
(1978) 11 MP CK 0004

In the Madhya Pradesh High Court

Case No : M.P. No. 579 of 1978 & Miscellaneous Petition No. 579 of 1978

Siddhi Bala Bose Library Association and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 29-11-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(c), 226, 30
Madhya Pradesh Ashaskiya Shikshan Sanstha Anudan Ka Pradaya Adhiniyam, 1978 —
Section 1, 10, 11, 12, 2

Citation : (1979) MPLJ 379

Hon'ble Judges : G.P. Singh, C.J.; J.S. Verma, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari with Kumari Kanti Rao, for the Appellant; S.L. Saxena, Govt. Advocate for Respondent No. 1 and Gulab Gupta, S.K. Mukerjee, Fakhruddin, R.D. Hundikar and O.P. Namdeo for Interveners, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Verma, J.

This order shall also dispose of Misc. Petition No. 621 of 1978 (Rahul Shiksha Parishad of Gwalior v. State of Madhya Pradesh).

By these Petitions under Article 226 of the Constitution, the petitioners challenge the validity of certain provisions of the M.P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya Adhiniyam, 1978 (No. 20 of 1978), here-in-after called the Act. By notification No. 745-XX-9-78, dated, Bhopal, the 31st July 1978, issued by the State Government under sub-section (3) of section 1 of the Act, this Act has come into force on the 1st August 1978. Petitioners are of associations of citizens who run educational institutions in this State for which they receive grant-in-aid and for this reason this Act has become applicable to them from 1st August 1978. The petitioners claim that some of their constitutional rights have been infringed by this enactment. One of the grounds of challenge is infringement of the right guaranteed under Article

30(1) of the Constitution. Petitioner No. 11 Taiyabi School Society of Ujjain is admittedly one such minority institution entitled to the right guaranteed under Article 30(1), even though such a character claimed by the other petitioners in these two petitions is denied by the respondents. In the present case, it is not necessary to decide whether the other petitioners also satisfy the requirement of a minority institution so as to invoke the aid of Article 30(1) of the Constitution. It is sufficient in the present case to say that the point based on that Article arises for determination on account of one of the petitioners admittedly fulfilling the character of a linguistic or religious minority. Before we proceed to consider the points raised in this petition, we would refer to the provisions of the impugned Act and the background which led to its enactment.

The Statement of Objects and Reasons, appended to the Bill (published in M.P. Rajpatra, Extra-ordinary, dated 2nd May 1978) discloses the rampant evil which is attempted to be eradicated by this legislation. It is stated that the State Government have been receiving complaints that the teachers of non-Government educational institutions receiving grant-in-aid are not paid full salary and their services are also not secure. It was mainly to ensure payment of full salary to teachers of such educational institutions in time and to provide them security of tenure of service that this legislation has been enacted. This is the main object of the legislation. The preamble of the Act shows that it is an Act to make provision for payment of salaries to teachers and other employees of non-Government schools, receiving grant-in aid from the State Government and non-Government educational institutions for higher education receiving grants from the M.P. Uchcha Shiksha Anudan Ayog (here-in-after called the Ayog) and other matters ancillary thereto. The provisions of this Act, briefly stated, attempt to achieve this objective.

The provisions of the Act mainly provide for a machinery to-ensure payment of full salary to such teachers and other employees in time every month through the treasury, availability of enough funds for this purpose; and utilization of the amount of grant and most of the fees received from the students to make this payment. There are some provisions also to secure the tenure of service of teachers etc. and provide for recruitment of suitable staff. Suitable sanctions are also provided to ensure compliance of these provisions by the management of these private educational institutions. This is the gist of the Act. We shall now refer to the provisions of the Act in some detail.

Section 1 of the Act provides that the Act extends to the whole of the State of Madhya Pradesh and shall apply to all institutions falling within the definition of "institution" given in section 2(e) i.e. non-Government school or educational institution for higher education receiving maintenance grant from the State Government or the Ayog. Section 2 contains the definitions. Section 3 lays down that from the appointed date (1st August 1978) the salary of a teacher or other employee of any institution shall be paid to him before the expiry of the 20th day or such earlier day of the month next following as may be specified without any

unauthorised deduction of any kind. Section 4 gives power to the Education Officer as defined in section 2(c) for the purpose of this Act, to inspect any institution or its record or call for the necessary information etc from the management of the institution with regard to payment of salaries to its teachers or employees or in respect of ancillary matters or give to its management any direction for the observance of such canons of financial propriety, as he thinks fit. Section 5 provides for the Constitution of "institutional fund", by opening a separate head of account in a treasury or sub-treasury for the purpose of payment of salary of the teachers and employees of an institution and for amounts to be deposited therein. In short, the provision therein is that the management is required to deposit into this fund the entire maintenance grant payable to the institution together with the prescribed percentage of the fees recovered from the students each month and such deficit, if any, as is necessary to make up the amount needed for payment of the total monthly salary to teachers and employees of the institution. The salary to the teachers and employees instead of being paid directly by the management is now required to be paid through the treasury. Section 6 controls the creation of posts, appointment of staff and termination of their services. Section 7 provides for protection against any legal proceeding for acts done in good faith by or under the Act. Section 8 gives the State Government power to exempt any institution or classes of institutions from all or any of the provisions of the Act. Section 9 enables recovery as arrears of land revenue of any sum which is required to be credited to the institutional fund under sub-sections (3) or (4) of section 5 of the Act, if the same is not credited by the management to the said fund. Section 10 contains the rule making power of the State Government and one of the powers specified therein is for fixing the percentage of fees collected which shall be retained by the management under sub-section (3) of section 5. It is in exercise of this power that 20% of fees collected is permitted to be retained by the management and the remaining 80% has to be deposited in the institutional fund u/s 5(3) . Section 11 gives power to the State Government, by order made within two years of commencement of the Act, to remove any difficulty arising in giving effect to the provisions of the Act. Section 12 makes modifications in the Madhya Pradesh Society Registrikaran Adhiniyam, 1973 (No 44 of 1973) in the manner specified in the schedule. The modifications so made inter alia provide that failure to comply with any direction given u/s 4 of this Act or with the provisions of sections 3, 5 or 6 thereof shall be punishable as an offence.

