

(1996) 03 KAR CK 0024

In the Karnataka High Court

Case No : W.Ps. 7163 and 7164 of 1990, 18266 of 1989, 20958 of 1990 and 13824 to 13851 of 1990

Gnyana Mandir Trust and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 01-03-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 15 (4), 16, 19 (1), 19 (1) (g)

Citation : (1997) ILR (Kar) 155 : (1997) 2 KarLJ 99

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Harish Desi, for K.S. Desai, B.K. Sampath Kumar and Raghunath, for M.L. Dayananda Kumar, Hanumanth Reddy Sahukar, for Umesh R. Malimath, for the Appellant; L.Y. Premavathi, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—These Writ Petitions involve common questions of law, so they are being disposed of by one common Judgment.

2. The petitioner in Writ Petition Nos. 7163 and 7164 has challenged the Government Circular bearing No. L01/SC/ST/20/89/ 90, dated 20.11.1989, the copy of which has been annexed as Annexure-A to the Writ Petition. The petitioner has prayed for quashing of this Circular Annexure-A by a writ, order or direction in the nature of writ of certiorari or the like. The petitioner has further prayed for a writ of mandamus being issued restraining the respondents from enforcing the above mentioned Circular and has prayed for such further or other reliefs as this Court deems fit.

3. The case of the petitioner in these two Writ Petitions is that the petitioner is a Trust, which owns educational institutions in the name and style of "Gnyana Mandira" and at present running Sudarshan Vidhya Mandira. The first petitioner's case is that the settlers who were desirous of creating a Trust with the object of making proper and adequate provision for the efficient

management of the Institution to promote its growth into a sound Educational Institution to inculcate the Indian culture in the young minds and to educate them on combined State and Central Government curricula in the Nursery, Primary, Secondary, Higher Secondary, and University Education In general and in the field of technical education.

4. The second petitioner in Writ Petition No. 7164/90 also claims to be the Registered Association for management of English Medium Schools in Karnataka. The aim and the object of the Association have been indicated in paragraph-2 of the Writ Petition. They all claim to be Private Managements of the privately established educational Institutions. According to the petitioners' case, petitioners have grievance against Government Circular dated 20.11.1989 and Government letter dated 26.10.1987, as per Annexure-A and B. The State Government, according to the petitioners, after having made reference to various Government Orders, has issued Circular dated 20.11.1989, issuing guidelines in respect of admissions to various Institutions - aided and unaided and issued directions to the said Institutions in the matter of appointment of the Staff in the various private Institutions. As per allegations paragraph-9 of the Writ Petition, a perusal of Annexure-A - the Government Circular dated 20.11.1989, restrictions have been imposed by the Department in relation to the matters of admission in Educational Institutions and appointment of the Staff - teaching and non teaching. According to the petitioners, it is provided in the Circular dated 20.11.89 that the Institutions will have to follow the reservation of 15 per cent quota for Scheduled Castes and 3 per cent for Scheduled Tribes etc., and in the matter of appointment, it has been stated that private institutions were not following the reservation and various complaints have been received by the Department in the matter of appointment, and on one pretext or the other appointments to the reserved posts of S.Cs and S.Ts. have not been made by the Institutions. Directions have been issued in the matter of appointment to the posts -teaching and non-teaching staff, as well as in the matter of admission of students to the private Institutions, according to the reservations. It is further pointed out that in the Circular it has been provided that in the matter of selection of teaching and non-teaching staff, the Selection Committee shall include in itself one of the representatives of the Department as a member. The petitioners case is that it has been provided that recognition of the private educational institutions like the petitioner is dependent upon the impugned circular and in case Private Institutions do not follow or do not adhere to the guidelines and directions contained in the Circular, or the Institutions of theirs fail to comply with the directions contained in the Circular, will not get renewal of their recognition. The petitioners' case is that the petitioners are recognised, but unaided Schools. The petitioners' case is that petitioners have got a right to establish and to manage the affairs of their own Institutions and that the Government or the Educational Department of the Government has no right to interfere with the administration and management of the Schools like petitioners institutions. In the Writ Petitions, the Circular imposing the conditions in the

