

(1991) 04 PAT CK 0001

In the Patna High Court

Case No : C.W.J.C. Nos. 1, 5813, 6057 and 7046 of 1988, 5347 of 1989, 5970 of 1990 and 2511 of 1983

Rahmania Primary Teachers Training College and etc. etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-04-1991

Acts Referred:

Citation : (1991) 04 PAT CK 0001

Judgement

S. Roy, J.—In all these writ petitions the petitioners based their claims on Article 30 of the Constitution. A Division Bench in C.W.J.C. No. 1 of 1988 ordered that that case should be listed before a Full Bench for admission. The Full Bench admitted that writ petition for hearing on 21-4-1988. Other writ petitions were also, therefore, ordered to be heard by Full Bench. All these cases were heard together and are being disposed of by this Judgment.

2. The petitioners in C.W.J.C. Nos. 1 of 1988, 7046 of 1988, 5347 of 1989, 5970 of 1990 and 5813 of 1988 claim that in order to impart teachers training primarily to Muslim students, teachers training schools were established. In C.W.J.C. No. 2511 of 1983 it has been stated that teachers training school was started by linguistic minority, namely, San-thats, primarily for Santhali students. In C.W.J.C. No. 6057 of 1988 it has been claimed that teachers training school has been started by Budhists, a religious minority, primarily for Budhists.

3. In all the cases they claim that the petitioners being minorities based on religion and/or language have fundamental right to establish and administer educational institution of their choice. According to them the Bihar Non-Government Physical Training Colleges and Non-Government Teachers Training Colleges and Non-Government Primary Teachers Education College (Control and Regulation) Act, 1982 (the Act) which was preceded by Ordinance (which embraces such schools also) does not apply to educational institutions established by religious and linguistic minorities. Consequently in some cases no direction could have been given "by the State Government when applications

were made for affiliation/recognition of such institutions that the institutions shall not be entitled to admit students. The Act consists of six sections. The relevant sections read as follows:--

"2(1) No persons or institution or committee shall (a) without the previous permission of the State Government which the State Government may accord on such terms and conditions as it may deem fit, and where previous permission has been accorded subject to such terms and conditions as may be determined by the State Government, without fulfilling those terms and conditions, organise, maintain manage or promote any school or college for undertaking, conducting providing for or imparting physical training or physical education or Teachers" Training or Teachers" Education by way of training.

(b) Admit or offer to admit to a course of studies leading to the examination for the award of a degree, diploma or certificate in branches of Teachers" Training or in allied branches of Teachers" Training of any University or Body, incorporated by any law of the Central or the State Government.

(c) Provide for instruction, lecture, tutorial or practical training in education whether or not, it may lead to any examination or the award of a degree, diploma or certificate."

"3 This Act shall apply to all such Non-Government, Physical Training Colleges, and the Non-Government Teachers" Training Colleges and the Non-Government Primary Teachers" Education College as are not affiliated permanently to any University or Body incorporated under any law of the Central or State Government. This Ordinance shall apply to such Non-Government, Physical Training Colleges and Non-Government Teachers" Training Colleges and Non-Government Primary Teachers" Education Colleges as are not affiliated or are temporarily affiliated or as are proposed to be opened."

Section 4 provides for penalty and Section provides for making rules. u/s of the Act rules have been framed by notification dated 25-11-1987.

4. The common case of the petitioners was not the provision that no teachers" training institution can be established and administered without the previous permission of the State Government was ultra vires Article 30(1) of the Constitution as the minorities have unfettered right to establish and administer educational institutions of their choice.

5. During the course of hearing, in some cases the bar to admit students without previous permission of the State Government was specifically challenged as ultra vires Article 30(1) of the Constitution on the ground that admitting students was not part of administration.

6. According to the petitioners in view of the fundamental right guaranteed to linguistic and religious minorities under Article 30(1) of the Constitution to establish and administer educational institutions of their choice, no rule or regulation or law can enjoin that such minorities shall be required to obtain prior

permission of the State Government either to establish or to administer educational institutions of their choice. According to them only if such educational institutions apply for recognition/ affiliation to enable the students of such institutions to appear at examination, the matter of affiliation/recognition may be regulated. It was submitted that establishing and administering educational institutions of their choice by the religious or linguistic minorities is a fundamental right. No fundamental right, however, was claimed with regard to affiliation and/or recognition of such educational institutions for the purpose of allowing students to appear at examinations.

7. According to respondents under Article 30(1) of the Constitution, unfettered right cannot be claimed even with regard to establishment and administration of educational institutions. It was submitted that the State has power to regulate establishment and consequently administration of such educational institutions. The Act and the rules are regulatory in nature and are neither restrictive nor prohibitive.

8. Both the parties in support of their respective contentions relied on a large number of decisions of the Supreme Court beginning from *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, and also some decisions of . this court.

What was stated with regard to the scope of Article 30(1) of the Constitution in *Kerala Education Bill (supra)* has been consistently followed in all subsequent decisions by the Supreme Court with regard to the nature of right under Article 30(1) of the Constitution. It is, therefore, not necessary to cite all the cases relied upon by the parties.

9. Article 30(1) of the Constitution reads as follows; "

"30(1) Right of minorities to establish and administer educational institutions. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."

10. In *S. Azeez Basha and Another Vs. Union of India (UOI)*, , the word "establish" in Article 30(1) of the Constitution was held to mean "to bring into existence". In *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, , the same meaning was attached to the word "establish" appearing in Article 30(1) of the Constitution. In the same judgment it was observed that the word "administration" means management of the affairs of the institutions. It was observed that the two rights i.e. to establish and to administer are separate in points of time. The first right is the initial right to establish institutions and the second right relates to administration of such institutions. The Supreme Court observed that management cannot be taken away and vested in another body without an encroachment upon the guaranteed right. The Supreme Court thereafter observed that the standards of education is not a part of management as such. It was further observed that the State may also regulate the conditions of employment of teachers, the health and hygiene of students. According to the

Supreme Court 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. It has been repeatedly reiterated by the Supreme Court that the minorities based on religion or language have right to administer educational institutions, but have no right to maladminister.

11. In *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, after holding that all minorities, linguistic or religious, have under Article 30(1) absolute right to establish and administer educational institutions of their choice observed as follows (at p. 545 of AIR) :--

"This, however, is not to say that it is not open to the state to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions; it is a right to establish and administer what are in truth educational institutions -- institutions which cater to the educational needs of the citizens, or sections thereof."

12. Two things are clear; firstly, that the minorities based on religion or language are entitled to establish educational institutions of their choice. But such educational institutions must be truly educational institutions. Secondly, they have right to administer such educational institutions, but they have no right maladminister. Merely because a person claims to be of religious or linguistic minority, he cannot claim fundamental right to establish educational institutions. Which cannot be said to be truly an educational institution. For example, if a medical college is established, not only there must be class rooms but there must be facility of hospital. If the minimum infrastructure for teachers training institution or medical college or engineering college are not available it cannot be said that a truly teachers training institution or a medical college or an engineering college has been established. The State, therefore, is entitled to lay down that no teachers training institution or medical college shall be established even by minorities based on religion or language unless they provide for imparting teaching as is expected to be imparted of a truly teachers training institute or a truly medical college or a truly engineering college.

