

(1988) 07 KAR CK 0069

In the Karnataka High Court

Case No : Writ Petition No's. 10085, 13277 and 18111 of 1987

Sarabheshwara Vidya Peetha

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-07-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19 (1) (g), 245, 246

Citation : (1988) ILR (Kar) 3182 : (1988) 3 KarLJ 415

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : H.B. Datar and J.A. Sequeira, for K.R.D. Karanth, for the Appellant;
N. Devadas, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Bopanna, J.—In these petitions the petitioners have sought for a Writ in the nature of mandamus directing the respondents to grant affiliation to the College of Education (B.Ed. College) for the academic year 1987-88. They have also sought for a Writ in the nature of certiorari for quashing the order of the State Government bearing No-ED. 122 UBC 87 dated 1-9-1987 produced as Annexure-G 1 in Writ Petition No. 18111 of 1987. Since a common point arises for consideration in these petitions, they are disposed of by a common order.

2. The petitioner in Writ Petition No. 13227 of 1987 is an educational institution registered under the Karnataka Societies Registration Act, 1960 and it is not in dispute that this Association is a minority institution which enjoys the protection of Article 40 of the Constitution. It is also not in dispute that this Association is running a number of educational institutions for catering to the needs of persons belonging to the minority community, namely, the Muslims of this State. Its grievance is that its application for establishing a Course in B.Ed. was rejected by the State Government and by such rejection the constitutional guarantee conferred on it under Article 40 of the Constitution is violated. The further grievance of this petitioner is that the impugned order rejecting its application

is. also opposed to the relevant provisions of Section 53 of the Karnataka State Universities Act, 1976 (in short "the Act") since a duty is cast upon the State Government to grant the permission sought for once it is found that the petitioner has complied with all the requirements of the aforesaid provisions of that Section.

The petitioner in Writ Petition No. 48117 of 1987 is also a minority institution which enjoys the protection of Article 40 of the Constitution. It is running a number of educational institutions for the benefit of the members of Muslim minority community. It had also applied for permission to start a B.Ed. College. But, notwithstanding the favourable report of the Local Inquiry Committee which had gone into the matter, the State Government had refused to grant the permission sought for on the ground that the starting of B.Ed. College is not permitted as a matter of policy in view of the fact a large number of unemployed B.Ed. graduates have already passed out of other institutions and in view of the unemployment problem created by them, it is not proper for the petitioners to swell the number of unemployed graduates by starting the B.Ed. Course.

In W.P.No. 10085 of 1987, the petitioner is a Society registered under the Karnataka Co-operative Societies Act. It is run by the majority community and not by a minority community as in the other two Writ Petitions. So, it does not claim the protection of Article 40 of the Constitution. It has based its claim under the provisions of Section 53 of the Act. It had made the necessary application to the Gulbarga University on 17-11-1986 and it had complied with all the necessary formalities of starting a B.Ed. College. The Local Inquiry Committee constituted by the Gulbarga University had inspected the College and submitted its report as required under Sub-section (3) of Section 52 of the Act and that report is also favourable to the petitioner. Even then, the State Government for the very same reasons stated in the other two petitions has refused permission to this institution to start a B.Ed. College.

3. On the pleadings of the parties, the points that arise for consideration in the first two petitions are:

- 1) Whether the protection conferred on the minority institutions under Article 40 of the Constitution is an absolute protection which does not come under the purview of the regulatory measures which the State Government could impose for the purpose of maintaining the academic standards and also for achieving the constitutional goal as envisaged in the Directive Principles of the Constitution, and in this case, the Directive Principles under Article 41 of the Constitution?
- 2) Whether the provisions of Section 53 of the Act are mandatory in that, once the provisions of Section 53(2) are complied with, the State Government must make a recommendation for granting the application prayed for?
- 3) Whether the impugned orders are violative of the Constitutional guarantee under Article 14 of the Constitution?

4. Learned Counsel for the petitioners in the first two Writ Petitions have relied on a number of decisions of the Supreme Court in which the Supreme Court had interpreted the provisions of Article 40 of the Constitution in so far as it relates to the rights and privileges of the minorities to establish educational institution of their choice. Learned Counsel for the petitioners Mr. Sequeira and Mr. K.R.D. Karanth who have appeared in these cases have laid stress on the words "of their choice" and contended that on the plain terms of Article 40 of the Constitution the State Government, in the case of minority institutions cannot deny their right to start B.Ed. Course notwithstanding the fact that there are a number of graduates who had taken the B.Ed. degree and a number of them are without jobs. These economic considerations, that is to say, the unemployment problem of B.Ed. graduates is not a relevant consideration for the purpose of Article 40 of the Constitution. Mr. H.B. Datar, Senior Advocate, has supplemented their arguments.

5. But, the learned Government Advocate has relied on the directive principles of the Constitution and in particular, Article 41 of the Constitution and has submitted that the decision of the State Government was prompted by the acute problem of unemployment which is staring at the B.Ed. graduates and this policy decision of the State Government is taken to mitigate the hardship faced by the unemployed B.Ed. graduates. He submitted that Article 40 of the Constitution cannot be read in isolation and it has to be read in conjunction with the Directive Principles of the Constitution which the Supreme Court has said are fundamental to the governance of the State. Therefore, in these petitions, we have a classic case of fundamental rights guaranteed to the minority institutions under Article 40 of the Constitution operating on a Collision Course with the Directive Principles of the Constitution which, as noticed earlier, are fundamental in the governance of the Country.