matter of admission, appointment, fixing reservations as well as providing that there shall be one representative of the Education Department in the Selection Committee and that requirement of publication of the vacancies occurring in the School have been challenged. According to the petitioners these directions could not be given by the Government under the Circular. According to the petitioners' case, this Circular is illegal, null and void and the respondents had no competence to issue these directions under any provision of law. The Circular does not have the backing of any provision as the source of power to issue that Circular. The petitioners have also alleged in the Writ Petition that the impugned Circular dated 20.11.1989 is violative of the provisions of Articles 14 and 19 of the Constitution and alleged that the restrictions imposed by the department under the said Circular for Private Educational Institutions are arbitrary. The petitioner's case is that respondents could only issue directions in the matter of maintenance of the standards of education as regard the private and unaided institutions, but the respondents had no power to impose any such conditions restrictions as have been imposed by the impugned Circular in the matters of admission and appointment of teachers of educational institutions. The petitioner's case is, petitioners could prescribe the requisite qualification for appointment of teachers, but respondents could not direct that in the matter of appointment of teaching and non-teaching staff or in the matter of admission of the students, certain percentage of quota or certain percentage of seats should be reserved for S.C., or ST., that is they could not provide for reservation of seats or quota for the persons belonging to weaker sections of society such as S.C., or ST., or backward classes. It has also been stated in the Writ Petition that the notification is violative of Article 300A of the Constitution. It has been pleaded that the Circular is a direct interference with the exercise of fundamental right of the petitioners under Article 19(1)(g) of the Constitution that is right of profession or occupation. Lastly it has been stated in the Writ Petition that the impugned circular notification had been issued without giving proper opportunity of hearing and say to the petitioners.

5. No counter affidavit appears to have been filed in these Writ Petitions.

6. Writ Petition No. 20958/1990 has been filed by The East -West Education Trust. The petitioner claims to be a Trust running various Educational Institutions including Nursery," Primary, Middle and High School Sections in the City of Bangalore and claims that all the institutions run by it are unaided and has not taken any aid from the State Government, either for the establishment of its Educational Institutions or as a grant-in-aid to run the Schools. The petitioner claims all Institutions to be recognised ones. Petitioner claims that it has been running Institutions keeping high standards without violating the prescribed norms. The petitioner in this case has also challenged the same Government Circular dated 20.11.1989, issued by the second respondent, on the same grounds, on which the Circular has been challenged by the petitioners in Writ Petition Nos. 7163 and 7164/1990.

7. No counter affidavit has been filed in this Writ Petition.

8. In Writ Petition Nos. 13824 to 13851 of 1990 the petitioners 1 to 27 of the Writ Petition, claim that they are running the Educational Institutions recognised by the Government of Karnataka, but those Institutions are unaided institutions. Karnataka Unaided Schools Managements Association, which is petitioner No. 28 in the Writ Petitions and which is petitioner No. 28 in the Writ Petitions and which is a registered association of the management of various unaided Schools, sought permission to file the petition on behalf of its members and had prayed for grant of relief to all the members of the Association. In these Writ Petitions also, the petitioners have challenged the Government Circular dated 20.11.1989, issued by respondent No. 2 that is Commissioner of Public Instructions. The circular which has been challenged in all there Writ Petitions have been challenged on the same grounds on which the Circular has been challenged by the petitioners in Writ Petition Nos. 7163 and 7164/1990.