The first contention of Shri Y.S. Dharmadhikari on behalf of the petitioners is that the freedom to form associations guaranteed to all citizens under Article 19(1)(c) of the Constitution includes the freedom to run an educational institution established by such an association without the imposition of any restriction except those permitted under clause (4) of Article 19, i.e. in the interests of the sovereignty and integrity of India or public order or morality. The argument is that the impugned Act is violative of Article 19(1)(c) because it contains certain restrictions on petitioners' right to administer the private educational institutions

run by them which cannot be related to interests of the sovereignty and integrity of India or public order or morality. The question, therefore, is whether the fundamental right guaranteed under Article 19(1)(c) goes to the extent suggested by Learned Counsel for the petitioners so that it not only gives freedom to form associations but also gives further unrestricted freedom to run an educational institution established by such an association without being subjected to reasonable restrictions except to the extent permitted under clause (4) of Article 19. It is now too late to advance such an argument which is against the well settled law.

It is settled that the right to form an association guaranteed by sub-clause (c) of clause (1) of Article 19 does not carry with it a further guarantee that the objects or purposes of an association so formed shall not be interfered with by law except on the grounds specified in clause (4) of Article 19, viz., sovereignty and integrity of India or public order or morality; and as to the concomitant right of an association after it is formed they cannot be different from rights which can be claimed by individual citizens of which the association is composed. To hold otherwise would mean that while in the case of an individual citizen to whom a right to carry on a trade or business is guaranteed by sub-clause (g) of clause (1) the validity of a law which imposes any restriction on this guaranteed right would have to be decided by the criteria laid down in clause (6) of Article 19, if he was associated with another and carried on the same activity, say, as a partnership or as a company, etc., he would obtain larger rights and the validity of legislation restricting such rights would have to be tested by a different standard, namely, that which is laid down in clause (4). Such an incongruous result cannot obviously be accepted [Constitutional Law of India by D.D. Basu--1977 Edition--at pages 51 and 52; P. Balakotaiah Vs. The Union of India (UOI) and Others, and All India Bank Employees' Association Vs. National Industrial Tribunal and Others,

Shri Dharmadhikari placed reliance on Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, in support of this argument. That decision is of no assistance in the present case. That decision is authority for the proposition that the right to form an association necessarily implies that the persons forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association; and any law by which outsiders are foisted in the voluntary association without giving any Option to members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. The interference with the freedom to form association was held to be bad and not with the functioning of the association to carry out its objects or purposes after it had been formed. Damyanti's case (supra) relied on by Shri Dharmadhikari itself points out the distinction and reiterates the settled position as follows:--

It is true that it has been held by this Court that, after an association has been formed and the right under Article 19(1)(c) has been exercised by the members

forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire.

The first contention raised on behalf of the petitioners is, therefore, rejected.

The next contention on behalf of the petitioners is mainly against the validity of section 5 of the impugned Act which reads as under:--

5. (1) There shall be opened in a treasury or sub-treasury, a separate head of account under which shall be constituted a separate fund for each institution (herein referred to as institutional fund) in accordance with the rules made in this behalf for the purpose of payment of salary of the teachers and employees of that institution.

(2) The State Government or the Ayog, as the case may be, shall twice during a year by such date as it may, from time to time, by notification specify, place to the credit of the institutional fund fifty per centum of the maintenance grant payable to the institution by the State Government or the Ayog, as the case may be.

(3) The management shall place to the credit of the institutional fund by the 30th of every month the total amount of fees recovered at standard rate specified under sub-section (5) from the students of the institution in that month less such percentage thereof as may be prescribed, for being retained by the management for meeting other expenditure of the institution.

(4) In addition to the fee deposited under sub-section (3), the management shall place to the credit of the institutional fund by 10th of every month for payment of salary to teachers and employees of the institution for the preceding month such further sums as may be required to make the $\frac{1}{12}$ of the total amount credited under sub-section (2) together with amount credited under sub-section (3) equivalent to $\frac{1}{12}$ of the total salary payable to teachers and employees of the institution with institutions contribution to the provided fund account of those teachers and employees per annum :

Provided that if in any month the amount at the credit of institutional fund falls short of the amount equivalent to $\frac{1}{12}$ of the total salary payable per annum by reason of proper credits having not been made under this sub-section or sub-section (3), the salary payable for that month may be to the extent and in proportion to the amount available and the short payment of salary shall be made good only on recoupment of the amount after proper credits.

