

(1979) 06 CAL CK 0009
In the Calcutta High Court
Case No : Civil Rule No. 2575 (W) of 1978

Pijus Das Gupta and Ors

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-06-1979

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 31, 31A

Citation : 84 CWN 1

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : Bholanath Sen, Bhagabati Prasad Banerji. and Tapan Kumar Pal, for the Appellant; Somnath Chatterjee and Nigam Kumar Chakrabarti for Respondents Nos. 1 and 5, Naranarayan Gooptu, Suprakash Banerji and Indrajit Sen for Respondent Nos. 2, 3, 4 and 6, Nirmalendu Roy and Susanta Kumar Kundu for Respondent No. 7, Tapash Chandra Roy and S.K. Panja for Respondent No. 8., for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this application under Article 226 of the Constitution the subject matter of challenge is the Netaji Nagar College (Taking over of Management) Act, 1978 and certain consequential actions in respect thereof. The petitioners are six in number. The first petitioner claims to be the Principal, Joint Secretary of First Governing Body (Provisional), Secretary (of injuncted Governing Body), President or Staff Provident Fund Committee of the said College, the second petitioner is the former Vice-Chancellor Jadavpur University, President (of injuncted Governing Body), Netaji Nagar College, the third petitioner is the Professor of Sociology, Calcutta University and a nominee of the Calcutta University on the (sic) Governing Body, the fourth and fifth petitioners are the donors, Swadesh Datta and Sudhin Sarkar and the Sixth petitioner is one Proboan Chandra Gupta, who claims to be the President of the Netaji Nagar College Guardians, and Benefactors' Association. As I mentioned before, the subject matter of challenge is the Act referred to hereinbefore and certain consequential actions taken pursuant thereto. Before I deal with this challenge, it

is necessary to refer, in brief, to certain facts. The petitioners claim that in May, 1967 a provisional Governing Body of the College was set up. In September 1967, the University, according to the petitioners, granted affiliation in B.Com Pass Course (Evening Class) and Pre-University Course (Evening Class) and the petitioner no. 1 was appointed, so he claims, as the Professor-in-Charge on the 2nd September, 1967. It is also the case of the petitioners that the University Inspection Team headed by Dr. P.K. Bose, the then Pro-Vice-Chancellor (Academic affairs) recommended for a duly qualified Principal and for his appointment as ex-officio Joint Secretary to the Government Body. The petitioner no. 1 was appointed the Principal and Ex-officio Secretary, in July, 1968. The University, according to the petitioners, on the 9th September, 1968 approved the appointment of the petitioner no. 1 as Principal and other teachers. The other facts are not very material for considering the question before me. I may, however, refer to certain facts after June, 1969 when certain disputes arose between the petitioners and the respondent no. 5, who is now a member of the West Bengal Cabinet asserting that there was a Trust Deed of which he was a settlor and himself and four persons including the petitioner no. 1 were trustees and the same was valid and reconstitution of the provisional Government Body, as required under Clause 93 of the First Statute was not applicable. There were various correspondence, to which again it is not necessary for me to refer. It appears that the disputes continued and there were certain incidents to which the petitioners have referred to in the petition and there was an allegation that the respondent no. 5 did something about keeping the cheque books with which, as I said, I am not concerned. On the 17th April, 1975, an application was moved under Article 226 of the Constitution in this Court and Mr. Justice Janah made an order whereby he vacated the interim order which was previously granted by him at the time of issue of the Rule Nisi in that case. The matter went up before the Division Bench in appeal. As one of the contentions urged in this case among others on the order passed by this Court, was on the effect of the Act, it would be necessary to refer to that order in certain extent. Mr. Justice M. Dutt delivering the decision of the Division Bench in the appeal from Original Order No. 536 of 1975 on the 11th June, 1975 after setting out the history of that case stated that disputes between the parties related to the constitution, and reconstitution of the Governing Body of the College known as Netaji Nagar College. His Lordship had set out the history and referred to the assertion of a trust deed and thereafter observed that the appellant, who was respondent no. 5 as well as the petitioner no. 1 had asserted that the College was being managed by a Trust created by the Trust Deed and in that view Clause 100(1) of the First Statute or the University would be applicable. The University of Calcutta on the other hand had insisted that the Trust was created after the commencement of the Statute and the Governing Body should be re-constituted in accordance with Clause 93(1) of the said Statute. His Lordship had set out the assertions of the claim as and sub-missions made on behalf of the parties and thereafter the Division Bench ordered, inter alia, as follows:

In our view, in the best interest of the college, pending the present litigation this affair of the college should be administered by an administrator. By consent of parties, we appoint Mr. P.N. Dey, Bar-at-Law, as the Administrator of the College. Mr. Dey will take charge of the College by Monday next. He will get a remuneration of Rs. 500/- per month. Let an authenticated copy of this order be served upon Mr. Dey by the office by Friday next at the latest.

