

(2013) 01 GUJ CK 0041
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1225, 1226, 1243 of 2003 etc. etc. in SCA No. 705 of 2002 etc. etc.

Hajinural Hasan Master Charitable Trust APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Constitution of India, 1950 — Article 19, 30, 30(1), 30(2), 337

Gujarat Secondary Education Act, 1972 — Section 17, 25, 3, 34, 35

Income Tax Act, 1961 — Section 132, 132(4), 132(4A), 132(5), 143(1)(a)

Citation : (2013) 2 GLR 946 : (2013) LabIC 1989

Hon'ble Judges : S.H. Vora, J; Mukesh R. Shah, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mukesh R. Shah, J.—As common question of law and facts arise in this group of Letters Patent Appeals they are decided and disposed of by this common judgment and order. All these Letters Patent Appeals under Clause 15 of the Letters Patent are arising out of the common judgment and order passed by the learned single Judge dated 09.10.2003 passed in Special Civil Application No. 12049 of 2001 and other allied matters, by which, the learned single Judge has negated the challenge to the Government Resolution dated 21.5.1994 providing for absorption of teaching and non-teaching staff by minority institutions declared surplus from other minority institutions and also held that Government Resolution of 1996 providing for addition of Clause 64.3 in the Grant in Aid Code would be applicable to aided minority institutions by observing and holding that as the minority institutions are getting grant in aid from the Government they are bound by the same and bound to absorb teaching and non-teaching staff from other minorities institutions who are declared surplus, failing which grant in aid would be cut, would not violate the fundamental rights guaranteed under Article 30(1) of the Constitution of India.

2.0. The facts leading to the present Letters Patent Appeals in nutshell are as

under:

2.1. All the appellants here-in-original petitioners are claiming to be religious/linguistic minority institutions. That all of them were directed to absorb surplus teaching/non-teaching staff, declared surplus from other minority institutions on the basis of Government Resolution dated 21.5.1994 providing for absorption of teaching/non-teaching staff by the minority institutions, declared surplus from other minority institutions. That under Government Resolution dated 21.5.1994, more particularly, Clause 4(g) it provides that a minority institution has to absorb teaching/non-teaching staff declared surplus from other linguistic or religious minority institutions and in the alternative they have to relieve such staff after following due procedure as required under Regulation 3 and after payment of compensation as required under Regulation 33 of the Gujarat Secondary Education Regulation. That the Government has also by Government Resolution of 1996 has directed to insert/add Clause 64.3 in the Grant in Aid Code providing that if concerned institution does not absorb the surplus teacher, there shall be grant cut.

2.2. Feeling aggrieved and dissatisfied with the aforesaid provisions in the Resolution dated 21.5.1994, more particularly, Clause 4(g) directing linguistic or minority institutions to absorb teaching or non-teaching staff declared surplus from other minority institutions, failing which there shall be grant cut as per Clause 64.3 in the Grant in Aid Code, respective appellants here-in-original petitioners claiming to be religious/minority institutions preferred Special Civil Applications before learned single Judge submitting that directing the minority institutions to absorb surplus teacher, declared surplus from other institutions would violate their fundamental rights guaranteed under Article 30(1) of the Constitution of India. It was submitted that such restriction and/or direction compelling the minority institutions to absorb the surplus teaching/non-teaching staff would be against the protection granted under Article 30 of the Constitution of India. It was the specific case on behalf of the minority institutions that it is the fundamental right of the minority institutions under Article 30(1) of the Constitution of India to establish and administer the institution of their choice and to appoint teaching and non-teaching staff is part of the right under administration and therefore, thrusting surplus teacher on minority institutions it violates the fundamental right of selecting teachers being the part of the right of administration as guaranteed under Article 30(1) of the Constitution of India. On the other hand, it was the case on behalf of the State Authority that as the minority institutions are getting grant in aid they are bound to absorb the surplus teaching/non-teaching staff, declared surplus from other minority institutions. It was further submitted that as such there is no discrimination between minority and non-minority institutions so far as giving grant is concerned. Therefore, it was the case on behalf of the State Authority that such provision directing the minority institutions to absorb teaching/non-teaching staff declared surplus from other minority institutions, failing which there shall be grant cut does not violate their rights guaranteed under Article 30(1) of the Constitution of India as alleged.

2.3. That the learned single Judge by impugned judgment and order has held that direction of ordering absorption of surplus teachers to the school receiving grant in aid, whether minority and non-minority the position would be the same and all shall be governed accordingly and it is held that Clause 4(g) of the Resolution dated 21.5.1994 directing the religious/linguistic minority institute to absorb the surplus teacher declared from other minority institute is neither violative of Article 30(1) of the Constitution of India nor the same is discriminatory and it is held that minority institutions are bound by the same, failing which there shall be grant cut as they are getting grant in aid from the State Government.

2.4. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the learned single Judge in so far as holding Clause 4(g) of the Government Resolution dated 21.5.1994 directing the minority institute to absorb surplus teaching/non-teaching staff as legal and valid and holding that Clause 64.3 of the grant in aid would be applicable to the minority institutions i.e. on non-absorbing surplus teaching/non-teaching staff would render concerned institution liable for grant cut, the respective appellants herein original petitioners claiming to be linguistic/minority institutions have preferred present Letters Patent Appeals under Clause 15 of the Letters Patent.

3.0. Shri Saurin Mehta, learned advocate for Nanavaty & Nanavaty has appeared on behalf of the appellants of Letters Patent Appeal No. 1338 of 2003, Shri A.K. Clerk, learned Advocate has appeared on behalf of appellant of Letters Patent Appeal No. 1339 of 2003 and Shri Dhaval Vyas, learned advocate appearing for Vyas Associates for rest of the appellants herein-original petitioners and Shri P.K. Jani. learned Government Pleader has appeared with Ms. Nisha Thakore, learned AGP appearing on behalf of the State Authority.

