

(1979) 08 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No's. 4031/76, 2090, 3244, 3244/77 and 3592/78 and C.R.P. No. 1668/77

The Manager, St. Joseph's Training College for Women and
Another

APPELLANT

Vs

The University Appellate Tribunal and Others

RESPONDENT

Date of Decision : 29-08-1979

Acts Referred:

Constitution of India, 1950 — Article 19, 30, 30(1)
Kerala University Act, 1957 — Section 19
Kerala University Act, 1969 — Section 19, 51A, 51A(1), 51A(2), 52A
Kerala University Act, 1974 — Section 60, 60(7), 60(9), 61, 65
Kerala University Ordinance — Ordinance 33, Ordinance 33(1), Ordinance 33(2),
Ordinance 33(4)
Limitation Act, 1963 — Section 5

Citation : (1979) 08 KL CK 0003

Hon'ble Judges : M.P. Menon, J;Janaki Amma, J;Chandrasekhara Menon, J;Balakrishna Eradi, J;Balagangadharan Nair, J

Bench : Full Bench

Advocate : M.I. Joseph, T.M. Mahalinga Iyer and M.R. Rajendran Nair, for the Appellant; V. Bhaskaran Nambiar, for 1st Respondent, A.A.G. for 2nd Respondent and T.C.N. Menon, for 3rd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna Eradi, J.—An important question relating to the constitutional validity of Sections 60(7) and 61 of the Kerala University Act, 1974 (hereinafter called the Act) in relation to their applicability to educational institutions established and administered by a religious minority entitled to the protection of Article 30(1) of the Constitution of India is raised in this batch of connected cases, which arise out of diverse proceedings between the same parties. In *Benedict Mar Gregorios v. State of Kerala and Ors.* 1976 KLT 458 (F.B.) a Full Bench of this Court had occasion to examine the validity of several of the provisions contained in the Act inclusive of Sections 60 and 61. The Full Bench upheld the

constitutionality of Sections 60 and 61 observing that those provisions did not appear to be in any way offensive and "little was said against their validity". The writ Petitioners in these cases contend that the said decision requires reconsideration in the light of the recent pronouncement of the Supreme Court in Lily Kurian Vs. Sr. Lewina and Others, . In view of the said contention urged on behalf of the Petitioners those cases have been placed before this larger Bench.

2. It is necessary to briefly state at the outset the facts that have led upto the institution of these petitions. The St. Joseph's Training College for Women, Ernakulam is an educational institution established by a religious Congregation of Nuns-Mothers of Carmel-the members of which belong to the Roman Catholic Church. It is clearly an educational institution established and administered by a religious minority entitled to the protection of Article 30(1) of the Constitution. The College is affiliated to the University of Kerala.

3. Smt. Lilly Kurian, who figures as the main contesting private party Respondent (hereinafter referred to as "Respondent-principal" for convenience) in all these petitions, was appointed Principal of the College in the year 1957. As a sequel to an unfortunate incident which is alleged to have taken place in the College on October 30, 1969 between the Principal and a Lecturer by name Rajaratnam, disciplinary proceedings were initiated against the Respondent-principal by the managing board of the College. A retired Principal of the Maharaja's College, Ernakulam was appointed by the management as enquiry officer to conduct a detailed enquiry into the allegations levelled against the Principal. The Respondent-principal did not participate in the enquiry proceedings but chose to adopt the stand that the management had no competence whatever to initiate disciplinary proceedings against her. The enquiry officer by his report dated November 27th, 1969 found the Respondent-principal guilty of the charges of misconduct. Based on the said enquiry report the Secretary of the managing Board issued a notice to the Respondent principal dated 2nd December, 1979 calling upon her to show cause against the punishment of dismissal from service which the management proposed to impose on her. The Respondent-principal was told by that notice that a meeting of the managing board would be held on 19th December, 1969 to consider the representation, if any, that she might make and take a final decision in the disciplinary proceedings against her. On 18th December, 1969 the Respondent-principal filed O.S. No. 819 of 1969 in the Munsiff's Court, Ernakulam challenging the validity of the disciplinary proceedings commenced against her by the managing board and praying for a permanent injunction restraining the Managing Board from proceedings with the impugned disciplinary action. On the same date the Munsiff issued an interim injunction restraining the management from implementing the decision, if any, which may be taken by it at the meeting to be held on 19th December, 1969. The managing board which met on 19th December, 1969 took the decision to remove the Respondent-principal from its service. On 2nd January, 1970 the Mother Provincial of the Congregation acting in her capacity as the President of the managing board passed an order dismissing from service the Respondent-