6. Learned Counsel for the petitioners have strongly relied on the decisions of the Supreme Court in The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, . In a very elaborate Judgment of the Constitution Bench of the Supreme Court; the content, scope and object of Article 40(1) of the Constitution is propounded in that decision. Learned Counsel also relied on the following other decisions of the Supreme Court, namely;

1. D.A.V. College, Bhatinda, etc. Vs. The State of Punjab and Others,
2. Rt. Rev. Msgr. Mark Netto Vs. State of Kerala and Others,
3. Managing Board of The Milli Talimi Mission, Bihar, Ranchi and Others Vs. State of Bihar and Others,
4. State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.,
5. The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another,

and also on 1979 Kar L.J. 224, Socio Literati Advancement Society v. State of

Karnataka and State of Kerala & ors. v. Manager, Corporate Management of Schools of Diocese of Palai, 1970 Kerala Law Times, 106 and other decisions of the High Courts dealing with the rights of the minority institutions under Article 40 of the Constitution.

7. Learned Government Pleader has relied on the following decisions of the Supreme Court, namely:

1. Vidharbha Sikshan Vyawasthapak Mahasangh Vs. State of Maharashtra and Others,
2. State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others,
3. K. Rajendran and Others Vs. State of Tamil Nadu and Others,
4. D.S. Nakara and Others Vs. Union of India (UOI),
5. Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another,

In addition to these cases, the recent decision of the Supreme Court reported in 1988(3) Supreme Court cases, page 9122 may also be looked into since in that case, we find the views of the Supreme Court on the administrative actions of the authorities concerned touching upon the fundamental rights protected under Part III of the Constitution when those rights are regulated by the State in order to achieve the constitutional goal to be achieved under the Directive Principles of the Constitution.

8. So, on these competing contentions, the first duty of this Court in these cases is to ascertain whether the rights of the minority institutions protected under Article 40(1) of the Constitution are absolute rights and whether they are subject to regulatory measures of the State? If they are subject to the regulatory measures, is it possible to say that the impugned orders in these cases are proper and come within the scope of regulatory measures which are protected from challenge notwithstanding the fundamental rights guaranteed under Article 40 of the Constitution.

9. In the decision of the Supreme Court in The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, on which the learned Counsel for the petitioners have relied, there are observations to the effect that these fundamental rights under Article 40 of the Constitution are subject to regulatory measures. In para-18 of the Judgment Chief Justice Ray has observed:

"This Court in State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., explained the necessity and importance of regulatory measures of system and standard of education in the interest of the Country and the people. When a minority institution applies for affiliation, it agrees to follow the uniform courses of study. Affiliation is regulating the educational character and content of the minority institutions. These regulations are not only reasonable in the interest of general secular education but also conduce to the improvement in the stature

and strength of the minority institutions. All institutions of general secular education whether established by the minorities or the non-minorities must impart to the students education not only for their intellectual attainment but also for pursuit of careers. Affiliation of minority institutions is intended to ensure the growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 40."

In paragraph-30 of the Judgment, the learned Chief Justice has stated thus:

"Educational institutions are temples of learning. The virtue of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete, dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclecticism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character."

Again in paragraph 90 of the Judgment, Justice Khanna, has observed :

"Regulations can be made to prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of an educational institution without qualified teachers. The State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance

of the right which is guaranteed; they secure the proper functioning of the institution, in matters educational (see observations of Shah, J., in *Rev. Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, Further, as observed by Hidayatullah, C.J., in the case of *Very Rev. Mother Provincial* (supra) the standards concern the body politic and are dictated by considerations of the advancement of the Country and its people. Therefore, if universities establish syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others."

In paragraph 92 of the Judgment, the learned Judge has observed :

"A regulation which is designed to prevent maladministration of an educational institution cannot be said to offend Clause (1) of Article 40. At the same time it has to be ensured that under the power of making regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 40(1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of *Rev. Sidhajibhai Sabhai* (supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution effective as an educational institution. Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

In para-177 of the Judgment, Justice K.K. Mathew has observed.

"Recognition or affiliation is granted on the basis of the excellence of an educational institution, namely, that it has reached the educational standard set up by the university. Recognition or affiliation is sought for the purpose of enabling the students in an educational institution to sit for an examination to be conducted by the University and to obtain a degree conferred by the University. For that purpose, the students should have to be coached in such a manner so as to attain the standard of education prescribed by the University. Recognition or

affiliation creates an interest in the University to ensure that the educational institution is maintained for the purpose intended and any regulation which will subserve or advance that purpose will be reasonable and no educational institution established and administered by a religious or linguistic minority can claim recognition or affiliation : but this does not mean that it should submit to a regulation stipulating for surrender of a right or freedom guaranteed by the Constitution, which is unrelated to the purpose of recognition or affiliation. In other words, recognition or affiliation is a facility which the University grants to an educational institution, for the purpose of enabling the students there to sit for an examination to be conducted by the University in the prescribed subjects and to obtain the degree conferred by the University, and therefore, it stands to reason to hold that no regulation which is unrelated to the purpose can be imposed. If, besides recognition or affiliation, an educational institution conducted by a religious minority is granted aid, further regulations for ensuring that aid is utilised for the purpose for which it is granted will be permissible. The heart of the matter is that no educational institution established by a religious or linguistic minority can claim total immunity from regulations by the legislature of the University if it wants affiliation or recognition; but the character of the permissible regulations must depend upon their purpose. As we said, such regulations will be permissible if they are relevant to the purpose of securing or promoting the object of recognition or affiliation. But that does not affect the question of principle. In every case, when the reasonableness of a regulation comes up for consideration before the Court, the question to be asked and answered is whether a regulation is in the general interest of the public has no relevance, if it does not advance the excellence of the institution as a vehicle for general secular education as, ex-hypothesi, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards. This is the reason why this Court has time and again said the question whether a particular regulation is calculated to advance the general public interest is of no consequence if it is not conducive to the interests of the minority community and those persons who resort to it."

