

(1991) 04 GUJ CK 0027
In the Gujarat High Court
Case No : S.C.A. No. 5239 of 1986

Firdaus Amrut Higher Secondary School, Ahmedabad	APPELLANT
Vs	
M.M. Dave	RESPONDENT

Date of Decision : 19-04-1991

Acts Referred:

Constitution of India, 1950 — Article 30, 30(1)

Citation : AIR 1992 Guj 179 : (1992) 1 GLR 314

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Advocate : M.J. Thakore, for the Appellant; R.M. Desai and N.C. Thakkar, for the Respondent

Judgement

1. Present petition under Article 227 of the Constitution is directed against the judgment and order of the Gujarat Secondary Education Tribunal, dated 1-8-1986 in Application No. 191/86 (Annexure "J" to the petition). Initially the petitioners also challenged the constitutionality of Ss. 36, 38 and 39 of the Gujarat Secondary Education Act (hereinafter referred to as "the said Act") as violative of Art. 30(I) of the Constitution of India. However, the said prayer was not pressed by the advocate of the petitioners as per the endorsement, dated 3-10-1986, and the matter was, there after, treated as matter triable by single Judge.

2. The facts giving rise to the present petition, shortly stated, are as under:

(i) The petitioners are the trustees of "Firdaus Amrut Education Trust" being a public trust registered under the provisions of Public Trusts Act, and they belong to minority community, i.e. "Parsi Zoroastrian community". By Trust Deed, dated 26th March, 1968, the settler, namely, the petitioner No. 1, created a trust by name "Amrut Education & Charitable Trust". The properties of the trust were vested in the trustees and one of the objects was stated to be spread of education. Clause 9 of the said trust deed, inter alia, provided that the trust should aim on imparting pre-primary and primary education, middle and higher

secondary education along with carrying out such extra curricular activities such as social services, cultural activities, professional training pertaining to the aforesaid educational purpose, physical training, literary activities and to provide for requisite buildings for running such institution and promote such activities which may result in educational progress. By condition No. 10 the settler appointed four persons as first trustees of the trust, and admittedly the said four persons belong to Parsi Zoroastrian community. Clause (b) of the said condition No. 10 also stipulated that for the purpose of carrying out the objects of the said trust, the number of trustees shall not be less than 3 and shall not be more than 9. The condition No. 12 being relevant is reproduced hereunder:

" 12. Appointment of New Trustee when a vacancy arises:

If the trustees hereby constituted, desire to be discharged or in the event of death or refuse or become incapable to act or is adjudged insolvent or convicted of any criminal offence or be absent from India for a period of six months or more without obtaining the leave of the other trustees may appoint any person in the vacancy of the trustees caused by the aforesaid persons".

(ii) The condition No. 15 of the trust deed, inter alia, provided that the trustees shall have power to frame rules and regulations for the administration of the trust fund and the trust. The trustees of the said trust in exercise of powers conferred upon them by clause 15 of the trust deed framed rules for the purpose of administration of the said trust. The said rules are produced at Annexure "B" to the petition. The preface to the said rules read as under:

"The Firdaus Amrut Higher Secondary School is an educational institution established by Parsi Zoroastrians to impart education and learning to boys and girls of the Parsi Zoroastrian community to teach them to lead their lives in accordance with the teachings of Zoroaster. Students belonging to other communities, however, are free to join the school. As far as possible, preference in admitting students will be given to boys and girls of the Parsi Zoroastrian community".

The rules also contemplate that the trust may use the funds of the trust for charity and they shall give preference to Zoroastrians from the limited funds available with the trust. It is also stipulated that in addition to public holidays declared by the Government, special Zoroastrian religious holidays will be observed in the school run by the Trust and five days of religious holidays are, thereafter, mentioned. It is also stipulated that special classes of instructions for Zoroastrian students will be conducted. It is also stipulated that in selection of teachers preference will be given to Zoroastrians.

(iii) It appears that a meeting of the trustees of the said trust was convened on 3rd January, 1985 and it unanimously passed the following resolution:

"That though the Trust is in all respects a family trust comprising of Parsi Zoroastrians, and will for all times consist only of Parsi Zoroastrians, the family

and relations being Parsis, it is hereby reiterated that in the event of a vacancy of a Trustee arising, it shall be filled up only by a Parsi Zoroastrian and by no member belonging to a community other than a Parsi Zoroastrian".