The hearing of the Rule is ex-pediated and if it is not otherwise inconvenient, the learned trial Judge will dispose of the Rule within two months from date.

The appeal is disposed of as above but in view of the facts and circumstances of the case, there will be no order for costs.

It is made clear that nothing herein said or found will prejudice the rights and contentions of either party at the hearing of the Rule.

According to the petitioners, between 1974 and 1977 the College had made certain improvements and the petitioners had referred to that and the learned Advocate appearing on behalf of the petitioners had referred to me, in detail, which again is not necessary for me to refer for the purpose of the present application. Again, according to the petitioners, the respondent no. 5, who had by July, 1977 become the Minister in the present Government attacked the Principal and demanded that unless he was restored to his former position the College would be reduced to ruins. The Netaji Nagar College (Taking Over Management) Ordinance was passed on the 14th February, 1978. The Assembly Session was due to commence on and from 15th February, 1978. On the 15th February, 1978 the Govt. Administrator was appointed, who took possession on the same day and thereafter the Act was passed which is the subject matter of challenge in the application. The other facts are not relevant for my present purpose.

2. Before I refer to the challenge, it is necessary to refer to certain provisions of the Act. The preamble to the said Act which received the assent of the President and was published in the Calcutta Gazette on the 28th March, 1978 stated:

An Act to make better provisions for the control, management and maintenance of the institution known as the Netaji Nagar College, Netaji Nagar, Regent Park, Calcutta-40 with a view to promoting education and to take over that purpose for a limited period the management of all the properties belonging to the said institution or held for the benefit or use thereof.

3. It further provided :

Whereas it is expedient in the public interest to make better provisions for the control, Management and maintenance of the institution known as the Netaji Nagar College, Netaji Nagar, Regent Park, Calcutta-40 with a view to promoting education and to take over for that purpose for a limited period the management of all the properties belonging to the said institution or held for the benefit or use thereof.

The Act was being passed. Sub-section 2(b) of the said Act provided as follows:

2(b) "The institution" means the Netaji Nagar College, Netaji Nagar, Regent Park, Calcutta-40, together with the lands, buildings, erections and fixtures constituting the same and includes all furniture, equipments, stores, moneys and other assets, and also all lecture rooms, laboratories and libraries held or used in connection with, or as accessories to, or as adjuncts of, the said Netaji Nagar College.

Sections 4 and 5 were to the following effect:

4. (1) With effect from the appointed day the Administrator or the Committee appointed u/s 6 shall have all the powers management and control in relation to the institution together with-

(a) ail lands thereof and appurtenant thereto and all buildings, erections and fixtures on such lands.

(b) all furniture, equipments, stores, moneys and other assets of the institution.

(2) (i) All persons exercising any power of management in relation to the institution by the terms of the constitution or by virtue of any judgment, decree or order of any court, in relation to the institution, immediately before the appointed day, shall be deemed to have vacated their offices and shall cease to exercise such power;

(ii) all such persons including the Receiver or the Administrator appointed by any court or any other person who has in his possession, custody or control any asset or assets of the institution shall forthwith deliver possession of such asset or assets to the Administrator or the Committee appointed u/s 6.

The institution shall remain under the management of the State Government for the period referred to in sub-section (2) of section 3 and shall be run for the purposes for which it was being run immediately before the appointed day and upon the expiry of the said period the management shall revert to the person or persons who were in charge of the management of the institution immediately before she appointed day.

4. Section 7 empowered the State Government to make rules regarding mode of transaction of business of the Committee and Section 8 provided for penalty for certain offences including withholding of documents from the Administrator and not complying with the provisions of the Act. Section 11 empowered the State Government to advance money and Section 12 provided for suspension of contracts. Section 14 provided the Act to have the overriding effect and Section 16 empowered the State Government to make rules. Section 17 repealed the Ordinance and validated the actions taken under the Ordinance.