principal with the rider added that the said order would be implemented immediately after the final decision of the Munsiff on the application for temporary injunction. On 17th January 1970 the Munsiff held that the Respondent-principal had failed to make out a prima facie case that the disciplinary proceedings taken by the management were illegal or without jurisdiction. Hence the temporary injunction which had been originally granted ex parte was vacated by the Munsiff subject to a direction that the cancellation of the injunction will become operative only after a period of two weeks so that the Respondent-principal may be enabled to move the Vice-Chancellor of the Kerala University [before whom she had already filed an appeal under Ordinance 33(4), Chapter LVII of the Ordinances framed by the Syndicate] for the grant of a stay of the order of dismissal. On 24th January 1970 the Vice-Chancellor passed an order staying the operation of the order of dismissal passed by the managing board against the Respondent-principal; the Petitioner was thereby enabled to continue to function as Principal of the College.

4. Subsequently, a separate disciplinary proceeding was started by the managing board against the Respondent-principal on the ground of its having been brought to light that without any reference to the management the Respondent-principal had sent two communications dated 6th October 1969 and 5th November 1969 to the Secretary to Government, Education Department, requesting for termination of the deputation of Sri Rajaratnam, as a result of which the deputation of Sri Rajaratnam was cancelled by the Government on 9th December 1969. The managing board viewed the sending of these communications by the Respondent-principal behind its back as an act of in subordination and it was in respect of this charge that the fresh disciplinary proceedings were initiated, pending the completion of the said disciplinary proceeding the managing board placed the Respondent-principal under suspension as per an order dated 10th April 1970 and appointed one Sr. Lewina as substitute Principal to take over charge from the Respondent-principal. On 13th April 1970 the Respondent-principal filed an appeal before the Vice-Chancellor challenging the order of suspension and moved for the grant of a stay. The Vice-Chancellor by his order dated 20th April 1970 issued a direction to the management that the status quo should be maintained. Apparently apprehending that on the strength of the said order the Respondent-principal might force her entry into the College claiming that she was entitled to function as Principal, the substitute Principal, Sr. Lewina, filed O.S. No. 405 of 1970 in the Munsiff's Court, Ernakulam praying for a declaration that she is the lawful incumbent of the office of the Principal and also for a permanent injunction restraining the Respondent-principal from entering the College and interfering with the discharge of duties of the Principal by the Plaintiff. An ex parte temporary injunction was granted in that suit on 2nd July 1970. The management of the College also filed a suit - O.S. No. 110 of 1970 - in the Subordinate Judge's Court, Ernakulam praying for a declaration that the Respondent-principal had ceased to be the Principal of the College and for a permanent injunction restraining her from entering the College, etc. On 19th

October 1970 the Vice-Chancellor allowed the two appeals filed by the Respondent-principal holding that the order dated 2nd January 1970 passed by the managing board dismissing the Respondent-principal from service as well as the subsequent order of the Board dated 10th April 1970 placing the Respondent-principal under suspension were both illegal, null and void in as much as they were passed in violation of the principles of natural justice. While setting aside the two orders the Vice-Chancellor also directed the management to allow the Respondent-principal to function as the Principal of the College. However, before these orders passed by the Vice-Chancellor were communicated to the management the management had instituted O.S. No. 110 of 1970 referred to supra and obtained an order of temporary injunction from the Munsiff's Court, Ernakulam. While that order of injunction was in force the Respondent-principal wrote a letter to the Superintendent of Post Offices, Ernakulam informing the latter that she was the lawful holder of the office of the Principal of the College and requesting that all letters and other postal articles addressed to the Principal should be delivered to her at her residence. Consequent thereon instructions are said to have been issued by the Superintendent of Post Offices to deliver all such letters and communications to the Respondent-principal. On the ground that this had led to serious difficulties in the working of the College, the substitute Principal Sr. Lewina filed another suit in the Munsiff's Court, Ernakulam on 22nd July 1972 - O.S. No. 569 of 1972 - impleading the postal authorities as well as the Respondent-principal as the Defendants. The prayer in that suit was to restrain the Superintendent of Post Offices from delivering to the Respondent-principal letters and other postal articles addressed to the Principal of the College. All the three suits pending in the Munsiff's Court, Ernakulam were subsequently transferred to the 1st Additional Sub Court, Ernakulam for joint trial along with O.S. No 110 of 1970 which was pending in that Court.