The above referred resolution appears to have been passed presumably on the requirement of Gujarat Secondary Education Board, Gandhinagar. The Board insisted that there should be a prohibition against appointment of any person other than a member of the community of Parsi Zoroastrian as a trustee, and accordingly, the trustees called the meeting and passed unanimous resolution. By the said resolution it is now clear that the trustees of the said trust approved that vacancy of trustee shall be filled in by the person belonging to Parsi Zoroastrian community only.

(iv) It is pertinent to mention at this stage that the said trust, thereafter, filed change report No. 926/86 before the Dy. Charity Commissioner whereby clause 12 of the said trust deed was sought to be amended. After following prescribed procedure for effecting the change in the public trust register, the Dy. Charity Commissioner by judgment and order, dated 20th May, 1987 granted the said change report. Clause 12 is sought to be amended by the said change report, and after amendment clause 12 reads as under:

"If the Trustees hereby constituted, desire to be discharged or in the event of death or refuse or become incapable to act or is adjudged insolvent or convicted of any criminal offence or be absent from India for period of six months or more without obtaining the leave of the other trustees in writing, the surviving or the continuing trustees may appoint any person of Parsi community of good reputation and character charitably inclined with a desire to spread education in the vacancy of the trustee caused by the aforesaid persons".

From the said change report, it becomes clear that in case of vacancy in the post of trustee any person of Parsi Zoroastrian community of good reputation and character is to be appointed. This change in the trust deed though subsequent in point of time is consistent with the unanimous resolution of the trustees, dated 3rd January, 1985.

(v) It is also required to be noticed that factually at no point of time any person other than a Parsi Zoroastrian is appointed as a trustee of the said trust. It is the case of the Petitioners that from the inception all trustees of the said trust belong to Parsi Zoroastrian community and at no point of time any person other than Parsi Zoroastrian has been appointed as trustee of the said trust. By the change report referred to hereinabove certain other minor changes were also effected in the trust deed which are not relevant for the purpose of this petition, and hence, I need not refer to them in detail in this judgment.

(vi) It is also required to be mentioned that the Gujarat Secondary Education Board has, vide its order, dated 11th January, 1985 recognised the Amrut High School run by the Amrut Education Trust as an educational institution established and administered by religious minority community, namely, Parsi Zoroastrian

community and while granting such recognition it is stipulated that in case of occurrence of any vacancy in the post of trustee, the same shall be filled-in only by the appointment of a Parsi Zoroastrian. Pursuant to the said certificate, the Amrut Higher Secondary School established and administered by the said trust was recognised as an educational institution administered and established by minority community all throughout and it enjoyed all benefits flowing from such recognition. The State Government or the District Education Officer has not withdrawn such recognition nor did they dispute the said recognition.

(vii) The respondent No. 4 herein was appointed as a teacher in the said Amrut Higher Secondary School on 19th July, 1985. Charge-sheet was given to her for certain misconducts. Respondent No. 4 submitted her reply to the charge-sheet and since the management was not satisfied by the reply, enquiry officer was appointed and thereafter a full-fledged domestic enquiry was conducted into the charges levelled against her. The enquiry officer, thereafter, submitted his findings. Copy of the said report and findings of the enquiry officer was supplied to the fourth respondent and she was afforded an opportunity to make her submissions against the said findings. Second notice to show cause against proposed penalty was also issued to her. She replied to such show cause notice. Thereafter the management passed the order dismissing the fourth respondent from service on 29th May, 1985 and from the said date the fourth respondent stood dismissed from services of the school.

(viii) Being aggrieved by the said order of dismissal, the fourth respondent preferred an application being application No. 191/ before the Gujarat Secondary Education Tribunal. The Tribunal issued notice to the school management, and thereafter, by a speaking order, dated 1st August, 1986 proceeded to decide the status of the petitioner-trust holding that it was not a minority institution and based on such finding it proceeded to hold that the order of dismissal was required to be quashed and set aside inasmuch as the provisions of Section 36(I) (b) of the said Act were not followed.