5. This Act, as I have mentioned before, was challenged on the three main grounds. It was urged that the Act violated the provisions of Article 14 of the Constitution. It was, secondly contended that the Act made serious inroads into

the judicial powers which the legislature was not competent to make. It was, thirdly, submitted that the Act violated the provisions of Article 31 of the Constitution. It is, therefore, necessary to examine these contentions separately. But before I do so it would be material to refer to certain other Statutes to which my attention was drawn.

6. The Calcutta University First Ordinance, which was passed under the Calcutta University Act, 1966 provided for taking over of the management by the University by the provisions of Statute 63 and Statute 64. In this connection, my attention was also drawn to Statute 64 which empowered the University to take over the management if the Syndicate was satisfied that an institution's proper standards of teaching, training or actions were not being maintained or the affairs of the college or institution were not being properly managed and to the detriment of the college or institution. My attention was also drawn to Section 23 (3) of the Calcutta University Act, 1966. Learned Advocate for the petitioners also drew my attention to a provision of an Act which came into effect a day prior to the present Act, viz., West Bengal Act VII of 1978 which was the Calcutta University (Temporary Supersession) Act, 1978 whereby the Government superseded some of the organs of the University of Calcutta and provided for taking over of the management by the Government for certain purposes. It is also not necessary to refer in detail to the said provisions. As I mentioned Section 23(3) of the Calcutta University Act, 1966 provide that the Syndicate shall, on being satisfied as a result of enquiries initiated by it, or otherwise, that the affairs of any Affiliated, Constituent or professional College or Institution were being managed to the detriment of the College or Institution as an effective educational institution, have the power to dissolve the Governing Body of such college or Institution and pending the reconstitution of the Governing Body thereof in such manner as the Syndicate may prescribe, to appoint an Administrator or an adhoc Governing Body consisting of such members as it may deem fit. My attention was also drawn to certain provisions of the West Bengal College Teachers' Act, 1975 and reliance was placed on Sections 5, 9 and 12 of the said Act. The purpose for referring to these statutes on behalf of the petitioners was that the Government or the University and after the Calcutta University (Temporary Supersession) Act, 1978 the Government by exercising power over the University could take over the management on certain conditions which provided for certain safeguards of the management of a College or an Institution in the University was satisfied that the affairs of the College or the Institution were not being managed properly. Therefore, it was submitted that the impugned Act which was for adjusting the affairs of this college and which was for a single Institution violated the provisions of Article 14 of the Constitution. Learned Advocate for the petitioners drew my attention to the affidavit filed in this proceeding by Sri Sambhu Charan Ghosh who is the Minister-in-Charge of Higher Education in West Bengal where in answer to the rule nisi he has stated that the West Bengal College and University Teachers' Association had brought to his notice that there were serious irregularities in the

administration of Netaji Nagar College, Tolly-gunge, and that there was an enquiry made by the Calcutta University relating to the affairs of the said College. A letter dated 20th January 1978 was also written by the Deputy Secretary (Education) to the Vice Chancellor requesting him to submit the report. By the letter dated 20th January 1978 the Vice Chancellor of the Calcutta University had submitted a note relating to the affairs of the College. In the said note the Vice Chancellor had stated, inter alia, as follows:-

A Note on Netaji Nagar College.

The College was granted affiliation to a provisional Governing Body in 1967. The University authorities directed the College management on 19.2.75 to reconstitute the Governing Body of the College as per Statute 95 of the Calcutta University First Statutes, 1966. The College management filed a law suit in the Court. The Court appointed an administrator to run the College till the disposal of the Rule. The case is still pending and the Administrator is also functioning. Immediately after the appointment of the Administrator, the Principal of the College terminated the services of Sri Dilip Kumar Chakraborty, M.Sc., Lecturer in Mathematics, with effect from 1.10.75. Sri. Chakraborty approached the University and the Vice-Chancellor directed the Principal of the College on 6.10.75 to allow Sri Chakraborty to continue in service after 30th September, 1975. -The Principal did not comply with this directive. Thereafter, the Syndicate gave another directive to the Principal on 14.11.76 to implement forthwith the directive on the Vice-Chancellor. The Principal also did not comply with this directive.

The present Vice-Chancellor also directed the Principal of the College to pay all the arrears dues of Sri Chakraborty and also to allow him to join his duties. The Principal did not comply with this directive on the plea that the Administrator, being appointed by the Court, was not bound to listen to the instruction of the Vice-Chancellor or the Syndicate.

