college shall have the liability to pay to the teachers

working in the college their emoluments as observed above. It is made clear that no person shall bring any change in the constitution of the college and/or otherwise interfere with until the matter is finally decided by the Government of the State of Bihar.

Madan Mohan Prasad, J.

I agree.