(ix) It may be mentioned at this stage that when the Tribunal, in fact, granted interim injunction from implementing and operating the impugned order of dismissal, the petitioner No. I herein gave pursis to the Tribunal to, the effect that without prejudice to the rights of the institution to contend that it is a minority institution, the school management has no objection to approach the District Education Officer for his approval to the proposal of dismissal under S. 36(I)(b) of the said Act. On such written pursis being given the Tribunal proceeded to finally dispose of the application on merits thereby quashing and setting aside the order of dismissal passed against fourth respondent and also holding that Amrut Education Trust and the school established and administered by it are not minority institutions. It is this order, dated 1-8-86 of the Tribunal passed in application No. 191/ 86 which is under challenge in this petition.

3. Mr. Mihir J. Thakore, learned advocate appearing for petitioners submits that the judgment and the order of the Tribunal in so far as it declares that the Amrut

Education Trust and the school established and administered by said trust is not minority institution is bad in law inasmuch as the reasoning adopted by the Tribunal runs quite counter to the very object of Art. 30 of the Constitution of India. He submits that simply

4. Mr. Mihir J. Thakore further submits that reading Ss. 36, 38 and 40A of the said Act together the Tribunal has no jurisdiction or authority to decide the status of the educational institution. He specifically refers to S. 17 of the said Act which prescribes powers and duties of the Gujarat Secondary Education Board as established under S. 3 of the said Act. He invites my attention to clauses 45 and 46 of the S. 17 which, inter alia, confer residuary powers on the Board. Under the said provisions the Gujarat Secondary Education Board is empowered to exercise such other powers and to perform such other duties as may be conferred or imposed upon it by and under this Act. The Board has also the power to do all such other acts and things as may because there is provision to appoint any outsider in the management of the said trust it cannot be said that the trust which was otherwise established and administered by the members of minority community only, would cease to be a minority institution. He submits that in the present case there was only a possibility of an outsider being appointed while in reality no person other than a Parsi Zoroastrian was appointed as the trustee of the said trust nor is any outsider appointed as trustee of the said trust till the date of the decision of the Tribunal or even till date. He further submits that even prior to the decision of the Tribunal there was also an unanimous resolution passed by the trustees providing that no person other than Parsi Zoroastrian shall be appointed as a trustee of the said trust, and in fact, based on such a resolution and on specific condition that no person other than Parsi Zoroastrian shall be appointed as trustee the Gujarat Secondary Education Board has recognised the said trust and the school as minority institution. Therefore, there was no justification on the part of the Tribunal in declaring the said trust and the school established and administered by the trust as one not run by minority community. He further points out that after the decision of the Tribunal the respondent No. 4 has continued to receive her salary every month regularly up to May, 1990 and she has, thereafter, left India and settled in U.S.A. Mr.N.C. Thakkar, learned advocate for respondent No. 4 admits that the respondent No. 4 has received salary up to May, 1990 and that she has left India and is residing in U.S.A. In this view of the matter, Mr. Thakore submits that the order of the Tribunal should be quashed and set aside in so far as it relates to the status of the institution. be necessary to carry out the purposes of the Act. He, thereafter, refers to S. 38 of the said Act and submits that the Tribunal which is established has specific jurisdiction to deal with any dispute or difference between the manager of a registered private secondary school and person in service of such school which is connected with the conditions of services of such person. In his submission the question as to whether the institution is a minority institution or not does not fall within the purview of the Jurisdiction of the Tribunal under S. 38 of the said Act inasmuch as such a question is not a dispute

or difference between the management and the teacher which is connected with the conditions of service of such teacher. He submits that there are two authorities under the Act, namely, Gujarat Secondary Education Board and the Gujarat Secondary Education Tribunal. Powers and functions of the Tribunal are very specific while the powers of the Board are specifically prescribed by S. 17 of the said Act and the power to decide the status of the institution falls legitimately within the powers of Gujarat Secondary Education Board. He submits that once the institution is recognised as minority institution by the Board any dispute about terms and conditions of service would go before the Tribunal under S. 38 but the Tribunal will not have any further jurisdiction. He, therefore, submits that question as to whether the educational institution is established and administered by minority institution or not is not one which falls within the jurisdiction of the Tribunal under S. 38 and therefore also the order of the Tribunal is required to be quashed and set aside.