9. No counter affidavit has been filed in all these Writ Petitions.

10. Writ Petition No. 18266 of 1989 has been filed by the Associated Managements of English Medium Schools in Karnataka and YCES High School, Mattikere, Bangalore. The first petitioner's organisation claim itself to be a registered. Association of Government Recognised unaided English medium school Management and according to petitioner it consists of 350 unaided institution managements. According to petitioner's case, the members of the petitioner's association are running unaided English medium Nursery to High schools through out the State. The petitioner has asserted that none of members are receiving grant or aid from the State Government and all the institutions run by the members of the petitioner's Association are unaided institutions. The petitioners asserted that at the time of granting of recognition to the members of the petitioner Association, Management were called upon to fulfil certain conditions as required by Grant-in-Aid Code and they asserted that all the management are fulfilling the provisions of the Code, so far as they relate to maintaining the academic standards. The petitioner's case is that the respondents are insisting upon the members of the petitioner's association to adopt the syllabus prescribed by the State Government and the conditions with regard to the minimum qualification for the purpose of appointment of teaching staff and with regard to suitability of the accommodation etc., They have also stated that Government is pressing for reservation of the quotas. According to petitioner's case, the right to make appointment of qualified teachers is the basic right of the management concerned and once the management makes appointment of qualified teachers, the opposite parties cannot refuse approval. The petitioner's case is that the Educational Institutions have fundamental right guaranteed under Article 19(1)(g) of the Constitution of management and administration. The petitioner has further takes the plea that State Government cannot infringe the right of the members of the petitioner's Association guaranteed under Article 300A of the Constitution and the Institutions run by the

members of the petitioner association cannot be compelled to comply with all the provisions of the Code as it applied to the aided Institutions. The petitioner has taken plea that Rule-17 which deals with reservations to be made and roster system to be followed, they cannot be enforced on the members of the petitioner's association and the right to appoint a teacher or member of a Staff is absolute and exclusive right of private management of the concerned school, and the State Government cannot interfere with the same unless and until a person appointed is found to be, not qualified or dis-qualified. The petitioner has stated that State Government issued a Notification dated 11.1.1988 compelling all Unaided Institutions to make reservations and to fill the reserved quota and to follow roster system in the matter of appointment of teaching and non-teaching staff. The petitioner has enclosed the copy of that notification as Annexure-A to the Writ Petition. The petitioner's case is that the said Notification is illegal and without any authority of law. The petitioner's case is that one of the members of the petitioner's association filed an objection bringing to the notice of Government its objection to the levying of conditions as per Annexure-A and in spite of this the Government is insisting upon the management of the various private schools and the members of the petitioner's association to follow roster system and to make appointment of reserved seats as well. The petitioner has further asserted that the opposite parties say that unless the management of the private institutions, particularly members of the association running various schools, do not comply with the notification, Annexure-A and the conditions imposed by the State Government which may be imposed at the time of renewal of recognition, the renewal may not be granted and in such conditions the petitioner's association has in the interest of the management of the various private institutions filed this petition under Article 226 of the Constitution.

11. No counter affidavit has been filed.

An application of additional statement of facts was also filed. In it, it has been stated that the opposite parties issued Annexure-B and C and has imposed the condition to the effect that the approval of recognition will be granted subject to the condition that in the matter of appointment of teaching and non-teaching staff, reservation pattern prescribed by the Government and the roster system prescribed by the Government is to be strictly followed and if the vacancies arise in the School are not filled in accordance with the provisions of reservation and roster system, it is being impressed upon management that the recognition will be cancelled. The petitioner's case is the institutions run by the members of its Associates being unaided Schools, the Government has no authority to prescribe of make reservation of seats for weaker section of people in the matter of either admission or appointment and Articles 15 and 16 of the Constitution will not apply. The petitioner has further alleged that those are meant for Government schools in the State or they may be applicable to private schools getting grants-in-aid or aid from the State Government, but not on the unaided schools and their right to manage the affairs of the school in the matter of appointment of staff and admission of students is unbridled and absolute and as such the

directions of State Government regarding reservation or roster system or the like have a tendency to interfere with the fundamental right of the members of the petitioner's association and the private institutions. As such the petitioner has prayed that order dated 31.1.1989 and 8.9.1989 be quashed, so far as they levy the restriction of reservation and roster system and also pray for quashing of Annexure-A date 26.10.1987.

