

(1984) 09 KAR CK 0039

In the Karnataka High Court

Case No : Writ Petition No. 12597 of 1984

Dr. T.M.A. Pai Foundation

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 10-09-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 30
Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 — Section 3, 4 (1), 5 (1), 5 (4), 5 (5)

Citation : (1985) ILR (Kar) 1056

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : S.G. Sundaraswamy, for the Appellant; R.N. Narasimbamurthy and M.R. Achar, Government Advocate, for the Respondent

Judgement

Rama Jois, J.—In this Petition, the Petitioners have challenged the constitutional validity of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 ("the Act" for short) and the orders made there under.

2. The facts of the case, in brief, are as follows : The 1st Petitioner is Dr. T.M.A. Pai Foundation, which is a trust registered under the Trusts Act. The 2nd Petitioner is Manipal Institute of Technology, which is an educational institution, owned and administered by the 1st Petitioner Trust. Petitioners 3 to 6 are the trustees. An institution called "The Academy of General Education" was founded by Dr.T.M.A. Pai in the year 1942. It was registered as a society under the Societies Registration Act. At that point of time, Manipal, the place at which the Academy was founded was in the former State of Madras. After reorganisation of States, it has become part of the new State of Karnataka. Para 29 of the Memorandum of Association, made the founder of the Academy, namely, Dr.T.M.A. Pai the Registrar for life. The Academy established large number of institutions including the 2nd Petitioner-Engineering College. On 30-5-1957, a Trust called The Manipal Engineering College Trust, Manipal was formed, inter alia with the object of establishing an engineering college. The 2nd Petitioner college

was established by the said Trust. Dr.T.M.A. Pai died on 29-5-1979. With the object of commemorating the name of Dr.T.M.A. Pai and promote the object which was dearer to him, the 1st Petitioner Trust, namely, Dr. T.M.A. Pai Foundation was formed as per the Trust Deed dated 17-2-1931. The object of the Trust as indicated in the Trust Deed was to promote the development of Konkani language and culture of Konkani speaking people in general and for educational advancement of the students speaking Konkani in addition to all castes and communities. The Trustees of the Manipal Institute of Technology Trust aforesaid, by another deed of declaration of Trust made on 8-7-1983 transferred all the assets to the 1st Petitioner - Foundation. As a result, the 2nd Petitioner College is now owned and administered by the 1st Petitioner-Trust.

With the object of prohibiting the evil of collection of capitation fee exorbitant rates for admission into educational institutions and in particular to institutions imparting technical education, the Governor of the State promulgated an Ordinance called the Karnataka Educational, Institutions (Prohibition of Capitation Fee) Ordinance, 1984, Questioning the constitutional validity of the said Ordinance and the order of the State Government dated 19-7-1984 fixing the total intake of the 2nd Petitioner-College and also earmarking 40% of the seats thereof as Government seats, this Writ Petition was presented. During the pendency of the Writ Petition, the Act came into force on 9.8.1984. Thereafter the order dated 16.8.1984 has been issued fixing the rates of capitation fee and tuition fee chargeable to private unaided educational institutions. The 2nd Petitioner institution is not receiving any financial aid from the State Government and, therefore it comes under the category of Private unaided educational institution.

3. The plea of the Petitioners is that the Act is violative of Article 30 of the Constitution, which conferred a fundamental right on the linguistic and religious minorities to establish and administer educational institutions of their choice. In support of this plea, the Petitioners have stated as follows: Konkani is a language of a Section of the people in the State which constitutes a small minority. Dr. T.M.A. Pai was a Konkani speaking person by birth. He was whole and soul of the Academy of General Education established by him in 1942 and he was largely responsible for the development of the Academy which made a small beginning in 1942 into a huge organisation consisting of schools and colleges including a Law College, a Medical College and an Engineering College. The progress and prosperity of Konkani speaking people was dearer to his heart. Therefore, on the demise of Dr. T.M.A. Pai in 1979, to commemorate his memory and promote the objects which were dearer to his heart, namely,, development of Konkani language and educational progress Konkani-speaking people the 1st Petitioner foundation was established and the ownership and control of the 2nd Petitioner-institution was handed over to the 1st Petitioner. The Konkani being a linguistic minority, the Petitioners are entitled to the protection of Article 30 of the Constitution. In spite of the representation made to the Government (Vide Annexure-E and the recommendation made by the Minority Commission (Vide

Annexure D), the Government has proceeded to enforce Section (42)(a) of the Act against the Petitioners though it is not enforceable against a minority institution.