(5) No management shall charge and collect fees from the students of the institution at a rate lesser than the standard rate of fee as the State Government may, from time to time, by notification, specify.

(6) No money credited to the institutional fund shall be applied for any purpose except the following, namely:--

(a) payment of salaries falling due for any period after the appointed date:

(b) credit of the institutions contribution, if any, to the provident fund accounts of the teachers and employees.

(7) The institutional fund shall be operated jointly by a representative of the management and by the Education Officer or such other officer as may be authorised by the Education Officer in that behalf.

The contention is that section 5 as a whole and particularly subsection (4) therein imposes unreasonable restrictions on petitioners' right to administer the educational institutions run by them. Sub-section (1) of section 5 lays down that for the purpose of payment of salary of teachers and employees of such an institution, there shall be opened in a treasury or sub-treasury, a separate head of account under which shall be constituted a separate fund for each institution, called as "institutional fund" in accordance with the rules made in this behalf. We are informed that the requisite rules have also been framed. Sub-section (2) then states that the State Government or the M.P. Uchcha Shiksha Anudan Ayog, as the case may be, shall twice during a year by such date as may be specified, credit into the institutional fund fifty percent of the maintenance grant payable to the institution. In this manner, the whole of the maintenance grant payable to the institution during a year is to be credited to the institutional fund in two instalments, each 50% of the annual grant. Learned Government Advocate made a statement at the hearing before us that this maintenance grant is to be credited into the institutional fund in advance before commencement of the period for which it is meant and not after the lapse of that period. We have, therefore, to proceed on the basis that the maintenance grant required to be credited to the institutional fund under this sub-section is to be paid by the State Government or the Ayog in advance before commencement of the period for which it is meant so that it is available in advance for disbursement of the salaries of the teachers and employees. Obviously, no exception can be taken to these provisions. Sub-section (3) requires the management of the institution to credit to the institutional fund by the 30th of every month the total amount of fees recovered at standard rate specified under sub-section (5) from the students of the institution in that month less such percentage thereof as may be prescribed for being retained by the management for meeting other expenditure of the institution. It is common ground that the percentage prescribed for this purpose by the rules for retention of the amount by the management is 20% of the total amount of fees recovered so that under this subsection the management is required to credit into the institutional fund 80% of the total fees recovered from the students. Sub-section (5) which is referred to in this sub-section lays down that no management shall charge and collect fees from students of the institution at a rate lesser than the standard rate of fees as the State Government may from time to time by notification specify. Sub-section (4) in substance requires the management to credit into the institutional fund in addition to the amount of fees required to be deposited under sub-section (3), by 10th day of every month, for payment of salary to teachers and employees of the institution for the preceding month, such further amount of money as may be

required to make up the deficit for payment of the monthly salary to teachers and employees of the institution for the proceeding month. In short, if the total amount required for payment of salary to teachers and employees of the institution for the preceding month exceeds the sum total of the amounts deposited under subsections (2) and (3), i. e. that month's maintenance grant, and 80% of the total amount of fees recovered from the students, then the deficit has to be made up by the management and this deficit, if any, is required to be deposited under sub-section (4) by the management into the institutional fund. It is, therefore, obvious that the management is required to make any deposit under sub-section (4) only if there is any such deficit left after taking into account the deposits made under sub-sections (2) and (3) and not otherwise.

We may here state that it was vehemently asserted on behalf of all petitioners that all teachers and employees of these institutions have been regularly paid the total salary payable to them and the evil sought to be eradicated by this legislation did not prevail in their institutions. We may also add that if this be so, there is no occasion for any of the petitioners to feel aggrieved by this legislation because the main object of the legislation is only to ensure payment in time without any unlawful deduction of the total salary payable to the teachers and employees of such institutions.

The challenge in this section is mainly to sub-section (4) of section 5. The contention is that the maintenance grant, if not paid in time, will also have to be paid by the management to make good the deficit. It is also stated that several categories of students are exempted from payment of fees and their fee is reimbursed to the institutions by the Government and there is invariably delay in reimbursement of that amount. It is urged that under sub-section (4) the entire deficit is to be made up by the management by the 10th day of the month and this would require the management to deposit even those amounts which it is the duty of the State Government or the Ayog to pay. It is also urged that non-compliance with this provision has been made punishable as an offence, as earlier stated, and for these reasons it amounts to an unreasonable restriction on petitioners' right to administer their educational institutions. Learned Government Advocate also stated at the hearing before us that reimbursement of the total amount of fees required to be made by the State Government will be done every month well before the 10th day of the month so as to leave enough margin for the management to make the deposit up to the 10th day of the month as required by sub-section (4) of the Act. As earlier stated, payment of the maintenance grant in advance under sub-section (2) has already been assured. There is thus no reasonable basis for any such apprehension expressed by the petitioners.

It has not been shown to us that in any particular case the deposits required to be made under sub-sections (2) and (3) would leave any deficit to be made up by the management under sub-section (4) so as to provide the foundation for such an argument. Moreover, the consistent stand on behalf of the petitioners is

that they have been paying all their teachers and employees their total salary regularly, and that being so, it is difficult to visualise how sub-section (4) can impose any undue hardship on them when its only object is to ensure the doing of that which they claim to be doing themselves without any compulsion.

