
(1982) 12 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 554 of 1980

Indulal Hiralal Shah and Others

APPELLANT

Vs

S.S. Salgaonkar and Others

RESPONDENT

Date of Decision : 24-12-1982

Acts Referred:

Constitution of India, 1950 — Article 29, 30(1)

Citation : AIR 1983 Bom 192

Hon'ble Judges : Pendse, J

Bench : Single Bench

Advocate : Porus Metha and F.H.J. Talyakhan, for the Appellant; L.C. Chaugale and P.D. Kamerkar, for the Respondent

Judgement

1. An interesting question to whether the Educational Institution run by the petitioner is an Institution run by minority community and, if so, whether the provisions of Rule 77.3 (3) (vii) of the Secondary School Code violate fundamental right guaranteed under Article 30(1) of the Constitution of India, falls for determination in this petitioner.

2. The petitioner No. 5 Prabhubhai Bhogilal Upadhyaya conducted an educational institution at Khar in Bombay Known as "Adarsh Bal Mandir". The institution was set up in the year 1938 by opinion a primary school and in June, 1963, High School was stated. The institution was conducted on the Gandhian principles of truth and non-violence and with a view to inculcate in the students Gandhian ideals and Gandhian view of life. The petitioner No. 5 executed a Deed of Declaration of Trust dated July 12, 1962 and created a Trust in respect of the educational institution and appointed and petitioner as the trustees. The Trust was registered under the Bombay Public Trust Act as a Public Trust. In the school run by the Trust, the students are imparted secondary education and are prepared for the S. S. C. Examination. Along with the general curriculum, the pubic are also taught to clean the premises, the class rooms, the sanitary blocks, etc., in order to inculcate in them the spirit of self-help and social service as

taught by Mahatma Gandhi. The students are also required to undertake training in mass spinning and the Uniform prescribed is of Khadi both for the students as well as the teachers. The petitioner No. 5 and the remaining Trustees are Gujarati speaking and 90% students come from Gujarati speaking families and have Gujarati as their mother tongue,. About 80% of the teacher and 50% of the members of the staff are also Gujarati. The petitioner, therefore, claim that the school is an educational institution established and administrated by a linguistic minority in the State of Maharashtra and are entitled to exercise rights conferred by Article 30(1) of the Constitution of India.

3. The respondents Nos. 5 to 9 were appointed as teacher sin the school between the years 1970 and 1974,. The letters of appointment stipulate wearing of Kahdi as a condition and respondents Nos. 5 to 9 accepted the said condition and were wearing clothes made of Khadi from the date of the their appointments. Some time in July 1978, it was observed by the school authorities that respondents Nos. 5 to 9 had not been wearing Khadi dress in school and thereupon they were called upon to give explanation for the their failure. It appears that thereafter the respondents Nos. 5 to 9 restarted wearing clothes made of Khadi but within a couple of days, they again ceased to wear Khadi during the school house. According to the school authorities, the conduct of the teachers was in breach of the conditions on which their appointments were made and amounted to gross insubordination and, therefore, the respondents Nos. 5 to 9 were served with show cause notices. The respondents Nos. 5 to 9 claimed that it was not desirable that the wearing of Khadi should be made compulsory and pleaded that they should be permitted to attend duty in any dress they like.

4. The school authorities thereupon commenced an enquiry as contemplated by Rule 77.3 of the Secondary Schools Code which, inter alia, provided for an enquiry if the services of a permanent employee are to be terminated by the management. The rule enable the management to commence the enquiry if an employee is guilty of insubordination, neglect of duties or misconduct (in each case of a serious nature). It is required to be stated at this juncture that the school run by the petitioner receives grant from the Government of Maharashtra and the conditions of service of teacher are regulated by the provisions of the Secondary Schools Code. The Committee appointed for holding an enquiry came to the conclusion that the respondents Nos. 5 to 9 were guilty of insubordination and their services were liable to termination. The respondents Nos. 5 to 9 thereupon preferred an appeal before respondent number 1 -- the Deputy Direction of Education -- in accordance with Rule 77.3 (3) (vii) of the Secondary School Code. The respondent No. 1, by letter dated November 7, 1979 informed the School that the findings of the Enquiry Committee are set aside as the act of not wearing Khadi uniform cannot be held to be an act of insubtodination, neglect of duty of misconduct within the meaning of Rule 77.3 of the Secondary School Code. The petitioners preferred an appeal against the order of respondent No. 1 to the Director of Education but the same was subsequently withdrawn and thereafter the present petitioner was filed in this Court on April 23, 1980.