4(i) The plea of the State put forward in the statement of objection may be summarised as follows: The 2nd Petitioner institution was not established by a minority and for the benefit of Konkani speaking people. The college was, even as stated by the Petitioners, was established by the Manipal Engineering College Trust in 1957 which was in turn created by the Academy of General Education. As stated by the Petitioners, it is only by the registered deed of declaration of Trust dated 8.7.1983 made by the Manipal Institution of Technology Trust, the assets of the 2nd -Petitioner college and the administration thereof along with other institutions stand vested in the 1st Petitioner foundation. From these facts it is clear that the institution was not established by a linguistic minority and, therefore, not entitled to the protection of Article 30 of the Constitution.

(ii) As far as the validity of the Act is concerned, as indicated in the preamble, practice of collecting Capitation fee was destructive of higher values and amounted to commercialisation of education and exploitation of the situation, the Act has been enacted and, therefore, the provisions of the Act are not violative of Articles 30 14 and 19 of the Constitution.

5. In view of the rival pleas of the Petitioners and the Respondent, the following two questions arise for consideration -

(1) Whether the Petitioners are entitled to the protection of Article 30 of the Constitution ?

(2) If the answer to the first question is yes, then, whether all or any of the provisions of the Act are unconstitutional being inconsistent with Article 30.

6. As far as the facts on the basis of which the protection of Article 30 is claimed, there is no dispute. They are :(i) Konkani is an independent spoken language. As regards the existence of such linguistic group, the petitioners have stated as follows :

".....Konkani is an independent language spoken mainly in the Districts of Dakshina Kannada and Uttara Kannada by about six lakhs of people (according to 1971 census) belonging to various communities including Catholic Christians Navayat Muslims and sections of Hindus-The percentage of persons whose mother tongue is Konkani as compared to total population in the State, is 1.96. This is so set out in the Karnataka state Gazetter Part II, page 978 and Karnataka State Gazetter Part I, page 439."

(ii) Dr. T.M.A. Pai was a Konkani and he was the whole and soul of the Academy of General Education in Manipal established in the year 1942. He was constituted as the Registrar of the Academy for life. After his demise in 1979, the 1st petitioner foundation was established, by Trust deed dated 17.2.1981 (Annexure N). The relevant portion of the Trust Deed reads -

"WHEREAS one Dr. T.M.A. Pai a Konkani speaking resident of Manipal, Udupi Taluk, firmly believed that education can transform society much faster and would give the best return, and, to that end. established educational institutions of diverse kinds, so painstakingly and with utter dedication, in the Dakshina Kannada District, presently in the State of Karnataka., and thus earned the gratitude, respect and recognition of many, including Government.

XX XX XX NOW THEREFORE, We the said Authors of the Trust, all speaking the same language as and after the manner of, the said Dr. T.M.A. Pai, declare as follows :

1. The Trust shall be known as "THE DR. T.M.A, PAI FOUNDATION."

XX XX XX 3. The First Trustees will be the Authors of the Trust with power to add other Trustee subject to the limitation, that at all times, all of them will be Konkani-speaking persons. They shall, from among themselves, by a majority vote, elect a President, a Secretary and a Treasurer. For convenience sake, the posts of Secretary and Treasurer may be held by the same Trustee, and in which case he will be designated "Secretary, cum-Treasurer." At no time, the number of Trustees shall exceed fifteen. All the Trustees together will be called the Board of Trustees.

4. Any vacancy caused in the Board of Trustees by resignation, death or otherwise, may be filled up by the other Trustees by nomination subject to their being Konkani-speaking.

XX XX 8. The objects of the Trust are :

(a) To support and promote the advancement of educational activities in all its branches, such as Kindergarten, Primary and High Schools, Colleges, leading upto and teaching Degree, Post Graduate and Doctorate courses in Arts, Science, Commerce, Engineering, Medicine, Pharmacy, Dental, Nursing, Management, Music and Fine Arts, Architecture and such other subjects as the Trustees may deem fit for the benefit of the students speaking Konkani, and in addition, students of all castes and communities, both Indian and from other countries.

(b) To promote the Konkani language and the culture of the Konkani speaking people in general, and that of the students speaking Konkani in the aforesaid institutions in particular."