13. When the Supreme Court observed that the minorities have right to administer educational institutions of their choice, but have no right to maladminister, it follows that for the purpose of administration also the State may lay down regulations for proper administration of such institutions.

I have already noticed that the Supreme Court in *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, had observed that the right conferred by Article 30(1) of the Constitution is in terms absolute, but that was not to say that reasonable restrictions in the interest of the efficiency of instruction, discipline, health, sanitation and the like may not be imposed. The Supreme Court compared Article 19 and Article 30 and observed that the absolute

language of Article 30(1) precludes restrictions envisaged under Article 19 being imposed on the right conferred by Article 30(1). But even if the rights under Article 30(1) are in absolute terms, it shall have to be exercised "in an organised society governed by law, and this involves regulations of rights which do not bind, but help, the effective exercise of those rights."

14. In *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, the interpretation of Article 30(1) given by the Supreme Court in its earlier judgments were noticed. It was again reiterated that 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. It would be wrong to assume that an unrestricted right as in Article 30 postulates absence of regulations. Regulations can be prescribed in spite of the unrestricted nature of the right. The observation of the Supreme Court in *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, and *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, that no general principle on which reasonableness or otherwise of a regulation may be tested was reiterated. In *Lily Kurian Vs. Sr. Lewina and Others*, the Supreme Court again reiterated that the management is subject to regulation, but regulation must not be to impair the right to administer. Again in *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, it was reiterated that the minority institutions must be truly educational institutions.

15. Learned counsel for the petitioners vehemently challenged the provisions in the Act which put a bar on minority institutes also to admit students without prior approval of the State Government. It was urged on behalf of the petitioners that admission of students was part of administration and the minority institutions shall not be required to obtain prior approval of the State Government for admitting students. I may notice that in none of the cases it was the stand of the petitioners that they established the educational institutions not with a view to preparing the students for degree or diploma examination and in fact the State Government in some cases refused to give recognition or to allow the students to appear at the examination. It is, therefore, not necessary to test in these cases the validity of the power of the State Government to provide for obtaining prior permission for admission of the students in institutions where the students shall not be required to appear at degree or diploma or certificate examination, that is to say such institutions which do not require any recognition or affiliation.

16. The State Government took over all primary, middle and secondary schools, other than belonging to minorities, Central Government and some other class of schools. As per Government decisions in Government colleges and schools all teachers must be trained teachers. There was rush for admission in teachers training colleges and schools, but seat being limited many could not get

admitted. Taking advantage of this situation, mushroom growth of such institution started. Such institutions were not truly school or college, State Government then stepped in.

17. If, as repeatedly reiterated by the Supreme Court, minority institutions must be at par in excellence with other institutions and it cannot be allowed to fall back, the State may prescribe regulations applicable at the very threshold. For instance, it may lay down the minimum educational qualifications for admission also in minority educational institutions. The minority institutions cannot be heard to say that for preparing students for primary teachers training examination, students belonging to religious minority who are not even matriculate or have not passed equivalent examinations or have not obtained the minimum required marks in the qualifying examination shall be admitted in primary teachers training school. If the normal pattern of minimum academic qualification is matriculate or equivalent with prescribed minimum marks, for keeping step with other institutions, that shall apply to minority institutions. A fortiori, the State may also frame regulations fixing the ratio of teachers and students. Therefore, the submission that as the fundamental right enshrined in Article 30(1) is in absolute term, no regulation can be made by the State Government for admitting students cannot be accepted. It must be made clear that such regulation shall not be of that nature as "to whittle down the fundamental right or to make the right illusory."

18. At the time of admission of C. W.J.C. 5813 of 1988 reliance was placed in Zakia Afaque Islamia College, Siwan Vs. State of Bihar and Others, by the petitioner of that case. During the course of hearing of these cases, reliance was placed on that case. It appears from the judgment in Z. A. Islamia (supra) that the college had already been given affiliation in faculty other than education and in the year 1980 an application was filed by the college for affiliation of this faculty.

19. In view of the provision of the Bihar State University Act, 1976, the University referred the question of affiliation to the State Government. The State Government refused to approve the affiliation on the ground that it was the policy of the State Government not to grant affiliation in courses of studies in faculty of education to any institution other than those under the control of the State Government. Consequently the University rejected the application of the college. The main question in that writ petition was, therefore, whether the State Government could have adopted policy that institutions in the Faculty of Education controlled by the State Government only will be given affiliation. The bar of Ordinance 87 of 1980, containing provision similar to the Act in question, was also pleaded by the respondent-University. The Bench observed without analysing in detail the provision of Ordinance that there was nothing in the Ordinance which goes to show that it specifically governs the minority institutions. It was also observed that if the provision of Section 2 of the Ordinance (that was similar to Section 2 of this Act) is to govern the minority

institutions also, there would be likelihood of infringement of Article 30 of the Constitution. This again was stated without recording any reason.

The special, leave petition filed against this judgment was dismissed by the Supreme Court. It was urged that the law laid down in *Zakia Afaque Islamia College, Siwan Vs. State of Bihar and Others*, having been affirmed by the Supreme Court, the educational institutions established by minority are outside the purview of the Act. Dismissal of the SLP will not mean that the Supreme Court has approved all that has been stated in *Z. A. Islamia (supra)*. So far the observation of the Bench in that case with regard to the provisions of the Ordinance are concerned, those could not have been subject matter of the writ petition because the only question for determination in that case was the order of the State Government refusing to affiliate the college in Faculty of Education only because it was not under the control of the State Government. In view of this order of the State Government, the University had no option, but to reject the application of the college for affiliation in Faculty of Education.

From that judgment it appears that the State Government did not take the plea of the provision of the Bihar Ordinance 87 of 1980.

That was pleaded by the University. In the wide language in which it has been held that the provision of the Ordinance did not apply to private institutions cannot be upheld.

20. For the reasons aforesaid, I am of the opinion that the observations made therein with regard to the ordinance is very broad and not in consonance with the law laid down by the Supreme Court. Further, in that case, it was not necessary to go into that question as that was not one of the grounds on which the State Government had rejected the application for giving affiliation to the college in the Faculty of Education.