5. The petitioners' claim that they belong to the minority community and have established and are administering an educational institution of their choice and it is not permissible for respondent No. 1 to interfere in the order passed by the educational institution as such interference by an outside agency clearly violates the fundamental right guaranteed under Article 30(1) of the Constitution of India. The petitioner further claim that Rule 77.3 (3) (vii) of the Secondary School Code with enable the aggrieved party to file appeal before respondent No. 1 is violative of petitioners' fundamental right under Article 30(1) of the Constitution of India, as it unreasonably interferes with the petitioner's right of administration in regard to the internal affairs of the School. It is further claimed that the impugned rule and Rule 77.10 of the Secondary School Code gives an unqualified mandate that no teacher shall be removed except with the prior approval of an outside authority. The impugned rules, claimed the petitioner, enable the appellant authority to substitute its own view for that the management even in case in which two views are reasonably possible. The petitioners, therefore, claim that the order passed by respondent No. 1 should be quashed.

6. In answer to the petition, on behalf of the respondent No. 1, Shri Rajanikant Prabhakar Karnik, Deputy Director of Education, has filed a return worn on September 1, 1980 and has claimed that the petitioner have not established how Gujarati speaking people in the State of Maharashtra constitute the linguistic minority. The respondent claimed that the petitioners are receiving grant-in-aid from the Government and it is open for the Government to control and regulated the administration of the School and establish the conditions of service of the teachers and the employees by framing regulations under the Secondary Schools Code. The respondent No. 1 further claims that the rule which provides for an appeal before the Deputy Director of Education cannot be claimed to be violative of Article 30(1) of the Constitution of India. The respondent No. 5 has filed an affidavit dated October 2, 1980 on behalf of himself and respondents numbers 6 to 9 in answer to the petitioner and it is also not established for the students of Gujarati speaking families. The respondents Nos. 5 to 9 deny that the school is established or administrated by linguistic minority in the State of Maharashtra, and provisions of appeal violates the fundamental right of the petitioners. The petitioners have filed affidavit-in-rejoinder sworn on November 14, 1980 and the supplementary affidavit dated November 26, 1982 reiterating the contentions urged in the petition and relying on the Census of India, 1971 in regard to the population Court of Gujarati in the State of Maharashtra. In view of the rival claims two questions squarely fall for determination and those are (1) whether the educational institution run by the petitioners can be termed as an institution run by the minority based on language, and (2) whether R. 77.3 (3) (vii) violates the fundamental right guaranteed under Article 30(1) of the Constitution of India.

7. Shri Mehta, learned counsel appearing in support of the petition, relied upon the contents of paragraph 2 of the petition to claim that the school is run by minority based on language. The circumstance highlighted are that the school

was established by petitioner No. 5 who is Gujarati and the Trustees appointed under the deed are all Gujarati's and are entitled to hold office during their lifetime. It was also claimed that the medium of training imparted in the School is Gujarati and 90% of the student and 80% of the teachers come from Gujarati speaking families having Gujarati as their mother-tongue. The averments made in para 2 of the petition are not denied by the respondents save and except stating that it is not admitted. Shri Mehta produced the original Trust Deed which is written in Gujarati and the English translation of the same on being called upon to do so by Shri Kamerkar, learned counsel appearing for respondents Nos. 5 to 9 at the hearing. The perusal of the Trust Deed clearly indicates that the petitioners were appointed as the Trustees and petitioner No. 5 was the Settlor of the Trust. The Trustees were appointed as lifetime Trustees and the deed provided that if any vacancy is caused, the same shall be filled in by the other Trustees nominating a fresh Trustee. In absence of any specific denial in the return filed by the respondent, there is no reason to dispute the statements made by the petitioners on oath in paragraph 2 of the petition. Shri Metha submitted that the denial by the respondent that the Gujarati speaking people in Maharashtra do not constitute a linguistic minority is without any basis and in support of the claim of the petitioners relied upon the extract from the Census of India, 1971, Series II Maharashtra, Part II-C (ii), The Social and Cultural Tables set out in the Census of India 1971 show that the total population of Maharashtra is 50,412,235 and the population of Gujarati persons is shown as 1,388,773. The Gujaratis of the total population of the Maharashtra and, therefore, says of Shri Metha, they constitute a linguistic minority.