Sub-section (6) says that no money credited into the institutional fund shall be applied to any purpose except payment of salaries and employer's contribution, if any, to the provident fund account of the teachers and employees. It is not the petitioners' case that the amount so available in the institutional fund would be far in excess of the amount needed for these two purposes, so as to suggest that there is any restriction placed on the use of that excess amount by this provision. Obviously, for this reason, no challenge was made to this sub-section. The last sub-section in section 5 is sub-section (7) which provides that the institutional fund shall be operated jointly by a representative of the management and by the Education Officer as defined in section 2(c) of the Act or his nominee. The institutional fund being constituted mainly for the purpose of payment of salary of the teachers and employees and the amounts credited into that fund being needed mainly for that purpose, the only thing to be done for operation of that fund is disbursement of the salary of the teachers and employees of the institution from that fund. In substance, the operation of the institutional fund requires only this act of disbursement to be done for the purposes and in the manner specified in section 5 itself. There is thus no additional power given to the Education Officer or his nominee under sub-section (7) and his function obviously is only to ensure that the money available in the institutional fund is utilized for the purposes specified and that this is done efficiently. This sub-section cannot, therefore, be treated as imposing any unreasonable restriction on the right of the management of such institutions, particularly when it was asserted time and again throughout the hearing before us that the amount of the grant and fees has been utilized only for this purpose even prior to the legislation and that the teachers and the employees of the institution have all along been paid regularly the total salary due to them. No part of section 5 suffers from the vice suggested by Learned Counsel for the petitioners.

Shri Dharmadhikari also argued that the duty fastened on the "management" under various provisions of the Act, particularly section 5(4), under pain of prosecution by amendment of certain provisions of the M.P. Society Registrkaran Adhiniyam, 1973, by section 12 read with the Schedule to the impugned Act, would lead to an incongruous result if we see the definition of "management" as contained in section 2(g) of the impugned Act, which reads as under:

2 (g) "Management" in relation to any institution means the governing body thereof within the meaning of the Madhya Pradesh Society Registrkaran Adhiniyam, 1973 (No. 44 of 1973), and the expression management of the institution shall be construed accordingly.

According to the definition of "management" contained in the impugned Act, it means the governing body of the institution within the meaning of the M.P.

Society Registrarian Adhiniyam, 1973. The expression "governing body of a society" is defined in section 3 (a) of Society Registrarian Adhiniyam, to mean the Governors, Council, Directors, Committee, Trustees or other body, by whatever name called, to whom by the regulations of the society management of its affairs is entrusted. "Regulations of a society" is defined in section 3 (d) of the Society Registrarian Adhiniyam to mean registered regulations of the society for the time being in force. Requirements with respect to memorandum of association of a society registered under the Society Registrarian Adhiniyam are contained in section 6 of that Act. According to section 6 (1) (d), the memorandum should also state the names, addresses and occupation of the Governors, Council, Directors, Committee or other governing body to whom by the regulations of the society the management of its affairs is entrusted. Section 27 of the Registrarian Adhiniyam requires that once in every year, in the manner prescribed, the annual general meeting of the society is to be held and a list of the full names, permanent addresses and chief occupations and others, if any, of the governing body shall be filed with the Registrar by the person authorised in this behalf by the governing body of the society. Thus, according to the provisions of the Society Registrarian Adhiniyam, the governing body of a society is that body to whom by the regulations of the society management of its affairs is entrusted. The definition of "management" contained in section 2(g) of the impugned Act means governing body of the institution within the meaning of the Registrarian Adhiniyam. The argument of Shri Dharmadhikari is that the educational institutions to which the impugned Act applies include also colleges to whom the College Code, i. e. Statute No. 28 framed under the M.P. Vishwavidyalaya Adhiniyam, 1973 (No. 22 of 1973) applies and the management in those cases is with a body different than the governing body within the meaning of M.P. Society Registrarian Adhiniyam, 1973. Shri Dharmadhikari referred to several provisions of the Vishwavidyalaya Adhiniyam as also the College Code to support this contention. Reliance was placed by him also on certain provisions of the M.P. Madhyamik Shiksha Adhiniyam, 1965, and the regulations framed thereunder to contend that similar result ensues in respect of educational institutions governed by those provisions. He also referred to the provisions of the M.P. Uchcha Shiksha Anudan Ayog Adhiniyam, 1973 for the same purpose. We have mentioned this argument only because it was addressed at considerable length by Shri Dharmadhikari. However, this point does not arise in the petitions before us since no foundation on facts has been laid therein to raise such a contention. The petitioners have not shown with reference to the facts pertaining to any particular institution belonging to them that any such incongruous result follows in that case. Reliance is placed only on paragraph 19 of this petition (M.P. No, 579/78) to make out the foundation for this argument. It is sufficient to say that there is nothing in paragraph 19 to give out the requisite facts in respect of even one educational institution to show that this point arises for consideration before us. Moreover, even the argument as advanced and noted by us does not find place in paragraph 19 of the petition. We accordingly express no opinion on this point which does not arise for decision by

us. We may also add that, if and when, action is taken under this Act against some one who cannot be held liable, this point would arise for consideration and before us it is merely hypothetical.