As desired by the Pro-Vice-Chancellor for Academic affairs, the Principal of the College was informed that annual inspection of the College would be held on 12.1.78. The Principal of the College, in his letter dated 10.1.78, requested the undersigned to defer the said inspection for the present as the law suit between the College and the University was still pending. So, the said inspection could not be held.

Recently, a representation from the teachers of the college has been received by the University. The representation contains irregular appointment of teachers, irregular promotion to teaching as well as non-teaching staff, irregular maintenance of P.F. account of the teaching and non-teaching staff of the College etc.

Sd/- S.K. Mukherjee Vice-Chancellor

7. The Education Minister further went on to observe, as an Education Minister of

the Government of West Bengal, that he was of the opinion, on consideration of the materials on record, that unless the management and control of the said College were taken over by the State Government for a specific period, the position of the College was not likely to improve. The situation, according to the Education Minister, came to such a pass that the management of the College was not in a position to discharge its duties properly. According to him, the impugned Act was passed and action was taken thereupon.

8. The case of the petitioners on Article 14 of the Constitution has been mainly mentioned in paragraphs 40 and 41 of the petition. In the said paragraphs, the petitioners stated that the Ordinance had been promulgated and the Bill which culminated in the passing of the Act was introduced in the Legislature as a fraud on the legislative power of the State inasmuch as in the facts and circumstances of the case leaving apart more than 200 Colleges in West Bengal, this particular college had been picked up as a solitary college for being taken over in the public interest and for better management. It has been further stated that the action was taken at the instigation of the Respondent No. 5, who, as I mentioned before, is now a member of the West Bengal Cabinet. The petitioners have thereafter in Paragraph 42 referred to relevant provisions of the Act, which I have mentioned, and submitted that the said provisions were sufficient to meet the contingency alleged. Apart from that there are no other facts either in the materials alleged in the petition or in the grounds in support of this petition which indicated as to which were other colleges and what was the position of the other colleges which were alleged to be similarly situated in the sense whether there were allegations of mismanagement of education.

9. The petitioners have also affirmed supplementary affidavit wherein the petitioners have given certain names of certain colleges in paragraph 2. On behalf of the respondents, however, the allegations in the supplementary affidavit were not admitted. It was also submitted that the respondents had no obligations to deal with the allegations contained" in the said supplementary affidavit. Be that as it may, in the supplementary affidavit the petitioners have stated, inter alia, only as follows:-

That the state of affairs in quite a large number of Colleges, e.g., Barrackpur Rastra Guru Surendranath College, Bagula Sri Krishna College, Naihati Rishi Bankim College, Bhowanipur Education Society College, Vijoygarh Jyotish Roy College, Khudiram Basu Central College has been very bad for many years and has been further deteriorating every year. The state of affairs in the Netaji Nagar College, on the other hand, was quite satisfactory and it was improving from year to year in every respect before its take over by the Government. In these circumstances, which were very much within the knowledge of the Government the decision of the Government to take over the Netaji Nagar College is clearly discriminatory and violative of Article 14 of the Constitution of India. The management of the Netaji Nagar College, which was better than that of many other Colleges, has been taken over by the Government on extraneous grounds

rather than for improvement of the College. In comparison with other Colleges no special circumstances existed for picking up or choosing the Netaji Nagar College for take over by the Government.

10. It is well-settled under Article 14 of the Constitution that equals should not be treated unequally and those who are equals should also not be subjected to unequal treatment or unequal proceedings. This principle is cardinal and self-settled. It is also well-settled that there is a presumption of constitutionality in the favour of legislation unless it is demonstrated that the Act-in-question infringes certain provisions of the Constitution. It is also well-settled that the onus is upon those who allege that the Act is violative of the provisions of the Constitution. It is well-settled also that in the particular facts and circumstances of a particular case the legislation may be passed in respect of one institution or individual. These principles have often been reiterated by Supreme Court in numerous cases and some of these were again referred before me and I briefly note these decisions.

11. Reliance was placed on the decision of the Supreme Court in the case of Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, , where the Supreme Court reiterated that a legislature which must, of necessity have the power of making special laws to attain particular objects must have large powers of selection or classification of persons and things upon which such laws are to operate. Hence mere differentiation or inequality of treatment does not per se amount to discrimination, and it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational purposes having regard to the object which the legislature has in view in order to invalidate an enactment under Article 14. Reliance was placed on certain observations at page 94 where the Supreme Court reiterated the above principles. Reliance was also placed on the decision in the case of Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others, , where at page 220 the Supreme Court again reiterated the aforesaid principles.