12. I have heard the Learned Counsel for the petitioners Sri Harish Desai holding brief for Sri K.S. Desai, in Writ Petition Nos. 7163 and 7164 of 1990, as well as Sri B.K. Sampath Kumar, Counsel for the petitioner in W.P. No. 20958/90, and Sri Raghunath, holding brief for Sri M.L. Dayananda Kumar, Counsel for the petitioner, as well as Sri Hanumanth Reddy Sahukar, holding brief for Sri Umesh R. Malimath, Counsel for the petitioner in Writ Petition No. 18266/ 1989 on one hand and the Learned Government Counsel Smt. L.Y. Premavathi on the other.

13. Learned Counsels for the petitioners referred to above, made the following submissions:-

That the petitioners run the unaided Schools. Their Institutions are recognised by the Government Department, but their Institutions are not getting any aid from the Government, nor they ever got from the Government, either for the establishment of the Institution or for the management and administration thereof respectively. That their institutions being unaided one and the Institutions when do not take any grant or aid for the Institutions, the restrictions and conditions as imposed, could not be imposed on them, because provisions of grant-in-aid are meant for grant-in-aid Schools. That the petitioners have got fundamental right to establish and to run the school and the right to establish and manage the Institutions carries with itself the right to admit students as well as to appoint, continue and dismiss staff - teaching and non-teaching. Learned Counsels for the petitioners in all these petitions submitted that this is the fundamental basic right of the privately established educational Institutions, which are maintained by the own resources of the petitioners unaided from the State that is not taking any aid or grant-in-aid from the Government or department of the Government. That the Circular impugned fixing or making reservations for S.C., and ST., in the matter of admission of students as well as in the matter of appointment of teaching and non-teaching staff under the Circular as well as the requirement or direction to have one representative of the Department in the Selection Committee, for appointment of teaching and non-teaching staff or requirement of publication of vacancies to be filled, is nothing but an interference and an illegal interference or unauthorised interference with the petitioners right to establish and manage the schools. Lastly the petitioners Counsel submitted that really the Circular is violative of Articles 14 and 19(1)(g) of the Constitution as well as it results in illegal breach and violation of the provisions of Article 300(A) of the Constitution. In order to substantiate their contentions Learned Counsels for the petitioners made reference to certain decisions of this Court given prior to 1992, which may be

referred, if necessary in course of consideration of the matter.

14. It has been contended by the petitioners Counsel in W.P.No. 18266/1989, in nut-shell that the members of the petitioners association have got a fundamental right to establish and manage their institutions which includes the right to appoint teaching and non-teaching staff and this right of the private unaided English medium schools is absolute and unbridled and it cannot be subjected to the conditions or restrictions as has been done by the Government vide., Circular referred to. It can only be subjected to one thing that the persons with prescribed qualification have to be appointed to maintain educational standards, but the Government could not press its policy of reservation and the reservation policy may be made applicable to Government Schools or to Government aided schools, but its policy of reservation and roster system and the restrictions system etc., cannot be made applicable and enforced against the unaided institutions run by the members of the Association of the petitioners. Therefore, the direction issued is illegal and ultravires and violative of Article 14, 19 and 300(A) of the Constitution. It is the duty of the State only to provide better education to the citizens of the State and make provisions for that and to look for the economic and educational interest of the weaker section of the society.