(iii) After the formation of the above Trust Deed dated 8-7-1983 (Annexure -O) the ownership and right of administration of the 2nd petitioner and other colleges were transferred to the 1st petitioner Trust. The relevant portion of that deed reads -

"AND WHEREAS Clause 23 of the aforesaid Deed of Trust dated the 30th of May, 1957 creating the Manipal Engineering College Trust since known as Manipal Institute of Technology Trust, empowers the Trustees, under the above circumstances, to transfer the assets of the Trust to any other Trust having

similar object.

AND WHEREAS as a result of representations made to and consultations held with Dr. T.M.A. Pai Foundation, a Trust having objects similar to the Manipal Institute Technology Trust and satisfactorily running certain other educational institutions, the Board of Trustees of the Manipal Institute of Technology Trust is satisfied that the said Foundation has the funds or the capacity to have them, in order to run the Manipal Institute of Technology as efficiently as hitherto.

AND WHEREAS consequently, the Board of Trustees of the Manipal Institute of Technology Trust by its resolution dated 15-6-1983 has for the foregoing mentioned reasons proposed to the Dr.T.M. A. Pai Foundation to take over the Manipal Institute of Technology with effect from the beginning of the academic year 1983-84.

** ** NOW THESE PRESENTS WITNESS AND the parties hereto hereby agree as follows :

1. That the Manipal Institute of Technology Trust hands and over to the T.M.A. Pai Foundation takes over, which it hereby does, the Manipal Institute of Technology and to manage and run it as established by it

** * * 4. All the financial responsibility for running the said Manipal Institute of Technology will be born wholly by the Dr. T. M. A. Pai Foundation and to help enable it to do so, the said foundation will be at liberty to enter into any agreement with any Government, University Municipality or any other public or private authority or body, which may seem conducive or beneficial to any of the objects of the Trust.

** ** 7. That the Dr. T.M.A. Pai Foundation will admit to Manipal Institute of Technology, students of all castes and community both Indian and others in addition to those speaking Konkani."

Underlined by me]

** ** Petitioners 3 to 6, who are trustees of the 1st Petitioner trust, are all Konkani speaking people.

7. On these facts the Petitioners claim that they are entitled to the right guaranteed under Article 30 of the Constitution.

8. Sri R. N. Narasimha Murthy, Learned Counsel appearing for the State, in support of the plea of the State that the 2nd Petitioner-institution cannot be regarded as having been established by the 1st Petitioner trust and, therefore, not entitled to the protection of Article 30(1) of the Constitution relied on the judgment of the Supreme Court in *Azeez Basha -v.- Union of India*.

9. In order to appreciate the ratio of the judgment of the Supreme Court in the case of *Azeez Basha*, it is necessary to state a few relevant facts. That was a case in which a college 1. *S. Azeez Basha and Another Vs. Union of India (UOI)*,

called M.A.O. College was established at Aligarh in 1877 by leading members of the Muslim Community who had formed themselves into an educational society with the object of educational advancement of the Muslims. Subsequently, the founders of the college made representation to the Government and pursuant to such request Aligarh Muslim University Act, 1920 was enacted. The aforesaid college then came to be vested in and administered by the Aligarh Muslim University constituted under the said Act. When certain amendments were made to the said Act, affecting the constitution and organisation of the University, the constitutional validity of the said Act was challenged. The contention of the Petitioner therein was that as the institutions which became subsequently Aligarh University was established by the Muslims, changes in the constitution and organisation of the University was violative of Article 30(1) of the Constitution. The contention was negatived on the ground that after the coming into force of the Aligarh Muslim University Act, 1920, the college was being administered by the University . and therefore the contention that the institution was established and administered by the minority was untenable, The Supreme Court pointed out that even though the college was established by the Muslims In the first instance on and after 1920, the college was established and administered by and under an Act of Legislature and, therefore, it cannot be said that the institution was established and administered by a minority, namely, Muslims. Relevant portion of the judgment, on. which the Learned Counsel for the State relied, reads :

"....The Article in our opinion clearly shows that the minority will have the right to administer educational institution of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because., for some reason or other, it might have been administering it before the constitution came into force. The words "establish and administer in the Article must be read conjunctively and so read it gives the right I.) the minority to administer an educational institution provided is has been "established by it."

Relying on the above enunciation Learned Counsel submitted as follows : Unless an institution was established by a linguistic or religious minority, just because for some reason or the other, a minority, begins to administer the said institution, the said minority cannot claim the right guaranteed under Article 30(1) of the constitution. The establishment of an institution from its inception by a minority and carrying on the administration of such institution forms the very basis for attracting the protection under Article 30. The words "establish" and "administer" are, as held by the Supreme Court, conjunctive. In the present case as admittedly the 2nd Petitioner institution was established by the Manipal Engineering College Trust in the year 1957, the mere fact that the ownership and control of the 2nd Petitioner institution was transferred and is now vested in the 1st Petitioner formed with the object of establishing and administering the educational institutions for the benefit of Konkani speaking people, does not entitle the Petitioner to the right guaranteed under Article 30(1) of the

Constitution.