12. Next reliance was placed on the decision in the case of Pandit Chunchun Jha Vs. Sheikh Ebadat Ali and Another, and my attention was drawn to observations at paragraph 16 to 21 of the said decision where the Supreme Court again reiterated the aforesaid view. Reliance was also placed on the well-known decision in the case of Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, which was a case dealing with the legislation concerning one persons. At page 547 of the report the Supreme Court after referring to the aforesaid principles observed as follows:

The decisions of this Court further establish-

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to, others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an

enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain presumption of constitutionality the Court may take into considerations of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked, as discriminatory and violative of the equal protection of the laws;

A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Art 14 of the Constitution may be placed in one or other of the following five classes:

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court. In determining the validity or otherwise of such a statute the Court has, to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from; left out of the group and whether such differentia has a reasonable relation to the object -ought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the Court finds that the classification satisfies the tests, the Court will uphold the validity of the law, as it did in *Chiranjitlal v. Union of India* (B) (supra), *State of Bombay v. F.M. Balsara* (C) (supra), *Kedar Nath Bajoria Vs. The State of West Bengal*, ; *V.M. Syed Mohammad and Company Vs. The State of Andhra*, and *Badhan Choudhury v. State of Bihar* (A) (supra).

(ii) A Statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the Court will strike down the law as an instance of naked discrimination, as it did in *Ameerunnissa Begum and Others Vs. Mahboob Begum and Others*,

(AIR 1953 SC 91) (K) and *Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others*, .

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classifications but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal v. Anwar Ali Sarkar (D) (supra)*, *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, and *Dhirendra Kumar Mandal v. Superintendent and Remembrancer of Legal Affairs*, 1955-1 SCR 224: (AIR 1954 SC 424) (N).

(iv) A statute may not make a classification of the person or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification; the Court will uphold the law as constitutional, as it did in *Kathi Banning Rawat v. The State of Saurashtra (E) (supra)*.

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for-applying those provisions according to the policy or the principle laid down by the state itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court, e.g. in *Kathi Ranning Rawat v. The State of Saurashtra (E)*

(supra) that in such a case the executive action but not the statute should be condemned as unconstitutional.

13. Good deal of reliance was placed by learned advocate for the petitioners on certain observations "in the case of Dinnapati Sadasiva Reddi, Vice Chancellor, Osmania University v. Chancellor, Osmania. University reported in AIR 1967 SC 1305 where at page 1313 of the report the Supreme Court observed inter alia, as follows:-

This is a clear case where the statute itself directs its provisions, by enacting S. 13A, against one individual, viz., the appellant, and, before it can be sustained as valid, this Court must be satisfied that there is a reasonable basis for grouping the appellant as a class by himself and that such reasonable basis must appear either in the statute itself or must be deducible from other surrounding circumstances. According to the learned counsel for the appellant all Vice Chancellors of the Osmania University come under one group and can be classified only as one unit and there is absolutely no justification for grouping the appellant under one class and the Vice-Chancellors to be appointed in future under, a separate class. In any event, it is also urged that the said classification has no relation or nexus to the object of the enactment.

14. Learned Advocate for the petitioners, relying on the aforesaid passage sought to urge that where a legislation was directed against one particular institution or an individual it was per se discriminatory unless it was demonstrated that there were certain factors that merit necessity for the legislature to pass a legislation for a particular individual or a particular institution. But these observations made in paragraph 43 had to be read in the context in which the Supreme Court was dealing with. These observations were made in the context of Section 13A Osmania University Act, 1959, which Act though dealing with all the Vice-Chancellors of that University had made a particular departure in the case of continuing Vice Chancellor of the University. It is in that context the Supreme Court found Section 13A of that Act which made a special provision in respect of the continuing Vice Chancellor requires to be demonstrate 1 to the necessity by the particular exigency in order to satisfy the test of Article 14 of the Constitution. As I said the principles upon which Article 14 generally have to be adjudged are well settled and have been reiterated by the Supreme Court in several decisions which I have referred to. In this connection I may also refer to the decisions in the cases of State of Uttar Pradesh Vs. Kartar Singh, State of J and K v. Trilokinath Khosa reported in AIR 1974 S.C. I, paragraphs 23 to 27, Ramesh Prasad Singh Vs. State of Bihar and Others, at pages 330 and 332, Pathumma and Others Vs. State of Kerala and Others, , Ramchand Jagadish Chand Vs. Union of India (UOI) and Others, The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, .