5. The Additional Subordinate Judge disposed of all the aforementioned suits by a common judgment dated 6th December 1972 wherein he upheld the validity of the appellate decisions rendered by the Vice-Chancellor setting aside the orders of dismissal and suspension from service passed by the management against the Respondent-principal and declared that the direction issued to the management to continue the Respondent-principal in the office of the Principal was also quite legal. Consequently the three suits instituted by the management and by the substitute Principal were all dismissed by the learned Subordinate Judge. Against the said decision of the subordinate Judge appeals were filed in the District Court, Ernakulam by the management as well as by substitute Principal. Two of these appeals, namely, A.S. No. 15 of 1972 and 32 of 1972 were dismissed by the District Judge on 17th March 1973. The third appeal (A.S. No. 33 of 1972) was kept pending. The matter was then taken up to this Court by the managing Board and the substitute Principal by filing S.A. Nos. 340 and 341 of 1973. A.S. No. 33 of 1972 which was pending in the District Court was also withdrawn to this Court for disposal along with the aforementioned second appeals. By judgment dated 19th July 1973 a Division Bench of this Court allowed these

appeals. Though this Court was of opinion that the provisions contained in Ordinance 33(1) and (4) in Chapter LVII of the Ordinances issued by the Syndicate under the Kerala University Act, 1957 conferring on teachers of affiliated institutions a right of appeal to the Vice-Chancellor against an order of suspension or an order imposing any of the major penalties were not violative of the protection guaranteed to religious minorities under Article 30(1) of the Constitution, it was however held that a Statutory Appellate Tribunal like the Vice-Chancellor was not competent to grant the relief of reinstatement into service since that would amount to specifically enforcing a contract of service. On this limited ground the appeals filed by the Managing Board and the substitute Principal were allowed by this Court. The suits instituted by the management and the substitute Principal were decreed declaring the orders passed by the Vice-Chancellor to be illegal and without jurisdiction and granting a permanent injunction restraining the Respondent-principal from interfering with the functioning of Sr. Lewina as the Principal of the College. Thereafter the matter was taken in appeal to the Supreme Court by the Respondent-principal by filing C.A. Nos. 728 to 730 of 1975 after obtaining special leave from the Supreme Court. On 22nd April 1975 the Supreme Court issued a direction that pending disposal of those appeals the status quo should be maintained.

6. On 19th August 1974 the Act came into force. Section 65 of the Act provides that the Government shall constitute for the purposes of the Act an Appellate Tribunal consisting of a judicial officer not below the rank of a District Judge nominated by the Chancellor in consultation with the High Court. Sub-section (7) of Section 60 lays down that any teacher aggrieved by an order passed in any disciplinary proceedings taken against him may, within sixty days from the date on which a copy of such order is served on him, or within sixty days after the Appellate Tribunal has been constituted under the Act, whichever period expires later, appeal to the Appellate Tribunal and the Appellate Tribunal may after giving parties an opportunity of being heard and after such further enquiry as may be necessary, pass such order thereon, as it deems fit, including an order of reinstatement of the teacher concerned. Section 61 provides that disputes between the management and a teacher of private colleges relating to the conditions of service of such teacher pending at the commencement of the Act shall be decided under and in accordance with the provisions of the Act. The section proceeds to lay down in Clause (b) thereof that any dispute between the management of a private college and any teacher of that college relating to the conditions of service of such teacher, which has arisen after 1st August 1967 and has been disposed of before the commencement of the Act shall, if the management or the teacher applies to the Appellate Tribunal in that behalf within a period of thirty days from the date of such commencement, be reopened and decided under and in accordance with the provisions of the Act, as if the dispute has not been finally disposed of. Taking advantage of these provisions conferring the new remedy by way of a right of appeal before the Tribunal constituted under the Act the Respondent-principal filed two appeals before the Tribunal as Appeals

Nos. 4 of 1974 and 8 of 1974 challenging the two orders passed by the managing board dismissing her from service and subsequently placing her under suspension pending the second disciplinary enquiry. Two interlocutory applications were also filed by the Respondent-principal before the Tribunal praying for the grant of stay of operation of the orders of dismissal and suspension. The management entered appearance in those appeals and raised a preliminary objection questioning the jurisdiction of the Tribunal to entertain those appeals. The Tribunal considered the said question as a preliminary issue. After hearing the arguments on both sides the Tribunal passed orders on 31st July 1976 overruling the preliminary objection raised by the management and holding that it had jurisdiction to entertain and dispose of the appeals.