10. Learned Counsel for the Petitioner per contra submitted as follows: It is true that in order to claim the right under Article 30(1), a linguistic or religious minority must not only have established but also administered the institution concerned. In Azeez Basha's case, though originally Muslims established the college, it came to be reestablished by and under an Act of Legislature which was not a minority. The word "establishment" in the Article is not used in the sense of founding as pointed out by the Supreme Court in that judgment. Relevant part of it reads :

"(2sic). What does the word "established" in Article 30(1) mean? In Bouvier's Law Dictionary, Third Edition, vol. I. it has been said that the word "establish" occurs frequently in the Constitution of the United States- and it is there used in different meanings and if (sic) such meanings have been given, namely- (1) to settle firmly to fix unalterably, as to establish justice, (2) to make or form; as, to establish a uniform rule of naturalisation ; (3) to found, to create, to regulate : as, Congress shall have power to establish post office; (4) to found recognize, confirm or admit; as, Congress shall make no law respecting an establishment of religion ; (5) to create, to ratify, or confirm as we, the people, etc.; do or(sic) if and establish, is to be found in the sense in which an eleemosynary institution is founded and we shall have to see in what sense the word has been used in our constitution in this Article. In Shorter Oxford English Dictionary, Third Edition, the word "establish" has a number of meanings i.e., to ratify, confirm, settle, to found., to create Here again founding is not the only meaning of the word "establish" and it includes creation also. In Webster's Third New International dictionary, the word establish has been given a number of meanings, namely, to found or base squarely to make firm or stable, to bring into existence, create, make start originate. It will be seen that here also founding is not the only meaning; and the word also means "to bring into existence". We are of opinion that for the purpose of Article 30(1) the word means to bring into existence", and so 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."

Therefore if an institution though established by some one else is taken over by a minority and it begins to administer it the minority can invoke Article 30. This position is accepted by the Kerala High Court in Dr. Aldo Maria Patroni -v.- Assistant Educational Officers. Relevant part of it reads -

".....For the establishment it is not necessary that the school must be constructed by the community. Even if a school previously run by some other organisation is taken over or transferred to the Church and the Church reorganizes and manages the school to cater to and in conformity with the ideals of the Roman Catholics, it can safely be concluded that the school has been established by the Roman Catholics."

Further in the present case, whatever be the form, the institution was founded

solely by Dr. T.M.A. Pai, who was a Konkani and cause dearer to his heart was the development of Konkani language and education of Konkani speaking people and it was for perpetuating his memory and 2. Rt. Rev. Dr. Aldo Maria Patroni, S.J. and Another Vs. The Assistant Educational Officer and Others, . fulfil his mission, the foundation was founded and, therefore the Petitioners are entitled "to the protection" of Article 30.

11 . On a careful consideration of the rival submissions, I am unable to agree that the judgment of the Supreme Court in the case of Azeez Bhasha is an authority for the proposition, that even if a linguistic or religious minority takes over the ownership and right of administration of an institution already established by some-one else, it would not be entitled to the right guaranteed under Article 30(1) of the Constitution. I am of the opinion that the expression "established" in Article 30 includes not only the founding of an institution but also securing the ownership of an already founded institution which means reestablishment of the institution under the new management and owner. In order to appreciate this point, the following illustration would be helpful : The Karnataka University was established under the Karnataka University Act, 1926, the Mysore University was established under the Mysore University Act, 1956 and the Bangalore University was established by the Bangalore University Act, 1964. When all these Universities were continuing to exist, the Karnataka State Universities Act, 1976 came into force. Section 3(1) of that Act reads.

"3. ESTABLISHMENT AND INCORPORATION OF UNIVERSITIES.

(1) There shall be established, with effect on and from appointed date., the following universities, namely ;

(a) the Bangalore University with headquarters at Bangalore and territorial jurisdiction over the area comprising the districts of Bangalore, Kolar and Tumkur ;

(b) the Karnataka University with headquarters at Dharwar and. territorial jurisdiction over the area comprising the districts of Belgaum, Bellary, Bidar. Bijapur.Dharwar, Guibarga,.North Kanara and Raichur ;

(c) the Mysore University with headquarters at Mysore and territorial jurisdiction over the area comprising the districts of Chickmagalore. Chitradurga, Cobrg, Hassan, Mandya, Mysore, South Kanara and Shimoga."