8. Shri Metha relied upon the decision of the Supreme Court in the case of D.A.V. College, Vs. State of Punjab and Others, to counter the submission of the respondents that the linguistic minority should be minority in relation to entire population of India. The reliance on the decision of the Supreme Court is appropriate and the observations of Mr. Justice Jaganmohan Reddy who spoke for the Bench in para 9 of the judgment are required to be quoted:--

"Though there was a faint attempt to canvass the position that religious or linguistic minorities should be minorities in relation to the entire population of the country, in our view they are to be determined only in relation to the particular legislative which is sought to be impugned, namely that if it is the State legislature these minorities have to be determined in relation to the population of the State".

In answer to this submission, Shri Chaugale and Shri Kamerkar, learned counsel appearing on behalf of the respondents, submitted that the mere fact that the educational institution was established by a Gujarati gentleman is not conclusive to hold that the institution is established and administered by the linguistic minority. It was urged that the Deed of Declaration nowhere provides that the intention of setting up of the institution was to conserve or to promote the Gujarati language, or the institution was established or administered for the

benefit of the minority. It was urged that Article 30 of the Constitution of India must be read in conjunction with Art. 29 of the Constitution of India and unless the petitioner establish that the educational institution was set up and administered for conserving the Gujarati language, it is not permissible to claim that the school is entitled to protection of Art. 30(1) of the Constitution of India. It was also urged that the averments set out in the Trust Deed are not for conserving the language of the minority and the appointment of the Trustees is not restricted only to the person speaking Gujarati language. It is necessary first to consider the submission as to whether it is necessary that the institution must be established and administered to conserve or promote the language of the minority community. The contention of the respondents is that Article 29(1) of the Constitution of India provided that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same and this Article must be read to appreciate the exact connotation of the expression "minority educational institution", referred to in Article 30(1) of the Constitution of India. In other words, the submission is that to claim protection of Article 30(1) of the Constitution of India, it must be established that the educational institution is set up and administered to conserve the language, script or culture. It is not possible to accept this submission. An identical contention was urged before the Supreme Court in the case of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, and Chief Justice Ray in his judgment in paras. 9 and 10 dealt with the submission and turned it down. It would be useful to quote paras 9 and 10 of the judgment of Chief Justice Ray:--

"9. Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Art. 25 and 26 and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality. 10. In *Respondent The Kerala Education Bill, 1957* 1959 SCR 995:(AIR 1958 SC 956) this Court said that Article 30(1) covers institution imparting general secular education. The object of Article 30 is to enable children of minorities to go out in the world fully equipped,. All persons whether in the majority or in the minority have the right under Article 25 freely to profess, practise and propagate religion. Any section of citizens which included the majority as well as the minority shall have under Article 29 the right to conserve their distinct language, script or culture. That is why the minorities are given a specific rights in respect of educational institution under Article 30. Article 30(1) gives the right to linguistic minorities as well where no question of religion arises. It is, therefore, not at all possible to excluded secular education from Art. 30. Since the *Kerala Education Bill case* (supra) in 1959 this Court has consistently held that general secular education is covered by Art. 30".

The Supreme Court has clearly held that the two Article 29 and 30 of the

Constitution of India create two separate right and the width of Art. 30 of the Constitution of India could not be cut down by introducing any considering on which Art. 29(1) is based. In view of that decision of the Supreme Court the submission urged on behalf of the respondent that the advantage of Article 30 of the Constitution of India is available provided the object of the educational institution is to conserve or promote the language or minority cannot be accepted.

9. The respondents then urged that the educational institution run by the the petitioners is neither established not administered for the benefit of the minority community. In support of this submission, reliance was placed on the contends of Deed of Declaration of Trust executed by petitioner No. 5 July 12, 1962. Paragraph 3 of this Deed set out the aims and object of the Institution in the following terms:--

(a) To run and develop the said Institution by name Adarsh Bal Mandir in our country with the aims and objects of imparting all round education based on the principles of Truth and Non-violence.

(b) To attempt moulding of the Society by such education that may be founded on the principles of truth and non-violence and that may conform to the culture and genius of our nation;

(c) To carry on such acts which may appear proper to the Trustees having regard to the above aims of the Institution. The trustees will not be able to make any distinction of caste, community or creed in the matter of the achieving the above aims and the activities of the Trust will be confined to India.