15. On behalf of the opposite parties, it has been contended by learned Government Counsel Smt. L.Y. Premavathi that the Circular is not violative of either-Article 14, Article 19 or Article 300(A) of the Constitution. That it is not the fundamental right of any person or Institution or Association of persons to establish and administer educational Institutions. It has been contended that even for a moment it be taken to be an occupation, though not conceded, the reasonable restrictions can be placed on that right, in view of the provisions of Article 19(6) of the Constitution. Lastly the Government Counsel submitted that the establishment of educational institutions by private bodies is not an independent act by itself. It is really an activity supplemental to the principal or primary activity of the State in the matter of securing the right of educational Institution. Learned Government Counsel submitted that now-a-days importance of the private educational institutions no doubt is there as a supplemental to the main job or principal job of the State, as has been found by the Supreme Court as well and no Institution established can run without approval, sanction and recognition of the State. The Degree and Certificates will have no relevance until recognition by the State for the purpose of appointment in the Government or for the purposes of allowing its students to appear for the examinations conducted by the principal body namely the Government or the Universities or institutions established by the law is there. The learned Government Counsel also submitted that this activity of the private management running the school under the Education Act or under the law relating to Education is supplemental to that of State. This activity being supplemental and complimented to the main function of the State and the Institutions run thereby, supplemental activity of running the School under the State will be subject to same conditions to which the main activity subjected, they will be subject to the provisions of the Constitution and

to the basic provisions of the Constitutional Law enshrined and indicated by the preamble of the Constitution. Learned Government Counsel submitted that no doubt as regards private unaided educational Institutions, in their case, fee may be higher than that of the Government Schools for the reason that they will have to bear the burden of running the Institution, but even then those institutions will have no absolute right even to take the fee to sky high, instead it is the duty of the State, when according permission to establish the Institution and granting recognition to put them to certain conditions and one of the conditions may be that the institution getting recognition, even though unaided will have to follow these orders and Circulars subsequently issued. They can also be made to charge fees not higher than the table of the fee that is prescribed by the Government or the competent authority, that is nothing beyond the ceiling of the fees fixed, can be charged. Learned Government Counsel submitted, that the power to grant recognition is always subject to the provisions of Articles 14, 15 and 16 read along with Articles 41, 45 and 46. Learned Government Counsel submitted the mandate of the Constitution is that Government shall make provisions for promotion of the Educational and economic interest of the weaker section of the Society, particularly members of the S.C., and ST., This direction read with Article 15(4) and 16(4) of the Constitution, definitely makes the duty of the State to make special provisions for protection of the economic and educational interest of the persons of socially and educationally backward classes as well as members of S.C., and S.T., and if that is the duty of the State the learned Government Counsel submitted in respect of these educational institutions to which recognition is granted and for the running of those Schools, permission is granted by the State, the duty of the State remains and the burden fastens on the State remains to see that the institution run under the shelter of the State in the form of permission and recognition, the constitutional provision should be followed, that is provisions of Articles 14, 15, 16, 41 and 46 and neither the principal instrumentality performing the job nor the supplementary instrumentality performing the job under the State, in the matter of education carrying supplementary activity can be exonerated from those obligations fastened on them. Learned Government Counsel submitted that in this view of the matter the order/Circular impugned does not suffer from any illegality or violation of any constitutional provisions. Learned Government Counsel submitted right to run educational institutions, particularly in Karnataka may be said to be legal right under the Karnataka Education Act and any educational institution can be run only with the permission of the State. That being the legal right, the right is only to be operated within the four corners of the provisions of law - constitutional or statutory and it is not in itself an independent right or independent activity. As such the learned Government Counsel submitted that all these Writ Petitions deserve to be dismissed.

16. It is one of the well settled principles of law under democratic constitution that there is no absolute power or nor absolute right nor it can be said that one has got power or right to act arbitrarily, as such a right which may run counter to