5. Mr. N. C. Thakkar, learned advocate for respondent No. 4 on the other hand submits that from the perusal of the trust deed as such it would be clear that the trust when established was not a trust run and managed by Parsi Zoroastrian community for upliftment of Parsi Zoroastrian community. The objects of the trust are of very general nature and it was simply a co-incident that all the family trust. He further submits that the provision to appoint any person belonging to another caste as a Trustee in the original trust deed was consistent with the trust being a trust not established by minority community. He submits that till the resolution was passed on 3-1-85 there was no intention on the part of the settler or trustees to restrict the membership of the trust to persons belonging to Parsi Zoroastrians. He emphasises the fact that the resolution, dated 3-1-85 was required to be passed because the Gujarat Secondary Education Board insisted that in order to acquire status of minority institution such restriction is required to be placed, and accordingly, the trustees passed the resolution restricting the membership of the trust to the persons belonging to Parsi Zoroastrian community only. He rebuts the submission of Mr. M. J. Thakor as regards power of Gujarat Secondary Education Board by stating that the Board is a statutory body and it can perform those functions which are statutorily assigned to it. He submits that nowhere in the scheme of the Act or regulations it is provided that the Secondary Education Board will decide the status of the institution. He therefore submits that the certificate issued by the Gujarat Secondary Education Board recognising the petitioner Trust as minority institution has no value in as much as it is a certificate issued by the authority which has no jurisdiction or authority to issue such certificate. He submits that S. 38 which defines the jurisdiction of the Tribunal applies to minority institution and teachers serving in minority institution can certainly raise dispute before the Tribunal regarding their service conditions and the Tribunal will decide the question of status of the institution. When a teacher serving in minority institution approaches the Tribunal his service conditions the Tribunal shall have to decide as to whether the institution is a minority institution or not. On merits, Mr. N. C. Thakkar submits

that the Tribunal was right in holding that the petitioner is not minority institution inasmuch as there was provision in its trust deed for appointment of any person belonging to any other caste as a trustee in the said trust.

6. From the rival submissions made by the respective advocates of the parties, one factual position, emerges and it is that the respondent No. 4 is no longer interested in continuing to serve as teacher with the school, and in fact, she has been paid salary up to May, 1990 and has thereafter left for U.S.A. and has settled in U.S.A. The said respondent No. 4 is not interested to continue to serve with the petitioner-trust nor does she claim any further relief against the petitioners Mr. N. C. Thakkar appearing for fourth respondent will be satisfied if a direction is given to the petitioners to continue the respondent No. 4 as teacher serving with the petitioner till 31st May, 1990 and to pay to her salary payable till that date. Factually, therefore, appropriate direction would satisfy the fourth respondent and the fourth respondent has no objection if that part of order or direction of the Tribunal is quashed and set aside which directs the petitioners to reinstate respondent No. 4 in service. However, Mr. N.C. Thakkar states that he would support the decision of the Tribunal about the status of the educational institution.

6(i). Before I proceed to decide the question about the validity of the declaration given by the Tribunal as regards minority status of the petitioner institution, I may clarify that I am not deciding in this petition the question as to whether the Tribunal has jurisdiction to decide the status of minority institution. I am told at the Bar that such a question is pending for decision before the Division Bench of this Court. Therefore, I am proceeding to decide this petition on the assumption that the Tribunal has jurisdiction to decide the status of minority institution.

7. The main question which is required to be decided in this petition is about validity of the declaration by the Tribunal that the petitioner-trust is not a minority institution. The Tribunal has disregarded the certificate dated 15th January, 1985 issued by the Gujarat Secondary Education Board and has proceeded to decide itself as to whether the school was a minority institution. The Tribunal has proceeded to observe that even if the certificate certifying the institution to be a minority institution is given by the Board, the Tribunal can on analysis of the trust deed come to its own conclusion as to whether the institution is a minority institution or not. Tribunal further proceeded to observe that if there is a provision in the trust deed making membership of the trust open to member of any community, such a trust and the school run by it cannot be called a minority institution though at the relevant time the trustees of the said trust might be belonging to minority community. The Tribunal found that by Clause 12 of the trust deed provision is made to the effect that when there is a vacancy the surviving or continuing trustee may appoint any person in such vacancy and from this provision the Tribunal came to conclusion that once there is scope of inducting a person belonging to other community as a member of the trust the trust would cease to be a trust run and administered by the minority

community. On this reasoning the Tribunal proceeded to hold that the petitioner trust and the school run and administered by the said trust cannot be said to be a minority institution.

8. Mr. Mihir Thakor, Ld. Advocate for petitioners submits that following factors are decisive of the status of the petitioner-institution:

(i) The first trustees appointed under the said trust deed were all belonging to Parsi Zoroastrian community.