These observations of the learned Judges of the Supreme Court are, in my view, do not appear to be helpful for the purpose of these cases as in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, the effect of Directive Principles of the Constitution on the rights of the minority institutions under Article 40 of the Constitution did not directly arise for consideration. But those Directive Principles arose for consideration in the case of *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*, and in the case of *Ram Saroop Dasji Vs. S.P. Sahi, Special Officer-in-charge of The Hindu Religious Trusts and Others*,

10. A constitution Bench of the Supreme Court in *Kerala Education Bill 1958*, Special Reference No 1/58 In Re: *The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, considered the effect of the

Directive Principles of the Constitution on the rights of minorities protected under Articles 14, 30(1) and 45 of the Constitution. Chief Justice S.R. Das, speaking for the majority observed :

"Presumably to implement the directive principles alluded to above the Kerala Legislative Assembly has passed the said Bill in exercise of the legislative power conferred upon it by Articles 245 and 246 of the Constitution read with entry 11 of List II in the Seventh Schedule to the Constitution. This legislative power is, however, to be exercised under Article 245 "subject to the provisions of this Constitution." Therefore, although this legislation may have been undertaken by the State of Kerala in discharge of the obligation imposed on it by the directive principles enshrined in Part IV of the Constitution, it must, nevertheless, subserve and not over-ride the fundamental rights conferred by the provisions of the Articles contained in Part III of the Constitution and referred to above. As explained by this Court in the *The State of Madras Vs. Srimathi Champakam Dorairajan*, (G) and reiterated recently in *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, (H), "the directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights." Nevertheless, in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body the Court may not entirely ignore these directive principles of State policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible. Keeping in view the principles of construction above referred to we now proceed to examine the provisions of the said Bill in order to get a clear conspectus of it."

11. In the case of *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, Chief Justice Hidayathulla, speaking for the Court, reviewed the earlier cases, namely, *The State of Madras Vs. Srimathi Champakam Dorairajan*, . *The State of Bombay Vs. Bombay Education Society and Others*, in regard to *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, . *Sidharjbhai v. State of Gujarat*¹⁴, *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, , *Katra Educational Society Vs. State of Uttar Pradesh and Others*, and *Rev. Father W. Proost and Others Vs. The State of Bihar and Others*, and observed as follows:

"There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are dictated by considerations of the advancement of the Country and its people. Therefore, if Universities establish the syllabi for examinations, they must be followed subject, however, to special subjects which the institutions may seek to teach, and to certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot

be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others."

12. In the case of *Rev. Sidharajbhai Sabbai and ors. v. State of Gujarat and anr.*¹⁴, Justice Shah, as he then was, speaking for the Court explained the regulatory measures that could be imposed on the minority institutions in paragraph 10 of the Judgment. The learned Judge observed:

"Article 40(1) provides that all minorities have the right to establish and administer educational institutions of their choice, and Article 40(2) enjoins the State, in granting aid to educational institutions, not to discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. Clause (2) is only a phase of the non-discrimination clause of the Constitution and does not derogate from the provisions made in Clause (1). The clause is moulded in terms negative; the State is thereby enjoined not to discriminate in granting aid to educational institutions on the ground that the management of the institution is in the hands of a minority, religious or linguistic, but the form is not susceptible of the inference that the State is competent otherwise to discriminate so as to impose restrictions upon the substance of the right to establish and administer educational institutions by minorities, religious or linguistic. Unlike Article 19, the fundamental freedom under Clause (1) of Article 40 is absolute in terms: it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Article 19 may be subjected to. All minorities, linguistic or religious have by Article 40(1) 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 under Article 40(1) would to that extent be void. 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 institution-institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed; they secure the proper functioning of the institutions, in matters educational."

In para-15 of the Judgment, the learned Judge observed :

"The right established by Article 40(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19 it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting of educational institutions of their own choice. The right is intended to be effective and is not to be whittled

down by so-called regulative measures conceived in the interest not of the minority educational institutions, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution the right guaranteed by Article 40(1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test-the test of reasonableness and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

But in the above case, the Directive Principles in question did not arise for consideration and therefore, the line of enquiry that this Court has to adopt in these cases is to what extent the directive principles enshrined in the Constitution could have a bearing on the regulatory measures sought to be imposed by the State Government on the petitioner institutions. In the first two petitions, as noticed earlier, the petitioners rely on the constitutional guarantee under Article 40 of the Constitution. In the third case, Mr. Datar for the petitioner relies on the provisions of Section 53 of the Act. It is no doubt true, in all these cases, the Local Inquiry Committee, on the direction made by the authorities concerned, had inspected the petitioner's institutions and had submitted a favourable report. In one of the Reports, the Chairman of the Committee had strongly recommended the case of the petitioners. The petitioners rely on this recommendation to drive home the point that the action of the State Government is arbitrary since there was no material before the State Government to form a contrary opinion.

