

(2014) 07 KL CK 0260
In the High Court Of Kerala
Case No : Ins. Appeal No. 70 of 2012

St. Joseph's Model Higher Secondary School	APPELLANT
Vs	
Employees' State Insurance Corporation	RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Constitution of India, 1950 — Article 13(2), 13(3)(a), 136, 14, 15
Employees State Insurance Act, 1948 — Section 1(5), 10, 12, 2(13), 2(13A)
Industrial Disputes Act, 1947 — Section 2(s)
Minimum Wages Act, 1948 — Section 2(i)
Right of Children to Free and Compulsory Education Act, 2009 — Section 12(1)(b),
12(1)(c), 12(3), 2(n)(iii), 2(n)(iv)

Citation : (2014) 07 KL CK 0260

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : N.N. Sugunapalan, Sr. Adv., M.B. Prajith and K.K. Premalal, Advocate for the Appellant; P. Sankarankutty Nair, and Sandesh Raja K, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.—(i) Whether a Higher Secondary School being run by Catholic Archdiocese of Thrissur, comes within the purview of the impugned notification?

(ii) Can the teachers of a Higher Secondary School being run by Catholic Archdiocese of Thrissur, be "employees" within the meaning of Section 2(9) of the ESI Act?

(iii) Whether the impugned notification is violative of the fundamental right of the linguistic or religious minorities enshrined in Article 30(1) of the Constitution of India?

(iv) Can it be said that the impugned notification is one protecting the right to life enshrined in Article 21 of the Constitution of India?

These are the questions of law to be answered in this appeal.

2. The appellant, Catholic Archdiocese of Thrissur, running an unaided Higher Secondary School following the State Syllabus, has come up in appeal by challenging notification G.O. (P) No. 135/2007/LBR dated 08.10.2007 issued by the Government of Kerala ("the impugned notification", for short), extending the provisions of the Employees' State Insurance Act, 1948 ("the ESI Act", for short) to educational institutions run by individuals, trustees, societies or other organisations, wherein 20 or more persons are employed or were employed on any day of the preceding twelve months. Challenging C11 and C18 notices issued by the Employees' State Insurance Corporation ("the ESI Corporation", for short), the said appellant had approached the Employees' Insurance Court through I.C No. 107 of 2009. The said case stands dismissed through the impugned judgment.

3. Heard the learned Senior Counsel Sri. N.N.Sugunapalan and the learned counsel Sri. K.K.Premalal for the appellant and the learned Standing Counsel Sri. Sandesh Raja for the ESI Corporation.

4. Questions (i) and (ii)

Over and above the arguments that the impugned notification abridges the fundamental right guaranteed to the linguistic as well as religious minorities under Article 30(1) of the Constitution of India, and that the teachers of educational institutions cannot be brought within the category of employees within the meaning of Section 2(9) of the ESI Act, the learned counsel for the appellant have forwarded an argument that, a Higher Secondary School being run by the Catholic Archdiocese of Thrissur, cannot be an educational institution of any one of the categories mentioned in the impugned notification.

5. The learned counsel for the appellant has argued that Rule (1) in Chapter III of the Kerala Education Rules, classifies the private educational institutions. It has been broadly classified into two categories such as (i) those under individual Educational Agency and (ii) those under Corporate Educational Agency. It seems that "Corporate Educational Agency" is also defined in Rule(1) which shows that "Corporate Educational Agency" shall include (a) two or more persons jointly with written registered agreement (b) a Board or Society or Association or Company or institution registered under a statute or created by a statute, (c) an institution of Trust, and (d) an ecclesiastical office of any religious denomination.

6. According to the learned counsel for the appellant the Catholic Archdiocese of Thrissur will not come within the purview of any of the categories so as to form a corporate Educational Agency within the meaning of Rule 1 of Chapter III of the Kerala Education Rules and therefore, it will not come within the purview of the impugned notification.

7. Black's Law Dictionary defines the term "organization" as "a body of persons formed for a common purpose." The term "organisation" is defined in Cambridge International Dictionary of English as a group of people who work together in a structured way for a shared purpose. The World Book Dictionary defines the term

"organisation" as a group of persons united for some purpose, churches, clubs and political parties.

8. An association or organization is a body of individuals. A particular sect of the Christian community has formed an ecclesiastical church in the name and style as Catholic Archdiocese of Thrissur. Catholic Archdiocese of Thrissur will come within (d) category, mentioned above, coming under the corporate Educational Agency, whereby it has been categorised as an ecclesiastical office of a religious denomination. The ecclesiastical institution formed as Catholic Archdiocese of Thrissur is no doubt, a corporate agency, which comes within the purview of organizations included in the impugned notification.

9. The learned Senior Counsel for the appellant has taken this Court through various provisions of the ESI Act, Industrial Disputes Act, Minimum Wages Act, Kerala Education Act and Rules etc., and argued that teachers, who are practising a "profession" are not doing an "occupation" and, therefore, it cannot be said that teachers are workers or workmen, and therefore, teachers of Schools can never be categorised as "employees" within the meaning of Section 2(9) of the ESI Act.

10. Per contra, the learned Standing Counsel for the ESI Corporation Sri. Sandesh Raja K. argued that the ESI Act as such is a self contained Code, which is capable of giving a wider amplitude to the definition of "employee" so as to take in the teachers of Schools also, within its sweep. It has been further argued that being a social legislation, which is a welfare legislation meant to protect the employees of such schools who are, in fact, downtrodden in the society, a liberal interpretation favouring such employees is required to be adopted even in a case wherein any such terms used in the Act is capable of different interpretations. In such cases, the one favourable to the beneficiaries in such cases has to be adopted, it is argued. It is also argued that being a self contained Code, the definition of the term "employee" as contained in the ESI Act cannot be interpreted by making use of the definition of "workman" as contained in Section 2(s) of the Industrial Disputes Act, or "employee" as contemplated under Section 2(i) of the Minimum Wages Act.