(ii) On the date when the Tribunal was called upon to decide the status, of the institution all the trustees belonged to Parsi Zoroastrian community.

(iii) At no point of time any person belonging to any other community other than Parsi Zoroastrian community was made a trustee of the said trust.

(iv) Because of unanimous resolution passed by the trust on 3-1-1985 there was total prohibition of inducting any person belonging to any other community as a trustee of the said trust.

(v) Said resolution was accepted by the Gujarat Secondary Education Board and the petitioner institution was recognised as minority institution established and administered by Parsi Zoroastrian Community by Gujarat Secondary Education Board with specific condition that no person other than Parsi Zoroastrian Community shall be inducted as trustee of the said trust.

(vi) Clause 12 of the trust deed was subsequently amended by submitting change report of the entry in the Public Trust Register also showed that there was no provision for inducting person belonging to any other community as trustees excepting persons belonging to Parsi Zoroastrian Community.

9. I am of the opinion that in order to decide the status of the institution a large number of factors are required to be considered. It is hazardous and unsafe to deny the benefit of minority institution to an educational institution based on one factor alone. The very purpose of fundamental right to establish and administer the educational institution of the choice of linguistic or religious minority will be frustrated if a lopsided view of the facts is taken and just constitutional benefit is denied to the institution by referring to or relying upon one factor alone disregarding all other relevant and material factors. The factors which are relevant for determining the minority status of an institution are, therefore, required to be first outlined.

10. My attention is drawn to the guidelines issued by the Minorities Commission for determination of minority status of educational institutions. It appears that those guidelines are also circulated to all States. The Minorities Commission has, after carefully considering the matter, framed the guidelines for determining of minority Status of educational institutions under the Constitution of India .

11. Firstly, the Commission has stated that the benefit of Art. 30(I) can be claimed by the community only on proving that it is a religious or linguistic

minority and that the educational institution was established by it. So far as Parsi Zorastrian Community is concerned, there is no dispute that it is a religious minority and that it has established educational institution.

12. Secondly, the Commission has stated that it is not always necessary that the objects for which a minority has established an educational institution must include the conservation of its language, script or culture. Art. 30(1) only emphasises that the body establishing and administering an educational institution belongs to a minority based on religion or language. It was nothing about the character of education to be imparted by them. Therefore, as per the guidelines prescribed by the minorities Commission an institution will be a minority institution even if it imparts secular education. The character of education to be imparted and the matter of administration will be at the choice of those who are to administer the institution. In these matters, choice must be of the person who belong to minority. Therefore, simply because the objects for which the trust was established are of general nature it could not be said that it is not a minority institution. Omission to state that it wanted to conserve its own Parsi Zorastrian religion would not, as such, make any difference.

13. Thirdly, the commission has provided that an institution seeking recognition as a minority institution must fulfil the statutory requirements concerning the academic standards, qualification of teachers and of the students seeking admission. It must have financial resources and capability to run on sustained basis. So far as this factor is concerned it is not the grievance of either side that the petitioner-institution has failed to fulfil any of the statutory requirements for recognition, and in fact, the recognition of the school run by the petitioner-trust is not withdrawn or cancelled.

14. Fourthly, the Minorities Commission has made reference the medium of instructions to be followed by minority educational institution. Neither the State Government nor the University can prescribe medium of instructions to be followed by minority educational institution, and since there is no dispute in the present case about the medium of instructions I need not dilate on this particular requirement.

15. The fifth criterion prescribed by the minority commission is about the constitution of governing bodies in minority educational institutions. This criterion is important and the same is reproduced hereunder:

"The minority educational institution must be free to induct competent and reputed individuals from other communities in the Managing Committee and the Governing bodies. The minority character of an institution is not impaired so long as the constitution of the Managing Committee/ Governing body provides for an effective majority to the members of the minority community.

The State should not have any power, directly or or through the University, to direct the constitution of the governing bodies in a manner so to deprive a minority of the effective administration of its educational institutions. However,

the State or the University may lay down general guidelines to ensure that only qualified persons find a place in the Governing bodies".