The last common argument on behalf of the petitioners is that the provisions contained in sections 5(4) and 6 of the impugned Act are violative of Article 30(1) of the Constitution and accordingly they infringe the right guaranteed under that Article to the institutions established and administered by linguistic and religious minorities. As earlier stated, it is admitted before us that at least one of the petitioners in M.P. No. 579/78 belongs to such a minority on account of which this argument arises for decision by us. However, before dealing with this point, we shall dispose, of a few more points which were argued only by Shri Balwant Singh who appeared for the petitioner in the other petition (M.P. No. 621/78).

One of the arguments of Shri Balwant Singh is that the amount required to be deposited by the management under sub-section (4) of section 5 is a "cess" or a "tax" and is, therefore, invalid. It is difficult to appreciate the argument. The scheme of the Act and contents of its provisions stated earlier need not be reiterated. Admittedly, nothing is to be recovered by the State or any other authority u/s 5(4) of the impugned Act and the only requirement is that the management should make good the deficiency, if any, towards the total monthly salary bill of the teachers and employees to enable payment of their salaries by the 20th day of the succeeding month for which the salary has to be paid. We have already pointed out that all petitioners in one voice asserted time and again before us that they are regularly paying the total salary payable to all its teachers and employees. In view of this stand taken by the petitioners and the purpose for which a deposit, if any, is required to be made u/s 5(4) of the impugned Act by the management, it is difficult for us to appreciate how this payment can be labelled either as a "cess" or a "tax". The mere fact that there is no recovery made by the State or any other authority of that amount from the petitioners is sufficient to negative this argument. Moreover, such a requirement is by authority of law made within the legislative competence of the State Legislature under entry 25 of Concurrent list and entry 32 of State list in Seventh Schedule to the Constitution.

Shri Balwant Singh also contended that section 8 of the impugned? Act violates Article 14, Section 8 reads as under:--

8. Notwithstanding anything contained in the Act, the State Government may, by general or a special order and subject to such conditions, if any, as it may deem fit to impose, exempt any institution or class of institutions from all or any of the provisions of this Act.

No foundation for such an argument has been laid by the petitioners. It is not shown that there has been any hostile discrimination in the exercise of this power of exemption given to the State Government u/s 8. Simply because power

to exempt in this manner has been given to the State Government, it does not amount to violation of Article 14. Such a challenge may be permissible only where in exercise of that power the State Government makes a discrimination between those belonging to the same class. No such case has even been alleged much less made out before us. We cannot hold that the mere conferment of such a power to grant exemption in suitable cases is by itself invalid. This argument has also, therefore, to be rejected.

It was also argued by Shri Balwant Singh that by amendment of section 38 of the M.P. Society Registrikaran Adhiniyam, 1973, as shown in clause 4 of the Schedule to the impugned Act, read with section 12 thereof, arbitrary power has been conferred on executive officers to prosecute persons. It is urged that clause 4 (1) (b) of the Schedule makes the non-compliance with any direction given u/s 4 of the impugned Act punishable as an offence, and section 4 of the impugned Act enables the Education Officer to issue certain directions to the management. The argument really is that the Education Officer may issue any direction or order u/s 4 of the impugned Act and if that is not obeyed, by virtue of these provisions a punishable offence results. There is no merit in this argument. Section 4 reads as under:--

4. The Education Officer may at any time, for the purpose of this Act, inspect or cause to be inspected any institution or call for such information, returns and records (including registers, books of account and Vouchers) from its management with regard to the payment of salaries to its teachers or employees or in respect of such ancillary matters or give to its management any direction for the observance of such canons of financial propriety, as he thinks fit.

It is clear from section 4 itself that the power given to the Education Officer thereunder is only "for the purpose of this Act" It is also clear from this provision that this power of the Education Officer to inspect or cause to be inspected any institution or call for such information, returns and records etc. from its management is "with regard to the payment of salaries to its teachers or employees or in respect of such ancillary matters" and that the power thereunder to give any direction to the management is "for the observance of such canons of financial propriety as he thinks fit." Section 4 itself circumscribes the limits of the powers of the Education Officer given therein and it "is incorrect to say that the ultimate result of all the provisions is to confer any arbitrary power on executive officers. This argument also, therefore, ails.

The last common contention based on violation of the right guaranteed to the linguistic and religious minorities under Article 30(1) of the Constitution is now considered. The argument is that sub-section (4) of section 5 and the whole of section 6 are violative of this right and, accordingly, are inapplicable to minority institutions.

The content of Article 30(1) and the extent of right guaranteed thereunder, is well settled by a catena of Supreme Court decision including one by a nine judge

Bench in The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, . One of the recent decisions of the Supreme Court is Rt. Rev Mark Natto v. Govt. of Kerala and others C.A. No. 927 (NCM) of 1976, 11-9-1978 (1978 UJ (SC)761) in which Untwalia J., speaking for the Court has summarised the settled law on this point as under:--

The ambit and content of Article 30 of the Constitution has been the subject matter of consideration and pronouncement by this Court in several decisions starting from In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, and ending with 9 Judges Bench decision of this Court in The Ahmedabad St. Xaviers College Society and another Etc. v. State of Gujarat and another. In State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., Hidayatullah C.J., speaking for the Court has said at page 740:

There is however, an exception in 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 syllabus for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others. These propositions have been firmly established in The State of Bombay Vs. Bombay Education Society and Others, ; The State of Madras Vs. Srimathi Champakam Dorairajan, ; In re The Kerala Education Bill; Sidharajbhai v. State of Gujarat (1963) Suppl. 1 SCR 112; Katra Education Society v. State of U.P. and others (1966) 3 S C R 323; Gujarat University, Ahmedabad v. Krishna Ranganath Mudholkar and others (1963) Suppl. 1 SCR 112; and Rev. Father W. Proost and Others Vs. The State of Bihar and Others, ; In the last case it was said that the right need not be enlarged not whistled down. The Constitution speaks of administration and that must firstly be left to the minority institutions and no more.