4.0. It is submitted by learned advocates appearing on behalf of the respective appellants that as such it is right of the every minority institutions under Article 30(1) of the Constitution of India to establish and administer the institution of their choice. It is submitted that it is the right given to the minority to establish and administer the institution to cater education needs of the minority or section thereof. In support of their above submission, they have relied upon the decision of the Hon''ble Supreme Court in the case of The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another,

4.1. It is further submitted that to appoint teaching and non-teaching staff is part of the right under administration and therefore, thrusting upon a surplus teacher on Minority Institutions thereby violates the right of selecting teachers being the part of the right of administration as guaranteed under Article 30(1) of the Constitution of India. In support of their above submissions, they have relied upon the following decisions of the Hon''ble Supreme Court.

(1). The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another,

(2). Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others,

(3). Decision of the Delhi High Court in the case of Queen Mary's School Thru Its Principal Vs. U.O.I.,

4.2. It is further submitted that right to administer an educational institution by minorities guaranteed under Article 30(1) of the Constitution of India consists of (a) to choose its Governing Body, (b) to appoint teaching staff and also non-teaching staff; (c) to admit eligible students of their choice and to set up a fee structure. It is submitted that the said right emanates from Article 30(1) of the Constitution of India and therefore, such right cannot be restricted by amending Clause 64.3 in Grant-in-Aid r/w the impugned Government Resolution dated 21.5.1994 especially sub-clause (g) of Clause 4 ordering to absorb the surplus teacher from other Minority Institution. In support of their above submissions, they have relied upon the decision of the Hon'ble Supreme Court in the case of Secy. The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others, It is further submitted that State Government cannot by executive fiat restrict the fundamental right guaranteed to minority institutions guaranteed under Article 30 of the Constitution of India. It is submitted that Grant in Aid Code and the impugned resolution dated 21.5.1994 are issued by the State Government in exercise of its executive functions which can never restrict or violate the rights of the Minority institutions guaranteed under Article 30(1) of the Constitution of India.

4.3. It is submitted that merely because the minority institution receives aid, its autonomy cannot be restricted by imposing conditions in the grant and thereby their rights cannot be diluted as guaranteed under the Constitution of India. It is submitted that the learned single Judge has materially erred in holding that sub-clause (g) of Clause 4 of Government Resolution dated 21.5.1994 ordering/compelling the minority institutions to absorb the surplus teacher from other minority institution does not violate the rights guaranteed to the minority/minority institutions under Article 30(1) of the Constitution of India, as the minority institutions are getting grant/aid from the Government. It is further submitted that such Clause/provision directing the minority institutions to absorb the surplus teacher from other minority institution as such violates their rights guaranteed under Article 30(1) of the Constitution of India, more particularly, right to administer the educational institution of their choice. It is submitted that the learned single Judge has materially erred in holding that as the minority institutions are getting grant in aid from the Government they are bound by the Government Resolution dated 21.5.1994 especially sub-clause (g) of Clause 4 and Clause 64.3 of the Grant in Aid. It is submitted that the aforesaid is just contrary to the law laid down by the Hon'ble Supreme Court in catena of decisions which are as under;

(1). T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,

(2). Brahmo Samaj Education Society and Others Vs. State of West Bengal and Others,

(3). Decision of the Delhi High Court in the case of Queen Mary's School Thru Its Principal Vs. U.O.I.,

(4). N. Ammad Vs. The Manager, Emjay High School and Others,

4.4. In the alternative, it is submitted that after giving a grant, the Government cannot at the later stage impose any condition for receiving the grant which violates its rights. It is submitted that there was no condition provided in the beginning under Grant-in-Aid Code that if any teacher or employee is declared surplus from other minority institution, such person shall be absorbed by the another minority institution. It is submitted that such conditions imposed upon by amending Grant-in-Aid Code and by impugned Resolution, after receiving of the grant by the minority, would violate the rights of minority institutions.

4.5. It is further submitted that as such the State Government can only prescribe or control the fundamental rights by legislating an enactment and that too, to the limited extent viz. minimum qualifications, experience and other criteria bearing on merit for making the appointments. It is submitted that if any such regulation interferes with the administrative control of the day-to-day management for the recruitment of staff or in any other manner, such regulations to that extent are void and unenforceable. In support of their above submissions, they have relied upon the decision of the Hon'ble Supreme Court in the case of Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others, It is further submitted by learned advocates for the respective appellants original petitioners claiming to be minority institutions linguistic or religious that even otherwise Section 40A of the Gujarat Secondary Education and Higher Secondary Education Act, 1972, inter alia, provides for non-applicability of Clause (26) of Section 17, Sections 34 and 25 and Clause (b) of sub-clause (1) and sub-sections (2), (3), (4) and (5) of Section 3 to minority institutions and therefore, once the State Legislature has also protected the rights of minority institutions to appoint a person teaching and non-teaching of their choice. It is, therefore, submitted that which is not permissible directly cannot be imposed upon minority institution indirectly and that too by way of Grant-in-Aid Code and by executive action of issuing a Resolution dated 21.5.1994.

4.6. It is further submitted that even otherwise Government cannot order to absorb a surplus teacher from another minority institution as the same would not be suitable for the environment of another minority institution as well as the said person may not promote the culture, script and propagate the religion upon which another religious/linguistic institution is founded upon. It is submitted that, therefore, the minority institution has right to pick and choose and exercise its veto to appoint and recruit its own teaching/non-teaching staff. In support of their above submission, they have relied upon following decision of the Hon'ble Supreme Court as well as decision of the Delhi High Court.

(i). Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others,

(ii). The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others,

(iii). Queen Marry's School v. Union of India reported in (2011) 185 DLT 168 (para 14)

4.7. It is further submitted by learned advocates for the respective appellants original petitioners that as the appointment of a teacher is part of right to administer guaranteed under Article 30(1) of the Constitution of India and, therefore, even appointment is a new appointment qua minority institution and therefore, the person who is already appointed by another institution who might be suitable to other minority institution, the said surplus teacher cannot be thrust upon another minority institution without having any application of veto or choice of another minority institution.