13. The order of the State Government is found in Circular No. 48 UBC 87 dated 7-5-1987. The sum and substance of the order is based on the report of the Technical Committee appointed by the State Government to examine the question of starting new B.Ed. Colleges in this State. The introduction to that report disclose that the Government had felt that the existing institutions are capable of meeting the man power requirement of the State at present and also for the immediate future. However, to examine the issue in its entirety the Government constituted the Technical Committee on 11-9-1986 consisting of the Commissioner of Public Instructions as the Chairman, Additional Secretary to the Government, Education Department as a member and one Professor S.R. Rohidekar as the third member. The terms of reference of the Committee are as follows :

"1. Whether or not the facilities available with the applicant institutions for starting new Colleges are adequate in terms of buildings, equipment, staff and

other requirement.

2. Whether or not the feeding institutions to the proposed Colleges are adequate.
3. Whether or not the applicants are financially sound and stable.
4. Whether or not the proposed Colleges will maintain high standard of education.
5. Whether or not the proposed Colleges will serve the interest of SC/ST, Minorities and Women's Organisations, and
6. Whether or not the proposed Colleges are from backward districts or Border areas."

The Technical Committee was authorised to devise its own Procedure of work according to its convenience. The preliminary meeting of this Committee was held on 1-10-1986 and in that meeting it was decided to collect certain basic data pertaining to the Training Colleges existing in the State. The second meeting of the Committee took place on 13-10-1986. The Committee felt that in view of the large number of applications referred to by the Government, it has to tour practically the entire State and therefore, the Committee suggested to the Government not to consider any application for starting the B.Ed. course for the academic year 1986-87. The Chairman of the Committee was authorised to write a letter to the Government in this connection. The Committee also observed in that meeting that it was necessary to examine the need for starting new Colleges and the employment potential before the Government: took a final decision in the matter. On the question of need the Committee formulated the following points for its consideration :

- " 1. Existing general need for Karnataka for different types of Colleges.
2. Needs of States bordering Karnataka.
3. Needs of SC/ST and Women's Organisations to have their own Colleges.
4. Needs for trained teachers in special subjects in schools and Colleges.
5. Future expansion needs and
6. Need for Colleges of High quality."

After considering these points, the Committee found as regards the B.Ed. Colleges thus:

"The existing number of High Schools is reaching 4000 and the number of teachers is around 30,000. The retirement vacancies will be 4% of 30,000, i.e., 1200 per year.

For the next five years there will be an addition of about 50 new High Schools and there will be only 3 classes (VIII, IX & X) High Schools. Each of them will need 5 trained teachers. So the annual demand will be 250 new trained teachers. The total demand will be 1450 per year.

Supply :- There are 58 B.Ed. Colleges and every year they turn over 4640 trained teachers. Even after taking out about 1500 of them as coming from neighbouring States, there will be 3140 newly trained teachers. The supply thus exceeds the demand. Hence there is no need for any more B.Ed. Colleges."

So, based on this report of the Technical Committee, the Government made the impugned order to the effect that till the expiry of the 7th Plan period no more new B.Ed. Colleges may be started and based on this policy decision, the Government declined to grant the permission sought for by the petitioners.

14. It is also the case of the petitioners that contrary to this policy decision taken in the year 1987, the State Government had accorded permission to certain other majority institutions to start the B.Ed. Course. Annexure-I is the order dated 27-8-1987 produced in W.P. 10085 of 1987 which shows that one Sri Jayachamarajendra Education Society was granted permission to start B.Ed. Course for the year 1986-87. By another order Annexure-K, bearing the same date, the State Government had accorded permission to one Prabhu Rajendra Education Society to start B.Ed. course for the academic year 1986-87. In W.P. 13277 of 1987, one more order dated 10-9-1987 according permission to Devaraj Urs Educational Institution for starting B.Ed. Course for the year 1987-88 fixing the intake at 100 seats, is produced as Annexure-K. Annexure-J is another order dated 27-8-1987 in the same Writ Petition according permission to Kanakadasa Educational Institution for starting B.Ed. College for the year 1986-87 fixing the intake of students at 80. So, on the basis of these orders of the State Government, which came into existence during the pendency of the Writ Petitions or just before the filing of the Writ Petitions, the petitioners have invoked the provisions of Article 14 of the Constitution.

15. The issuance of these orders by the State Government is admitted by the learned Government Advocate. But, he had explained the circumstances under which these orders were issued in paragraph 8 of the Returns filed by the State Government. He submitted that affiliation was granted to two institutions as per Annexures J and L in Writ Petition No. 13277 of 1987 for the academic year 1986-87 and not for the academic year 1987-88. The circumstances under which these orders were issued are that the State Government had taken a decision to accord affiliation in view of the Writ Petitions filed by those two institutions which came up for consideration before this Court in Writ Appeal No. 418/87 and Writ Petition No. 6335 of 1987 and in that appeal and the Writ Petition this Court had made an interim order permitting the students to appear for the April 1987 examinations. In view of the interim order made by this Court and having regard to the interest of the students and the facilities available in those institutions for fulfilling the requirements of affiliation, the Government decided to accord affiliation. As regards the Devaraj Urs Educational Institution, its case was recommended by the University during the year 1986-87 itself and the Government took the decision on 14-10-1986 to accord affiliation for the said institution for the year 1987-88 and as such, the decision in respect of this

institution was much earlier to the policy decision taken by the Government on 23-4-1987. The communication in respect of the affiliation was made only on 10-9-1987. In para-9 of the return, it is stated that the affiliation sought for by these institutions was during the year 1986-87 and the Cabinet ratified the sanction for these institutions before the policy decision of the State Government, Hence, it is submitted that after the policy decision was taken by the State Government, it has not accorded affiliation to any other institutions and therefore, it has not violated the provisions of Article 14 of the Constitution.