It may be seen from the wording of the provision" the Section speaks of establishment of the three Universities which had already been established. The fact that the three Universities had already been established is no basis to say that the three Universities are not established under the 1976 Act. Therefore, the expression "establishment" means and includes reestablishment or taking over of both ownership and control of an institution. The interpretation of Article 30(1) by the Supreme Court to the effect that the expression "establish" and administer should be read conjunctively means that both the ownership and right

of administration must be in the hands of the minority, and that if one of them is absent, the right guaranteed under Article 30(1) cannot be invoked. In other words, a minority having only ownership or only right of administration without ownership, would not be entitled to the protection of Article 30. The Kerala High Court, after considering the relevant paragraph of the judgment of the Supreme Court in Azeez Basha's case, held that the expression "establishment" includes the taking over of ownership and control of an institution already existing. I am in respectful agreement with the view taken by the Kerala High Court. Therefore, if a linguistic or religious minority desirous of establishing an educational institution, instead of starting a new educational institution, if it were to secure both absolute ownership and management of an already existing institution, either by purchase or gift or by declaration of the property as a Trust for the benefit of the minority, it is entitled to the right guaranteed under Article 30 in respect of such institution. In all such cases, the test to be applied is, whether both the ownership and the right of administration of the institution concerned is really with the minority concerned? If the answer is yes, the right guaranteed under Article 30 extends.

12. The Petitioners in this case satisfy all the conditions :

(i) They are a linguistic minority as undisputable Konkani is spoken language of small section of the people in the State.

(ii) The institution was taken over by the 1st Petitioner Trust and they are the owners of the institution and they alone are administering the institution.

(iii) Moreover the institution was founded by a Konkani.

In fact the State Minority Commission had also requested the Government to extend to the Petitioners the benefit of Article 30 by letter dated 13-7-1984. It reads -

"AL HAJ R. H. GOODWALA, B.A. LL.B.,

CHAIRMAN,

STATE MINORITIES COMMISSION.

GOVERNMENT OF KARNATAKA

Bangalore-1

D.O. No.SMC 180/Meet

84.

Dated : July 13, 1984

Dear Sri Rachalahji,

It is represented to me by Dr. T.M.A. pai Foundation Syndicate House, Manipal, by their letter July 6, 1984 that Konkani speaking persons in Karnataka are

linguistic minority and are entitled to all the safeguards vouchsafed in Article 30 of the constitution.

As you know., Konkani language is one of the languages spoken by the people on the Coastal region in our State. Therefore, the Commission is of the clear opinion that Konkani speaking people are linguistic minority and are entitled to the safeguards under the Constitution as contended by them.

The letter (copy enclosed for favour of ready reference) reads that "Government has exempted only Engineering Colleges run by minorities based on religion and not language. This Minority Commission, is a Commission both for religion and linguistic minorities. Therefore, it has to protect the rights of the linguistic minorities as well.

The commission feels that if the representation that Government has exempted only Engineering Colleges run by religious Institutions is correct, it appears the Notification is by oversight and not duct differences of opinion. I hope you will agree with me and there should be no difficulty in accepting their representation. Hence, I request you to please modify the impugned Notification in consonance, in pursuance of Article 30 of the Constitution.

With kind regards,

Yours sincerely, Sd/- R. H. Goodwala".

It may be seen from the aforesaid letter, Minority Commission of this State clearly opined that the Petitioners were entitled to the protection of Article 30 of the Constitution.

In the face of these facts I am convinced that the Petitioners' claim for the protection of the rights guaranteed under Article 30 of the Constitution is well-founded.

13. As far as the second question is concerned, the scope of Article 30(1) of the constitution has been fully expounded by the Supreme Court in various decisions. It is sufficient to refer to three of those decisions :

(i) Sidhrajibhai -v.- State of Gujrat. The relevant portion of the judgment reads-

"....This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and administer educational institutions: it is a right to establish and administer what are in truth educational institutions - institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed"

[Underlined by me]

(ii) All Saints High School -v.- Government of A.P. Relevant portion of the judgment reads-

65. Thus, on an exhaustive analysis of the authorities of this Court and the views taken by it from time to time during the last decades on various aspects, shades and colours, built-in safeguards, guarantees, scope and ambit of the fundamental right enshrined in Article 30(1), the principles and propositions that emerged may be summarised as follows;

1. That from the very language of Article 30(1) it is clear that it enshrines a fundamental right of the minority institutions to manage and administer their educational institutions which is completely in consonance with the secular nature of our democracy and the Directives contained in the Constitution itself.