4.8. By making above submissions and relying upon the above decisions, it is requested to allow present Letters Patent Appeals by quashing and setting aside the impugned common judgment and order passed by the learned single Judge and to declare that Clause 4(g) of the Government Resolution dated 21.5.1994 directing/compelling linguistic or religious minority institutions to absorb surplus teaching/non-teaching staff from other minorities institutions who are declared surplus from other minority institutions is in violation of rights guaranteed under Article 30(1) of the Constitution of India and to declare that Clause 64.3 in the Grant in Aid Code would not be applicable to Aided minority institutions.

5.0. All these Letters Patent Appeals are opposed by Shri P.K. Jani, learned Government Pleader appearing on behalf of respondent State authority. It is submitted by Shri P.K. Jani, learned Government Pleader that as the respective linguistic or minority institutions are taking grant or aid from the Government, they are bound by the policy of the State Government and therefore, the learned single Judge has not committed any error and/or illegality in declaring/holding that Clause 4(g) of the Government Resolution dated 21.5.1994 does not violate any of the rights of the minorities guaranteed under Article 30(1) of the Constitution of India. It is submitted that as such State Government has taken due care to protect the rights of the minority institution by providing Clause 4(g) of the Government Resolution dated 21.5.1994 that such linguistic/religious minority institutions have to absorb only those surplus teaching/non-teaching staff, declared surplus from other minority institutions. It is submitted that as such if the intention of the State Government was to violate any of the rights of the minority institution linguistic or religious, in that case, such Clause 4(g) would not have been there and it would have been simply provided that all aided institutions to absorb teaching/non-teaching staff, declared surplus from any aided institutions. It is submitted that therefore, as such Clause 4(g) of the Government Resolution dated 21.5.1994 is not affecting and/or violating any of the rights of the minority institutions guaranteed under Article 30(1) of the

Constitution of India.

5.1. It is further submitted by Shri P.K. Jani, learned Government Pleader appearing on behalf of the respondent authority that the word "minority" is as such neither defined in the Constitution nor there is any State legislature. It is submitted that so far as Article 30 is concerned, the essential condition to be satisfied is that either it is to be religious minority or linguistic minority. It is submitted that so far as word minority is concerned, in general sense, it is referred to any community which is numerically less than 50% of the population of the State concerned. It is submitted that so far as State of Gujarat is concerned, vide resolution dated 14.11.1979 it has resolved and given recognition to three languages and given status of minority which includes Urdu, Sindhi and Marathi. It is submitted that religions which are recognized as minority religion in the State of Gujarat includes Islam, Christianity, Shikh, Buddha and other religion or community. It is submitted that hence "Hindi" language being national language and is official language is not conferred recognition as minority language in the State of Gujarat. It is submitted that again the institutions claiming rights/protection as minority institutions have first to satisfy the test of minority institution. It is submitted that there has to be recognition by the State of such institution as "minority institution". It is submitted that institutions claiming to be linguistic minority must fulfill the object for which the claim is made. In support of his above submissions, he has relied upon para 3 of the decisions of the Hon'ble Supreme Court in the case of In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India,

5.2. It is further submitted by Shri P.K. Jani, learned Government Pleader appearing on behalf of respondent State authority that once having agreed to receive grant from the State Government under the Grant in Aid, the control of the State Government over the petitioners institutions, more particularly, qua recruitment of its staff, accommodation of surplus teachers etc. would be within the purview of the authority and to take action if, it is found that the institution has defied any of the provisions of the law which is otherwise binding and the authority is within its power to take action in accordance with law.

5.3. It is further submitted that even rights and protection guaranteed under Article 30(1) are not absolute. It is submitted that Article 30 confers two rights (1). The right to establish institution and (2) the right to administer it. It is submitted that the expression right to establish institution and to administer it has to be read in harmony of the substance of the right conferred by the said Article. It is submitted that word "establish" in this context, means to bring into existence an educational institution, while the word "administer" means the right to manage and conduct of the institution. It is submitted that the right to administer may be said to consist of the following rights;

(a) to choose its managing or governing body

- (b) to choose its teachers and Head Masters/Principal
- (c) not to be compelled to refuse admission to students;
- (d) to use its properties and assets for the benefit of the institution.
- (e) to select its own medium of instruction.

5.4. It is submitted that though Article 30 itself does not lay down any limitations upon the right of a minority to administer its educational institutions, this right is not absolute and is always subject to reasonable regulations. In support of his above submissions, he has relied upon paras 19, 20, 30, 47, 91, 92, 105, 173, 174 and 264 of the Hon'ble Supreme Court in the case of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*. It is submitted that reasonable regulation is must for benefit of the institution as the vehicle of education for the minority community, consistent with national interest such as to laid down qualification of conditions of service, to secure appointment of good teachers, to maintain a fair standard of teaching, to ensure orderly, efficient and sound administration and to prevent maladministration, to ensure that the funds are spent for the betterment of education and to ensure social welfare, economic regulations, regulate appointment of teachers.

5.5. It is submitted that minority institutions cannot resist regulations which are conducive and do not restrict the rights of the administration of the minority community but facilitate and ensure better and more effective exercise of that right for the benefit of the institution. It is submitted that so far as absorption of surplus teacher is concerned, the same does not have effect of displacing the minority administration or in any manner take away its autonomy, more particularly, when the teaching or non-teaching staff, as the case may be, so declared surplus has once been selected as qualified by the committee and it is no question of fresh appointment. It is submitted that so far as absorption of surplus teaching/non-teaching staff is concerned, it is to be appreciated that there is no Constitutional or legal right to the school management to get financial aid. That these are the schools which are defined as private higher secondary schools within the meaning of private higher secondary schools defined under the Gujarat Secondary Education Act, 1972. That there is no statutory obligation under the Act to provide financial aid to the private school under the provisions of Gujarat Secondary Education Act, 1972. That a private secondary and higher secondary school is free not to take any financial aid from the State Government. There are many private schools in the State who are not receiving any grant by their own choice. It is submitted that as such private schools run by the minority institutions are under no legal duty/obligation/compulsion to open a private school/trust. It is submitted that these private institutions run by minority institutions are also not under any legal duty or obligation to accept the grant of the State Government. It is submitted that there are private schools run by Minority institutions who have chosen not to accept the grant from the State Government. It is submitted that therefore, there is no constitutional or legal

obligation/compulsion on part of minority to establish secondary or higher secondary school. Similarly, there is no further obligation and compulsion to obtain aid from the State Government by these minority institutions. It is submitted that therefore, once such minority institutions have agreed to accept the aid from the Government they are bound by the policy of the State Government.