11. The learned Senior Counsel Sri. Sugunapalan has argued that the preamble of the ESI Act as well as various provisions in it including Section 1(5), Section 2(6A), Section 2(9), Section 2(13), Section 2(13A), etc. clearly give an indication and impression that it should be for the protection and benefits of the employees of a factory or such industrial concerns and not meant for teachers of an educational institution like Schools or Colleges. Section 1(5) of the Act reads as follows:-

The appropriate Government may, in consultation with the corporation and where the appropriate Government is a State Government, with the approval of the Central Government, after giving six months" notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of

them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

12. The argument is that Section 1(5) makes it clear that the provisions of the said statute can be extended to "any other establishment or class of establishments, industrial, commercial, agricultural or otherwise". The argument in short is that the term "or otherwise" does not give any blank cheque to the Government to bring any establishment, which is totally alien to an industrial, commercial or agricultural establishment within the sweep of the ESI Act. The term "employee" is defined in Section 2(9) as "any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies, and.....". It has also been pointed out that Section 2(13) defines the term "immediate employer", wherein also it has been mentioned that "a factory or an establishment to which this Act applies". Similar is the wording in Section 2(13A) also. The learned Senior Counsel has argued that by extending the principle of ejusdem generis, the term "or otherwise" as contained in Section 1(5) of the Act can only bring in establishment similar to industrial, commercial or agricultural alone.

13. On a careful consideration of the term "or otherwise" as contained in Section 1(5) of the ESI Act, it is evident that the legislature has carefully worded the said provision so as to include any other establishment within the sweep of Section 1(5) of the ESI Act. It has to be noted that if the intention was to include establishment similar to industrial, commercial or agricultural alone as establishments, definitely, the legislature would have worded it as "such other establishments of similar nature". At the same time, in Section 1(5), the legislature has used the term "or otherwise". In the absence of any specific term to invite a presumption that what is intended is establishments similar to industrial, commercial or agricultural in nature, it has to be noted that the legislature has carefully given a blank cheque to the appropriate Government to bring any establishment wherein employees are working, within the sweep of Section 1(5) of the Act.

14. Regarding the definition of "employee" as contained in Section 2(9) of the ESI Act, the learned Senior Counsel as well as the learned counsel for the appellant have pointed out that the legislature has never meant to bring an employee of an educational institution within the said definition. The attention of this Court has been invited to Section 2(s) of the Industrial Disputes Act, 1947 as well as Section 2(i) of the Minimum Wages Act, 1948 to canvas an argument that teachers of an educational institution cannot be brought within the purview of "employee" within the meaning of Section 2(9) of the ESI Act.

15. Section 2(s) of the Industrial Disputes Act defines "workman" as "any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward,.....". Therefore, Section 2(s) is confined to a workman of any industry. Such workman should be a person who is employed in any industry to

do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. In Section 2(i) of the Minimum Wages Act, 1948, the term "employee" is defined as "any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed...". Therefore, in order to bring a person in the category of an "employee" within the meaning of the Minimum Wages Act, 1948, he should be in a scheduled employment in respect of which minimum rates of wages have been fixed. When the Industrial Disputes Act brings a workman in respect of any industrial establishment, the Minimum Wages Act brings an employee within the purview of the said Act only when he is in a scheduled employment in respect of which minimum rates of wages have been fixed. Therefore, the legislative intent for bringing a person within the scope of Section 2(s) as a "workman" under the Industrial Disputes Act, and a person as an "employee" within the meaning of Section 2(i) of the Minimum Wages Act, is totally different. The same cannot be equated at all. When the Industrial Disputes Act is confined to an industrial establishment alone, the term "employee" in the Minimum Wages Act is confined to any scheduled employment for which minimum wages have been fixed.

16. On going through the Minimum Wages Act, the definition of "employee" in Section 2(i) of the said Act has a wider amplitude than the definition of a "workman" as contained in Section 2(s) of the Industrial Disputes Act. Same is the question with regard to the ESI Act also. It is evident that the definition of the term "employee" as contained in Section 2(9) of the ESI Act has a wider amplitude than that of a "workman" as contained in Section 2(s) of the Industrial Disputes Act and "employee" as contained in Section 2(i) of the Minimum Wages Act. Further, in all other respects also, it is evident that the term "employee" as contained in Section 2(9) of the ESI Act cannot be equated with the definition of the term "workman" or "employee" as contained in the other two Acts. In short, the provisions are not *pari materia*.

17. In such a context, it has to be examined whether for interpreting the term "employee" as contained in Section 2(9) of the ESI Act, the definition of the term "workman" or "employee" from the other two statutes can be made use of. The learned Standing Counsel for the ESI Corporation is relying on the decision in *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, wherein it has been held in paragraph 1:

It is not a sound rule of interpretation to seek the meaning of words used in an Act, in the definition clause of other statutes. The definition of an expression in one Act must not be imported into another. "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone" (per Loreburn, L.C. in *Macbeth & Co. v. Chislett*). For the same reason we refrain from borrowing upon the definition of "local authority" in enactments such as the

Cattle Trespass Act, 1871 etc. as the High Court has done.

18. The learned Standing Counsel for the ESI Corporation has further relied on the decision in *Agricultural Produce Market Committee, Narela, Delhi Vs. Commissioner of Income Tax and Another*, wherein it was held in paragraph 40 that in interpreting a definition clause in a statute, it is not a sound rule of interpretation to seek the meaning of words used in the definition clause of other statutes. They have further relied on the decision in *M/s. Whirlpool of India Ltd. Vs. Employees' State Insurance Corporation*, wherein it was held:-

The Employees' State Insurance Act is a social legislation enacted to provide benefits to employees in case of sickness, maternity and employment injury and to make a provision for certain other matters in relation thereto. Undoubtedly, any provision of which two interpretations may be possible would deserve such construction as would be beneficial to the working class but, at the same time, one cannot give a go-by to the plain language of a provision.