2. That although unlike Article 19 the right conferred on the minorities is absolute, unfettered and unconditional but this does not mean that this right gives a free licence for mal-administration so as to defeat the avowed object of the Article, namely, to advance excellence and perfection in the field of education.

3. While the State or any other statutory authority has no right to interfere with the internal administration or management of the minority institution, the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards and issue guidelines for the purpose of ensuring the security of the services of the teachers or other employees of the institutions".

[Underlined by me]

(iii) St. Xaviers College -v.- State of Gujarat, Relevant portion of the judgment at paragraph 42 reads-

"..The provisions contained in Section 33-A(I)(b) of the Act are that for recruitment of the Principal and the members of teaching staff of a college there is a selection committee of the college which shall consist, in the case of recruitment of a Principal, of a representative of the university nominated by the Vice-Chancellor and, in the case of recruitment of a member of the teaching staff of the college, of a representative of the university nominated by the Vice-Chancellor and the head of the Department if any for subjects taught by such persons. The contention of the intervenes with regard to these provisions is that there is no indication and guidance in the Act as to what types of persons could be nominated as the representative. It was suggested that such matters should not be left to unlimited power as to choice. The provisions contained in Section 33-A(I)(b) cannot therefore apply to minority institutions".

In the last case, Section 33-A(I)(b) of the Gujrath University Act was struck down as offending Article 30(1) of the Constitution on the ground that the said provision, according to which, representatives of the University and the Department concerned, were required to be included as members of the 5. Krishna Chandra Gangopadhyaya and Others Vs. The Union of India and Others, selection committee constituted for selecting members of the teaching staff of a minority institution was inconsistent with Article 30.

14. I shall now proceed to consider the validity of the provisions of the Act in the

light of the aforesaid decisions.

(i) Validity of Section-3. In the order made in a batch of Writ Petitions. W.P. No. 123 '4 of 1984 etc., D.D. 3-9-1981 (H.K.E.S.-v.-State of Karnataka), in which the constitutional validity of the Act was challenged by non-minorities, I have considered the constitutional validity of various provisions of the Act in greater detail. In the said order, I have upheld the validity of Section 3 of the Act holding that the said provision was not violative of Articles 14 19(1)(g) and 21 of the Constitution. Section 3 prohibits the collection of capitation fee for admission into educational institution. The proviso to Section 3 however permits the collection of capitation fee for admission to the extent permitted by the State Government by an order made by it for a period of five years. I have upheld the validity of the said section on the ground that it was intended to eradicate the evil and undesirable practice of collection of capitation fee for admission into educational institution at exorbitant rate and this practice amounted to commercialisation of education and was not conducive to maintenance of educational standards. As pointed out by the Supreme Court in the cases of Sidrajibhai and St. Xaviers College, it is competent for the State to make law even in respect of "minority institutions either in the interest of excellence of education or to prevent mal" administration or on grounds of morality. Therefore, as far as the provisions of Section 3 are concerned, it is enacted for achieving the above objects. Commercialisation of education and disposal of seats in favour of more mined but less merited candidates is an evil injurious to educational standards and, therefore, its eradication is in the interest of minority institution itself. Similarly charging of exorbitant capitation fee for admitting students which amounts to commercialisation of education, i. e., auctioning of seats in the technical colleges, which is being done by the private educational institutions as stated in the statement of objection and also according to the findings recorded by the Karnatak University Review Committee, relevant portion of which i.s extracted in the order made in the case of H.K.E. Society referred to above, is immoral and. he same is nothing but exploitation and, therefore, amounts to mal-administration of the institution Therefore) when the Legislature has declared that collection of capitation fee, in the manner and at the rate it is going on is a social evil and a punishable offence, it would be so, whether the same is committed by a minority or majority section of the society. Article 30 gives no immunity against such laws as is evidenced from the ratio of the judgment of the Supreme Court. For these reasons, I hold that Section 3 of the Act with its proviso does not violate Article 30 of the Constitution also.