It was urged that the aims and objects of the institution indicate that the School was to be run on the principles of truth and non-violence and the trustees were not to make any distinction of caste, community or creed. it was further urged that the object of the Trust was to mould the Society to conform to the culture and genius of the Nation. It was submitted that reading these aims and object set out in the Deed of Trust it is obvious that the creator of the Trust had a wide vision and the institution was not established only to cater the interest of the Gujarati speaking community. It was further submitted that the petition does not set out any averment that the institution was established for the benefit of the minority community.

10. Shri Chaugale relied upon the decision of the Supreme Court in the case of S. Azeez Basha and Another Vs. Union of India (UOI), to submit that the words "established and administered" in Article 30(1) of the Constitution of India must be read in conjunction i.e. Article 30(1) of the Constitution of India postulates that the religious community will have the right to establish and administer educational institution of their choice, meaning thereby, that where a religious minority establishes an educational institution, it will have the right to administer it, but not otherwise. Reliance was also placed on the observation of the Supreme Court in the case of State of Kerala, etc. Vs. Very Rev. Mother

Provincial, etc., and especially on the observations of Chief Justice Hidayatuallah in paragraph 8 of the judgment to the following effect.

"8. Article 30(1) has been construed before by this Court. Without referring to those cause it is sufficient to say that the clause contemplate two right which are separated in point of the time. The first right is the initial right to establish institution of the minority's choice. Establishment here means the bring into being of an institution and it must be by a minority community. It matter not if a single philanthropic individual with is won means,. found the institution or the community at large contributes the funds. The position in law is the same did not intention in either case must to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community other from other minority communities or even from the majority communities or even form the majority community can taken advantage of the institution. Such other communities bring in income and they do not have to be turned away to enjoy the protection".

As regards the decision of the Supreme Court in Aligarh University case, it has no application because the University there was established not by a minority community but by a statutory provision. The provisions of Chief Justice Hidayatuallah undoubtedly lay down that the intention of the person who established an educational institution must be ascertained to determine whether it was for the benefit of the minority community.

11. It would be convenient at this stage also to make a reference to the decision of the Supreme Court in the case of the Kerala Education Bill, 1957 reported in AIR 1958 SC 956. In paragraph 22 of the judgment, Chief Justice Das considered the submission urged on behalf of the State of Kerala that three conditions must be fulfilled before the protection and privileges of Art. 30(1) is claimed, namely, (1) there must be a minority community (2) one or more of the members of that community should after the commencement of the Constitution, seek to exercise the right to established an educational institution of his or their choice, and (3) the educational institutional must be established for the members of his or their own community. The submission as regards the third part was turned down and it would be convenient to set out the relevant portion:

"As to third condition mentioned above the argument carried to its logical conclusion comes to this that if a single member of any other community is admitted into a school established for the members of a particular minority community, then the educational institution cases to be an educational institution established by the particular minority community. The argument is sought to be reinforce by a reference to Art. 29(2). It is said that an educational institution established by a minority community which does not seek any aid from the funds of the State need not admit a single scholar belonging to a community other than that for whose benefit it was established but that as soon an educational institution seeks and gets aid form the State coffers Article 29(2) will preclude it form denying admission to members of the other communities on grounds only

of religion, race, caste, language or any of them and consequently it will cease to be an educational institution of the choice of the minority community which established it. This argument does not appear to us to be warranted by the language of the article itself. There is no such limitation in Art. 30(1) and to accept this limitation will necessarily involve the addition of the words "for their own community" in the article which is ordinarily not permissible according to well established rules of interpretation. Nor is it reasonable to assume that the purpose of Art. 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which received aid on account of its being a minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to any aid. The real import of Art. 29(2) and Art. 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst community. In our opinion, it is not possible to read this condition into Art. 30(1) of the Constitution".

From the judgment of the Supreme Court, it is obvious that the submission urged on behalf of the respondents that the advantage of Art. 30(1) of the Constitution of India is not available to the petitioners because the educational institution was not established and administered for the benefit of the minority community and the aims and objects of creation of the Trust was not restricted to the members of the minority community cannot be entertained. A faint submission was advanced that the Deed of Trust does not prohibit members of the other communities from being the Trustees and, therefore, it should be held that the school was not established or administered by the minority community. It is not possible to accede to this submission. The first five trustees appointed under the deed are all Gujarati speaking persons and were to hold the office for their lifetime and the Trust Deed itself provides that in case a vacancy occurs, it can be filled by the remaining trustees by nomination of a person of their choice. In my judgment, reading the Trust deed as a whole and taking into consideration the various circumstances like that all the trustees are Gujarati speaking, the medium of teaching is Gujarati and 80% of teachers are Gujarati speaking, it is to be concluded that educational institution of the petitioners is of a minority community and the petitioners are entitled to the protection of Art, 30(1) of the Constitution of India.