19. This Court fully agree with the argument forwarded by the learned Standing Counsel for the ESI Corporation that for interpreting a definition clause in the ESI Act, the aid of the definition clause in other enactments noted earlier, cannot be pressed into service. Apart from all these, there cannot be any ambiguity with regard to the definition of the term "employee" as contained in Section 2(9) of the ESI Act.

20. The learned Senior Counsel as well as the learned counsel for the appellants are harping upon the term "work" used in Section 2(9) of the ESI Act to argue that the said term is intended for a worker, who can be equated to a workman under Section 2(s) of the Industrial Disputes Act, and not for a person who is practising a profession. It is true that the terms "work of a factory or establishment" are used in Section 2(9) but, on interpreting the Section in its plain language, the only possible interpretation to the term "work" incorporated therein is that the said term is used merely in its literal sense to show that a person who is working in a factory or establishment to which the said Act applies. Whether he is a person who is practising a profession or doing an occupation, it cannot be said that he is not working. In the literal sense of the term, it can be said that a Doctor is working in a hospital or a Teacher is working in a school. It cannot be said that the said term in its literal sense cannot be used to reveal the occupation of a professional. The legislature has carefully worded the said provision by incorporating the term "work" and has never used the term "worker" or "workman" anywhere in Section 2(9) of the ESI Act. Had the term "workman" is used, the argument forwarded on behalf of the appellants would have carried merits.

21. Apart from all the above, in interpreting the definition of the term "employee" in Section 2(9) of the ESI Act, the aid of Section 1(5) of the ESI Act also has to be taken. The legislature has, in its wisdom, thought it fit to bring any other establishment of the choice of the Government within the purview of

Section 1(5) of the ESI Act. There is no restriction to any class of establishment in case the Government wants to bring it within the purview of the provisions of the ESI Act. It is evident that educational institutions also can be establishments wherein an employee within the meaning of Section 2(9) of the ESI Act can work. By the mere use of the term "work", at any stretch of imagination, the term "employee" can be equated with the term "workman" as defined under Section 2(s) of the Industrial Disputes Act. When compared to the Industrial Disputes Act as well as Minimum Wages Act, other qualifications are also required to classify a person as workman or employee. At the same time, Section 2(9) takes in any employee without any such classification. The only qualification is that such employee should work in a factory or establishment to which the ESI Act applies. Therefore, when there cannot be any restriction to bring an educational institution as an establishment to which the provisions of this Act applies, the employees who are qualified therein to have coverage are, no doubt, employees within the meaning of Section 2(9) of the ESI Act.

22. Regarding teachers, the appellants have invited the attention of this Court to the recent judicial pronouncement of the Apex court in *E.S.I.C. Medical Officer's Association Vs. E.S.I.C. and Another*, wherein it was clearly held in paragraphs 10 and 11 that Doctors as well as Teachers are not merely doing any occupation; whereas, they are practising solemn professions. It is true that teachers are imparting education in schools and it is true that they are practising a solemn profession of imparting education. It is true that they cannot merely be equated with a workman of a factory or industrial establishment. Of course, it has become trite law that the educational institutions are also parts of industries. The decision in *E.S.I.C. Medical Officers' Association (supra)*, does not lend any adequate support to the question in hand, as the same is not with regard to the term "employee" within the meaning of the ESI Act, whereas, the same is relating to Section 2(s) of the Industrial Disputes Act.

23. The learned counsel for the appellants are relying on the decision in *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*, also. Unfortunately, the same also does not lend any adequate support, as the same is also confined to the term "workman" within the meaning of Section 2(s) of the Industrial Disputes Act. Similarly, the decision in *Haryana Unrecognised Schools Association Vs. State of Haryana*, also, on which reliance has been placed, is relating to Section 2(i) of the Minimum Wages Act regarding the definition of "employee" in it.

24. Regarding the other point raised by the learned Senior Counsel for the appellants that the term "employee" as contained in Section 2(9) of the ESI Act should be understood as a person associated with work in factories or similar industrial establishments, it has to be noted that wherever the term "factory" is used in the provisions contained in Section 2(9), 2(13) and 2(13A) of the ESI Act, the terms "or establishment to which this Act applies" are also incorporated. Had the provisions were incorporated only with regard to those employees

working in factories or similar establishments, such would have been the wordings in those provisions. At the same time, in all those provisions, the terms used are `factory or establishment to which this Act applies". When the legislature has used the said terms `or establishment to which this Act applies", it should be understood as those establishments coming within the category "or otherwise" as contained in Section 1(5) of the ESI Act. I have also found that the Government is free to bring in any establishments of their choice within the sweep of Section 1(5) of the ESI Act and there cannot be any restriction to it. Therefore, it is evident that a School or College can also be an establishment within the meaning of "or otherwise" as contained in Section 1(5) of the ESI Act, or "or establishment to which this Act applies" in various provisions of the ESI Act.

25. Questions (iii) and (iv)

The learned Senior Counsel Sri. Sugunapalan and the other learned counsel for the appellant have argued that the impugned notification is clearly violative of the fundamental right guaranteed to the linguistic as well as religious minorities under Article 30(1) of the Constitution of India. It has been argued that being a fundamental right, the linguistic or religious minorities with the protection guaranteed under Article 30(1) of the Constitution have the absolute right to establish and administer the educational institutions `of their choice" and, therefore, any restrictions including financial administration imposed through the impugned notification can be considered as an abridgment within the meaning of Article 13(2) of the Constitution on the fundamental right guaranteed under Article 30(1) of the Constitution, which is impermissible. The learned counsel for the appellant have pointed out that the liability thrust upon the management of such a minority educational institution, being employers, and the teachers therein to pay contribution to the ESI Corporation, will, no doubt, ultimately fall on the shoulders of the students and their parents, who are minorities. The argument in short is that administration of "their choice" includes financial administration also, and the liability presently created through the impugned notification on the teachers as well as the employers of such minority institutions will transgress into the financial autonomy of the institutions and, therefore, it is violative of Article 30(1) of the Constitution.