21. I have already noticed that the grievance of the petitioners is with regard to Section 2 of the Act which provides for previous permission for establishing educational institutions and for admitting students. In view of the law laid down by the Supreme Court, it must be held that if an educational institution is established by minority which is a truly teachers training college or school. State cannot take any action against it for violating the provisions of the Act nor can refuse recognition/ affiliation on that ground. But if it is not a truly teachers training college/ school, merely because it was established by religious or linguistic minority, founders cannot claim protection under Article 30(1) of the Constitution. Consequently, the State may take appropriate action in such cases, whether the institute established is a truly educational institute or not is a question of fact. The State Government surely has power to determine this fact, and once this fact is established in the affirmative, the bar to obtain prior permission to establish is lifted. The stage of admitting students comes. Likewise, for the purpose of admitting students the general pattern is to be followed by minority educational institutions also. If on enquiry this is decided in

favour of the institution, the bar of admitting students with previous permission of State Government is lifted.

22. Whether minority educational institution is a truly educational institution for the purpose it is established is a question of fact. Likewise, the minimum academic qualifications of the students admitted, teacher student ratio etc. are questions of fact. Necessarily, in such cases, the State before taking any action against founder of any minority educational institution shall have to make an enquiry after giving notice to such founder.

It will be useful to notice here that the rules framed under the Act prescribes the minimum area of land, minimum size and number of class rooms, hostel and provides for fulfilling various requirements. In Civil Appeal No. 4129 of 1989 disposed of on 21-9-1990 (copy of the judgment provided at the time of hearing) Supreme Court noticed the requirements under the rules framed under the present Act and observed that while deciding application for recognition "what the Government should see is whether there has been substantial compliance"?

23. In the Managing Committee of Maulana Mazharul Haque Primary Teachers Education and Bachelor of Education College, Kortonha, Hajipur Vs. State of Bihar and Others, and in the Managing Board of The Milli Talimi Mission, Bihar, Ranchi and Others Vs. State of Bihar and Others, , both referred at the Bar, the question was affiliation of a minority institution. It was observed therein that refusal of affiliation on terms and conditions which denies autonomy and progress of minority institution is violative of Article 30 of the Constitution. These decisions are of no assistance to the facts of these cases under consideration.

24. The Bench decision of this Court in C.W.J.C. No. 1577 of 1987 disposed of on 26-5-1989 was referred at the Bar. In that case prayer was made to issue writ of mandamus directing the University to allow the students of Sogra College to appear at the Bachelor of Education examination. The prayer was refused as the Faculty of Education was not affiliated to the University. The judgment of C.W.J.C. No. 5823 of 1989 disposed of on 7-7-1989 was also brought to our notice. In that case this court refused to issue mandamus to the University to allow the students of Millat Primary Teachers Training College to appear at the examination. In that judgment the observation of Supreme Court in W. P. (Civil) 28 of 1988 disposed of on 28-7-1988, was quoted. The Supreme Court took notice of mushroom growth of unrecognised educational institutions also in Bihar established by flouting rules and regulations and "making such institutions as a fait accompli" in order to wrest recognition.

25. Various requirements as condition precedent for establishing teachers training institutions have been laid down in the rules framed under the Act. All the requirements are for the excellence of the institutions. I find no reason why these requirements shall not apply to minority institutions. Of course, the State Government must keep in mind for the purpose of recognition the observation of Supreme Court in Civil Appeal No. 4129 of 1989 (already noticed elsewhere)

whether there has been substantial compliance. If substantial compliance of the requirements is to be considered for recognition, surely this shall apply at the time when the institution is established. Unless a truly educational institution by substantially complying the conditions of the rules is established, there is no question of admitting students. Again for the purpose of admitting students, the rules must be substantially complied.

26. I am, therefore, of the opinion that minority institutions shall not be required to obtain prior permission for establishing and admitting students. But they shall be bound to substantially comply the various conditions laid down in the rules both for establishing the institution and admitting students. If they do not, they will come within the mischief of the Act and no recognition will be given to such institutions.

27. To sum up:--

(a) although right under Article 30(1) is in absolute terms, the right to establish and administer educational institutions may be regulated;

(b) regulation must not be such so as to make the rights illusory or to impair it;

(c) Section 2 of the Act is prohibitory in nature; it shall not apply to educational establishment who may claim protection under Article 30(1);

(d) admitting students is part of administration.

(e) the bar u/s 2 of the Act for establishing a minority institution and admitting students without prior approval of State government will not be attracted, if the institution is a truly educational institution established by a minority, religious or linguistic.

(f) the conditions laid down in the rules framed under the Act shall apply to minority institution, both at the stage of establishment and at the time of admitting students; if those are not followed the managing committee may come within the purview of Section 4 of the Act. Before taking any action, the State must give an opportunity to the founder or managing committee of being heard.

(g) for establishing an institution and admitting students, the conditions laid down in the rules need not be fulfilled in toto, but must be sufficiently complied.

(h) if there has been sufficient compliance of the conditions, the Government must consider the application for affiliation.

(i) no application for affiliation shall be rejected without giving an opportunity of being heard; reasons must be recorded for rejecting an application.

(j) no student of an unrecognised institution shall be allowed to appear at any examination for certificate/degree in teaching.

(k) religious or linguistic minorities can not be allowed to establish institution violating rules and regulation and admit students making such institutions fail

accompli to wrest recognition.

28. In C.W.J.C. No. 1 of 1988 prayer is for issuance of mandamus on the respondent t,p. accept the fees and forms of the students of the petitioners-institution for the session 1985/87 and to grant recognition to the institution as per the recommendation of the inspecting team. In C.W.J.C. No. 7046 of 1988 the prayer is the same with the difference that the session involved is 1986-88.

In C.W.J.C. N.o. 5347 of 1989 the session in question is 1987-89. In C.W.J.C. No. 5970 of 1990 the prayer is for issuance of writ of mandamus on the respondent to grant recognition to the institution and to publish the result of the students of the institution who had appeared for the session 1985-87, 1986-88, and 1987-89.

29. In C.W.J.C. No. 1 of 1988 interim order was passed for allowing the students of the institution to appear at the examination of the session 1985-87 and in C.W.J.C. No. 5347 of 1989 interim order was passed to allow the students to appear at the examination for the session 1987-89. Although in C.W.J.C. No. 5970 of 1990 prayer has been made for publication of the result for the session 1985-87, 1986-88 and 1987-89, no interim order appears to have been passed for allowing the students to appear for the session 1986-88 of this institution.

In C.W.J.C. No. 7046 of 1988 by application for amendment, which was allowed, prayer has been made for quashing An-nexure-2 by which the petitioner was informed that its application for recognition of the institution was rejected.

30. In C.W.J.C. No. 5318 of 1988 prayer is for issuance of writ of mandamus for recognition of the institution and to allow the students to appear at the examination for the session 1986-88.

In C.W.J.C. No. 6057 of 1988 prayer is for issuance of writ of mandamus directing the respondents to recognise Bhagwan Budh" Siksha Sangh Maha Vidyalaya and to allow the students of that institute to appear at the examination for the session 1986-88. in C.W.J.C. No. 2511 of 1983 prayer is to allow the students of petitioner No. 1 to appear at the examination for the session 1979-81, 1980-82 and 1981-83, and for declaration that institution-petitioner No. 1 established and maintained by Sofa Her Santhats was both religious and linguistic minority institution. It appears that in this case also interim order was passed for allowing the students of the institution to appear at the examination.