16. So, this being the stand of the State Government, this Court has to examine whether the Policy decision taken by the State Government is a regulatory measure which the State Government could make for denying the rights of the petitioners guaranteed under Article 40 of the Constitution and also for denying their right u/s 53 of the Act. I will dispose of the second point now itself since it does not admit of any difficulty.

17. The language of Section 53(1) in unmistakable terms says that the Colleges within the University Area may, on satisfying the conditions specified in the Section be affiliated to the University as affiliated Colleges by the University on the recommendations made by the State Government. So, the right of affiliation is controlled by the provisions of Sub-section (1) of Section 53 of the Act.

18. It is contended by the learned Counsel for the petitioners that the provisions of Section 53(1) of the Act are mandatory and not directory though the word "shall" is not used and if that is read as mandatory, the State Government has no option but to grant the affiliation prayed for, if the petitioners satisfy the requirements of Clause (a) to (i) of Sub-section (2) of Section 53 and also Sub-section (3) of Section 53 of the Act. It is common ground that the petitioners have complied with the requirements of Clauses (a) to (i) of Sub-section (2) and also Sub-section (3) of Section 53 of the Act. So, on this premise, it is contended by the learned Counsel that the provisions of Section 53(1) of the Act should be read as mandatory and therefore, without going into the question which was debated at great length on Article 14 and Article 40 of the Constitution this Court could give the necessary direction to the State Government to comply with the mandatory requirement of Section 53(1) of the Act.

19. This contention takes me to the Scheme of affiliation of Colleges and recognition of the institutions under Chapter XI of the Act. Section 53 of the Act deal's with the affiliation of Colleges. Section 54 deals with the recognition of certain institutions. Section 55 deals with the inspection of Colleges and Reports. Section 56 deals with the withdrawal of the affiliation. Section 56A is a new provision which deals with Autonomous College. So, the scheme of the affiliation of Colleges or recognition of institutions must as well be taken into consideration in order to ascertain whether the language of Section 53(1) of the Act is mandatory or directory. The word used in Section 53(1) of the Act is "may" but to read this word as mandatory the Court must be satisfied about the purpose and object of Chapter IX which deals with the affiliation of Colleges and

institutions. Under Sub-section (5) of Section 53 of the Act, notwithstanding the fact that the Colleges in question had complied with the requirements of Sub-section (2) of Section 53 of the Act, a power is conferred on the State Government to make such enquiry as may appear to be necessary and to make recommendation for the grant of application or any part thereof or refuse the application or any part thereof and the University is bound by such recommendation. Under the proviso to Sub-section (6) of Section 53 of the Act, on the recommendation of the State Government, permanent affiliation may be granted to a College which was affiliated continuously for a period of not less than five years and fulfilled all the conditions of affiliation and attained the academic and administrative standards prescribed by the University from time to time. Under the newly inserted provision of Sub-section (10) of Section 53 of the Act, the State Government has the power to fix the intake of students to be admitted to a new set of study. u/s 56 of the Act, the rights conferred by the affiliation may be withdrawn in whole or in part or modified if the college has failed to comply with any of the provisions of Section 53 of the Act. u/s 56-A of the Act, with prior concurrence of the State Government and the University Grants Commission, the University may designate for such period as may be specified, an affiliated College, department or unit as an Autonomous College for any course of study, after following the procedure and subject to such conditions as may be prescribed in the Statutes made in that behalf. Under Sub-section (3) of Section 56A of the Act, the University may, with the prior concurrence of the State Government, continue the designation of the Autonomous College for such further period as may be specified or cancel such designation. I have quoted these provisions with a view to bring out the intendment of the scheme of the Act under Chapter IX. In all these provisions the word "may" is consistently used just to show that a right is conferred on the State Government and it may exercise that right or may not exercise that right. For determining whether the language of Section 53 of the Act is mandatory or directory, the test is whether the very same provisions of the Act impose a duty on the State Government to carry out the object or intendment of the Act as brought out in Chapter IX of the Act under the Scheme of affiliation of Colleges and recognition of institutions. In my view, if the provisions of Section 53 of the Act are read with the provisions of Sections 54, 55, 56 and 56-A of the Act which deal with the provisions relating to other aspects of affiliation of colleges or recognition of institutions, the language of Section 53(1) cannot be said to be mandatory but only directory. Even otherwise, assuming that it is mandatory, the mandate of Section 53(1) of the Act is always subject to the constitutional provisions, namely, the provisions dealing with the fundamental rights as also the provisions dealing with the Directive principles. Therefore, the line of enquiry in these cases is whether notwithstanding the provisions of Sub-sections (1) and (2) of Section 53 of the Act, it is open to the State Government to formulate a policy by which it can negative the rights of the petitioners both under the constitutional provisions as also the statutory provisions under the Act. This question takes me to the decisions of the Supreme Court on which the learned Counsel for the University

has relied.