In the case of St. Xaviers College, Ahmedabad (supra) the majority decision, although by the separate judgments, has converged to the view that the right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration of the school in the matter of maintaining discipline, health, morality and so on

and so forth. Even the two learned Judges differing from the majority on some of the aspects of the matter under consideration before this Court in *St. Xaviers College* case did not depart from this fundamental principle. The difference was mainly in the application of the principle in relation to some of the provisions of the impugned Statute. As summed up by Das C.J. in the *Kerala Education Bill* case (*supra*) the right to administer an educational institution of their choice by a minority cannot mean a right to mal-ad minister. Of course in the application of the salient principles mentioned above opinions have different from case to case and may differ.

The result is this. This right is not absolute and is subject to regulatory measures which are "necessasy for ensuring orderly, efficient and sound administration of the school in the matter of maintaining discipline, health, morality and so on and so forth." The permissible regulatory measures are those which achieve this purpose without annihilating the right of the minorities to administer their institutions. Any measure which destroys any right of management, by taking it away or otherwise, say by conferring a right of veto on an outside agency cannot be treated as a permissible regulatory measure and would infringe the right guaranteed under Article 30(1). This is the test to be applied for deciding the validity of a provisions challenged on this ground.

Applying the above test, this argument with reference to subsection (4) of section 5 must be rejected. As earlier pointed out, sub-section (4) does not in any manner prejudicially interfere with the administration of any private educational institution, nor does it lay down any additional burden on any of them. That provision is only to ensure payment of the total salary every month to all teachers and employees of such institutions. As earlier stated, all the petitioners including those who claim to belong to the linguistic or religious minorities assert that no default is being committed by them and that they are all paying to their teachers and employees regularly the total salary due to them. There being no additional burden of any kind placed on any of the petitioners, there is no basis to assail section 5(4) of the impugned Act. This provision does not even restrict the right to administer much loss annihilate it. The only thing done is to ensure the doing of that act which the petitioners claim to have been doing throughout. The only difference is that now the payment of the same amount is through treasury while it was earlier paid directly to the employees. Such a measure satisfies the requirement of a "permissible regulatory measure."

The main attack on the basis of this argument is to section 6 of the impugned Act, which reads as under:

6. Notwithstanding anything contained in any law for the time being in force or any rules, regulations, byelaws, statutes or regulations made thereunder,--

(a) on and from the appointed date,

(i) no post of a teacher or other employee shall be created except in such scale of pay as the State Government may, from time to time, determine and no

teacher or other employee shall be recruited without following the procedure prescribed in this behalf;

(ii) the teachers or employees shall have such qualifications and experience as may be prescribed; and

(iii) no teacher or other employee shall be dismissed or removed from service or his services terminated without prior approval of the competent authority :

Provided that a teacher or other employee may prefer an appeal against his dismissal, removal or termination from service to an appellate authority as the State Government may, by notification, specify within thirty days from the date of receipt of the order by him and such authority may after holding such enquiry as it may deem fit in the manner prescribed, may either set aside or confirm or modify the said order and pending the disposal of appeal, the appellate authority may also stay the operation of order on such grounds, as it thinks fit;

(iv) no teacher or other employee shall be placed under suspension for more than ninety days without prior approval of the competent authority:

Provided that the competent authority shall give its approval only after holding such enquiry and within such time as may be prescribed;

(b) the competent authority may on an application made within thirty days from the appointed date by a teacher or an employee of an institution, who has been dismissed or removed from service or whose service has been terminated by the management of an institution at any time on or after the 18th November, 1977, after giving the management of the institution and the persons affected by such dismissal, removal or termination a reasonable opportunity of being heard and after conducting such enquiry as it may deem fit, declare the dismissal, removal or termination, as the case may be, to be void and direct the management of the institution to reinstate such teacher or employee in service;

(c) the competent authority shall review all the cases of appointment of teachers and other employees made during the period commencing from the 17th November, 1977 and ending on the date of commencement of this Act and, if it, after giving the management of the institution and the person concerned a reasonable opportunity of being heard, finds that the appointments were made in anticipation of this Act, it may by an order in writing for reasons to be stated therein disapprove such appointment.