26. Per contra, the learned Standing Counsel for the ESI Corporation has pointed out that the liability to pay contribution created through the impugned notification on the minority managements of educational institutions and its teachers, has no direct impact on the fundamental right guaranteed under Article 30(1) of the Constitution and that the ultimate liability allegedly thrust upon the shoulders of the students and their parents, who are a section of the minority, can only be a secondary impact, which can only be indirect and, therefore, it does not violate Article 30(1) of the Constitution. It is also argued that the ESI Act is a piece of social welfare legislation, which guarantees among other welfare measures, the maintenance of proper health of the employees and their right to

life including right to livelihood as guaranteed under Article 21 of the Constitution and, therefore, the same cannot militate against Article 30(1) of the Constitution. In short, the argument is that at the most, if at all the impugned notification is considered as a restriction to the fundamental right under Article 30(1) of the Constitution, it can only be considered as a reasonable restriction, which can be imposed for upholding the solemn right of right to life enshrined in Article 21 of the Constitution and, therefore, it is permissible and legally valid.

27. The question whether the institutions in these cases are educational institutions being run by religious minorities within the meaning of Article 30(1) of the Constitution need not be considered, as the same is not under challenge. In the backdrop of the aforesaid arguments, first of all, the fundamental right guaranteed under Article 30 of the Constitution of India has to be considered. Article 30 reads thus:-

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

[(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

28. As per Article 13(2), the State shall not make any law which takes away or abridges the rights conferred by that Part and any law made in contravention of the said clause shall, to the extent of the contravention, be void. As per Article 13(3)(a), "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law. Therefore, the impugned notification can also be considered as "law" within the meaning of Article 13(2) of the Constitution. The question to be examined is whether the impugned notification is a law which takes away or abridges the right guaranteed to the linguistic or religious minorities under Article 30(1) of the Constitution.

29. The learned Senior Counsel Sri. Sugunapalan has argued that unlike Article 19, which deals with fundamental freedom, Article 30(1) of the Constitution cannot be restricted in any manner as it is an absolute right. The learned Senior Counsel has invited the attention of this Court to the decision in *Society for Unaided Private Schools of Rajasthan v. Union of India* and another [2012 (6) SCC 102] rendered by a 3 Judges' Bench of the Apex court, while dealing with cases wherein the question whether the provisions of the Right of Children to Free and Compulsory Education Act, 2009 ("the 2009 Act", for short), in

particular, Sections 12(1)(c) and 12(3), infringe the fundamental freedom guaranteed to unaided minority schools under Article 30(1) of the Constitution, was considered. It was held therein,

S. 12(1)(c) read with S. 2(n)(iii) and S. 5 mandates that every recognised school imparting elementary education, even if it is an unaided school, not receiving any kind of aid or grant to meet its expenses from the appropriate government or the local authority, is obliged to admit in Class I, to the extent of at least 25% of the strength of that class, children belonging to weaker Section advantaged group in the neighbourhood and provide free and compulsory elementary education till its completion.

The question relating to the validity and applicability of the 2009 Act qua unaided minority schools has been considered in paragraph 14, which reads as follows:-

The inspiring preamble to our Constitution shows that one of the cherished objects of our Constitution is to assure to all its citizens the liberty of thought, expression, belief, faith and worship. To implement and fortify these purposes, Part III has provided certain fundamental rights including Article 26 of the Constitution which guarantees the right of every religious denomination or a section thereof, to establish and maintain institutions for religious and charitable purposes; to manage its affairs in matters of religion; to acquire property and to administer it in accordance with law. Articles 29 and 30 confer certain educational and cultural rights as fundamental rights.

It was held in *Society for Unaided Private Schools of Rajasthan* (supra) that the right conferred on the minorities under Article 30(1) of the Constitution is, however, subject to the right conferred by Article 29(2) of the Constitution.

30. Article 30(1) gives the minorities two specific rights:

(a) to establish, and

(b) to administer educational institutions of their choice.

In the words of the Apex court, the key to Article 30(1) lies in the words 'of their choice'. In paragraph 18 of *Society for Unaided Private Schools of Rajasthan* (supra), it has been held:

The right established by Article 30(1) is a fundamental right declared in terms absolute unlike the freedoms guaranteed by Article 19 which is subject to reasonable restrictions. Article 30(1) is intended to be a real right for the protection of the minorities in the matter of setting up educational institutions of their own choice. However, regulations may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition. However, such regulation must satisfy the test of reasonableness and that such regulation should make the educational institution an effective vehicle of education for the minority community or for the persons who resort to it. Applying the above test in the case of *Rev. Sidhajibhai Sabhai and Others Vs.*

State of Bombay and Another, , this Court held the rule authorizing reservation of seats and the threat of withdrawal of recognition under the impugned rule to be violative of Article 30(1).

31. It was further held Society for Unaided Private Schools of Rajasthan (supra):

In answer to the above question, it is important to note that in the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, , this Court held that there shall be no reservations in private unaided colleges and that in that regard there shall be no difference between the minority and non-minority institutions. However, by the Constitution (Ninety-third Amendment) Act, 2005, Article 15 is amended. It is given Article 15(5). The result is that P.A. Inamdar has been overruled on two counts: (a) whereas this Court in P.A. Inamdar had stated that there shall be no reservation in private unaided colleges, the Amendment decreed that there shall be reservations; (b) whereas this Court in P.A. Inamdar had said that there shall be no difference between the unaided minority and non-minority institutions, the Amendment decreed that there shall be a difference. Article 15(5) is an enabling provision and it is for the respective States either to enact a legislation or issue an executive instruction providing for reservation except in the case of minority educational institutions referred to in Article 30(1). The intention of the Parliament is that the minority educational institution referred to in Article 30(1) is a separate category of institutions which needs protection of Article 30(1) and viewed in that light we are of the view that unaided minority school(s) needs special protection under Article 30(1). Article 30(1) is not conditional as Article 19(1)(g).