31. It will thus appear that in all the cases prayer has been made for allowing the students of unrecognised educational institutions to appear at the examinations of primary teachers for different sessions.

32. The State Government shall have first to decide, on the basis of facts that may be brought on record by the petitioners, that these institutions are institutions of minority character as envisaged under Article 30 of the Constitution. If it is found that in fact they are minority institutions, the question will be whether the institutions have been established by substantially complying the conditions laid down in the rules. For this also the State Government shall

have to record a finding on the basis of materials that may be placed before it by the managing committee of the educational institutions.

The next fact on which the State Government shall have to record a finding, again on the basis of the materials that may be brought on record by the managing committee of the educational institutions, whether for the purpose of admitting students the conditions laid down in the rules have been substantially complied with.

33. If all these findings go in favour of the institutions in question, and if application is made for recognition, the State Government shall record whether other conditions for recognition have been substantially complied. If the State is of the opinion that recognition should not be given, it must give an opportunity to the concerned managing committee of being heard. If it refuses recognition, it must record reasons.

34. As all these facts are still to be enquired into no writ of mandamus can be issued to the State Government to grant recognition to the educational institutions in question. It must, however, be noticed that the manner in which the State Government have given recognition to a number of institutions without recording any finding as to whether they were institution who can claim protection under Article 30 of the Constitution whether they were truly educational institution established and students admitted by substantially complying the rules, and whether they have complied or have substantially complied the rules regarding syllabus general standard of teaching and other standards which must be followed so that such institutions do not fall back from other such institutions, must be deprecated.

Annexure 9 series in C. W. J. C. No. 7046 of 1988 show that in casual manner orders have been passed giving recognition to different teachers training institutions. These annexures are not subject-matter of challenge. I, therefore, cannot interfere with the same. But it must be impressed on the State Government that since Act and the rules framed therein have been enacted to stop mushroom growth of teachers training institutions, it must be careful in disposing of all matters relating to teachers training institutions.

35. In C.W.J.C. No.7046 of 1988, the petitioner has challenged the validity of annexure 2, Letter dated 1-8-1989 by which the institution has been informed that as the conditions have not been fulfilled recognition was refused. It appears from perusal of annexure 2 that the State Government was of the opinion that all the conditions laid down in the rules for establishment of primary teachers training institution must be strictly followed. This is contrary to the observation of the Supreme Court in Civil Appeal No. 4129 of 1989 which I have already noticed hereinbefore. On this ground alone, annexure 2 is liable to be quashed and it is quashed. The State Government must pass fresh order in accordance with law.

36. I have already noticed that by interim orders students of some of the institutions were allowed to appear at the examinations. Since none of the

institutions were recognised institution, it is ordered that results of the students who were so allowed to appear at the examinations by the orders of this court, shall not be published.

37. With the aforesaid findings and directions all these writ petitions are disposed of There shall be no order as to costs.

S.N. Jha, J.

38. I broadly agree with the judgment painstakingly prepared by Brother Roy and the order proposed by him. I would however, like to append a short footnote.

39. In the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, , the Supreme Court while stating that the minority institutions claiming the protection of Article 30(1) of the Constitution must be educational institutions of the minorities in truth and reality, "intended to give the children of the minorities the best general and professional education to make them complete men and women of the country and to enable them to go out into the world fully prepared and equipped." stressed the need for the identification of truly educational institution of minorities in the following words:

"what is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities."

Rules framed u/s of the Act laying down the terms and conditions for grant of permission, affiliation do, in my view, provide sufficient guidelines or indices for the identification of such institutions. A substantial compliance of the requirements should suffice.

40. What will be the stage at which such an identification is to be made? Rule 6 framed under the Act, provides for a machinery for holding enquiry for the purpose of grant of permission, on application made in that behalf. There cannot be restriction on the right of the minorities to establish truly educational institutions of their choice. However, thereafter, before they proceed further, it will be incumbent upon them to seek permission, which will be in the nature of recognition of, by the State Government to be accorded or refused after necessary enquiry. If this power of holding enquiry for the purpose of identification of truly educational institution of this stage is not conceded to the State, then at no stage thereafter such an identification can be meaningfully done. Students admitted by institutions, which are not truly educational institutions, in the absence of any regulatory provisions as at present, governing such examination being conducted by the Bihar School Examination Board, as we were informed at the Bar, will have to be allowed to appear at the examination. Alternatively, if they are not to be allowed to appear at that stage, loss and hardship is bound to be caused to them, leaving the organisers or the managers of the "game," the unscrupulous money makers, make merry with their exploits. Surely, this will not serve the objects of Article 30(1).

41. Apropos to paragraph 21 of the judgment I would say that even a truly educational institutions of the minorities must also fulfil and conform to the regulatory provisions as may be prescribed by law for the purpose of recognition or affiliation by any University or body incorporated under any law for allowing its students to appear at an examination, like in the present cases, for the award of degree, diploma or certificate in teachers' training of such University or body corporate. But if the institution imparts education or admits students to a course of studies not leading to any such examination for the award of any such degree, diploma or certificate in teachers' training by any University or any body incorporated under any law of the State, Obviously, there is no question at all of applying the provisions of the Act or the Rules. This, however, is not the position in any of the cases in hand.

G.C. Bharuka, J.

42. Since I am only in part agreement with the judgment pronounced by Brother S. Roy, J. and the disagreement is on a major issue with regard to the applicability of the statutory provisions in question to the minority institutions involved in the case, I feel necessary to pronounce an independent judgment of mine.

43. These writ applications have been filed by the petitioners, inter alia, asserting that in view of Article 30 of the Constitution of India, they being of minority communities, are as a matter of right entitled to establish Teachers Training College and the Respondents are duty bound to permit the students of their institutions to appear at the respective examinations held by school Examination Board. According to the petitioners, in view of a Division Bench decision of this court in the case of Zakia Afaque Islamia College, Siwan Vs. State of Bihar and Others, the provisions of the Bihar Non-Government Physical Training Colleges and Non-Government Teachers "Training Colleges and Non-Government Primary Teachers" Education Colleges (control and Regulation) Act, 1982 (hereinafter to be referred to as "the Act" only) and the rules framed thereunder have no application to their institutions.

44. Before proceeding to examine the intricacies of Article 30 of the Constitution and its effect on the rights claimed in these writ applications, it is essential to ascertain the purpose and the nature of regulations, which have been envisaged under the provisions of the Act.

45. Chapter V of the Bihar Education Code (1964 edition) deals with Teachers Training schools. It transpires from the Education Code that in 1930 a decision was taken by the Government to make the teachers' training compulsory as a condition of service for the teachers serving in the Government schools. It also appears that for appearing at the said examination the teachers had to undertake training in the schools specially set up for the purpose. The aims to be achieved by such training were;

(i) To give the teachers under training practical experience of life of the

community based on co-operation work for the common good.