the basic theme of the Constitution and the provisions of the constitution is not available. The Constitution is the fundamental law and the basic law of the Country and every person howsoever high or low it may be, is bound to adhere and to follow the Constitution in its letter and spirit. Every right conferred by the Constitution or law is also circumscribed by the provisions of the Constitution and the basic principles enshrined under the Constitution. No one can be permitted to act contrary to the concept of justice - Social, economic or political, that is the basic structure of the Constitution, nor can any one be permitted to act against the concept of fraternity, assuring the dignity of the individual, nor can any one be allowed to act or perpetuate anything in the name of education against the unity and integrity of the Country. The basic norms prescribed by the Constitution and its preamble read along with the principles enshrined in the two Chapters that in Part-III and IV part-IVA of the Constitution, control the exercise of rights and powers. They have got to be read together. Right of education is no doubt a fundamental right enshrined under Article 21 of the Constitution and every one has got a right to get education to improve his dignity and personality. Provisions of Article 21 read with Articles 41, 45 and 46, together provides a scheme and these Articles read with Articles 14, 15 and 16 provide almost a complete picture. Article 41 imposes a duty on the State to make an effective provision for securing the right of education to every citizen, but within the limits of its economic capacity and development Article 45 of the Constitution mandates the State to make endeavour to provide free and compulsory education for all children up to the age of 14 years and for making endeavour and effort in this regard and the period has been prescribed as 10 years. That within this period of 10 years the efforts should be made in such a manner that the mandate may appear to be followed. Article 46 of the Constitution mandates that the State shall promote with special care the educational and economic interests of the weaker sections of the people, particularly S.C., and S.Ts., and it is provided that the State shall protect them from social injustice and all forms of exploitation. In this very context Article 15(4) and 16(4) also provide for making reservations, for the weaker section of people. It confers power on the State that nothing in Article 15 or 16 shall prevent the State from making provisions for reservation. Where one power is given and mandate is also to make provision for promotion of the interest of weaker section of society, specialty S.C., and S.T., an obligation is cast on the State to do that. Imparting of education no doubt have been made to be principal duty and obligation of the State and the State has to provide education and educational facilities for making provisions to served persons from exploitation and injustice. How the provisions for education to be made by the State. It can be said the State can make provision for education by establishing and administering educational institutions, no doubt out of its own funds, but that is not the only way. Making provision means making Legislation also, so as to let educational institutions spring up under the supervision as well or subject to its recognition of the State, in the sense either Central or provisional State, both have been empowered to legislate in regard to the matters of education vide the various entries in the Constitution. By Legislation,

they can provide for educational Institutions, being established run and managed by the persons privately, or by private Trust and private Institutions. The Act may provide that the institutions may be run, subject to recognition. Right of establishment and right to manage the institution may be a right, but recognition is the very blood of the institution. Without recognition of the Institutions, if Degrees are granted or Certificates are granted by the private institutions, they may be of no avail to the persons approaching the private institutions to study unless the State permits them to appear for examinations conducted.

17. In the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., Their Lordships of the Supreme Court have been pleased to observe vide, paragraph-75 that there is no fundamental right under Articles 19(1)(g) to establish an educational institution, if recognition or affiliation is sought for such an educational institution. In paragraph-92 it has been provided that regulatory measures have to be provided to protect the institutions from racketeering commercialisation of education. Thereafter the Hon"ble Justice Mohan observes as under:-

"Regulatory measures must so ensure that private educational institutions maintain minimum standards and facilities. Admission within all groups and categories should be based only on merit. There must be reservation of seats in favour of weaker sections of the society and other groups which deserve special treatment. The norms for admission should be pre-determined, objective and transparent."

Hon"ble Justice B.P. Jeevan Reddy, in his Judgment has been pleased to indicate the role of private educational Institutions. His Lordship observed that:-

"The activity of establishing an educational institution can neither be a trade nor business nor can it be a profession within the meaning of Article 19(1)(g)."

He further observed "We agree with Gajendragadkar, J that" education in its true aspect is more a mission and a vocation rather than a profession or trade or business, He further observed that establishing of educational institution by no stretch of imagination be treated as "practicing any profession."

In para-168 of the Judgment, His Lordship proceeds to observe:-

"For the purpose of these case, we shall proceed on the assumption that a person or body of persons has a right to establish an educational institution in this country. But this right, we must make it clear, is not an absolute one. It is subject to such law as may be made by the State in the interest of general public."