It has come out that the Apex Court has concluded that the unaided minority school(s) needs special protection under Article 30(1). It has been further held that Article 30(1) is not conditional as Article 19(1)(g) of the Constitution.

32. The learned counsel for the appellants are relying on the decision in Pramati Educational and Cultural Trust (r) and Others Vs. Union of India (UOI) and Others, rendered by a 5 Judges' Bench of the Apex Court, wherein the vires of the concerned provisions of the 2009 Act was examined. In paragraph 46, it was held:

When we look at the 2009 Act, we find that S. 12(1)(b) read with S. 2(n)(iii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under S. 12(1)(c) read with S. 2(n)(iv), an unaided school has to admit into twenty-five per cent of the strength of class I children belonging to weaker sections and disadvantaged

groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Art. 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Art. 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar as it is made applicable to minority schools referred in clause (1) of Art. 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in *Society for Unaided Private Schools of Rajasthan v. Union of India & Anr.* (supra) insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.

33. In *Pramati Educational* (supra), it was held that the insertion of Article 15(5) as well as Article 21A in the Constitution does not alter the basic structure or frame work of the Constitution and the same are constitutionally valid. It was further held that the 2009 Act is not ultra vires to Article 19(1)(g) of the Constitution; but, at the same time, it was held that the 2009 Act insofar as it applies to minority schools, aided or unaided covered under clause (1) of Article 30 of the Constitution is ultra vires to the Constitution.

34. The attention of this Court has been invited to the decision rendered by a 6 Judges' Bench of the Apex Court in *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, wherein the constitutional validity of certain provisions of the Kerala University Act, 1969 was considered. It was held therein that the administration means "management of the affairs" of the institution and that such management must be free of control in the case of a minority institution within the meaning of Article 30(1) of the Constitution, so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas as to how the interests of the community in general and the institution in particular would be best served. In unequivocal terms, it was held that no part of such management can be taken away and vested in another body without an encroachment upon the guaranteed fundamental right under Article 30(1) of the Constitution. In paragraph 10 of the decision noted supra, it has been held:

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.

(Emphasis supplied)

The gist of the observations is that such regulations do not bear 'directly upon the management' as such, although they may indirectly affect it. Therefore,

even if the restriction caused by a regulation is indirectly affecting the management or administration, it will not be ultra vires to the fundamental rights guaranteed under Article 30(1) of the Constitution. What is prohibited and totally restricted is that such regulations should not directly affect the management or the administration of the minority institution.

35. The learned counsel for the appellants have invited the attention of this Court to another 4 Judges' Bench decision of the Apex Court in *Lily Kurian Vs. Sr. Lewina and Others*, wherein the constitutional validity of Ordinance 33(4) under the Kerala University Act was considered. As per the said provision, 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). It was held therein that the expression 'conditions of service' covers a wide range, as explained by the Privy Council in *AIR 1949 112 (Privy Council)*. On behalf of the management, it was contended that the right of appeal before the Vice Chancellor given to the teachers of private colleges under Ordinance 33(4) in the matter of suspension and dismissal, is violative of the rights of the religious minorities guaranteed under Article 30(1) of the Constitution. It was also contended that the conferment of a power to hear an appeal necessarily invests the appellate authority with the power to annul, vary or set aside the order appealed against. On the side of the respondent in that case, it was argued that the right to administer guaranteed by Article 30(1) of the Constitution does not carry with it a 'right to maladminister'. In that case, the Apex Court held,

The degree of permissive State control must depend upon the circumstances of each case. The right under Art. 30(1) forms part of a complex and inter-dependent group of diverse social interests. There cannot be any perpetually fixed adjustment of the right and those social interests. They would need adjustment and readjustment from time to time and in varying circumstances. Undoubtedly, the management of a minority institution could not be displaced by the regulatory measure. But the State has a power to regulate through the agency of the University the service conditions of teachers and to secure a fair procedure in the matter of disciplinary action against them. These safeguards must necessarily result in the security of tenure of teachers and must attract competent and qualified staff and thus could ultimately improve the excellence and efficiency of the educational institution.

36. In paragraph 53 of the decision in *Lilly Kurian (supra)*, it was held that as laid down by the majority in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, a blanket restriction, which directly interferes with the disciplinary control of the managing body of a minority educational institution over its teachers, is violative of the fundamental right guaranteed under Article 30(1) of the Constitution. It was held that Ordinance 33(4) framed by the Syndicate of the University under Section 19(j) of the Kerala University Act, 1969 would not, therefore, be applicable to an educational institution established and managed by a religious or linguistic minority. In the

decision in Lilly Kurian (supra), the aforesaid finding was rendered by considering that Ordinance 33(4) has a direct impact on the management and administration of a minority educational institution.

37. The attention of this Court has been invited to the decision of another 5 Judges' Bench of the Apex Court in State of U.P. Vs. Jai Bir Singh, which, in fact, is a reference order. The question therein was relating to the interpretation of the term "industry" as contained in Section 2(s) of the Industrial Disputes Act, 1947. In paragraph 33 of the decision in State of U.P. (supra), it was held,

With utmost respect, the statute under consideration cannot be looked at only as a worker-oriented statute. The main aim of the statute as is evident from its preamble and various provisions contained therein, is to regulate and harmonise relationships between employers and employees for maintaining industrial peace and social harmony. The definition clause read with other provisions of the Act under consideration deserves interpretation keeping in view interests of the employer, who has put his capital and expertise into the industry and the workers who by their labour equally contribute to the growth of the industry. The Act under consideration has a historical background of industrial revolution inspired by the philosophy of Karl Marx. It is a piece of social legislation. Opposed to the traditional industrial culture of open competition or laissez faire, the present structure of industrial law is an outcome of long-term agitation and struggle of the working class for participation on equal footing with the employers in industries for its growth and profits. In interpreting, therefore, the industrial law, which aims at promoting social justice, interests both of employers, employees and in a democratic society, people, who are the ultimate beneficiaries of the industrial activities, have to be kept in view.