7. O.P. No. 4031 of 1976 is a writ petition filed by the Manager of the College challenging the legality and correctness of the aforesaid order dated 31st July 1976 passed by the Tribunal (Ext. P-4 in the said O.P.) and praying that the said order should be quashed by this Court.

8. Subsequently on 26th May 1977 the Tribunal by an elaborate judgment allowed the appeals filed by the Respondent-principal, set aside the orders of dismissal and suspension passed against her by the managing board and directed that the Appellant (Respondent-principal) be reinstated in service with arrears of salary and all other service benefits to which she may be entitled as per rules. C.R.P. No. 1668 of 1977 has been filed by the management of the College u/s 60(9) of the Act questioning the said judgment of Tribunal.

9. O.P. No. 2090 of 1977 is a writ petition filed by Sr. Lewina, the substitute Principal, challenging the legality and validity of the decision dated 26th May 1977 rendered by the University Appellate Tribunal on various grounds set out in the petition which include the contention that the provisions of Sections 60 and 61 of the Act which confer an unfettered and unguided appellate power on the Tribunal inclusive of the power to reopen disputes which had already been adjudicated upon and closed and also to order the reinstatement of a teacher dismissed from service by the management are violative of the rights conferred on religious minorities by Article 30(1) of the Constitution of India. There is also a prayer in the Original Petition to declare Section 61 of the Act as ultra vires and illegal on the ground that it offends Article 30(1) of the Constitution.

10. On 25th June 1977 the Respondent-principal filed I.A. No. 100 of 1977 before the University Appellate Tribunal praying for a review of the Tribunal's judgment dated 26th May 1977 on the grounds set out in that application. That petition was allowed by the Tribunal by an order dated 31st August 1977 and the judgment dated 26th May 1977 was reopened to the extent prayed for in the petition for review and it was directed that Appeal No. 4 of 1974 will be reheard on 9th, September 1977 on those points. O.P. No. 3244 of 1977 is a writ petition filed by the educational agency and the Manager of the College seeking to quash the aforesaid order of the Appellate Tribunal dated 31st August 1977.

11. The Respondent-principal had not impleaded Sr. Lewina in the appeals that she had filed before the Tribunal which were disposed of by the judgment dated 26th May 1977. Apparently with a view to cure the said defect she filed three fresh appeals before the Tribunal as Appeal Nos. 15 to 17 of 1977 challenging the order of dismissal passed against her on 2nd January, 1970 and the two orders dated 10th April 1970 and 6th December 1972 passed by the management placing her under suspension. While those appeals were pending before the Tribunal, the Supreme Court pronounced judgment in C.A. Nos. 728 to 730 of 1975 on 15th September 1978 dismissing the appeals filed by the Respondent-principal. Though the Supreme Court disagreed with the view taken by this Court in the judgment appealed against that the University Tribunal functioning u/s 60 had no power to order the reinstatement of a dismissed teacher, the appeals were dismissed on the ground that the provision contained in Ordinance 33(4) of Chapter LVII of the Ordinances issued under the Kerala University Act, 1957 conferring appellate jurisdiction on the Vice-Chancellor without any limitation or guidelines was violative of the rights guaranteed to religious and linguistic minorities under Article 30(1) of the Constitution and hence they were invalid and inoperative in relation to minority institutions and the orders passed by the Vice-Chancellor were consequently without jurisdiction. The Supreme Court in its judgment took note of the fact that the Kerala University Act, 1969 under whose provisions the appeals had been entertained and decided by the Vice-Chancellor had since been repealed by the Act with effect from 18th August 1974 and that the Respondent-principal, who was the Appellant before the Supreme Court, had already filed appeals before the Appellant Tribunal constituted u/s 65 of the Act. After mentioning the aforesaid facts their Lordships observed.

We refrain from making any observations with regard to that appeal. We wish to say that the validity of Section 60(7), 61 and 65 was not in question before us, and so we express no opinion in regard thereto.