15. Learned Advocate for the petitioners contended that there were several institutions where educational standards had not been maintained and there was

no reason why resort had not been taken to the other statutes. So far the University statute is concerned, it was for the University to take action on certain conditions. The fact that the University happens to be under certain amount of the control of the Government in view of the Calcutta University (Temporary Supersession) Act, 1978, does not, in my opinion, detract from the power of the Government in appropriate cases to make provisions for promoting education and for that purpose to take over for a temporary period the management and control of an institution. The contingency and the circumstances under which a University can take over management are different, in my opinion, in which the Government can take over the management and control. Secondly it appears to me that even though in the case of one individual or one institution a particular Act has been passed if there is rational nexus between the object that is said to be achieved, that is to say promoting education and taking over management for that purpose, then if that institution has been chosen because there was certain amount of conflict or dispute inside the college, the magnitude of which it is not for the Court to decide, in my opinion, the Act per se does not suffer from the vice of violation of Article 14 of the Constitution. It is true that there may be other institutions where educational standards are not being maintained. It may also be true" that there might be other institutions where management is not properly done, but what are the conditions of those institutions and what is the nature of the disputes for which the management is not properly done, there are not sufficient facts and averments before me and it is primarily for the petitioners, to establish that the other institution in which the mismanagement or the disputes are similarly situated and this particular institution has been selected arbitrarily. Taking into consideration even the averments in the supplementary affidavit and the averments in paragraphs 40 to 43, in my opinion, the petition does not make out a case of violation of Article 14 of the Constitution.

16. It is true, for a variety of reasons one may have to treat people unequally. The most important, perhaps, is that any single value, whether it be freedom or justice, when taken as absolute and overriding and applied in an exacting way, can lead to excess. No single value can satisfy what are inherently in compatible objectives even when most men desire the incompatible. So one has to be clear as to what one is forgoing, in the effort to resolve the incompatibilities. Many adjustments become inevitable. In one of his essays on Liberty Latah Berlin has summed up this as follows:-

To avoid glaring inequality or widespread misery I am ready to sacrifice some, or all, of my freedom. I may do so willingly and freely: but it is freedom that I am giving up for the sake of justice or equality or the love of my fellow men. I should be guilt-stricken, and rightly so, if I were not, in some circumstances, ready to make this sacrifice. But a sacrifice is, not an increase in what is being sacrificed, namely, freedom, however great the moral need or the compensation for it. Everything is what it is :. Liberty is liberty, not equality or fairness or justice or culture, or human happiness or a quiet conscience. If the liberty of

myself or my class or nation depends on the misery of a number of other human beings, the system which promotes this is unjust and immoral. But if I curtail or lose my freedom, in order to lessen the shame of such inequality, and do not thereby materially increase the individual liberty of others, an absolute loss of liberty occurs. This may be compensated for by a gain in justice or in happiness or in peace, but the loss remains, and it is a confusion of values to say that although my "liberal", individual freedom may go by the board, some other kind of freedom "social" or "economic"- is increased. Yet it remains true that the freedom of some must at times be curtailed to secure the freedom of others. Upon what principle should this be done ? If freedom is a sacred, untouchable value, there can be no such principle. One or other of these conflicting rules or principle. One of other of these conflicting rules or principles must, at any rate in practice, yield; not always for reasons which can be clearly stated, let alone generalised into rules or universal maxims. Still, a practical compromise has to be found.

17. In the aforesaid background and principles the problem of violation of Article 14 has to be judged as enunciated by the Supreme Court. I am unable to accept that the impugned Act Violated the provisions of Article 14 of the Constitution. The report or the note of the Vice-Chancellor and the facts in the affidavit of the Minister do indicate that everything was not happy from the point of view of development of education in the atmosphere of the College in question. Who is responsible for the same or whether there were sufficient for taking action by the Govt. are not relevant for deciding the controversy on the violation of Article 14 of the Constitution.

18. The Second ground of attack to this Act was that the Act in question made serious inroads into judicial power. In our Constitution in a democracy which we have envisaged there is separation of powers between the Executive, the Legislature and the Judiciary. It is for the Legislature to legislate, it is for the Judiciary to decide and adjudicate and it is for the Executive to implement and carry out The Legislature is not competent, it is well-settled, to sit on judgments pronounced by the Court or to nullify or to, set aside any judgment of the Judicial Forum, but it is competent for the Legislature to pass any legislation subject to constitutional limitation under which all Legislators must function, the basis upon which a Judicial decision is based. I have set out hereinbefore the judgment and order of Mr. Justice M. M. Dutt, and the circumstances under which the same passed.