5.6. It is further submitted that as such giving of grant in aid is absolutely discretionary act of the State Government as Clause 84.1 of grant in aid specifically states that the recognized education institutions are eligible for different types of grants which may be paid at the discretion of the sanctioning authority. It is submitted that therefore, giving of grant is at the discretion of the sanctioning authority and that too on fulfilling the terms and conditions. It is submitted that the decisions of the Director/Officer is based on the terms and conditions being fulfilled.

5.7. It is further submitted by Shri P.K. Jani, learned Government Pleader appearing on behalf of respondent State authority that the Government instruction relating to absorption of surplus teachers are only applicable to the private school who are receiving grant from the State Government. It does not apply to the private schools whether minority or non-minority. Thus, the Government instructions uniformly applies to all institutions who opt for grant and thus as rightly observed by the learned single Judge there is no discriminatory treatment given to the minority institutions taking grant.

5.8. It is further submitted that by allowing surplus teacher to be absorbed in such minority institutions, no rights of administrative are in any manner substantially affected. In support of his above submission, he has relied upon the observations made by the Hon''ble Supreme Court in para 141 of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,

5.9. It is further submitted by Shri P.K. Jani, learned Government Pleader appearing on behalf of respondent State authority that therefore by absorbing one person at a given time, no rights of the minority institutions are in any manner affected. That the policy of absorbing surplus teachers is equally applicable to the school run and manage by the non-minority schools and therefore, the action of the State is in the directions of providing equal treatment to all the institutions which are receiving the aid irrespective of their constitutions. All these institutions, minority and non-minority, taking aid are treated equally by the State without any discrimination.

5.10. Now, so far as reliance placed upon the decision of the Hon''ble Supreme Court in the case of Sindhi Education Society (The Chief Secretary, Govt. of Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others, is concerned, it is submitted by Shri P.K. Jani, learned Government Pleader appearing on behalf of respondent State authority that the same is in relation to applying reservation policy of the State. It is submitted that

in present appeals no issue is involved with regard to application of reservation policy. It is submitted, therefore, principle as enunciated in the said judgment will not apply to the facts of the present case. It is submitted that similarly the decision of the Delhi High Court also will have no application to the facts of the present case. By making above submissions and relying upon above decisions, it is requested to dismiss the present Letters Patent Appeals by submitting that Clause 4(g) of the Government Resolution dated 21.5.1994 and Clause 64.3 of the Grant in Aid Code do not violate any of the rights guaranteed to the religious/linguistic minority institutions guaranteed under Article 30(1) of the Constitution of India.

6.0. Heard the learned advocates for the respective parties at length. The following question of law arise for consideration of this Court.

(I). Whether the Clause 4(g) of the Government Resolution dated 21.5.1994 which provides for absorption of teaching/non-teaching staff declared surplus from other minority institutions, by the minority institutions and Clause 64.3 in the Grant in Aid Code which provides that on non absorption of teaching/non-teaching staff declared surplus, by the concerned minority institution there shall be grant cut would violate the fundamental right of such minority/minority institutions guaranteed under Article 30(1) of the Constitution of India?

(II). To what extent, State Government can regulate the administration and management of such minority educational institutions when such institutions receive aid from the State?

(III). Whether the learned single Judge is right in holding that Clause 4(g) of the Government Resolution dated 21.5.1994 directing the minority institutions to absorb a surplus teaching/non-teaching staff declared surplus from other minority institutions and Clause 64.3 of the Grant in Aid Code did not violate any of the rights of such aided minority institutions, guaranteed under Article 30(1) of the Constitution of India?

6.1. At the outset, it is required to be noted that as such all the appellants-original petitioners claim to be either religious or linguistic minority institutions and it is the case on behalf of the respective linguistic or religious minority institutions that under Article 30(1) of the Constitution of India such minority institutions have absolute right to administer and establish educational institutions of their choice and the Government has no regulatory control over the minority institutions and no control whatsoever in the managing committee, internal managing committee of the school inclusive of selection of the teachers amongst equivalent candidates. It is also the case on behalf of the respective appellants -- original petitioners minority institutions that merely because they are aided minority institutions it cannot destroy, impair and even dilute their very character of linguistic/religious minority institutions. As stated hereinabove, on the other hand and even so observed and held by the learned single Judge as minority institutions are getting grant in aid from the State Government and

therefore, provision directing such minority institutions to absorb surplus teachers does not violate any of the rights guaranteed to such minority institutions guaranteed under Article 30(1) of the Constitution of India.

6.2. In the case of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, the Hon''ble Supreme Court has observed and held that Clause (1) of Article 30 gives right to all minorities, whether based on religion or language to establish and administer educational institutions of their choice. It is further observed and held in the said decision that right to administer an institution means the right to effectively manage and conduct the affairs of the institution. The 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 interest of the community in general and the institution in particular will be best served. In paras 90 and 92 the Hon''ble Supreme Court has observed and held as under:

90. We may now deal with the scope and ambit of the right guaranteed IV Clause (1) of Article 30. The Clause confers a right on all minorities, whether they are based on religion or language, to establish and administer educational institutions of their choice. The right conferred by the Clause is in absolute terms and is not subject to restrictions, as in the case of rights conferred by Article 19 of the Constitution. The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have, necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education. The right to administer educational institutions can plainly not include the right to mal administer. Regulations can be made to, prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of all educational institution without qualified teachers. The State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational (The observations of Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, Further, as observed by Hidayatullah C.J. in the case of *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, the standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish syllabi" for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the

right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others.