From this guidelines prescribed by the Minorities Commission it becomes abundantly clear that a minority educational institution must be free to induct competent and reputed individuals from other communities in the managing committees or governing bodies. However, induction of such an outsider should not be such so as to take the control of the institution out of the hands of the minority. So long as minority community provides for maintaining its effective control by keeping effective majority of persons belonging to the minority community either in governing body or managing committee, the provision for induction of persons belonging to other communities cannot be said to be inconsistent with minority character of the institution. This factor is the main relevant factor and when it is prescribed by the Minorities Commission established by the Government of India, its significance cannot be minimised. I am of the opinion that in order to see that the minority enjoys the benefits flowing from the Constitutional guarantee of Art. 30, it is necessary that it is not totally secluded from other communities so much so that it cannot intermingle with other communities and become part of the national stream. On the contrary, it is desirable that the minority communities while effectively exercising their fundamental right under Art. 30 are permitted to induct competent and reputed individuals from other communities in the managing committees/ governing bodies so that such communities, have advantage of faith, script, language and religious tenets of other communities. In fact, in a secular State like India it is desirable that the minority educational institutions run by linguistic or religious minority freely and fairly intermingle with persons belonging to other communities so that there is free and fair exchange of learning, thoughts, effects of tenets, script and the language also. The provision, therefore, in the document or trust deed providing for induction of person belonging to other community in the managing committee/ governing body is not, in anyway, inconsistent with the exercise of freedom guaranteed by Art. 30(I) of the Constitution. In my opinion, such a provision is consistent with exercise of constitutional right and it would facilitate and help in enjoying that freedom more effectively, and in fact it would make freedom meaningful.

16. In re Kerala Educational Bill, 1957 reported in AIR 1958 SC 956 the Supreme Court in its Advisory jurisdiction was required to give its opinion as regards constitutionality and validity of Kerala Education Bill, 1957, more particularly in the context of Arts. 29 and 30 of the Constitution of India. While considering the scope and ambit of right conferred by Art. 30(I) the Court also dealt with one of the three minor submissions made by the learned counsel appearing for the state of Kerala. His submission before the Court was that one of the three conditions to be fulfilled before claiming the protection and privileges of Art. 30(I) is that the educational institution must be established for the members of his or their own community. Supreme Court negated this submission in the following words:

"As to third condition mentioned above, the argument carried to its logical conclusion comes to this that if a single member of any other community is admitted into school established for the members of a particular minority community, then the educational institution ceases to be an educational institution established by the particular community. The argument is sought to be reinforced by a reference to Art. 29(2). It is said that an educational institution established by a minority community which does not seek any aid from the funds of the State need not admit a single scholar belonging to a community other than that for whose benefit it was established but the as soon as such an educational institution seeks and gets aid from the State coffers Art. 29(2) Will preclude it from denying admission to members of the other communities on grounds only of religion, race, caste, language or any of them and consequently it will cease to be an educational institution of the choice of the minority community which established it. This argument does not appear to us to be warranted by the language of the Article itself. There is no such limitation in Art. 30(1) and to accept this limitation will necessarily involve the addition of words "for their own community" in the article which is ordinarily not permissible according to well established rules of interpretation. Nor is it reasonable to assume that the purpose of Art. 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which receives aid on account of it being a minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that majority institutions will not, as minority institutions, be entitled to any aid. The real import of Art. 29(2) and Art. 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. In our opinion, it is not possible to read this condition into Art. 30(1) of the Constitution."

17. From the above observations it becomes abundantly clear that Art. 30(1) of the Constitution of India does not warrant any such limitation so as to confine its protection to the educational institution which admits the member of one community alone. The conjoint reading of Arts. 29 and 30(1) clearly contemplates a minority institution with sprinkling of outsiders admitted into it. The minority institution does not shed its character and. cease to be a minority institution by simply admitting non-minority community persons into it. I am conscious of the fact that the observations reproduced hereinabove are made in the context of admission of members to the institution. However, I am of the opinion that the said observations apply with equal force to the induction or admission of outsiders to the governing body or managing committee. By confining the

management or governance of such institution solely to members of minority community, linguistic or religious, the very concept of giving protection to minority institution by conserving their distinct language, script and culture would be defeated if they are not permitted to intermingle in the national stream by mixing with persons belonging to other communities. It would lead to separating the society into small fragments based on caste, religion or language. Therefore, the provision in the deed or constitution of the institute to induct outsider in the governing body or -managing committee does not militate against the institution. Such a provision should be read as permitting induction of some persons of non-minority community so long as majority persons of managing committee/ governing body are belonging to minority community. Provision permitting induction of outsider into governing body/managing committee does not result into converting otherwise minority institution into non-minority institution.