Clause (a) of section 6 contains four sub-clauses. By sub-clause (i) the State Government is empowered to fix the scales of pay of teachers and other employees and to lay down the mode or procedure of their recruitment. So far as laying down the scales of pay is concerned, that power is rightly not disputed and it is only the provision enabling laying down of mode of recruitment of personnel which is objected to. It is also stated that the scales of pay laid down by the State Government are being paid to ensure that suitable persons are available for appointment. So far as laying down the mode or procedure of recruitment of

personnel is concerned, there can be no objection so long as there is no interference in the actual recruitment of personnel in the case of minority institutions. All that this sub-clause does is to enable the State Government to fix the scales of pay and lay down the general mode or procedure for recruitment of teachers and other employees and it does not enable any interference by the State Government in the choice of personnel selected by that mode, which continues to remain with the management of the institution. It has not been shown to us that the scale of pay in any case has been fixed so high as to be unreasonable and an indirect interference with the running of any such educational institution. It has also not been shown that the mode or procedure of recruitment laid down is such as to amount to an undue interference with the right of management of any educational institution run by any minority. This sub-clause, as such, is, therefore, innocuous and not open to challenge on this ground. Sub-clause (ii) enables the laying down of qualifications and experience for teachers or employees of the institutions. There is no vice even in this provision which is meant only for the purpose of standardization of education and teaching in institutions and does not in any manner interfere with the right of minorities. There is no dispute that so long as there is no unreasonable interference with the right of administration or management of a minority institution, there can be no objection to laying down qualifications and experience for appointment of teachers and employees inasmuch as these institutions also have to satisfy the general requirements in this behalf to be followed by all institutions. It must, therefore, be held that no ground has been made out to assail the validity of sub-clauses (i) and (ii) of clause (a) of section 6 of the impugned Act on the basis of Article 30(1). Both these provisions satisfy the aforesaid test of "permissible regulatory measure," subject to which alone the right under Article 30(1) is available.

The remaining provisions of section 6 commencing with sub-clause (iii) of clause (a) of section 6, however, present some difficulty. Sub-clause (iii) lays down that no teacher or other employee of such an institution shall be dismissed or removed from service or his services terminated "without prior approval of the competent authority". "Competent Authority" is defined in section 2(b) of the impugned Act to mean an authority appointed by the State Government for discharging the functions of competent authority under this Act. The proviso to this sub-clause further gives a right of appeal to a teacher or other employee against his dismissal, removal or termination from service to an appellate authority appointed by the State Government and such authority is empowered to either set aside or confirm or modify the said order and pending the disposal of appeal the appellate authority is also empowered to stay the operation of the impugned order. In short, by sub-clause (iii) the ultimate power of dismissal or removal from service or termination of service of a teacher or other employee of such an institution is given to the "competent authority" subject only to the decision of the appellate authority, in case of an appeal by the aggrieved teacher or employee. The competent authority and the appellate authority are to be

appointed by the State Government. The management's action terminating the service of an employee is ineffective unless approved by the competent authority. Even where the competent authority approves the management's action, the aggrieved employee can appeal against the same and the appellate authority may set it aside. Incidentally, no appeal is provided to the management against refusal of approval by the competent authority. It is, therefore obvious that in this respect the ultimate power is not with the management of the institution but with an outside authority which has been given the power to veto the action of the management. Sub-clause (iv) lays down that no teacher or other employee shall be placed under suspension for more than ninety days without prior approval of the competent authority. Obviously, the management's power of suspending a teacher or employee for more than ninety days is similarly taken away and conferred on the competent authority who is an outsider. Thus, the management's power of disciplinary control by suspension of an employee or termination of his service has been taken away or annihilated.

Clause (b) of section 6 enables the competent authority to set aside the dismissal, removal or termination of service of a teacher or other employee of such an institution who has been dismissed or removed from service or whose service has been terminated by the management at any time on or after 17th November 1977 and to direct his reinstatement in service. Clause (c) empowers the competent authority to review all cases of appointment of teachers and other employees made during the period commencing from 17th November 1977 and ending on the date of commencement of this Act (1-8-1978) and disapprove such appointments. The provisions in Clauses (b) and (c) which enable the competent authority to review all cases of teachers and other employees who have been removed from or taken in service after the 17th November 1977 and reverse the management's decision, have been made to undo the acts which may have been done in anticipation of this legislation because it was on the 17th November 1977 that the State Government declared that the teachers of non-Government educational institutions shall be paid salary through treasury. This is the significance of the date 17th November 1977 mentioned in these clauses.

The cumulative effect of the provisions contained in sub-clauses (iii) and (iv) of clause (a) and clauses (b) and (c) of section 6 is that after commencement of the impugned Act no teacher or employee can be suspended by the management for more than ninety days without prior approval of the competent authority; or removed from services without prior approval of the competent authority; the aggrieved teacher or employee can prefer an appeal before an appellate authority constituted by the State Government; and the competent authority has been empowered to review all cases of teachers and employees taken in service or removed from service after the 17th November 1977 up to the date of enforcement of the Act and to set aside the management's action. In short, in respect of choice of such personnel and their removal from service on or after the 17th November 1977, by these provisions the right of management has been destroyed by conferring the power of veto on the competent authority or the

appellate authority, as the case may be, both nominees of the State Government.

In our opinion, the test indicated earlier shows that the provisions contained in sub clauses (iii) and (iv) of clause (a) and clauses (b) and (c) of section 6 of the impugned Act violate the right guaranteed under Article 30(1) of the Constitution of India and for this reason they cannot be made applicable to institutions established and administered by linguistic or religious minorities.