92. A regulation which is designed to prevent maladministration of an educational institution cannot be said to offend Clause(1) of Article 30. At the same time it has to be ensured that under the power of making regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30(1) is intended to be real and effective and not a more pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of *Rev. Sidhajibhai Sabhai (supra)*, regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution effective as an educational institution. Such regulation must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

6.3. It is further observed and held by the Hon''ble Supreme Court in the said decision that a law which interferes with minorities choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is further observed and held by the Hon''ble Supreme Court in the said decision that it is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. It is further observed that the selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without, infringing Article 30(1). It is further observed by the Hon''ble Supreme Court in the said decision that so long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management and that is part of the fundamental right of the minorities to administer the educational institution established by them.

6.4. The Hon''ble Supreme Court in the case of *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, has also observed and held that while it is

permissible for the State and is educational authority to prescribe qualification of a teacher, once the teachers possessing requisite qualifications are selected by a minority for their educational institute, the State would have no right to veto the selection of the teachers.

6.5. In the recent decision of the Hon"ble Supreme Court in the case of Sindhi Education Society (Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others, the Hon"ble Supreme Court has reiterated above principles and has held that the minority has an inbuilt right to appoint the persons which in its opinion are better culturally and linguistically compatible to the institution. It is further observed and held that thus they could chose their management committee as well as they have right to chose its teachers. In paras 111 to 114 the Hon"ble Supreme Court in the case of Sindhi Education Society (supra) has observed and held as under:

111. A linguistic minority has constitution and character of its own. A provision of law or a Circular, which would be enforced against the general class, may not be enforceable with the same rigors against the minority institution, particularly where it relates to establishment and management of the school. It has been held that founders of the minority institution have faith and confidence in their own committee or body consisting of the persons selected by them. Thus, they could choose their managing committee as well as they have a right to choose its teachers. Minority institutions have some kind of autonomy in their administration. This would entail the right to administer effectively and to manage and conduct the affairs of the institution. There is a fine distinction between a restriction on the right of administration and a regulation prescribing the manner of administration. What should be prevented is the maladministration. Just as regulatory measures are necessary for maintaining the educational character and content of the minority institutions, similarly, regulatory measures are necessary for ensuring orderly, efficient and sound administration.

112. Every linguistic minority may have its own socio, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 64(1)(b), could be enforced against the general or majority category of the Government aided school but, it may not be appropriate to enforce such condition against linguistic minority schools. This, may amount to interference with their right of choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact; would diminish the very essence of their character or status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features

of a linguistic minority in relation to selection of eligible and qualified teachers.

113. A linguistic minority institution is entitled to the protection and the right of equality enshrined in the provisions of the Constitution. The power is vested in the State to frame regulations, with an object to ensure better organization and development of school education and matters incidental thereto. Such power must operate within its limitation while ensuring that it does not, in any way, dilute or impairs the basic character of linguistic minority. Its right to establish and administer has to be construed liberally to bring it in alignment with the constitutional protections available to such communities.

114. The minority society can hardly be compelled to perform acts or deeds which per se would tantamount to infringement of its right to manage and control. In fact, it would tantamount to imposing impermissible restriction. A school which has been established and granted status of a linguistic minority for years, it will not be proper to stop its grant-in-aid for the reason that it has failed to comply with a condition or restriction which is impermissible in law, particularly, when the teacher appointed or proposed to be appointed by such institution satisfy the laid down criteria and/or eligibility conditions. The minority has an inbuilt right to appoint persons, which in its opinion are better culturally and linguistically compatible to the institution.

6.6. In the case of *N. Ammad Vs. The Manager, Emjay High School and Others*, , it is observed and held by the Hon"ble Supreme Court that management of the minority institution has right to choose and appoint any qualified persons and the same is protected by Article 30(1) of the Constitution of India.

6.7. Identical question came to be considered by the Delhi High Court in the case of *Queen Marry's School* (supra) and before Delhi High Court also the question was of absorption of surplus teacher by the aided minority institution. In the case before the Delhi High Court question was with respect to Rules 47 and 64(1)(e) of the Delhi School Education Rules granting power to the Director of Education to direct absorption of surplus teacher and which compels the institution including minority institutions to give undertaking that they shall absorb the surplus teacher/employees and Rule 64 provides that no aid to be given unless suitable is undertaking given by the managing committee. That in the said decision Delhi High Court considered the decision of the 9 Judges Bench of the Hon"ble Supreme Court in the case of *St. Xaviers College* (supra) as well as even decision in the case of *Sindhi Education Society (Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others*, and even the decision in the case of *Brahmo Samaj Education Society (Brahmo Samaj Education Society and Others Vs. State of West Bengal and Others*, In paras 9 and 10, Delhi High Court has observed and held as under:

9. The essential or core management right to appoint teachers and other personnel of their choice, even while preserving the state's regulatory power to prescribe basic qualifications, for filling the post, was spelt out in the nine-Judge

Bench in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, The decision highlighted the importance of the role of the Principal of a college, and other teachers. In support of majority view in that decision K.K. Mathew, J. observed that:

182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend (sic). On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution.

H.R. Khanna, J. adopted a still broader view that even selection of teachers is of great importance in the right to manage a school. Learned Judge stated that:

The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1).

The judgment in *Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others*, again interpreting various provisions of the Act, after exhaustively surveying the previous decisions on the interpretation of Article 30, stated that:

100. The power to regulate, undisputedly, is not unlimited. It has more restriction than freedom particularly, in relation to the management of linguistic minority institutions. The rules, which were expected to be framed in terms of Section 28 of the DSE Act, were for the purpose of carrying out the provisions of the Act. Even, otherwise, it is a settled principle of law that rules must fall within the ambit and scope of the principal legislation. Section 21 is sufficiently indicative of the inbuilt restrictions that the framers of the law intended to impose upon the State while exercising its power in relation to a linguistic minority school.