It has been held that in interpreting a law relating to industries meant to promote social justice for regulating the interests of both employers and employees, a few one inferring the ultimate beneficiaries of the industrial activities, have to be kept in view.

38. The learned counsel for some of the appellants has invited the attention of this Court to the 11 Judges' decision of the Apex court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , wherein it was held in paragraph 161 at pages 587 and 588 that Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words `of their choice' indicates that even professional educational institutions would be covered by Article 30. It was held therein that,

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Art. 30 of the Constitution, the State Government or the University may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures

for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

39. The question 5(c) raised in the decision in T.M.A. Pai Foundation (supra) was whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities. The said question was answered by holding that so far as the statutory provisions regulating the facets of administration are concerned, in case of unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a University or Board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. At the same time, it was held that however, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievance of the employees and teachers against termination from service as a punishment, the Apex court has held that a mechanism will have to be evolved through the constitution of a Tribunal presided over by a judicial officer of the rank of the District Judge. It was further held that regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

40. Sri. Sandesh Raja, learned Standing Counsel for the ESI Corporation, has invited the attention of this Court to paragraphs 135, 136, 137 and 138 of T.M.A. Pai Foundation (supra). It was held therein that all rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part and that, it is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. The Apex Court further held that it is difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

41. In paragraphs 136 and 137, it was held,

Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also for example, laws relating to taxation, sanitation, social

welfare, economic regulation, public order and morality.

It follows from the aforesaid decisions that even though the words of Art. 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Art. 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Art. 30(1).

42. In paragraph 138 of *T.M.A. Pai Foundation* (supra), it was held that laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do. In paragraph 139, it was held that like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g. method of recruitment of teachers, charging of fees and admission of students. At the same time, they will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.

43. The learned counsel for the appellants have relied on another 5 Judges' decision of the Apex Court in *Nallur Prasad and Others Vs. State of Karnataka and Others*, wherein the question whether the imposition of mother tongue as medium of instruction in a minority educational institution will affect the fundamental rights under Articles 19, 29 and 30 of the Constitution, was considered. It was held therein that the imposition of mother tongue as medium of instruction will certainly affect the fundamental rights under Articles 19, 29 and 30 of the Constitution as far as a minority educational institution is concerned. It was held that the State has no power or authority under Article 350A of the Constitution to compel the linguistic minorities to choose their mother tongue only as medium of instruction in primary schools.

44. In order to fortify his argument, Sri. Sandesh Raja has invited the attention of this Court to a 6 Judges' decision of the Apex Court in *Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another*. It was held therein that all minorities, linguistic or religious, have, by Article 30(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 30(1) would to that extent be void. It was held that the said protection however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions. It is a right to establish and administer what are in truth educational institutions - institutions which cater to the educational needs of the citizens, or sections thereof. It was further held that the 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 of education.

45. The learned Standing Counsel for the ESI Corporation has relied on the decision in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, rendered by a 9 Judges' Bench of the Apex Court, wherein it was held in paragraph 174 that,

The application of the term "abridge" may not be difficult in many cases but the problem arises acutely in certain types of situations. The important ones are where a law is not a direct restriction of the right but is designed to accomplish another objective and the impact upon the right is secondary or indirect. Measures which are directed at other forms of activities but which have a secondary or indirect or incidental effect upon the right do not generally abridge a right unless the content of the right is regulated. As we have already said, such measures would include various types of taxes, economic regulations, laws regulating the wages, measures to promote health and to preserve hygiene and other laws of general application. By hypothesis, the law, taken by itself, is a legitimate one, aimed directly at the control of some other activity. The question is about its secondary impact upon the admitted area of administration of educational institutions. This is especially a problem of determining when the regulation in issue has an effect which constitutes an abridgment of the constitutional right within the meaning of Article 13(2). In other words, in every case the court must undertake to define and give content to the word "abridge" in Article 13(2).

It was further held,

The question to be asked and answered is whether the particular measure is regulatory or whether it crosses the zone of permissible regulation and enters the forbidden territory of restrictions or abridgment. So, even if an educational institution established by a religious or linguistic minority does not seek recognition, affiliation or aid, its activity can be regulated in various ways provided the regulations do not take away or abridge the guaranteed right. Regular tax measures, economic regulations, social welfare legislation, wage and hour legislation and similar measures may, of course have some effect upon the right under Article 30(1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly in-sufficient to constitute an abridgment.

46. The gist of the decisions discussed above clearly brings out that when a restriction is imposed through a regulation or law and such restriction has a direct impact on the administration and management of a minority educational institution, it will be violative of the fundamental right guaranteed under Article

30(1) of the Constitution. If it has only secondary impact, which is indirect, then, such a restriction cannot be held to be violative of the fundamental right guaranteed under Article 30(1) as far as a minority educational institution is concerned.