However, as indicated in the order in the connected batch of Writ Petitions, the proviso u/s 3 not only confers power on the State, but also a duty to fix the number of seats in respect of which no capitation fee could be collect-ed and the maximum amount of capitation fee which could be collected in respect of other seats has to be fixed having due regard to the fact that the financial resources for the maintenance of private unaided educational institution has to be secured mainly from capitation fee.

I have also held that the State Government has to comply with the rules of natural justice before passing any order under proviso to Section 3 of the Act. Therefore the power to fix the number of fee seats and capitation fee has to be exercised in such a manner as not to defeat the right to administer the institution. Thus these safeguards are available to the Petitioners. Further I have stated in the order made in the aforesaid Writ Petitions that the validity of Section 3 without the proviso becomes a live-issue only after the expiry of five years. Therefore, it would be open to the Petitioners to question the validity of Section 3 without the proviso as and when the proviso becomes or rendered unavailable.

(ii) Validity of Section 4(1). This provision empower the Government to fix conditions of eligibility for admission to educational institutions. This obviously is in the interest of academic standards and therefore valid.

(iii) Validity of Section 4(1) and (3). As far as Section 4(2) (a) read with Section 2(e) is concerned, I have declared in the other batch of Writ Petitions that they are invalid on the ground of violation of Articles 14 and 19(1)(g) of the Constitution. The other part of the said Section empowers the Government to regulate admission to educational institutions. Sub-section (3) of Section 4 provides that a nominee of each of the Government and the University to which the concerned educational institution is affiliated should be included as members of the Selection committee- In view of the ratio of the decisions of the Supreme Court, (2 3 4) the whole of Sub-sections (2) and (3) of Section 4 are inconsistent with Article 30 and, therefore, are unenforceable against the Petitioners.

(iv) Validity of Section(1) This provision empowers the Government to fix the rates of tuition fee and other fee chargeable by educational institutions. This provision again amounts to interference in the right of administration guaranteed to the minorities under Article 30(1) (See: In re. Kerala Education Bill). Therefore though this provision has been upheld, with reference to non-minority institutions, on the ground that it is in public interest, the same cannot be upheld in respect of minority institutions as no restrictions in public 6. A.I.R 1958 SC 956. interest could be imposed on the right conferred under Article 30(1) of the Constitution.

(v) Validity of other provisions. In the other batch of Writ Petitions I have held that the last part of Sub-section (4) and Sub-section 5 of Section 5 and Sub-section (1) of Section 6 are invalid on the ground of violation of Articles 14 and 19(1)(g) of the Constitution. The reasons set out for striking down those provisions apply with greater force to the minority institution. Therefore a declaration has to issue to the effect that these provisions are invalid as being inconsistent with Article 30 also.

Sub-section (2) of Section 6 empowers the Government to require the educational institution to submit such report, or statements as it may deem necessary for carrying out the the purpose of the Act and Sub-section (2) of

Section 9 empowers the Government, after securing necessary information from an educational institution, to give such direction to the management as it deem fit. These provisions have been up-held on the ground that they are the provisions which are absolutely essential for enforcing the provisions of Section 3. As I have upheld the validity Section 3 with its proviso, it follows that the provisions of Sub-section (2) of Section 6 and Sub-section (2) of Section 9 have also to be upheld on the ground that they are not violative of Article 30(1) of the Constitution.

15. Learned Counsel for the Petitioners submitted that there was no necessity for the enforcement of the provisions of the Act against the Petitioners as by a resolution, the 1st Petitioner has decided not to collect any Capitation fee to the Petitioner institution.

16. I am unable to agree. If the Petitioners have decided not to collect any Capitation fee for admission, it is commendable, but it is no ground to hold that the provisions of the Act are inapplicable to the Petitioner-institution, for, the possibility of reversing the resolution or collecting Capitation fee inspite of the resolution, directly or indirectly, cannot be ruled out.

17. To sum up my conclusions are-

(1) The Petitioners are entitled to the protection of Article 3 of the Constitution, as the 2nd petitioner-Engineering College is established and administered by Konkani, who are a linguistic minority in this State

. (2) The provisions of Section 3 read with Section 5(2) of the Act prohibiting the collection of Capitation fee for admission to educational institutions except to the extent permitted by an order made by the State Government under proviso to Section 3 are neither violative of Articles 14 and 19(1)(g) of the Constitution nor violative of Article 30 of the Constitution.

(3) Section 4(2) of the Act which empowers the Government to fix certain number of seats out of the total .intake of private unaided educational institutions as Government seats for being filled up by a committee appointed by the State Government and Section 4(3) of the Act which provides for inclusion of a nominee of the Government and University in the selection committee are violative of Article 30 of the Constitution.