20. In the case of *K. Rajendran and ors. v. State of Tamil Nadu*¹¹ a Bench of three Judges of the Supreme Court, dealing with the constitutional validity of the Tamil Nadu Abolition of posts of part-time Village Officers Act, observed as follows :

"It was, however, strenuously urged by Shri R.K. Garg that those who have to vacate the posts would be without any work and some of them have large families and that compensation, if any, payable to them is very inadequate. He urged that it was the duty of the Government to make adequate provision pursuant to Article 48 and Article 43 of the Constitution. These Articles are in Part IV of the Constitution. They are not enforceable by the Courts but they are still fundamental in the governance of the Country."

The very same view was reiterated by the Supreme Court in the latest decision reported in *Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others*, The Supreme Court has observed thus:

"As matter of interpretation, the Directive Principles, e.g.. Articles 39(d) of the Constitution, have to be and have been read into the Fundamental Rights e.g. Articles 14 and 16 of the Constitution So read, the principle of equal pay for equal work, though not expressly declared by our Constitution to be a fundamental right, is a constitutional goal. Construing Articles 14 and 16 in the light of the Preamble and Article 49(d), the principle of "equal pay for equal work" is deducible from those articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

This elucidation by the Supreme Court is apposite to this case for the purpose of ascertaining the fundamental rights guaranteed under Article 40(1) of the Constitution. If the Directive Principles of the Constitution could be read into the fundamental right under Articles 14 and 16 of the Constitution, I find no good reasons for excluding this principle for the interpretation of Article 40(1) of the Constitution. In the light of the law laid down by the Supreme Court, it is open to the State Government to bring in regulatory measures which may have the effect of imposing restriction on the enjoyment of the right conferred on the minorities under Article 40(1) of the Constitution and at the same time achieve the constitutional goal under Article 41 of the Constitution which reads as under:

"The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

21. The Supreme Court, in the case of *State of Tamil Nadu v. L. Abu Kavur Bai*

and ors.¹⁰ has dealt with this point in a more elaborate manner. In that case the Supreme Court was dealing with the constitutional challenge to the Tamil Nadu Stage Carriages and Contract Carriages (Acquisition) Act (Act 12/73). The Supreme Court examined the impact of Article 29(b) and (c) of the Constitution on the fundamental rights guaranteed under Articles 14, 19, 31 and 31-C of the Constitution. The Supreme Court upholding the constitutionality of the Act observed :

"In recent decisions on the subject the view that has crystallised is that the Courts should attempt to give a harmonious interpretation to the directive principles contained in Part IV of the Constitution even though not enforceable. Attempt should, therefore, be made to reconcile the two important provisions rather than to arrive at conclusions which bring into collision these two provisions one contained in Part III and the other in Part IV. We must appreciate that the reason why the founding fathers of our Constitution did not advisedly make these principles enforceable was perhaps due to the vital consideration of giving the Government sufficient latitude to implement these principles from time to time according to capacity, situations and circumstances that may arise.

On a careful consideration of the legal and historical aspects of the directive principles and the fundamental rights there appears to be complete unanimity of judicial opinion of the various decisions of this Court on the point that although the directive principles are not enforceable yet the Court should make a real attempt at harmonising and reconciling the directive principles and the fundamental rights and any collision between the two should be avoided as far as possible."

In the recent decisions on the subject, the view that is crystalised is that the Court should give a harmonious construction to Part III and Part IV of the Constitution.

22. In the case of *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, and observed :

"This is not mere semantic. The edifice of our Constitution is built upon the concepts crystallised in the Preamble. We resolved to constitute ourselves into a Socialist State which carried with it the obligation to secure to our people justice-social, economic and political. We, therefore, put Part IV into our Constitution containing directive principles of State policy which specify the socialistic goal to be achieved."

At a later stage it was observed that the fundamental rights are not an end in themselves but are the means to an end, the end is specified in Part IV. Bhagwati, J., in his minority Judgment after extracting a portion of the speech of the then Prime Minister Jawahar Lal Nehru, while participating in a discussion on the Constitution (First Amendment) Bill, observed that the Directive principles are intended to bring about a socio-economic revolution and to create a new socio-economic order where there will be social and economic justice for all and

everyone, not only a fortunate few but the teeming millions of India, would be able to participate in the fruits of freedom and development and exercise the fundamental rights. It, therefore, appears to be well established that while interpreting or examining the constitutional validity of legislative/administrative action, the touch stone of Directive principles of State Policy in the light of the Preamble will provide a reliable yardstick to hold one way or the other."

23. In the case of Central Inland Water Transport Corporation Ltd. and anr. v. Brojo Nath Ganguly and anr.¹³, the Supreme Court in paragraph 24 of its Judgment has observed :

"Article 12 defines the expression "the State" while the other Articles of the Constitution referred to above, such as Article 152 and Article 408, and Clause (58) of Section 3 of the General Clauses Act define the term "State". The deliberate use of the expression "the State" in Article 12 as also in Article 46 would have normally shown that this expression was used to denote the State in its ordinary and constitutional sense of an independent or sovereign State and the inclusive clause in Article 12 would have extended this meaning to include within its scope whatever has been expressly set-out in Article 12. The definition of the expression "the State" in Article 12, is, however, for the purposes of Parts III and IV of the Constitution. The contents of these two parts clearly show that the expression "the State" in Article 12 as also in Article 46 is not confined to its ordinary and constitutional sense as extended by the inclusive portion of Article 12 but is used in the concept of the State in relation to the fundamental rights guaranteed by Part III of the Constitution and the Directive Principles of State Policy contained in Part IV of the Constitution which principles are declared by Article 47 to be fundamental to the governance of the Country and enjoins upon the State to apply in making laws."