47. From the principle evolved in *St. Xaviers College* (supra), it has to be considered that where a law is not a direct restriction of the right of the minorities guaranteed under Article 30(1) of the Constitution; but is designed to accomplish another objective and the impact upon the right on the minority is secondary or indirect, the same is not violative of Article 30(1) of the Constitution. It was held therein that regular tax measures, economic regulations, social welfare legislation, wage and hour legislation, and similar measures may, of course, have some effect upon the right under Article 30(1). But, where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgment within the meaning of Article 13(2) of the Constitution. It has to be noted that in *Rev. Sidhrajibhai Sabbal* (supra), it was held that regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed and such regulations are not restrictions on the substance of the right which is guaranteed under Article 30(1) of the Constitution. Therefore, it is evident that in *St. Xaviers College* (supra), the aforesaid legal proposition in *Rev. Sidhrajibhai Sabbal* (supra) has been reiterated by finding that such regulations cannot be said to be an abridgment within the meaning of Article 13(2) of the Constitution.

48. In *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, , following the decision in *St. Xaviers College* (supra), the question whether certain provisions of the Industrial Disputes Act would be violative of Article 30(1) as far as it relates to a minority educational institution, was considered. It was held that a law like the Industrial Disputes Act which lays down social security to workers is the keystone in dealing with the industrial relations between the industrial employers and their workers and the provisions in such a social security legislation cannot be held to be abridgement within the meaning of Article 13(2) of the Constitution on the fundamental right guaranteed under Article 30(1) of the Constitution.

49. In paragraph 12 of *C.M.C. Hospital* (supra), it was held at pages 703 and 704, Thus it is seen that the Act is one which is enacted as a social security measure in order to ensure welfare of labour and it falls within one or the other of entry 22 - Trade Unions; industrial and labour disputes, entry 23 - social security and social insurance; employment and unemployment and entry 24 - welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits in the List III of the Seventh Schedule to the Constitution. The Act generally applies to all industries irrespective of the religion or caste to which the parties

belong. It applies to industries owned by the Central and the State Governments too. Any decision given by the Industrial Tribunal or a Labour Court under the Act is subject to judicial review by the High Court under Art. 226 of the Constitution and an appeal to this Court under Art. 136 of the Constitution. The Labour Court, the Industrial Tribunal, the High Court and this Court while dealing with matters arising out of the Act have to deal with them objectively. The smooth running of an educational institution depends upon the employment of workmen who are not subjected to victimisation or any other kind of maltreatment. The conditions of service of workmen in all institutions including minority educational institutions have to be protected in the interest of the entire society and any unfair labour practice, such as "hiring and firing", termination or retrenchment of the service of a workman on irrational grounds will have to be checked. The Act makes provisions in respect of these matters. The Act being a general law for prevention and settlement of industrial disputes cannot be construed as a law which directly interferes with the right of administration of a minority educational institution guaranteed under Art. 30(1) of the Constitution. The law is not enacted with the object of interfering with any such right. It clearly falls within the observation of Mathew, J. in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, that "regular tax measures, economic regulations, social welfare legislation, wage and hour legislation and similar measures may, of course have some effect upon the right under Art. 30(1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgment.

50. In *C.M.C. Hospital (supra)*, after discussing the preamble of the Constitution, Article 41 which provides for provision for securing right to work, Article 42 which makes a provision for securing just and humane conditions of work and for maternity relief and Article 43 of the Constitution which makes a provision for securing by suitable legislation or economic organisation or in any other way to all workers agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, it was held that such regulations or laws which ensure social welfare and social security measures will not be an abridgement to the fundamental right guaranteed under Article 30(1) of the Constitution. In paragraph 18 of *C.M.C. Hospital (supra)*, it was held,

If a creditor of a minority educational institution or a contractor who has built the building of such institution is permitted to file a suit for recovery of the money or damages as the case may be due to him against such institution and to bring the properties of such institution to sale to realise the decretal amount due under the decree passed in such suit is Art. 30(1) violated? Certainly not. Similarly the right guaranteed under Art. 30(1) of the Constitution is not violated, if a minority school is ordered to be closed when an epidemic breaks out in the neighbourhood, if a minority school building is ordered to be pulled down when it is constructed contrary to town planning law or if a decree for possession is passed in favour of the true owner of the land when a school is built on a land

which is not owned by the management of a minority school. In the same way if a dispute is raised by an employee against the management of a minority educational institution such dispute will have necessarily to be resolved by providing appropriate machinery for that purpose. Laws are now passed by all the civilised countries providing for such a machinery. The Act with which we are concerned in this case is an Act which has been brought into force for resolving such industrial disputes. Sections 10, 11A, 12 and 33 of the Act cannot, therefore, be construed as interfering with the right guaranteed under Art. 30(1) of the Constitution. Similarly, S. 9A of the Act, which requires the management to issue a notice in accordance with the said provision in order to make changes in the conditions of service which may include changes in the hours of work, leave rules, introduction of new rules of discipline etc., cannot be considered as violative of the right guaranteed under Art. 30(1) of the Constitution of India.

It was held therein that the provisions of the Industrial Disputes Act under challenge are applicable to the minority educational institutions like C.M.C. Vellore also.

51. Sri. Sandesh Raja has invited the attention of this Court to the decision rendered by the 3 Judges' Bench of the Apex Court in Consumer Education and Research center and others Vs. Union of India and others, , wherein it was held,

The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are corner stones of social democracy. The concept "social justice" which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social Justice" is thus an integral part of "justice" in generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, Tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex of social change to relieve the poor etc. from handicaps, penury to ward off distress, and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectations. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity, the State should provide facilities and opportunities to them to reach at least minimum standard of health, economic security and civilised living while sharing according to the capacity, social and cultural heritage.

52. In paragraph 24 of Consumer Education (supra), by relying on Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, , it was held that no person can live without the means of living i.e., means of livelihood, and if the right to livelihood is not treated as a part of the constitutional right to life, the

easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. It was held that the expression 'life' assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in work place and leisure. In paragraph 26 of the Consumer Education (supra), it was held that the health and strength of the worker is an integral facet of right to life and denial thereof denudes the workman the finer facets of life violating Article 21.