(ii) To assist and encourage the trainees in the development of their personality, physical, intellectual, aesthetic and spiritual.

(iii) To equip the trainees professionally for their work and to help them to acquire necessary knowledge about the technique of teaching.

(iv) To enable the trainees to acquire proficiency in crafts for using them as one of the media of education and co-operative self sufficiency.

(v) To enable the trainees to study and implement the integrated syllabus of element- ary schools.

46. The Teachers Training Certificates are granted by the Board, which has been constituted under the Bihar School Examination Board Act, 1952 (Bihar Act 7 of 1952) (hereinafter to be referred to as "Board Act"). Section 6 of this Act deals with the functions of this Board and Sub-section 2(k) thereof provides that the Board shall conduct such other departmental examination and perform such other duties as may be prescribed by the rules. Section 16 authorises the state Government to make rules and Sub-section 2(d) of this section provides that the statement may make rules prescribing the departmental examinations to be conducted by the Board and the duties to be performed by it.

47. The State Government pursuant to the said powers contained in Section 16(2) (d) of the Board Act has framed the Bihar School Examination Board (Conduct of Teachers' Training School Examination) Rules, 1963. Rule 3 of these Rules provides for conduct of examination of Teachers' Training school, publication of result and grant of certificate and it reads as under; Rule 3(1) subject to such terms and conditions as may, from time to time, be determined by the State Government, the Board shall conduct the examination of trainees of Teachers Training schools on the completion of their courses of studies laid down by the State Government for such schools and publish the results thereof and make all arrangement necessary for the conduct of such examinations and publication of such results.

(2) The Board shall grant suitable certificates to the trainees who pass such examination.

48. It appears that from time to time the State Government had been issuing instructions laying down terms and conditions for conduct of such examinations and grant of certificate to the trainees of Teachers' Training schools. The instructions are contained in Government Circulars Nos. 755 dt. 15-6-73, 1021 dt. 1-9-73, 2278 dt. 13-11-77 and 1400 dt. 13-8-79.

49. It further appears that the State Government, instead of laying down the necessary terms and conditions for appearance at the aforesaid examination through instructions, took a decision to bring an effective legislation in this regard. This necessity appears to have been felt to check mushroom growth of

institutions which, instead of imparting training in the faculty of education, were found indulging in pure commercial adventures by exploiting job seekers in Government schools since such training is a prerequisite for entering into the cadre of primary and secondary teachers.

50. In the above background statutory provisions were made initially by promulgating ordinance but were subsequently incorporated in Bihar Act No. 29 of 1982 which has been referred to above as the Act. In the case of Md. Gheyasuddin v. State of Bihar ILR (1980) Pal 1238 while dealing with one of the ordinance on the subject, it has been held by a Bench of this Court at page 1251.

"In the ordinance under consideration, like in State of Nagaland Vs. Ratan Singh, etc., , the policy as also the manner of effectuating the policy have both been laid down. The policy is to check mushroom growth of educational institutions imparting training in faculty of education. This is clear both from the preamble as also from the provisions of the ordinance. The manner of effectuating the policy is by authorising the State Government to lay down terms and conditions under which Teachers' Training college may be opened or be permitted to continue. As to what would be terms and conditions under which College or institutions should be permitted to be established is a matter of detail and may have to be charged from time to time, depending on the existing conditions and the experience gained in working out the statutory provision."

51. Section 2 of the Act read in its proper perspective provides that,

(1) No person or institution or Committee shall without the previous permission of the State Government which the State Government may accord on such terms and conditions as it may deem fit, and where previous permission has been accorded subject to such terms and conditions as may be determined by the State Government, without fulfilling those terms and conditions.

(a) Organise, maintain, manage or promote any school, or College for undertaking, conducting, providing for or imparting physical training or physical education or Teachers' Training or Teachers' education by way of training.

(b) Admit or offer to admit to a course of studies leading to the examination for the award of a degree, diploma or certificate in branches of Teachers' Training or in allied branches of Teachers' Training of any University or Body, incorporated by any law of the Central or the State Government.

(c) Provide for instruction, lecture, tutorial or practical training in education whether or not, it may lead to any examination or the award of a degree, diploma or certificate.

52. Clause (e) of Section 2(1) of the Act intends to regulate the activities of organising, maintaining, managing and promoting the training institutions. According to The New Lexicon Webster's Dictionary, the word "Organise" means "to give an orderly or organic structure to, arrange the parts of (something) so that it may work as a whole; Therefore, this activity can well be held to be

falling within the ambit of the expression to establish" for the purpose of Article 30 of the Constitution.

53. So far as the remaining three activities, namely, maintaining, managing and promoting of the institutions are concerned, these will necessarily fall within the ambit of "administration" thereof.

54. Clause (b) of Sub-section (1) of the Aet envisages regulations on the right to admit or offer to admit to courses of studies leading to examination for the award of a degree, diploma or certificates in respect of Teachers' Training having legal recognition. The stage for admitting candidates or students for training and future examination can arise only after an institution is established in the sense that it is in readiness to impart training as per syllabi. Therefore, the admission of students to institutions is an activity which takes place after the institution is established. But, for the present it will not be of much consequence as to whether a particular activity is the process of setting up and running of an educational institution will fall within the ambit of establishment "or administration" as used under Article 30 of the Constitution. Therefore, advisedly, I am refraining from entering into the liberal niceties of these words.

55. In view of the discussions made above, it is clear that the legislature has intended to regulate the establishment as well as administration of educational institutions in question. The question is whether such legislative exercise is constitutionally valid? The constitutionality of the impugned provisions under the Act has been assailed primarily on two grounds, namely.

(i) The provisions contained under the Act seek to nullify the fundamental rights guaranteed to minorities under Article 30 of the Constitution to establish and administer educational institutions of their choice because this right being absolute in terms, cannot be subjected to any regulation, through any measure may be legislative or executive.

(ii) Even if the impugned provisions are considered to be regulatory in nature and permissive within the frame work of Article 30 the same are violative of Articles 14 as well as 30 of the Constitution being excessive, unreasonable and arbitrary having no nexus to the object sought to be achieved.