As to what Parts III and IV of the Constitution mean is explained by the Supreme Court in para-25 of its Judgment. But, it is not necessary to quote this in extenso since the policy with which we are concerned is made clear from the views of the Technical Committee appointed by the State Government and the State Government has sought to enforce the policy decision under the impugned orders. So, on a consideration of these cases, the bone of contention which requires an answer is whether the impugned policy decision would amount to a regulatory measure which is permissible for imposing restrictions on the right of the petitioners to establish colleges of their choice. What is present in this case is only the affiliation to a particular course and not affiliation to the University. Affiliation to University has been granted to the petitioners. The affiliation to a particular course is a smaller right which comes within the ambit of a larger right, that larger right being the affiliation to the University. Thus understood, it is possible to contend that notwithstanding the affiliation to the University, affiliation to a particular Course as required u/s 53(1) of the Act is a discretionary power of the State. In this case, we are not concerned with the affiliation to the University but affiliation to a particular Course The Constitutional

goal sought to be achieved by the State Government by refusing permission to start the B.Ed. Course is obviously based on the provisions of Article 41 of the Constitution. I have already excerpted its provisions in the earlier part of the order. It enjoins on the State Government within its economic capacity and development to make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Under this Article a number of interests will have to be taken care of by the State Government. While taking care of these interests a proper balance should be struck. On the one hand, the State has to secure the right to work. On the other hand, the State Government has to secure the right to education and is bound by an obligation to provide assistance in cases of unemployment. The State Government will have to take into consideration the balancing of rights and obligations under this Article. Just to secure that balance, whether it is proper to curtail the number of B.Ed. Colleges for the time being, that is till the expiry of the 7th Plan period and whether by such curtailment, the State Government has made inroads into the rights of the petitioners to propagate education which is also one of the Directive Principles of the State Policy, under Article 41 of the Constitution, is another aspect of the question that remains to be considered.

24. In my view, this policy decision of the State Government in curtailing the number of B.Ed. Colleges till the end of 7th Plan period is only a regulatory measure which could be imposed on the petitioners in terms of the Constitutional goal to be reached under Article 41 of the Constitution. If the State Government had imposed a total and complete ban for all time to come on the establishment of B.Ed. Colleges in this State, then there was some thing to be said against the legality and validity of the action of the State Government. But, in these cases, taking into consideration the large number of B.Ed. graduates who are knocking at the doors of the Government for suitable jobs, it cannot be said that the State Government was acting arbitrarily or in contravention of the Constitutional guarantee conferred on the petitioners in the first two petitions under Article 40 of the Constitution or the rights conferred on all the petitioners u/s 53 of the Act. In my view, if a harmonising construction is adopted, the provisions of Article 41 of the Constitution obligates the State Government to impose regulatory - measures curtailing the rights of the petitioners to affiliation to a particular Course of study. Thus construed, the curtailment of the rights of the petitioners for a temporary period, namely, up to the expiry of the 7th Plan period, i.e., till the end of 1990, would not be violative of the constitutional right guaranteed under Article 40 of the Constitution or the statutory right conferred u/s 53 of the Act.

25. An argument was put-forth by Mr. Sequeira, the learned Counsel for the petitioners relying on Article 41-C of the Constitution. Article 41-C was introduced by the Constitution 25th Amendment of 1971 which provides:

"Notwithstanding anything contained in Article 13, no law giving effect to the

policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

According to him, on the plain terms of Article 41-C of the Constitution, Article 40 is excluded from the purview of Article 41-C and only Articles 14 or 19 come within the sweep of this Article and, therefore, by implication this Court should hold that the policy decision by which the State Government is enabled to take for securing all or any of the principles laid down in Part IV should not abridge his clients' rights under Article 40 of the Constitution. This argument is inconsistent with the rulings of the Supreme Court on the harmonious construction of the provisions of Chapter III and the provisions of Chapter IV of the Constitution. Provisions of Article 41-C do not impair the rights of the State Government to bring in any regulatory measure for regulating the rights of the minority institutions conferred on them under Article 40. The consistent view of the Supreme Court since the decision of the Constitution Bench in *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, with this contention also. As noticed earlier, in (1988) 3 SCC 9122, the Supreme Court has laid down, as a matter of interpretation, that the Directive Principles, e.g., Article 49(d) of the Constitution have to be and have been read into the Fundamental Rights, e.g., Articles 14 and 16 of the Constitution. The same principle should be adopted for construing Article 41 of the Constitution. If any more authority is necessary, the decision of the Supreme Court in the case of *Vidharbha Sikshan Vyawasthapak Mahasangh v. State of Maharashtra and ors.*⁹ would serve the purpose for these cases. The education policy of the Maharashtra Government refusing permissible to colleges to hold the first year classes of Diploma in Education was challenged before the Supreme Court by Special Leave against the Judgment of the Bombay High Court (Nagpur Bench). The Bombay High Court had dismissed the Writ Petition and the appellant in that case challenged the order of the Maharashtra Government dated 31-5-1985 refusing to grant permission to the member institutions of the appellant to hold the first year classes in Diploma in Education in the academic year 1985-86 though a large number of applications had been received by the Government from different institutions of the districts of the State. It appears that by an order dated 9-9-1984 of the Education and Employment Department of the Maharashtra Government, permission was granted to 47 institutions in Nagpur district and 17 institutions in Bhandara district. Permission was granted on certain conditions and it was made clear that the order granting permission would be applicable only for the academic year 1984-85. The Director of