This conclusion reached by us with the aid of the above test laid down by the Supreme Court is also supported by some other decisions of the Supreme Court dealing with similar provisions. It is sufficient for us to refer to only two of the recent decisions of the Supreme Court. In Lily Kurian v. Sr. Lewina & Ors. Civil Appeals Nos. 728-730 of 1975 decided on 15th September 1978 the Supreme Court held that the provision of appeal to the Vice-Chancellor in Ordinance 33 (4) made u/s 19(j) of the Kerala University Act, 1957, is inapplicable to an educational institution established and managed by a religious or linguistic minority as it infringes their right of administration guaranteed in Article 30(1). The material provisions of Ordinance No. 38 framed u/s 19(j) of the Kerala University Act, 1957, with which the Supreme Court was concerned in Lily Kurian's case (supra) read as under:--

33(1) Suspension: The management may at any time place a teacher under suspension where a disciplinary proceeding against him is contemplated or is pending. He shall be paid subsistence allowance and other allowances by the management during the period of suspension at such rates as may be specified by the University in each case. The teacher shall have right to appeal against the order of suspension to the Vice-Chancellor of the University within a period of two months from the date on which he receives the order of suspension.

(2) Nature of penalties : The following penalties may be good and sufficient reasons be imposed on a teacher by the management:--

(i) Censure.

(ii) Withholding of increment.

(iii) Recovery from pay of any pecuniary loss caused to the institution/monetary value equivalent to the amount of increment ordered to be withheld.

(iv) Reduction to a lower rank in the seniority list or to a lower grade or post.

(v) Dismissal from service.

The management shall be the Disciplinary Authority in imposing the penalties.

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(4) Appeal: A teacher shall be entitled to appeal to the Vice-Chancellor of the University against any order passed by the management in respect of the penalties referred to in items (ii) to (v). Such appeal shall be submitted within a period of 60 days the appellant receives the order of punishment.

It will be seen that the provision of appeal contained in the proviso to sub-clause (iii) of clause (a) of section 6 of the Act challenged before us is substantially similar to that in Ordinance No. 33 (4) which was challenged before the Supreme Court in Lily Kurian's case. In *The Ahmedabad St. Xaviers College Society and another etc. v. State of Gujarat* and another the question involved related to the validity of certain provisions of the Gujarat University Act, 1949, as amended by Act No. 6 of 1973, so far as they apply to minority institutions. It was held therein that the provisions of sub-sections (1) (b) and (2) (b) of section 51-A along with some other provisions are violative of Article 30(1) of the Constitution and therefore they can have no application to the educational institutions established and administered by religious or linguistic minorities. Sub-sections (1) (b) and (2) (b) of section 51-A required approval by the Vice-Chancellor or his nominee for imposition of penalty or termination of service of a teacher or other employee of an affiliated college and in this manner interference was made with the power of disciplinary control of the management of the institution. These provisions of the Gujarat Act which were struck down as violative of Article 30(1) of the Constitution in *St. Xaviers College* case were similar to the relevant provisions of section 6 of the Act challenged before us.

In Lily Kurian's case (*supra*), Sen J. speaking for the Court, summarized the judgment in *St. Xaviers College* case as follows:

An analysis of the judgments in *St. Xaviers College* case (*supra*) clearly shows that seven out of nine judges held that the provisions contained in clauses (b) of sub-sections (1) and (2) of section 51-A of the Act were not applicable to an educational institution established and managed by religious or linguistic minority as they interfere with the disciplinary control of the management over the staff of its educational institutions. The reasons given by the majority were that the power of the management to terminate the services of any member of the teaching or other academic and non-academic staff was based on the relationship between an employer and his employees and no encroachment could be made on this right to dispense with their services under the contract of employment, which was an integral part of the right to administer, and that these provisions conferred on the Vice-Chancellor or any other officer of the University authorised by him, uncanalised, unguided and unlimited power to veto the actions of the management. According to the majority view, the conferral of such blanket power on the Vice-Chancellor and his nominee was an infringement of the right of administration guaranteed under Article 30(1) to the minority institutions, religious and linguistic. The majority was accordingly of the view that the provisions contained in clause (b) of sub-sections (1) and (2) of section 51A of the Act had the effect of destroying the minority institution's disciplinary control over the teaching and non-teaching staff of the college as no punishment could be inflicted by the management on a member of the staff unless it gets approval from an outside authority like the Vice-Chancellor or an officer of the University authorised by him.

x x x x x

As laid down by the majority in St. Xaviers College's case (supra), such a blanket power directly interferes with the disciplinary control of the managing body of a minority educational institution over its teachers. The majority decision in Sr. Xaviers College case squarely applies to the facts of the present case and accordingly it must be held that the impugned Ordinance 33 (4) of the University of Kerala is Violative of Article 30(1) of the Constitution.

The three recent decisions of the Supreme Court in St. Xaviers College case, Rt. Rev. Magr Mark Nattos case and Lily Kurians's case summarise the law laid down by the Supreme Court on this point. It is, therefore, not necessary to refer to any earlier decision. Following the law laid down by the Supreme Court, we hold that sub-clauses (iii) and (iv) of clause (a) and clauses (b) and (c) of section 6 of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, 1978 (No. 20 of 1978) are violative of Article 30(1) of the Constitution and, therefore, they have no application only to educational institutions established and administered by religious and linguistic minorities. No other part of the impugned Act has been shown to be invalid.

Except to the limited extent indicated above, these petitions fail and are dismissed, but, in the circumstances, without any costs. The outstanding amount of security deposit shall be refunded to the petitioners.