It was thus made clear that no opinion was being expressed by the Supreme Court about the maintainability of the appeal of the Respondent-principal that was pending before the Tribunal or about the constitutionality of Sections 60 and 61 of the Act.

12. O.P. No. 3592 of 1978 is a writ petition filed by the Manager of the St. Joseph's Training College challenging the constitutionality of Section 61 of the Act on the ground that it is violative of Article 30(1) of the Constitution and praying that the said section should be declared to be void and inoperative in relation to the educational institutions established and administered by religious minorities. There is a further prayer in the writ petition for the issuance of a writ of prohibition restraining the University Appellate Tribunal from proceeding with the adjudication in Appeals Nos. 15 to 17 of 1977 filed by the Respondent-principal on the ground that the Tribunal has no jurisdiction to entertain or dispose of those appeals in view of the constitutional invalidity of Sections 60 and 61 of the Act.

13. The principal question that arises for consideration before us concerns the constitutional validity of Sections 60(7) and 61 of the Act in relation to educational institutions established and administered by religious minorities. Though various other points have also been raised in the civil revision petition as well as in some of the connected writ petitions an adjudication in respect of them will become necessary only in the event of its being found that Sections 60(7) and 61 are valid and enforceable with respect to educational institutions established and administered by a religious minority. That is because if the challenge raised by the Petitioners against Sections 60(7) and 61 is to be upheld the resultant position would be that the impugned orders passed by the Tribunal will have to be declared to be wholly without jurisdiction and consequently null and void and a writ of prohibition will also have to issue against the Tribunal restraining it from proceeding with the three appeals pending before it.

14. Before we enter upon a discussion of the contentions advanced on both sides on the question of the constitutionality of Sections 60(7) and 61 of the Act it will be useful to reproduce in full the provisions of these two sections:

60. Conditions of service of teachers of private colleges.-(1) Notwithstanding anything contained in any law or in any contract or other document, the conditions of service of teachers of private colleges, whether appointed before or after the commencement of this Act, including conditions relating to pay, pension, provident fund, gratuity, insurance and age of retirement, shall be such as may be prescribed by the Statutes.

(2) No teacher of a private college shall be kept under suspension by the educational agency except when disciplinary proceedings are initiated against him,

(3) When a teacher of a private college is suspended for a period exceeding fifteen days, the matter, together with the reasons for the suspension, shall be reported to the Vice-Chancellor.

(4) Any disciplinary proceedings initiated under Sub-section (2) shall be completed within a period of three months or within such further period as may be allowed by the Vice-Chancellor after hearing the parties concerned,

(5) Any person aggrieved by an order of the Vice-Chancellor under Sub-section (4) may, within a period of thirty days from the date of receipt of the order by him, appeal to the Appellate Tribunal.

(6) No disciplinary action shall be taken against a teacher without giving him a reasonable opportunity of showing cause against the action proposed to be taken against him.

(7) Any teacher aggrieved by an order passed after the commencement of this Act in any disciplinary proceeding taken against him may, within sixty days from the date on which a copy of such order is served on him or within sixty days after the Appellate Tribunal has been constituted under this Act, whichever period

expires later, appeal to the Appellate Tribunal and the Appellate Tribunal may, after giving the parties an opportunity of being heard, and after such further inquiry as may be necessary, pass such order thereon as it may deem fit, including an order of reinstatement of the teacher concerned:

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period if it is satisfied that the Appellant had sufficient cause for not presenting the appeal within the said period.

(8) Any order passed by the Appellate Tribunal under Sub-section (7) may be executed through the Subordinate Judge's Court having jurisdiction over the area in which the private college is situate as if it were a decree passed by that court.

(9) Any person who objects to an order passed by the Appellate Tribunal under Sub-section (7) may, within sixty days from the date on which a copy of such order is served on him, prefer a petition accompanied by court fee stamps of the value of ten rupees to the High Court on the ground that the Appellate Tribunal has either decided erroneously, or failed to decide, any question of law.

(10) The provisions of Section 5 of the Limitation. Act, 1963, shall be applicable to any proceedings under Sub-section (9).

(11) The High Court shall, after giving the parties an opportunity of being heard, pass such order on the petition, as it deems fit.

(12) Where the High Court passes any order under Sub-section (11), the Appellate Tribunal shall amend the order passed by it in conformity with the order of the High Court.