Education, Maharashtra State, by his letter dated 21-5-1985 instructed the institutions that they should be prepared to admit students for the academic year 1985-86 and also prepare a programme with this contention also. As noticed earlier, in (1988) 3 SCC 9122, the Supreme Court has laid down, as a matter of interpretation, that the Directive Principles, e.g., Article 49(d) of the Constitution have to be and have been read into the Fundamental Rights, e.g., Articles 14 and 16 of the Constitution. The same principle should be adopted for construing Article 41 of the Constitution. If any more authority is necessary, the decision of the Supreme Court in the case of *Vidharbha Sikshan Vyawasthapak Mahasangh v. State of Maharashtra and ors.*⁹ would serve the purpose for these cases. The education policy of the Maharashtra Government refusing permissible to colleges to hold the first year classes of Diploma in Education was challenged before the Supreme Court by Special Leave against the Judgment of the Bombay High Court (Nagpur Bench). The Bombay High Court had dismissed the Writ Petition and the appellant in that case challenged the order of the Maharashtra Government dated 31-5-1985 refusing to grant permission to the member institutions of the appellant to hold the first year classes in Diploma in Education in the academic year 1985-86 though a large number of applications had been received by the Government from different institutions of the districts of the State. It appears that by an order dated 9-9-1984 of the Education and Employment Department of the Maharashtra Government, permission was granted to 47 institutions in Nagpur district and 17 institutions in Bhandara district. Permission was granted on certain conditions and it was made clear that the order granting permission would be applicable only for the academic year 1984-85. The Director of Education, Maharashtra State, by his letter dated 21-5-1985 instructed the institutions that they should be prepared to admit students for the academic year 1985-86 and also prepare a programme for facilitating admission. The plea of the appellant before the Supreme Court was that while the institutions had been going on with the preparation for admission of students for the next academic years, the members of the appellant-Society received an order from the Education Officer, Zilla Parishad, Nagpur, dated 14-6-1985 stating that the Government had not granted permission to 36 member institutions of the appellant-Society to hold first year classes for the year 1985-86 except that they would be entitled to hold the second year classes. In other words, as per the said order about 36 institutions have been directed not to admit students in the academic year 1985-86. This order was made pursuant to the policy decision of the Government dated 31-5-1985. The Bombay High Court having dismissed the Writ Petition, the appellant in that case approached the Supreme Court by special leave. The Supreme Court observed in para 6 of the Judgment thus:

"In view of the averments in the affidavit of the respondents, it is difficult to accept the contention of the appellant that the impugned order or the policy decision of the Government is arbitrary and unreasonable. There is also no question of interference with the right to education of any citizen, as contended on behalf of the appellant. On the contrary, the Government, in our opinion, has

taken the right decision so as to save the youngmen from being explicated. There is no substance in the contention of the appellant that the refusal to grant permission to hold B.Ed. classes for the year 1985-86 will result in unemployment. As pointed out in the affidavit of the respondents, if the permission is granted, there will be a large scale unemployment in as much as 3,00: students will be admitted in the first year classes as against the requirement of 616 students.....We agree with the High Court that these 11 institutions have been selected on the basis of need-cum-performance and accordingly, there is no question of any discrimination or of violation of the provision of Article 14 of the Constitution. The contentions of the appellants are rejected."

In my view this ruling of the Supreme Court is apposite to the facts and circumstances of the case and the only distinction is that we are dealing with the minority institutions claiming constitutional guarantee under Article 40 of the Constitution. I have already considered this aspect of the case in the earlier part of my order. The order declining to grant permission being a regulatory measure it is protected by the provisions of the Directive Principles of the Constitution but also by the provisions relating to reasonable restrictions on the exercise of fundamental rights under Article 19(1)(g) of the Constitution. The special right of the minorities under Article 40 may not be a fundamental right under Article 19(1)(g) of the Constitution which is subject to reasonable restrictions in public interest, but it is not possible to contend that the fundamental rights of the petitioners under Article 40 of the Constitution in the first two Writ Petitions are breached by giving effect to the directive principles of the Constitution. The very same reasoning is applicable to case of the petitioner in the third Writ Petition.

28. The next contention which requires consideration is the applicability of Article 14 of the Constitution to the facts and circumstances of the case. As observed by the Supreme Court in *Harjeet Singh Ors. Vs. Union of India (UOI) and Others*, a mere departure from a rule or regulation would not attract Article 14 of the Constitution. The facts and circumstances of each case will have to be taken into consideration. The return filed by the Government is a complete answer to the contention based on the discrimination under Article 14 of the Constitution. Some orders have come into existence permitting certain institutions to start the B.Ed. Course. But those orders of the Government were made either pursuant to the directions issued by this Court in some of the cases pending in this Court or before the Government announced its policy decision on the basis of the recommendation of the Technical Committee. So, it is not possible to accept the contentions of the petitioners that they have been discriminated in the matter of according permission to start B.Ed. Course. In the circumstances, all these petitions are liable to be dismissed and accordingly are dismissed. However, it is open to the petitioners to request the State Government to reconsider its policy after the expiry of VII Plan period.

29. Parties to bear their own costs in all these Writ Petitions.