12. Shri Mehta tried to fortify his submission with reference to inspection report prepared by the educational Inspector in December 1963 and the rules framed by the School in accordance with the provisions of Clause 7 of the Trust Deed but I need not consider the submission as neither the report, nor the rules were

produced before me by the petitioners and I declined to look into the same unless the documents were properly produced by giving opportunity to the respondents to inspect and reply. In my judgment, the material on record leads to an inescapable conclusion that the petitioners are running an institution which is established and administered by a minority community.

13. Then the question which arises is whether the provisions of R. 77.3 (3) (vii) of the Secondary Schools Code violate the fundamental rights guaranteed under Art. 30(1) of the Constitution of India and the question poses little difficulty in view of the long line of decisions of the Supreme Court. It would suffice if the reference is made to the latest decision of the Supreme Court in the case of the All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, . justice S. Murtaza Fazal Ali, after an exhaustive analysis of the cases decided by the Supreme Court and the views taken during the last two decades on various aspects shades and colours, built-in-safeguards, guarantees, scope and ambit of the fundamental right enshrined in Art. 30(1) of the Constitution propositions that emerged in the following terms:

"1. Article 30(1) enshrines a fundamental right of the minority institutions to manage and administer their educational institutions which is completely in consonance with the secular nature of democracy and the Directives in the Constitution itself.

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

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

4. At the same time, the State or any University authority cannot under the cover or garb of adopting regulatory measures tend to destroy the administrative autonomy of the institution or start interfering willy nilly with the core of the management of the institution so as to render the right of the administration of the management of the institution concerned nugatory or illusory. Such a blatant interference is violative of Art. 30(1) and would be wholly inapplicable to the institution concerned.

5. Article 30 by its very nature implies that were an affiliation is asked for, the University concerned cannot refuse the same without sufficient reason or try to impose such conditions as would completely destroy the autonomous administration of the educational institution

6. The introduction of an outside authority however high it may be either directly

or through its nominees in the governing body or the managing committee of the minority institution to conduct the affairs of the institution would be completely destructive of Art. 30(1) and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Art. 30. Perhaps there may not be any serious objection to the introduction of high authorities like Vice-Chancellor or his nominee in the administration particularly that part of it which deals with the conditions of service of the teachers yet such authorities should not be thrust so as to have a controlling voice in the matter and thus overshadow the powers of the managing committee. Where educational institutions have set up a particular governing body or the managing committee in which all the powers vests, such powers should not be curbed or taken away unless the Government is satisfied that these powers are grossly abused and if allowed to continue may reduce the efficacy of the usefulness of the institution.

It is, therefore, open to the Government or the University to frame rules and regulations governing the conditions of service of teachers in order to secure their tenure of service and to appoint a high authority armed with sufficient guidance to see that the said rules are not violated or the members of the staff are not arbitrarily treated or innocently victimised. In such a case the purpose is not to interfere with the internal administration or autonomy of the institution but it is merely to improve the excellence and efficiency of the education because a really good education can be received only if the tone and temper of the teachers are so framed as to make them teach the students with devotion and dedication and put them above all controversy. But while setting up such an authority care must be taken to see that the said authority is not given blanket and uncanalised and arbitrary powers so as to act at their own sweet will ignoring the very spirit and objective of the institution. It would be better if the authority concerned associates the members of the governing body or its nominee in its deliberation so as to instil confidence in the founders of the institution or the committees constituted by them.

7. Where a minority institution is affiliated to a University the fact that it is enjoined to adopt the course of study or the syllabi or the nature of books prescribed and the holding of examination to test the ability of the students of the institution concerned does not violate the freedom contained in Art. 30 of the Constitution.

8. While there could be no objection in setting up a high authority to supervise the teaching staff so as to keep a strict vigilance on their work and to ensure the security of tenure for them, but the authority concerned must be provided with proper guidelines under the restricted field which they managing committee, the Head of the institution or the senior members of the managing committee must be associated and they should be allowed to have a positive say in the matter. In some cases the outside authorities enjoy absolute powers in taking decisions regarding the minority institution without hearing them and these orders are

binding on the institution. Such a course of action is not constitutionally permissible so far as minority institution is concerned because it directly interferes with the administrative autonomy of the institution. A provision for an appeal or revision against the order of the authority by the aggrieved member of the staff along or the setting up of an Arbitration Tribunal is also not permissible because Ray, C. J. pointed out in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, that such a course of action introduces an arena of litigation and would involve the institution in unending litigation, thus impairing educational efficiency of the institution and create a new field for the teachers and thus draw them out of purely educational atmosphere of the minority institutions for which they had been established. In other words, nothing should be done which would seek to run counter to the intentions of the founders of such institutions".