56. For dealing with the first ground of challenge, it is worthwhile to quote Article 30(1) of the Constitution which reads as under;

30(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

It is now conclusively established by series of decisions of Supreme Court that the right guaranteed to the minorities, religious or linguistic under Article 30(1) of the Constitution is an absolute right to establish and administer educational institutions of their choice and any law or executive direction which seeks to infringe the substance of that right would to that extent be void. But the question precisely is whether the State can subject this right to certain regulations without

in any way infringing the substance of that right? Keeping in view the Supreme Court decisions, to which I will be referring hereinafter, the petitioners have conceded that the right of administration of the institutions can be subjected to reasonable regulations. But according to them the right to establish an educational institution is an absolute right and it cannot be made dependent on regulatory provisions for any reason, howsoever benevolent and necessary the same may be in the interest of even the institution or the participants thereof. Relying on the observations of the Supreme Court made in the case of *Rev. Father W. Proost and Others Vs. The State of Bihar and Others*, by Hidayatullah, C.J. (para 8) it has been submitted that Article 30 of the Constitution is a special right to the minorities to establish educational establishment of their choice. Stress has also been laid on the observations made in para 11 in this report wherein it has been held that:

".....the language of Article 30(1) is wide and must receive full meaning. We are dealing with protection of minorities and attempts to whittle down the protection cannot be allowed . We need not enlarge the protection but we may not reduce a protection naturally flowing from the words."

57. On the other hand, learned Advocate General appearing on behalf of the State has submitted that the regulatory provisions can be made applicable even at the stage of establishment if it could be shown that the provisions are in the best interest of the educational institution and those do not in any way infringe the substance of the right enshrined under Article 30(1) of the Constitution. In support of his submissions, he has relied on the case of *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, wherein in para 46 it has been held that "the ultimate goal of a minority institution top in imparting general secular education is advancement of learning. This court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education." Reliance has also been placed on para 77 of this report wherein it has been held that.

"the idea of giving some special rights to the minorities is not to have a kind of privileged or pampered section of the population but to give to the minorities a sense of security and a feeling of confidence..... special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institution and by guaranteeing to the minorities autonomy in the matter of the administration of these institutions."

58. The learned Advocate-General has also placed reliance on para 172 of the aforesaid *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, and has submitted that in view of the observations of the Supreme Court no right, howsoever absolute the same may be, can be free from regulation and be laid stress on the following observations made by the Supreme Court wherein it has been held that.

"Because Article 30(1) is couched in absolute terms, it does not follow that the right -guaranteed is not subject to regulatory laws which would not amount to its abridgment. It is a total misconception to say that because the right is couched in absolute terms, the exercise of the right cannot be regulated or that every regulation of that right would be an abridgement of the right."

59. Having considered the rival contentions of the parties. I am firmly of the view that regulatory provisions can be made applicable in respect of establishment as well as administration of the educational institutions if the same are found to be necessary for excellence of education and in the best interest of the institution and do not lead to negation or abridgement of the right in question. Dealing with this very aspect, the Supreme Court in the case of Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, has held in paragraph 10 as follows:--

".....This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions; it is a right to establish and administer what are in truth educational institutions -- institutions which cater to the educational needs of the citizens or sections thereof. Regulation made in the true interests of efficiency of institution, 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 institutions in matters educational. (Underlining is mine)

60. It is needless to say that in view of Article 30(1) of the Constitution, the regulations could only be in the interest of the institutions. Such, as to make it an effective educational institution to secure excellence of training. It has been further said by the Supreme Court in the above referred case that 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.

61. It is also a well established principle of the constitutional law that the rights conferred even in absolute terms have to be exercised in an organised society governed by law, and this involves regulations of rights, which do not hinder, but help, the effective exercise of these rights. See Constitutional law of India by H.M. Seervai, Third Edition, at page 972.

62. A bare reading of Article 30(1) of the Constitution clearly suggests an inbuilt regulation of the right which it seeks to confer on the minorities. This right can be claimed and enforced only where the minorities intends to establish and administer as "educational institution." Educational institution

"has not been defined in the Constitution. In the case of A.P. Christians Medical Educational Society v. Government of A.P. AIR 1986 SC 1490 it has been held that," these institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms. They may be institutions intended

to give the children of the minorities the best general and professional education, to make them complete men and women of the country and to enable them to go out into the world fully prepared and equipped. They may be institutions where special provision is made to the advantage and for the advancement of the minority children. They may be institutions where the parents of the children of the minority community may expect that education in accordance with the basic tenets of their religion would be imparted by or under the guidance of teachers. Learned and steeped in the faith. They, may be institutions where the parents expect their children to grow in a pervasive atmosphere which is in harmony with their religion or conducive to the pursuit of it. What is important and what is imperative is that there must exist some real positive index-to enable the institution to be identified as an educational institution of the minorities." (Underlining is mine)

63. In view of the law laid down by the Supreme Court in *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, it is clear that the right under Article 30(1) of the Constitution can be claimed only in respect of such institution which can be identified as an educational institution by reference to some real positive index. Question may arise as to who has to provide such a positive index? The answer, to my kind, is that at least the legislature is definitely competent to provide such an index for the identification of an institution as an educational institution for imparting true education in the desired field or faculty. If an institution fails to substantially subscribe to the requirement of such an index or the norms, the institution cannot be held to be an educational institution in truth and reality. As such, even if such institutions are set up by persons claiming to be of minority communities, religious or linguistic, they cannot be allowed to claim any right under Article 30 of the Constitution unless the institution is, as a matter of fact, found to be conforming to such index or the norms,

64. To substantiate the aforesaid reasonings it would suffice to say that in general for educational institutions there should be at least class rooms where education can be imparted. There should be teachers in the teaching institutions. Relating to the professional education, like in the Medical Colleges there should be a hospital and in the Engineering Colleges there should be laboratory with required instruments and apparatus and the likes. Unless an institution imparting education fulfils such minimum requirements meant for imparting education in the specified field or faculty, that institution cannot be identified as an educational institution for claiming the right in question. The State legislature has enacted the impugned Act only with an objective for laying down index or norms necessary for a Teachers' Training College.

65. It is significant to note here that in *A.P. Christians Medical Educational Society case* (AIR 1986 SC 1400) (*supra*), the claims advanced before the Supreme Court was that permission to start a new medical College could not be refused by the University to a minority institution. But this contention was

repelled, inter alia, by holding that (at p. 1495 3 of AIR):

"Obviously the so-called establishment of Medical College was in the nature of a Financial adventure for the so called society and its office bearers, but an educational misadventure for the students. Many, many conditions had to be fulfilled before affiliation could be granted by the University. Yet the society launched into the venture without fulfilling a single condition beyond appointing some one as principal. No one could have imagined that a Medical College could function without a teaching hospital, without the necessary scientific equipment, without the necessary staff, without the necessary building and without the necessary funds. Yet that is what the society did or pretended to do.

There was no doubt that the society and the so-called institutions were started as business ventures with a view to make money from gullible individuals anxious to obtain admission to professional colleges. It was nothing but a daring imposture and skull (drudgery?) duggery. By no stretch of imagination status and dignity of a minority institution can be conferred on it." (Underlining is mine) 66. The ambit and scope of Article 30 of the Constitution particularly with reference to the power of regulation of minority institutions has been considered at length by the Supreme Court in the case of All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, . After reviewing almost all the judicial pronouncements on the subject, it has been held in para 9 as follows: "In view of these decisions it is now well settled that minorities based on religion or language: have fundamental freedom to establish and manage educational institutions of their own choice, but the State has right to provide regulatory provisions for ensuring educational excellence, conditions of employment of teachers, ensuring health, hygiene and discipline and allied matters. Such regulatory provisions do not interfere with the minorities fundamental right of administration of their educational institutions; instead, they seek to ensure that such institution is administered efficiently, and that students who come out of minority institution after completion of their studies are well equipped with knowledge and training so as to stand at par in their avocation in life without any handicap."