101. To appoint a teacher is part of the regular administration and management of the school. Of course, what should be the qualification or eligibility criteria for a teacher to be appointed can be defined and, in fact, has been defined by the Government of NCT of Delhi and within those specified parameters, the right of a linguistic minority institution to appoint a teacher cannot be interfered with. The paramount feature of the above laws was to bring efficiency and excellence in the field of school education and, therefore, it is expected of the minority institutions WP(C) Nos. 2845/1992 & 4291/1993 Page 11 to select the best teacher to the faculty. To provide and enforce any regulation, which will practically defeat this purpose would have to be avoided. A linguistic minority is entitled to conserve its language and culture by a constitutional mandate. Thus, it must select people who satisfy the prescribed criteria, qualification and

eligibility and at the same time ensure better cultural and linguistic compatibility to the minority institution.

102. At this stage, at the cost of repetition, we may again refer to the judgment of this Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, where in para 123, the Court specifically noticed that while it was permissible for the State and its educational authorities to prescribe qualifications of a teacher, once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of the teachers. Further, the Court specifically noticed the view recorded by Khanna, J. in reference to Kerala Education Bill, 1957 case, and to Clauses 11 and 12 of the Bill in particular, where the learned Judge had declared that, it is the law declared by the Supreme Court in subsequently contested cases as opposed to the Presidential Reference, which would have a binding effect and said: (*T.M.A. Pai case*, SCC p. 571, para 123)

123.... The words "as at present advised" as well as the preceding sentence indicate that the view expressed by this Court in *Kerala Education Bill, 1957*, in this respect was hesitant and tentative and not a final view in the matter.

What the Court had expressed in para 123 above, appears to have found favour with the Bench dealing with *T.M.A. Pai*. In any case, nothing to the contrary was observed or held in the subsequent judgment by the larger Bench.

Although the Court's observations were in the context of autonomy of a linguistic minority educational institution, the same principles would apply in the cases of institutions established and administered by religious minorities, i.e. the State's effort to enforce regulations which would directly or indirectly give a decisive role or say (or even a veto) in the appointment of teachers, would violate the right guaranteed under Article 30(1). This Court notices that a previous single Judge decision, in *St. Anthony's Girls Senior Sec. School and Others Vs. Govt. of NCT of Delhi and Others*, did make observations about applicability of Rule 47, the judgment stopped short of pronouncing on the invalidity or inapplicability of the rule.

10. Rule 47 and Rule 64(1)(e), in this Court's opinion, cannot be made applicable to minority schools-aided or otherwise. The power to require aided schools to absorb teachers and employees rendered surplus in other institutions is laudable, as it furthers the twin social goals of ensuring that trained and experienced manpower does not go waste, and also of assuring employment to teachers and employees, who may be rendered helpless in such circumstances. The State's objective in protecting the *laissez-faire* consequences from such vulnerable and at the same time valuable sections of the society cannot be over emphasized. Yet, that social purpose cannot obscure, equally that when those personnel are deployed by the administration on an unwilling (if not protesting) minority institution, it becomes an imposition, robbing the school or institution its

choice to pick its personnel, guaranteed by the Constitution. Therefore it is held that Rules 47 and 64(1) (e) are inapplicable, to the extent that an unwilling school cannot be directed to accept such teachers or employees.

6.8. In the aforesaid decision the Delhi High Court also considered the decision of the Hon"ble Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and consequently it is held that provisions under the Delhi School Education Act which provides directing educational institution to absorb the staff rendered surplus, failing which there shall be no grant, are inapplicable to the aided minority schools.

6.9. Considering the aforesaid decisions of the Hon"ble Supreme Court and law laid down by the Hon"ble Supreme Court in the aforesaid decisions, it is to be held that it is the right of the every minority institution under Article 30(1) of the Constitution of India to establish and administer institution of their choice and such aided minority institutions shall have full control/autonomy in appointing teachers/staff, however subject to complying, adhering to the recruitment rules and other general norms to the extent, they prescribe qualification, experience, age and other such criteria for appointment.

7.0. Thus, when such aided minority institutions have absolute right to appoint the teachers as per their choice, but subject to fulfilling the recruitment rules as stated above, they cannot be compelled to absorb teaching/non-teaching staff declared surplus from other institutions may be minority institutions. What cannot be done directly cannot be permitted to be done indirectly. Thus, Clause 4(g) of the Government Resolution dated 21.5.1994 which compels/directs the religious or linguistic minority institutions to absorb the teaching/non-teaching staff declared surplus staff from other minority institutions would violate the fundamental rights of such minority institution to administer and/or establish the institution of their choice which is guaranteed under Article 30(1) of the Constitution of India.

7.1. Now, the next question which is posed for consideration of this Court is whether merely because such minority institutions are receiving aid i.e. they are aided minority institutions they are bound to obey and/or comply with any provisions which otherwise violates their fundamental rights guaranteed under Article 30(1) of the Constitution of India?

7.2. In the case of Brahmo Samaj Education Society and Others Vs. State of West Bengal and Others, it is held and observed by the Hon"ble Supreme Court that merely because such minorities are receiving aid, their autonomy of administration cannot be totally restricted and institutions cannot be treated as a Government owned one. It is further observed that of course the State can impose such conditions as are necessary for the proper maintenance of standards of education and to check maladministration. But that control cannot extend to the day to day administration of the institution. It is further observed that State can regulate the method of selection and appointment of teachers

after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. It is further observed that the State can very well provide the basic qualification for teachers. It is further observed by the Hon''ble Supreme Court in the said decision that receiving aid from the State coffers can also not be treated as a justification for imposition of any restrictions that cannot be imposed otherwise.

7.3. The Hon''ble Supreme Court in the case of TMA Pai Foundation (supra) in paras 122, 141 to 143 has observed as under:--

122. The learned Judge then observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. Recognising that the right to administer educational institutions could not include the right to mal administer, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation "must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it." It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.

141. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Art. 30(1) illusory. The founding fathers have not incorporated the right to grants in Art. 30, whereas they have done so under Art. 337; what, then, is the meaning, scope and effect of Art. 30(2)? Article 30(2) only means what it States, viz., that a minority institution shall not be discriminated against when aid to educational institutions is granted. In other words the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an object surrender of the right to management is made a condition of aid, the denial of aid would be violative of Art. 30(2). However, conditions of aid that do not

involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

142. The implication of Art. 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institutions also entitled to receive it, subject to the fulfillment of the requisite criteria, and the State gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.

143. This means that the right under Art. 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfillment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

7.4. It is held by the Hon''ble Supreme Court in the case of *The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others*, that receiving of aid does not alter nature of character of the minority educational institutions aid. It is held that Article 30(1) of the Constitution of India clearly implies that any grant i.e. given by the State Government to the minority institution cannot have such condition attached to it which will in any way dilute or abridge the right of the minority and to establish and administer educational institution of their choice.

7.5. As observed in the case of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, the Hon''ble Supreme Court has observed and held that the Clause (1) of Article 30 of the Constitution of India confers a right on all minorities, whether they are based on religion or language, to establish and administer educational institutions of their choice. It is further observed that the right conferred by the Clause is in absolute terms and is not subject to restrictions, as in the case of rights conferred by Article 19 of the Constitution of India. It is further observed that the right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. It is further observed that as such regulations have to be so designed as to make it an effective vehicle for

imparting education. It is further held that the State prescribe regulation to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. It is further submitted that in the said decision the regulations which is designed to prevent maladministration of an educational institutions cannot be said to offend Clause (1) of Article 30. It is further observed that at the same time it has to be ensured that under the power of making regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. It is further observed that the right conferred by Article 30(1) is intended to be real and effective and not a more pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. It is observed that such regulation must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

It is further held and observed in the said decision that right to administer an institution means right to effectively manage and conduct affairs of the institution. It is observed that administration means "management of the affairs" of the institution. The management must be free of control so that the founders or their nominees can mould the institution according to their way of thinking and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. It is further held and observed that the selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such, right, of selection and appointments without infringing Article 30(1). It is further held that a law which interference with the minorities choice of qualified teachers or its disciplinary authority control over the teachers and other members of staff of the institutions is void as being violative of Article 30(1) of the Constitution of India.

7.6. It is also required to be noted at this stage that even as per Section 40A of the Gujarat Secondary and Higher Secondary Education Act, 1972, Clause (26) of Section 17, Sections 34 and 35, and Clause (b) of subsection (1) and subsections (2), (3), (4) and (5) of Section 36 shall not apply to any educational institution established and administered by a minority, whether based on religion or language. Sub-section (26) of Section 17 confers upon Gujarat Secondary Education Board to lay down qualifications, methods of selection and conditions of appointment, promotion and termination of employment and rules for conduct and discipline of the headmaster and the teaching and non-teaching staff of registered private secondary schools. Section 34 of the aforesaid Act is relating to the recruitment and conditions of service of persons appointed in registered private secondary schools. Section 35 of the aforesaid Act provides to have

selection committee who shall select the persons for appointment as teachers of the school from amongst the persons who are qualified to be appointed as such in accordance with regulation made in that behalf. Thus, by Section 40A of the said Act, the aforesaid provisions would not be applicable to the educational institutions established and administered by minority, whether based on religion or language. Thus, in view of the aforesaid statutory provisions, more particularly, Section 40A of the aforesaid Act, such minority institution cannot be compelled to absorb the surplus teaching/non-teaching staff, declared surplus from other minority institutions. Nothing can be done indirectly, which cannot be done directly.

7.7. In the case of *Brahmo Samaj Education Society and Others Vs. State of West Bengal and Others*, in paras 6 to 8 the Hon''ble Supreme Court has observed and held as under:--

6. The question now before us is to decide whether the appointment of teachers in an aided institution by the College Service Commission by restricting the petitioner's right to appointment is a reasonable restriction in the interest of general public or not. The petitioner has a right to establish and administer educational institution. Merely because the petitioners are receiving aid, their autonomy of administration cannot be totally restricted and institutions cannot be treated as a Government owned one. Of course the State can impose such conditions as are necessary for the proper maintenance of standards of education and to check maladministration. It is stated in *TMA Pai* that:

While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State. The merit may be determined either through a common entrance test conducted by the University or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions the method to be followed is for the University or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the University to provide that consideration should be shown to the weaker sections of the society." Once aid is granted to a private professional educational institution, the Government or the State agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution. The State, which gives aid to an educational institution, can impose such conditions as are necessary for the proper maintenance of the high standards of education as the financial burden is shared by the State. The State would also be under an obligation to protect the interest of the teaching and non-teaching staff. In many States, there are various statutory provisions to regulate the functioning of such educational institutions where the States give, as a grant or aid, a substantial proportion of the revenue

expenditure including salary, pay and allowances of teaching and non-teaching staff. It would be its responsibility to ensure that the teachers working in those institutions are governed by proper service conditions. The State, in the case of such aided institutions, has ample power to regulate the method of selection and appointment of teachers after prescribing requisite qualifications for the same. Ever since, in *Re: In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, this Court has upheld, in the case of aided institutions, those regulations that served the interests of students and teachers. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institutions. In other words, rules and regulations that promote good administration and prevent maladministration can be formulated so as to promote the efficiency of teachers, discipline and fairness in administration and to preserve harmony among affiliated institutions. At the same time it has to be ensured that even an aided institution does not become a Government owned and controlled institution. Normally, the aid that is granted is relatable to the pay and allowances of the teaching staff. In addition, the management of the private aided institutions has to incur revenue and capital expenses. Such aided institutions cannot obtain that extent of autonomy in relation to management and administration as would be available to a private unaided institution, but at the same time, it cannot also be treated as an educational institution departmentally run by Government or as a wholly owned and controlled Government institution and interfere with constitution of the governing bodies or thrusting the staff without reference to management.