Chief justice Chandrachud in para 16 of his judgment considered the challenge to the provisions of S. 4 of the Andhra Pradesh Recognised private Educational Institutions Control Act which provided for an appeal to an authority or Officer prescribed by the Act by any teacher who is dismissed, removed or reduce in rank or whose conditions of service are altered or interpreted to his disadvantage. The learned Chief Justice held that the provision was too broadly worded to be sustained on the touchstone of the right conferred upon the minorities by Art. 30(1). It was observed:--

"In the first place, the section confers upon the Government the power to provide by rules that an appeal may lie to such authority or officer as it designates, regardless of the standing or status of that authority or officer. Secondly, the appeal is evidently provided for on all questions of fact and law, thereby throwing open the order passed by the management to the unguided scrutiny and unlimited review of the appellate authority. it would be doing no violence to the language of the section to interpret it to mean that, in the exercise of the appellate power, the prescribed authority or officer can substitute his own view for that of the management, even in cases in which two views are reasonably possible".

The provisions of R. 77.3 (3) (vii) of the Secondary Schools Code are almost on par with the provisions of S. 4 of the Andhra Pradesh Recognised Private Educational Institutions Control Act. The rule under challenge enables either party i. e. the aggrieved teacher or the management to prefer an appeal to the Deputy Director and sub-rule (viii) enables the Deputy Director to decide the appeal both on facts and law and substitute its own decision for that taken by the management of the minority institution. The challenge of the petitioners to these sub-rules on the ground that it violates the protection guaranteed under Art. 30(1) of the Constitution of India deserves to be upheld in view of the dictum laid down by the Supreme Court.

14. The Supreme Court considered the power of appeal conferred on the Vice-Chancellor under Ordinance 33 (4) framed u/s 19 of the Kerala University Act in

the case of Lily Kurian Vs. Sr. Lewina and Others, . The Supreme Court held that the power of appeal is not only a grave encroachment on the institution's right to enforce and ensure discipline in its administrative affairs but it is uncanalised and unguided in the sense that no restrictions are placed on the exercise of the power. It was observed that such a blanket powers directly interferes with the disciplinary control of the managing body of a minority educational institution over its teachers and the majority decision in the Ahmedabad St. Xaviers College Society case (supra) squarely applies. In view of the dictum laid down by the Supreme Court, it will have to be held that the blanket powers conferred under R. 77.3 (3) (vii) of the Secondary Schools Code are violative of Art. 30(1) of the Constitution of India inasmuch as it encroaches upon a minority institution's right to administer its affairs and the petitioners complaint in that regard deserves to be upheld.

15. Shri Chaugale learned counsel appearing on behalf of respondent No. 1 submitted that the result would be that the administrator of the minority institution would be able to hire and fire any of the teachers according to his will and in spite of receipt of grant from the Government, the Government would not be able to regulate the administration of the school with regard to the service condition of the teachers. The right of the State Government to regulate the administration in respect of the service conditions of the employees and teachers is not taken away but such regulation would not enable the Government to provide for an outside agency or an authority like the Deputy Director of Education to entertain an appeal against the decision taken by the Management after holding an enquiry as contemplated under R. 77.3 of the Secondary Schools Code. Shri Chaugale sounded an apprehension that the Enquiry Committee consists of the Principal, the representative of the Management and the representative of the teachers and it is not unlikely that in almost all the cases, the view of the Management would be supported by the Principal and the teacher is left without any alternative. It is undoubtedly true that the apprehension of Shri Chaugale is not without any basis but it is for the Government to decide how best to protect the interest of the employee from the threat of wrongful dismissal, but this consideration cannot weigh while considering whether the provisions of R. 77.3 (3) (vii) and (viii) of the Secondary Schools Code are violative of fundamental right guaranteed under Art. 30(1) of the Constitution of India to a minority institution. In my judgment, the petitioners are entitled to the reliefs sought in the petition.

16. Accordingly, the petition succeeds and the rule is made absolute in terms of prayer (a) of the petition. In the circumstances of the case, there will be no order as to costs.

17. Petition allowed