With regard to the permissibility of the nature of regulations, apart from what has been said in Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, , it has been held by Khanna, J. in para 91 of The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, that, "It is, in my opinion, permissible to make regulations for ensuring the regular payment of salaries before a particular date of the month. Regulations may well provide that the funds of the institution should be spent for the purposes of education or for the betterment of the institution and not for extraneous purposes. Regulations may also contain provisions to prevent the diversion of funds of institutions to the pockets of those in charge of management or their embezzlement in any other manner. Provisions for audit of the accounts of the institution would be permissible regulation. Likewise, regulations may provide

that no anti national activity would be permitted in the educational institutions and that those employed as members of the staff should not have been guilty of any activities against the national interest."

67. Now coming back to the provisions of the Act. Pursuant to the powers conferred u/s thereof the State Government has made rules under notification No. G.S.R. 1107 dated 25-11-87, Rule 3 of these Rules lays down the terms and conditions subject to which permission can be accorded to Teachers Training Colleges as per the provisions of Section 2 of the Act. For the sake of clarity it may be indicated here that even Teachers Training Schools imparting training for certificate courses have been covered under the expression "College" both under the Act and the rules. These rules, inter alia, provide that for being recognized as a Teachers' Training College the institution should have sufficient land, building, library, hostel accommodation, staff room for teachers, teachers with specified qualifications and the like,

68. Section 2 of the Act read with Rules 3 and 5 of the Rules makes it mandatory that even for the establishment and organisation of a Teachers Training College it is incumbent upon the management to obtain prior permission. This does not stand to reason. Here establishment or organisation of a Teachers' Training College per se cannot be held to be defeating any of the objects of the Act. Provisions to this extent cannot be held to be regulatory either in general public interest or in the interest of the educational institutions in question. But the State can definitely regulate the activities incidental to the admission of the students to the Colleges, may be of minorities, to ascertain that the institution does not fall short of the norms or the index laid down by the legislature. Therefore, the provisions of the Act and the Rules for seeking permission and/or recognition of the Government can be enforced only after the College is established but before it intends to invite applications from the students to take admission in those institutions on an assurance to impart training leading to the examination (s) contemplated u/s 2(1)(b) of the Act. In this view of the matter, the provisions of the Act and the Rules to the extent it provides for seeking previous permission even for establishment of such College is held to be constitutionally invalid and unenforceable being violative of Article 14 as well as Article 30 of the Constitution.

69. Now coming to the terms and conditions contained in rule 3 of the Rules, in my view, the same should be treated as index or norms for setting up of a Teachers' Training College and unless an institution is set up with the aforesaid requisites, in law, it cannot be deemed to be an institution, which can effectively impart education in the faculty of teachers training. It is only on the fulfillment of these conditions and norms that an institution can be identified as an educational institution in the faculty in question even within the meaning of Article 30(1) of the Constitution. In the case of N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another, it has been held that,

"The Teachers Training Institutes are meant to teach children of impressionable

age and we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training. True they will be required to pass the examination but that may not be enough. Training for a certain minimum period in a properly organised and equipped training institute is probably essential before a teacher may be duly launched." (Underlining is mine)

Therefore, it is difficult to accept the contentions of the petitioners that enforcement of the provisions of the Act and the rules to the extent they have been made applicable with regard to the taking of admission of the students and management of the institutions are destructive of their right pertaining to minority institutions under-Article 30 of the Constitution.

70. Rule 6 of the Rules contemplates that on receipt of applications from the institution for grant of permission the State Government in the Education Department shall get an enquiry conducted by a Committee constituted as per the Rules and in the subsequent Rules the State Government. On receipt of the recommendation of that Committee, shall consider the same and grant permission to the institution concerned. Therefore, under the scheme of the Act and the rules if an institution fulfills the desired norms and conditions so as to be identified as a Teachers' Training College in its true perspective as per the legal provisions then it will be incumbent upon the Government to accord permission to such institution. In such a situation the institution will be entitled to the permission as a matter of right. Consequent to the grant of permission by the Government under the Act, the Board will be bound to permit the trainees of such institution to appear at the respective examinations held by it.

71. In none of the cases before us it has been pleaded that the petitioners have undertaken the establishment of their Colleges for instructions, Lectures, tutorials or practical training in education which is not meant for leading to an examination for getting certificate of the Board in this regard. Therefore, for the present, it is not necessary to examine the constitutional validity of the impugned provisions keeping in view such class of cases.

72. In the case of Zakia Afaque Islamia College, Siwan Vs. State of Bihar and Others, a Bench of this court has held that the provisions contained in Ordinance No. 87/ 80, which was one of the ordinance of the impugned Act, containing identical provisions, was not applicable to the minorities institutions in view of Article 30 of the Constitution. Hence, according to their Lordships if the provisions of Section 2 of the ordinance for that matter the entire ordinance in question was to govern the minority institutions also there would be a likelihood of infringement of the provisions of Article 30 of the Constitution, on a detailed analysis of the issues involved, in view of the law laid down by the Supreme Court in this regard. I have already held that except with regard to the establishment of the Teachers' Training College the provisions of the Act do not infringe the right guaranteed under Article 30 of the Constitution. Therefore, with due respect, it is to be held that the view taken in the case of Zakia Afaque Islamia College (supra) is not correct to the extent indicated above and the same

needs to be overruled.

73. At this stage it may be useful to refer to a judgment of the Supreme Court in the case of Managing Committee of Bhagwan Budh Primary Teachers" Education College, Siwan v. State of Bihar (Civil Appeal No. 4129 of 1989) decided on 21st September 1990. In this case while examining the imperativeness of the rules it has been held that "what the Government should see in whether there has been substantial compliance."

74. In C.W.J.C. No. 7046 of 1988 large number of orders have been filed as Annexure 9 series. -All these orders have been issued under the signature of Sri Begamber Prasad, Joint Secretary to the Government in the department of Education. Perusal of all these orders reflects deplorable state of affairs on the parts of the Government department. Though under the provisions of the Act and the Rules as 1 have stated above permission cannot be accorded to the Teachers Training Colleges unless they fulfil the terms and conditions embodied under the rules but still, for the reasons best known to the authorities concerned, in quite a good number of cases permissions have been accorded without either holding any enquiry in this regard or where the conditions were not fulfilled as per the narration of the orders themselves, curiously enough, permission has been accorded by saying that these are either interim permission or temporary permission till further orders or permission for some specific period. Under the provisions of the Act and the Rules, the Government has no authority to accord permission in such a manner, under the scheme of the Act and the Rules permission can be accorded only on fulfillment of the terms and conditions statutorily provided and once such a permission is accorded it is permanent permission subject to the right of cancellation or withdrawal in case of any default on the part of the institution. Practice of according permission as reflected in the orders Annexure 9 series should be forthwith stopped and if any such permission is granted it should be deemed to be void and inconsequential in the eye of law.