53. Therefore, evidently it has to be found that a social welfare legislation like the ESI Act and its provisions are meant for ensuring a better standard of life, health and welfare to the employees whereby upholding the right to life guaranteed under Article 21 of the Constitution. No doubt, when the right of the minorities guaranteed under Article 30(1) is compared to the right to life guaranteed under Article 21 of the Constitution, the right to life guaranteed under Article 21 will be on a higher pedestal than the right guaranteed under Article 30(1) of the Constitution. When a legislation has been brought by the State to ensure the livelihood within the meaning of right to life and for ensuring health and better welfare to the employees for ensuring protection to the fundamental right guaranteed under Article 21 of the Constitution, it cannot be said that such a law will abridge the fundamental right of the minorities guaranteed under Article 30(1) of the Constitution.

54. In *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.*, rendered by a 5 Judges' Bench of the Apex Court by relying on *Lilly Kurian* (supra), it was held:

Protection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minority's choice enshrined in Article 30(1) means "management of the affairs" of the institution. This right is, however, subject to the regulatory power of the State. Article 30(1) is not a charter for maladministration; regulation, so that the right to administer may be better exercised for the benefit of the institution is permissible; but the moment one goes beyond that and imposes, what is in truth, not a mere regulation but an impairment of the right to administer, the Article comes into play and the interference cannot be justified by pleading the interests of the general public; the interests justifying interference can only be the interests of the minority concerned.

55. In *Kirloskar Brothers Ltd. Vs. Employees' State Insurance Corpn.*, a 3 Judges' Bench of the Apex Court held that the object of the ESI Act is to provide certain benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. It was held that as per Part IV of the Constitution, not only the State and its instrumentality but even private industries shall ensure safety to the workmen and provide facilities and opportunities for health and vigour of the workmen, which are integral part of

right to equality under Article 14 and right to invigorated life under Article 21 which are fundamental rights of the workmen. It was held that interpretation of the provisions of the ESI Act, therefore, must be read in the light not only of the objects of the Act, but also the constitutional and fundamental and human rights. In *Kirloskar Brothers* (supra), the decision in *Consumer Education* (supra) has been relied on. In paragraph 8 of *Kirloskar Brothers* (supra), it was held,

Health is thus a state of complete physical, mental and social well being and right to health, therefore, is a fundamental and human right to the workmen. "The maintenance of health is the most imperative constitutional goal whose realisation requires interaction of many social and economic factors. Just and favourable condition of work implies to ensure safe and healthy working conditions to the workmen. The periodical medical treatment invigorates the health of the workmen and harnesses their human resources. Prevention of occupational disabilities generates devotion and dedication to duty and enthuses the workmen to render efficient service which is a valuable asset for greater productivity to the employer and national production to the State." Interpreting the provisions of the Act in para 33, it was held that the Act aims at relieving the employees from health and occupational hazards. The legal interpretation is to ensure social order and human relations.

56. From what is discussed above, it is evident that the provisions of the ESI Act are meant for the welfare measures of the employees, primarily aiming at their health and that of their family members, with a view to aiding them to live a decent and healthy life within the meaning of Article 21 of the Constitution. Such regulations have no direct impact on the administration and management of the minority educational institutions within the meaning of right guaranteed under Article 30(1) of the Constitution. The said legislation or the impugned notification, which extends the provisions of the said legislation to schools being run by the minorities, cannot be treated as an abridgement within the meaning of Article 13(2), so as to violate the fundamental right guaranteed under Article 30(1). Under the protective cover of Article 30(1) of the Constitution, a minority educational institution cannot be heard to say that they have unfettered right even to violate the fundamental right guaranteed under Article 21 of the Constitution. A social welfare legislation as the ESI Act and the impugned notification which extends the same even to such minority educational institutions also, is meant for upholding the right to life enshrined in Article 21 of the Constitution and, therefore, the same cannot be styled to be an abridgement within the meaning of Article 13(2) of the Constitution.

57. Apart from all the above, it is evident that the effect of the impugned notification, which results in contribution from the teachers as well as the management of such Schools being the employers, do not have any direct impact on the administration or management of such educational institutions. Of course, it has a secondary impact which is indirect that the parents of the students of such institutions will be saddled with the liability to meet further expenses in the

matter, which is purely secondary in nature. As there is no direct impact on the management and administration, the impugned notification does not take away or abridges the fundamental right guaranteed under Article 30(1) on the minorities. Matters being so, it has to be held that the impugned notification does not violate the fundamental right guaranteed under Article 30(1) of the Constitution. It does not abridge Article 30(1) within the meaning of Article 13(2) of the Constitution.

58. From the discussions made above, it is evident that the teachers and other employees, to whom wages enabling them to be covered under the ESI Act are payable, employed at the unaided Higher Secondary School being run by the Catholic Archdiocese of Thrissur, are employees within the meaning of Section 2(9) of the ESI Act read with Section 1(5) of the Act. It has been pointed out that, if proper emoluments applicable to Aided Schools or Government Schools, whether it is of the Central Government or the State Government, are disbursed to the teachers or other employees employed therein, there need not be any quarrel with regard to the coverage at all. If sufficient emoluments are disbursed to them, in such case, their emoluments will exceed 10,000/- during the appointed period and in such case, there need not be any quarrel with regard to the coverage at all. Having chosen to retain teachers at educational institutions, without disbursing proper emoluments, the management cannot be heard to clamour that such persons, who happen to work in such educational institutions for paltry amounts as wages, cannot be brought within the coverage of the ESI Act. It goes without saying that the employees as defined in the ESI Act takes in teachers or other employees of such unaided Schools drawing wages below the statutory minimum specified for the coverage.

59. The impugned notification is not at all defective on any aspect. C11 notices or C18 notices issued by the ESI Corporation in this case are not liable to be interfered with. The impugned judgment passed by the court below is also not liable to be interfered with.

In the result, this appeal is dismissed.