18. Yet in another decision in the case of *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, the Constitutional bench of the Supreme Court in the context of Art. 30 stated that it contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. The Court then observed as under (at page 2082):

"It matters not if a single philanthropic individual with his own means, founds the institution or the community at, large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection".

The second right relates to the administration of such institution. The administration means, "management of the affairs". This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution particular will be best served. While dealing with the contention as to whether provisions of Kerala University Act, 1969 took away from the founders the right to administer their own institution, the Court found that the administration of the schools run by management should be in the hands of the particular community. Ss. 48 and 49 of Kerala University Act, inter alia, provided for taking over of the management of minority institution by the nominees of educational agencies or corporate managements. In view of the fact that there was total taking over of the management the Supreme Court upheld the challenge to the constitutionality of Ss. 48 and 49 of the said Act and observed as under:

"The Constitution contemplates the administration to be in the hands of the particular community. However desirable it might be to associate nominated members of the kind mentioned in Ss 48 and 49 with— other members of the governing body or the managing council nominees, it is obvious that their voice must play a considerable part in management. Situation might be conceived when they may have a prepondering voice. In any event, the administration goes to a distinct corporate body which is in no way answerable to the educational agency or the corporate management. The founders have no say in the selection of the members nominated or selected except those to be nominated by them. It is, therefore, clear that by the force of sub-section (2)(4) and (6) of Ss. 48 and 49, the minority community loses the right to administer the institution it has founded. Sub-section (5) also compels the governing body or the managing committee to follow the mandate of the University in the administration of the institution. No doubt, the Statutes, Ordinances, Resolutions, Rules, Bvlaws and Orders can also be examined in the light of Art. 30(I) but the blanket power so given to the University bears adversely upon the right of administration".

It is, therefore, clear from the above observations that so long as the founders of educational institutions are not robbed of their right to establish and administer the educational institution and so long as they have a preponderating voice it cannot be said that the mere provision of induct an outsider in the governing body/ managing committee as per the wish of the minority would deprive the educational institution established and administered by an minority community of its minority status.

19. In the case of All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, the Supreme Court was called upon to decide the validity of S. 3(I) and (2) of Andhra Pradesh Recognised Private Educational Institutions Control Act (I I of 1975). After undertaking an exhaustive analysis of the cases decided by the Supreme Court and the views taken by it during the last two decades on various aspects, shades and colours, built-insafeguards, guarantees, scope and ambit of the 1 fundamental right enshrined in Art. 30(I), the Court summarised certain principles and propositions and the principle which is relevant is stated hereunder (at Page 1066 and 1067):

"The introduction of an outside authority however, high it may be either directly or through its nominees in the governing body or the managing committee of the minority institution to conduct the affairs of the institution would be completely destructive of Art. 30(I) and would reduce the management to a helpless entity having no real say in the matter and thus destroy very personality and individuality of the in stitution which is fully protected by Art. 30. Perhaps there may not be any serious objection to the introduction of high authorities like the Vice-Chancellor or his nominee in the administration particularly that part of it which deals with the conditions of service of the teachers yet such authorities should not be thrust so as to have a controlling voice in the matter and thus overshadow the powers of the managing committee.

Where educational institutions have set up a particular governing body or the managing committee in which all the powers vest, such powers should not be curbed or taken away unless the Government is satisfied that these powers are grossly abused and if allowed to continue may reduce the efficacy or the usefulness of the institution".

From the above observations also it becomes clear that the persons who belong to minority community should have controlling voice in the administration of the institution. A provision, therefore, which provides unilateral and non-voluntary induction of outside agency or persons so as to completely deprive the minority of its right of administration, is held to be destructive of Art. 30(I). Be it noted that the observations were made by the Supreme Court in the context of induction of outside authority by State agency unilaterally and without consent and concurrence of minority community. However, when the minority community itself in its constitution provides for induction of an outsider in its management at its own choice so as not to deprive itself of its controlling voice in the overall management of the institution it cannot be said that such a provision in the constitution would deprive the minority institution of its status as a minority institution.