75. Now before coming to the individual cases I would also like to deal with another important aspect, which will have a bearing on the reliefs claimed in all the cases. In all the cases there is a prayer for issuance of a mandamus to the Board to allow the students of the respective institutions to appear at the Teachers Training course even though such institutions have not obtained permission of the Government under the provisions of the. Act and the Rules before admitting the students and purporting to impart training as per syllabus and requisites laid down in this regard. I need not detain myself to discuss the matter in any detail since the Supreme Court with regard to the Act in question itself has considered the matter in the case of Managing Committee of Bhagwan Budh Primary Teachers Training College and Another Vs. State of Bihar and Others, wherein it has been held in para 2 as follows:--

"It is not possible to grant any such permission as prayed for because the granting of such permission would be clearly violating the provisions of the Education Act (see the judgment in SLP No. 12014 of 1987 decided on November

25, 1987 and the A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another,). What is, however, unfortunate is that applications made by various educational institutions to the Government for recognition are not promptly disposed of. In fact, we are of the view that the concerned department of the Government of Bihar should see to it that applications for recognition of educational institutions are decided promptly and where such an application is without merit, the Government should promptly reject the same and take steps to see to it that the rejection is brought to the attention of the students of the institution concerned so that they may not waste further time and money by undergoing training in that institution. The failure of the Government to take such action would only reflect callous indifference to the interests of the young students to whom the Government certainly owes certain responsibilities. We also feel that the State Government should issue advertisements through newspapers and other possible channels, if any, to ensure that students do not get misled by such unrecognised institutions into wasting, their precious time and money in undergoing training which will be of no avail to them. We find that there appears to be a large number of students in the State who are misled by such institutions. In fact, the State should consider taking such steps criminal or civil as are open to it in law to stop such institutions and those who run them from misleading students and deceiving them."

In para 4 of the aforesaid case the Supreme Court issued directions to the State Government to get published advertisements in at least three newspapers in the State with wide circulation warning students not to take admission in any educational institution which has not got recognition and making it clear that if they do so, they would be doing so at their own risk. The advertisements were to be issued within three weeks from the date of receipt of this order by the department concerned. In spite of the directions issued by the Supreme Court, at least the records do not bear out that this direction of the Supreme Court has been carried out.

76. It needs to be specifically stated here that after receiving the recommendation of the Committee and before taking decision adverse to the applicant seeking permission under the Act. It would be mandatory on the part of the Government to issue show cause spelling out the reasons, which may according to the authorities are germane for such refusal and grant reasonable and effective opportunity of hearing to the applicant. This procedural requirement of fairness is implicit in the very nature of the power contained in Section 2 of the Act and the rules framed thereunder. In the case of *Swadeshi Cotton Mills Vs. Union of India (UOI)*, it has been held that

"Principle of natural justice are now considered so fundamental as to be "implicit in the concept of ordered liberty" and, therefore, implicit in every decision making function, call it judicial, quasi judicial or administrative. It has been held that where an authority functions under a statute and the statute is silent about the observance of the principle of natural justice such statutory silence is taken

to imply compliance with the principle of natural justice. The implication of natural justice being presumptive, it should be followed by the authorities unless it is excluded by express words of statute or by necessary implications.

77. Now coming to the facts of the cases before us, so far as C.W.J.C. Nos. 5813 of 1988, 6057 of 1988 and 2511 of 1983 are concerned as per the petitioners they have been established by the religious minorities for imparting education in the faculty of teachers training. Prayer of the petitioners inter alia, is that the institutions should be given recognition and the students who have been admitted to the institutions should be allowed to appear at the examinations held by the Board. Their assertion is that the provisions of the Act and the Rules cannot be made applicable to them in view of the fundamental right enshrined under Article 30 of the Constitution. Since I have already held that the provisions of the Rules are applicable for admission and imparting training to the students, the petitioners of the aforementioned writ applications are not entitled for any relief as claimed unless they apply and obtain permission in accordance with the provisions of the rules. The writ applications, mentioned , above, are accordingly dismissed.

78. Four writ applications, namely C.W.J.C. Nos. I of 1988, 7046 of 1988, 5347 of 1989 and 5970 of 1990 have been filed by the same institution. In the first three writ petitions, prayer is for issuance of a writ of mandamus directing the State to grant recognition and to allow the students to appear for the training sessions 1985-87, 1986-88 and 1987-89. In the fourth writ application, viz. C.W.J.C. No. 5970 of 1990 the prayer is for issuance of a writ of mandamus to grant recognition to the institution and to publish (he result of the students of the institution. Who according to the petitioner had appeared pursuant to interim orders passed by this court in the first three writ applications at the examinations pertaining to the above referred three sessions. From the records if it transpires that interim orders were passed allowing the students of the institution to appear at the examinations pertaining to the sessions 1985-87 and 1987-89. But no such order seems to have been passed for the session 1986-88. It further transpires that by the order as contained in memo No. 483 dated 1-8-89, which has been filed as Annexure 2 with the supplementary affidavit filed on 3-10-89 in C.W.J.C. No. 7046 of 1988 the State Government has refused permission to the petitioner as per the provisions of the Act and the Rules and, therefore, it is also prayed that the said order be quashed. Admittedly, the petitioner institution had admitted the students without seeking statutory permission under the Act. Therefore, there was no occasion on the part of the Government to ascertain whether at the material time the institution was fully equipped for imparting training in the art of teaching to those students and that the students had undergone the necessary training as per the syllabus and courses of study. Proper and requisite training is one of the major factors which has to be taken into account before a certificate of training is given by the Board. As such, it is not possible for this court to issue any writ of mandamus for publication of the results as prayed.

79. So far as the order as contained in Annexure 2 in C.W.J.C. No. 7046 of 1988 is concerned, the same is quashed since this order has resulted in civil consequences but the same has been passed without granting any reasonable opportunity of hearing to the petitioner to establish the claim. Further the order is cryptic and non speaking in the sense that it merely says that for certain conditions enumerated in the order have not been fulfilled. But no details in respect thereof has been given. Since that order has been quashed, it will be incumbent upon the Respondent No. 2, the Director, Research and Training, to grant reasonable opportunity of hearing to the petitioner after serving show cause notice and pass appropriate orders in accordance with law within a period of four weeks from the date of communication of this order. Accordingly, C.W.J.C. Nos. 1 of 1988, 7046 of 1988, 5347 of 1989 and 5970 of 1990 are partly allowed to the extent indicated above.

80. In the circumstances of the case there shall be no order as to costs.