(4) Section 5(1) of the Act which empowers the Government to fix the rate of tuition fee and other fees is also violative of Article 30 of the Constitution.

(5) Under proviso to Section 3, the State Government has not only the power to fix the number of seats in respect of which collection of Capitation fee for admission is prohibited, but also the power to fix maximum rate of Capitation fee for admission which could be collected in respect of other seats and such an order is enforceable against the Petitioner.

(6) The Government either before fixing the number of seats in respect of which

no Capitation fee could be collected or in fixing the maximum rate of Capitation fee permitted to be collected in exercise of the power under proviso to Section 3 has to comply with the rules of natural justice.

(7) For next academic year and thereafter, the Government should, after securing selection policy from the Petitioners, frame rules for ensuring selection according to merit within a class or group in whose favour the seats are earmarked by the Petitioners, as indicated in detail in the order made in H.K.E. Society's case.

(8) Proviso to Section 3 not only creates a duty in the Government to fix the number of seats in respect of which no Capitation fee should be collected but also to fix the maximum rate of Capitation fee in respect of others seats and to fix the same having due regard to the fact that institutions substantially depend for their maintenance on the Capitation fee.

If the Government makes no order under proviso to Section 3 for the next academic year it would result in immediate prohibition of collection of Capitation fee. Therefore if the Petitioners consider necessary to collect Capitation fee and make representation to the Government to fix the same, the Government is under a duty to consider the representation and make appropriate order having due regard to the scope and intendment of those provisions as interpreted by this Court.

18(i) As regards the validity of the Government Order dated 19-7-1984, in so far it relates to the intake fixed, there is no grievance as it is the same fixed for last year. As regards the 40% of the Government seats fixed in the order, I would have, for the same reason as set out in the order made by me in W. P. Nos. 12324/84 etc., dated 3-9-1984 decline to interfere for this academic year and required the Petitioners to fill up those seats by admitting students selected by the selection committee constituted by the Government. But the Petitioners, have as stated in the Petition filled up all the seats i.e., including 40% of its intake even prior to the presentation of the Petition. Therefore the question of not interfering with the order, for this academic year does not arise. In fact even according to the Government, the order was not intended to be enforced against a minority institution for in respect of other minority institutions no Government seats are fixed.

(ii) As regards that part of the Government Order dated 16-8-1984 which fixed the rate of Capitation fee for admission for 60% of the seats which also means that no Capitation fee for admission could be collected in respect of 40% of the intake in the Petitioner institution and no Capitation fee higher than Rs.30,000/- per seat could be collected in respect of 60% of the seats being an order made under proviso to Section 3 which is enforceable against minority institution also as held above, it is enforceable against the Petitioner, if the Petitioners contrary to their own decision not to collect Capitation fee for admission were to collect Capitation fee in violation of that order.

(iii) As regards that part of the Government Order which fixes the rate of tuition fee and other fees being an order made u/s 5(1) is unenforceable against the Petitioners as I have held Section 5(1) being inconsistent with Article 30(1) is unenforceable against the Petitioner-institution.

19. In the result, for the reasons stated above, I make the following :

(i) The challenge to the constitutional validity of Section 3 of the Karnataka Educational Institutions" (Prohibition of Capitation Fee) Act, 1984, which prohibits collection of Capitation fee for admission except to the extent permitted by an order made by the Government and other provisions necessary for enforcing Section 3, and the order made under proviso to Section 3, fails and the Petition is dismissed to that extent. (ii) A declaration shall issue to the effect that-

(a) Section 4(2) of the Act which empowers the Government to declare a part of the intake of the seats in the educational institutions and to make selection for those seats.

(b) Sub-section (1) of Section 5 which empowers the Government to fix the rate of tuition fee and other fees.

(c) The last portion of Sub-section (4) of Section 5 of the Act, namely, the words "and to such extent and in such manner as may be specified by order by the Government.

(d) Sub-section,(5) of Section 5 of the Act and Sub-section (I) of Section 6 of the Act, which require the Petitioners to carry on the management of their educational institutions in the manner prescribed and directed by the Government.

are void as offending Articles 14, 30 and 19(1)(g) of the Constitution.

(iii) A writ in the nature of Mandamus shall issue to the Respondents not to enforce the provisions declared void and also other parts of Sections 4(2), 4(3) and 5(1) which are declared inconsistent with Article 30(1) of the Constitution, against the Petitioners.