20. Mr. M. J. Thakor referred to the decision of Bombay High Court in the case of Indulal Hiralal Shah and Others Vs. S.S. Salgaonkar and Others, . In the case before the Bombay High Court the educational institution was run by Gujaratis in the State of Maharashtra and the question arose as to whether the petitioners belonged to minority community and whether they established and administered any educational institution. It was contended before the Bombay High Court that there was provision in the trust deed permitting induction of persons belonging to other community, and therefore, it could not be said to be a minority institution. After referring to the observations of the Supreme Court in *Re Kerala Education Bill* (supra) and in *State of Kerala v. Rev Mother Provincial* (supra) the Bombay High Court observed as under:

"From the judgment of the Supreme Court, it is obvious that the submission urged on behalf of the respondents that the advantage of Art. 30(I) of the Constitution of India is not available to the petitioners because the educational institution was not established and administered for the benefit of the minority community and the aims and objects of the creation of the Trust was not restricted to the members of the minority community cannot be entertained. A faint submission was advanced that the Deed of Trust does not prohibit members of the other communities from being the Trustees, and therefore, it should be held that the school was not established or administered by the minority community. It is not possible to accede to this submission. The first five trustees appointed under the deed are all Gujarati speaking persons and were to hold the office for their life time and the Trust Deed itself provides that in case a vacancy occurs, it can be filled by the remaining trustees by nomination of a person of their choice. In my judgment, reading the Trust Deed as a whole and taking into consideration

the various circumstances like that all the trustees are Gujarati speaking, the medium of teaching is Gujarati and 80% of the teachers are Gujarati speaking, it is to be concluded that the educational institution of the petitioners is of a minority community and the petitioners are entitled to the protection of Art. 30(I) of the Constitution of India".

21. It should be mentioned at this stage that Mr. N. C. Thakkar, Ld. Advocate or respondents relied upon the decision in the case of Chikkala Samuel Vs. District Educational Officer, Hyderabad and Another, . By the said decision he wanted to make good the point that an institution established and run by minority community is to be distinguished from an institution established and run by a person belonging to minority community. I do not think this decision is, in any way, of any help to Mr. Thakkar, nor does it help in deciding the point under discussion, In view of the observations of the Supreme Court I do not think it necessary to refer to the decision of A. P. High Court in detail.

22. For the reasons stated hereinabove, I am of the opinion that it cannot be said that the provision in the trust deed or any other document establishing the institution permitting induction of person belonging to nonminority community in governing body/ managing committee would deprive the institution of its minority status or character. From the observations of the Supreme Court it becomes clear that such a provision is consistent with Art. 30 of the Constitution of India and it does not, in anyway, militate against the minority character of the institution.

23. The Tribunal was, therefore, in error in holding that the school established and administered by the petitioner-trust is not a minority institution simply because there is a provision for induction of an outsider as trustee. Even otherwise also the Tribunal should not have and ought not to have given any declaration about the status of the institution especially when from the inception of the trust till the date the Tribunal rendered its decision all the trustees were persons belonging to minority community. It was also clear that a resolution was also passed at the behest of Gujarat Secondary Education Board that no person belonging to any other community shall be inducted in the managing committee and that was the condition imposed by the Gujarat Secondary Education Board while recognising the petitioner-trust as a minority institution. In fact, the Tribunal did not apply its mind to these glaring facts and in most unsatisfactory manner and quite cursorily proceeded to pronounce upon the status of the petitioner-institution. Therefore, the judgment and the order of the Tribunal in so far as it declares that the petitioner institution was not a minority institution is required to be quashed and set aside and it is required to be declared that the petitioner institution is a minority institution run, established and administered by the religious minority community, namely, Parsi Zorastrians.

24. In the result, petition succeeds. The judgment and order of the Gujarat Secondary Education Tribunal at annexure "J" to the petition in application No. 191/ 86, dated 1-8-1986 in so far as it declares the petitioner- institution to be

not a minority institution is hereby quashed and set aside and it is declared that Firdaus Amrut Higher Secondary School Established and administered by Firdaus Amrut Education Trust is a minority institution. As regards directions issued by the Tribunal to reinstate respondent No. 4 it is declared that the respondent No. 4 shall be treated to have continued in service as a teacher up to 30th May, 1990 and since she left permanently for U.S.A., and thereafter, she has settled at U.S.A. she shall not be entitled to any wages thereafter. Rule is made absolute to the aforesaid extent with no order as to cost.

25. Petition allowed