In para-169 of the Judgment, His Lordship observed as under:-

"We must, however, make it clear and which is of crucial importance herein, that the right to establish an educational institution does not carry with it the right to recognition or the right to affiliation."

Referring to the importance of recognition in the matter of establishment of educational Institutions, His Lordship observed:-

"It is matter of substantial - the very life-blood of a private educational institution. Ordinarily speaking, no educational institution can run or survive unless it is recognised by the Government or the appropriate authority and or is affiliated to one or the other Universities in the country.

Indicating the role of privately recognised educational Institutions. Their Lordships of the Supreme Court further observed:-

"Clearly and indubitably, the recognized affiliated private educational institutions, supplement the function performed by the institutions of the State. Theirs is not an independent activity of the State. In the above circumstances, it is idle to contend that imparting of education is a business like any other business or that it is an activity akin to any other activity like building on roads, bridges etc..... The private educational institutions merely supplement the effort of the State in educating the people, as explained above. It is not an independent activity. It is an activity supplemental to the principal activity. It is an activity supplemental to the principal activity carried on by the State. No private educational institutions can survive or subsist without recognition and or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory - in the interest of general public - upon the authority granting recognition or affiliation to in sit upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognizing affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. Affiliation/recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or University is justified or is entitled to grant recognition/affiliation without imposing such conditions. Doing so would amount to abdicating its obligations enjoined upon it by Part-III; Its activity is bound to be characterised as unconstitutional and illegal. To reiterate, what applies to the main activity applies equally to supplemental activity. The State cannot claim immunity from the obligations arising from Articles 14 and 15. If so, it cannot confer such immunity upon its affiliates."

18. This per se reveals that even if for a moment it is the legal right of the petitioners, State has got power and it is its duty to see that no unfairness is being allowed to be made use of under the privilege granted by State or State authority in the form of recognition, by the private educational institutions and nobody should be entitled to claim immunity from Articles 14 and 15, I may add Article 16, and as Supreme Court says that it - State or State authority cannot confer such immunity to affiliate. That being the position, it is the duty of the State or State authorities to make regulatory and controlling provisions when

granting recognition as well as to issue Circulars or orders from time to time in that regard. Apart from fixing the standards of Education, the State authorities have to see that in the matter of admission of students as well as in the matter of appointment of teachers no unfairness does take place or comes into picture as per the constitutional provisions in relation to the directions or mandate to the State that the State shall make provisions for protection of the interest-economic, and educational of the weaker section. The State when follows such mandate and makes provision for reservation of seats for the down trodden people of the weaker Section i.e., Scheduled Castes and Scheduled Tribes and backward classes or when it has made such provisions by issuing Circulars and when it has also provided for method for selection and provisions to control unfairness by making provisions of reservation and roster system on one hand and on the other hand it directs the following of the same, as well as provides for inclusion of one of the representatives of the State, in the matter of selection, to be the member of selection committee or it requires publication of the vacancies, in my opinion, the action of the State by issuing G.O.s., or Circulars impugned cannot be said to be ultravires, illegal, or void, as petitioners have not got the absolute right in the matter of appointment, but it is subject to the provisions of the Constitution and statutory law, such as Karnataka Education Act or the like. The petitioners right to run the Institution is always subject to the condition prescribed by the Act, whether aided or unaided. Even in the matters of fixation of fees to be charged, the State can put a limit, beyond which no institution can charge anything. These Acts and circulars or orders may be said to be regulatory and they cannot be said to be interfering with the right of petitioner to manage or administer the educational institution.

19. These measures are the acts of the State to control or prevent mal-administration. Right to administration does not carry with it any authority to mal-administration, in the sense of administration contrary to the mandate of the Constitutions, or the law.

20. Thus considered in my opinion, all these Writ Petitions have got no force and all these Writ Petitions mentioned above are hereby dismissed. The costs are to be borne by the parties.