19. Mr. Justice Dutt proceeded on the basis that there was a dispute between certain persons who are claiming to be the Trustees. The College was to be governed by a Trust Deed executed before the coming into operation of the University Statute, while the University was asserting that the Trust was created after the Statute came into effect. This dispute resulted in a deadlock and in order to resolve this dispute and until the dispute was resolved, to carry on the administration, this Court thought it fit to appoint an administrator. That,

however, in my opinion, did not in any way detract or take away the power of the Government even in a proper case to pass any legislation for taking over an Institution for the better management of it, for promoting education and incidentally for making for that purpose a provision for the management of the properties of such Institution. Any legislation of such a nature must of necessity, provide for taking-over of the management by the persons when the Government decides to take over that Institution by the machinery Government sets up and, therefore, there must be incidental provisions for the carrying cut by the person who is appointed to implement that taking-over of the properties and the affairs of the Institution. In that respect the Act must provide what is to happen about any Officer or other person appointed by a Court to manage the affairs of the Court. Such a provision, in my opinion, does not nullify or question the decision of the Court upon the dispute pending before the Court but is only a particular provision to implement the taking-over of the management by the Government which was not the subject-matter of adjudication before the Court, when the Court in the instant case had appointed an Administrator, as I have indicated before.

20. The principle on this aspect are also well-settled. Learned advocate for the petitioners drew my attention to the observations of the Supreme Court in the case of State of Tamil Nadu and Another Vs. M. Rayappa Gounder and Others, and he relied on the observations appearing at page 233 of the said report. There what had happened was that certain assessment had been set aside by the Court made under the provisions of the Madras Entertainment Tax Act without altering the provisions of the Madras Entertainment Tax-Act retrospectively or in any way the Act. is question. Mainly Section 7 provided that the said assessment would still be valid. It was naturally held that this amounted to an infringement of the judicial power but it did not, in my opinion, lay down or postulate that it was not possible for the Legislature to provide for a law which will make the basis, which nullified the assessment, to make the said assessment valid assessment. Indeed there are several decisions in the facts and circumstances of the case that such effect has been made in respect of the income tax Act or other Acts.

21. In this connection, reliance may also be placed on the observations of the Supreme Court in the case of Jitnath Singh v. State of Bihar, reported in AIR 1974 Patna Page 28 at page 33; in the case of I.N. Saksena v. State of Madhya Pradesh reported in AIR 1976 SC page 2230 (paragraphs 20 to 22 and 30 to 35); in the case of The Government of Andhra Pradesh and Another Vs. Hindustan Machine Tools Ltd., . Reliance may also be placed on the observations of the Supreme Court in the case in re : The Special Courts Bill, 1978, Special Reference No. 1 of 1978 dated 1.12.78 reported in In Re: The Special Courts Bill, 1978, .

22. Before I conclude, on this aspect I may also refer to certain provisions of the Coal Mines (Nationalisation) Act, 1973, the Coking Coal Mines (Nationalisation)

Act, 1972, the Coal Mines (Taking over of Management) Act, 1973 which provided also that irrespecty by the State for a limited period Liquidator or Receiver by the Court, the Administrator or the person Custodian appointed by the Government to take over the Coal Mines was obliged to take over charge of those Coal Mines and all Liquidators, Receivers and other Officers of the Court are bound to hand over Coal Mines to such Custodian or Administrator. As I said before, if the basis of the legislation upon which the Court passed an order is changed, then the fact that incidentally implementation of that Act nullifies the appointment of Officers under the Court's orders does not, in my opinion, amount to any inroad by the Legislature to the judicial power and therefore, is not violative of the cardinal principles of the Constitution.

23. The third ground of challenge to this impugned legislation was violation of Article 31 of the Constitution. It is contended that Clause (2) of Article 31 provided that no property should be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provided for acquisition or requisitioning of a property for the amount which might be fixed by such law and which might be determined according to such principles and in such a manner as may be specified in such law. Clause (2A) of Article 31 provides that where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property. Article 31A, clause (b) protects the taking-over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of property, and saves the same from the mischief of Article 31A of the Constitution.