There are a large number of educational institutions, like schools and non-professional colleges which cannot operate without the support or aid from the State. Although these institutions may have been established by philanthropists or other public spirited persons, it becomes necessary, in order to provide inexpensive education to the students, to seek aid from the State. In such cases, as those of the professional aided institutions referred to hereinabove, the Government would be entitled to make regulations relating to the terms and conditions of employment of the teaching and non-teaching staff whenever the aid for the posts is given by the State as well as admission procedures. Such rules and regulations can also provide for the reasons and the manner in which a teacher or any other member of the staff can be removed. In other words, the autonomy of a private aided institution would be less than that of an unaided institution.

7. But that control cannot extend to the day-to-day administration of the institution. It is categorically stated in *T.M.A. Pai* (cited supra at page 551, paragraph 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for

teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) has laid down qualifications to a teaching post in a University by passing Regulations. As per this Regulations UGC conducts National Educational Testing (NET) for determining teaching eligibility of candidates. UGC has also authorized accredited States to conduct State Level Eligibility Test (SLET). Only a person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification of a teacher. Petitioner's right to administer includes the right to appoint teachers of its choice among the NET/SLET qualified candidates.

8. Argument on behalf of the State that the appointment through College Service Commission is to maintain the equal standard of education all throughout the State of West Bengal does not impress us. The equal standard of teachers are already maintained by the NET/SLET. Similarly, receiving aid from State coffers can also not be treated as a justification for imposition of any restrictions that cannot be imposed otherwise.

7.8. Considering the aforesaid decisions and law laid down by the Hon'ble Supreme Court, it is to be held that linguistic or the religious minority institutions have right guaranteed under Article 30(1) of the Constitution of India to establish and administer the minority institutions of their choice and they have right to choose their managing committee as well as they have right to choose its teachers, who possess the eligibility and qualification, as provided by the State Government and merely because such minorities institutions are aided minority institutions taking grant from the Government, their autonomy of administration cannot be totally restricted and/or the minority character of institutions does not cease to be so when grant in aid is received from the State. Thus, it is to be held that Clause 4(g) of the Resolution dated 21.5.1994 directing the linguistic or religious minority institutions to absorb teaching/non-teaching staff, declared surplus from other minority institutions and Clause 64.3 of the Grant in Aid Code providing that by not absorbing a surplus teaching/non-teaching staff, there would be grant cut are void being violative of rights guaranteed to such minority institutions guaranteed under Article 30(1) of the Constitution of India and it is to be held that Clause 64.3 of the Grant in Aid Code would not be applicable to the linguistic or religious minority institutions.

8.0. There is another reason to struck down Clause 4(g) of the Government Resolution dated 21.5.1994 on the ground that infringes fundamental rights of such minority guaranteed under Article 30(1) of the Constitution of India. It is to be noted that Clause 4(g) of the Government Resolution dated 21.5.1994 directs linguistic or religious minorities to absorb teaching or non-teaching staff declared surplus from any linguistic or religious minority institutions and it does not provide that a teaching or non-teaching staff declared surplus from same/similar linguistic/religious minority institutions is to be absorbed. As per example if the institution is a linguistic minority institutions of Marathi or Sindhi or Urdu as the case may be and still under the existing regulation the Sindhi or Urdu or Marathi

linguistic institutions have to absorb teaching or non-teaching staff declared surplus from other linguistic or religious minority institutions. Similarly, a religious minority institutions established by a particular minority community will have to absorb a surplus teaching/non-teaching staff declared surplus from other religious minority institution. As observed by the Hon''ble Supreme Court in the case of Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others, every linguistic minority institution has constitutional right to conserve its own socio economic, culture, character. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers without really being impressed by the fact of their religion and community. It is further observed that minority has inbuilt right to appoint a person, which in its opinion are better culturally and linguistically compatible to the institution. It is, therefore, held that thus, they can choose their managing committee as well as they have a right to choose its teachers and the same would entail the right to administer effectively and to manage and conduct the affairs of the institutions. It is further observed and held by the Hon''ble Supreme Court in the said decision that as such purpose of grant in aid cannot be construed so as to destroy, impair and even dilute the very character of linguistic/religious minority institutions. As observed, constitutional intend is to bring minority at par or qualify with majority as well as give them right to establish and administer and run minority education institutions.

8.1. Considering the above and the observations and law laid down by the Hon''ble Supreme Court in the aforesaid decisions to compel a particular linguistic or religious minority institutions to absorb teaching/non-teaching staff declared surplus from another/other linguistic or minority institutions would take away the right of a particular linguistic or minority institution to appoint teacher of their own choice and they would be violative of right guaranteed to such minority institutions guaranteed under Article 30(1) of the Constitution of India.

In view of the above and for the reasons stated above, all these appeals succeed and the impugned common judgment and order dated 9.10.2003 passed by the learned single Judge passed in Special Civil Application Nos. 12049 of 2001, 12004 of 2002, 12005 of 2002, 12007 to 12021 of 2002, 705 of 2002 and 6902 of 2002 is hereby quashed and set aside and it is held and declared that Clause 4(g) of the Government Resolution dated 21.5.1994 which provides directing the linguistic/minority institution to absorb the surplus teaching/non-teaching staff, declared surplus from other minority institutions is void and it violates the rights guaranteed to such linguistic or religious minority institutions guaranteed under Article 30(1) of the Constitution of India and consequently it is struck down. It is also held that Clause 64.3 of the Grant in Aid Code in so far as it provides that non absorption of any surplus teaching or non-teaching staff by the linguistic or religious minority institutions, declared surplus from other minority institutions, there shall be grant cut, shall not be applicable to such linguistic or religious minority institutions. However, it is clarified that present decision would be

applicable with respect to those institutions who are declared as linguistic or religious minority institutions and would not be applicable to any institutions whose status as linguistic or religious minority institution is under cloud and/or disputed. It is further observed that if any of the petitioner institutions are conferred with the status of the minority institutions either linguistic or religious and if there grant is cut due to non absorption of surplus teaching and/or non-teaching staff declared surplus from other minorities, the same shall be refunded to such institutions. With this, all these appeals are allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.