24. Learned Advocate for the petitioner drew my attention to the several provisions, mainly clause (b) of Section 2 of the Act which I have set out hereinbefore. He also referred me to the provisions of Sec. 4(1) of the Act and also to Sec. 11 and contended that for taking-over of equipments, stocks, moneys and other assets which belonged to the Management no compensation had been provided. These assets had been provided to be taken-over by the impugned legislation for the purposes of management for a limited period under the Act and, therefore, this does not infringe Article 31 of the Constitution. This aspect of the matter is also well-settled. Learned Advocate for the petitioner drew my attention to certain observations of the decision in the case of *Municipal Committee, Amrit. sar v. State of Punjab* reported in AIR 1970 S.C. page 2182, while on behalf of the respondents reliance was placed on the observations of the Andhra Pradesh High Court in the case of *Governing Body of the Rangarava Medical College, Kokinada v. Govt. of Andhra Pradesh* reported in AIR 1977 A.P. page 420 and also in the case of *State of Kerala Vs. Kumari T.P. Roshana and Another*, . Learned Advocate for the respondents also drew my attention to the decision in the case of *V. Rev. Mother Provincial, Congregation of Mother of Carmel, Carmelite Provincial House, v. State of Kerala*, reported in AIR 1970

Kerala 196 and the observation of the Supreme Court in the case of *The Municipal Corporation of The City of Ahmedabad and Another, Vs. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc.*, . As I have mentioned before, reading section to which my attention was drawn to the taking-over of power of the Management for a limited period and the property for taking over for the purpose of managing, the same property will not vest there as such immediately on the government and there was no permanent extinguishment of the right of property of the persons to whomsoever prior to the coming into operation of the Act, the same belonged. In that view of the matter, there is neither requisitioning nor acquisition of property except to the limited extent permitted by Article 31, clause 1 (b) of the Constitution and, therefore, there is no question of providing for any compensation on the score. If that is the position, normally, in my opinion, there has been no violation of the provisions of Article 31 of the Constitution. In this connection reliance may also be placed on the decision of Justice Anil Kumar Sen (C. R. 1812 (W) of 1973 *Profulla Chandra Sen v. Union of India*) unreported judgment delivered on 10th October 1974 which dealt with the taking over of the Sarda Mahapitha Reference may also be made to Mahajati Sadan Act, 1949.

25. Learned advocate for the respondents, however, contended that the petitioners have no locus standi and as such cannot maintain this action. It was urged that the petitioners did not represent the Governing Body. Furthermore, all the members of the Governing Body were not made parties to this action. There was at the time when the petition was filed, no right of management because the admitted position, according to the petitioners was that they were enjoined by the order of the Court and none had any right to any assets to which the petitioner had the proprietary right which had been interfered with and on this account the petition was liable to be dismissed because they could not complain either of Article 14 or Article 31 of the Constitution. On the other hand, learned advocate for the petitioners, submitted before me that the petitioner had sufficient personal interest in protecting the said institution and, therefore, had locus standi. The petitioner No. 1 was the Secretary of the Governing Body and was entitled to manage along with others and he was a party to the writ petition pending in this Court. In this connection learned advocate for the respondents drew my attention to the observations of the decision in the case of *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, at pages 833; in the case of *Dwarkanath Tewari v. State of Bihar* reported in AIR 1959 S.C. 249; in the case of *Bennett Coleman & Co. Ltd. v. Union of India* reported in AIR 1973 S.C. page 106 at page 114; in the case of *A.K.M. Hassan-uz-Zaman v. Debobrata Bandopadhyay* reported in 82 Calcutta Weekly Notes 806 at 832 and in the case of *Sanatan Roy v. Commissioners, Dum Municipality* reported in 1979(1) Calcutta Law Journal 489 at 496. In the view I have taken on the other aspect of the matter, it is not necessary, in my opinion, to decide this question in this application. Learned advocate for the petitioners criticised this act as highly arbitrary and motivated. It, of course, has to be remembered that the power of

the judicial review of Legislation is very limited. It is not the wisdom of the law that can be reviewed or lack of discretion on the part of the legislature which is open to judicial scrutiny. It is the illegality of the Act that can be the subject-matter for judicial review and as I have indicated, there has been no violation either of Article 14 or of Article 31 of the Constitution or no usurption of the judicial power by the legislature, I am unable to uphold the challenge to the impugned legislation. Whether the respondents are well advised or wise enough to pass the impugned legislation or not, it is not for this Court to express any opinions.

With these observations, this Rule is discharged.

Interim order, if any, is vacated.

There will be no order as to costs.