61. Past disputes relating to service conditions of teachers.-Notwithstanding anything contained in any law for the time being in force, or in any contract, or in any judgment, decree or order of any court or other authority;

(a) any dispute between the management of a private college and any teacher of that college relating to the conditions of service of such teacher pending at the commencement of this Act shall be decided under and in accordance with the provisions of this Act and the Statutes made thereunder;

(b) any dispute between the management of a private college and any teacher of that college relating to the conditions of service of such teacher, which has arisen after the 1st day of August, 1967, and has been disposed of before the commencement of this Act, shall, if the management or the teacher applies to the Appellate Tribunal in that behalf within a period of thirty days from such commencement, be reopened and decided under and in accordance with the provisions of this Act and the Statutes made thereunder as if it had not been finally disposed of.

We shall also read Section 65 which provides for the constitution of the Appellate Tribunal:

65. Constitution of Appellate Tribunal.-(1) The Government shall constitute an Appellate Tribunal for the purposes of this Act.

(2) The Appellate Tribunal shall be a judicial officer not below the rank of a District Judge nominated by the Chancellor in consultation with the High Court.

(3) The term of office of the Appellate Tribunal shall be three years from the date of its nomination.

(4) The Appellate Tribunal shall have the power to make regulations consistent with the provisions of the Act with the previous sanction of the Government for regulating its procedure and disposal of its business. The regulations so made shall be published in the Gazette.

(5) The remuneration and other conditions of service of the Appellate Tribunal shall be such as may be prescribed by rules.

15. The attack levelled by the Petitioners in these cases is against the provisions contained in Sub-section (7) of Section 60 and Clause (b) of Section 61 of the Act. Sub-section (7) of Section 60 lays down that any teacher aggrieved by an order passed against him by the management in any disciplinary proceeding after the commencement of the Act shall have the right to prefer an appeal to the Appellate Tribunal within a period of sixty days computed in the manner specified in the Sub-section. If such an appeal is filed the Appellate Tribunal is empowered by the Sub-section to pass such order thereon as it may deem fit after hearing both parties, including an order of reinstatement of the concerned teacher. Sub-section (9) provides that any person who objects to an order passed by the Appellate Tribunal under Sub-section (7) may within sixty days from the date of service of such order prefer a petition to the High Court on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law.

16. Section 61 inter alia empowers the Appellate Tribunal to reopen and adjudicate afresh upon disputes between managements of private colleges and teachers of such colleges which might have been already disposed of before the commencement of the Act. Clause (a) of Section 61 deals with disputes pending on the date of the commencement of the Act and it lays down that such disputes shall be decided by the Appellate Tribunal under and in accordance with the provisions of the Act and the statutes made thereunder. It is with Clause (b) which deals with disputes which had been already decided and disposed of before the commencement of the Act that we are more directly concerned in this case. With respect to such disputes which arose after the 1st day of August, 1967 Clause (b) lays down that notwithstanding anything contained in any law or contract or judgment, decree or order of any court or other authority, in case the management or the teacher applies to the Appellate Tribunal in that behalf within a period of thirty days from such commencement, such disputes shall be reopened and decided afresh by the Tribunal under and in accordance with the provisions of the Act and the statutes made, thereunder, as if those disputes had

not been finally disposed of.

17. In the case before us, it is in the exercise of the aforesaid power of reopening of past disputes that the Appellate Tribunal has adjudicated upon the question of legality and validity of the orders of dismissal and suspension passed by the management against the Respondent-principal despite the fact that they had been the subject matter of a prior adjudication by the Vice-Chancellor and also by the civil courts ultimately culminating in the judgment rendered by the Supreme Court. When such a past dispute is reopened under Clause (b) of Section 61 the fresh adjudication to be conducted upon it by the Appellate Tribunal will necessarily be one u/s 60(7) of the Act. Hence, irrespective of any question concerning the vires of Section 61, the validity of such fresh adjudication by the Tribunal will necessarily depend upon the result of the challenge levelled against the constitutionality of Section 60(7). We shall, therefore, first take up for consideration the question whether the provisions of Section 60(7) of the Act infringe the fundamental rights guaranteed to religious minorities under Article 30(1) of the Constitution.

18. It is contended on behalf of the Petitioners that Sections 60(7) and 61 of the Act have the effect of completely displacing the disciplinary authority of the management of the minority educational institutions over the teaching staff of their colleges and vesting it in an outside authority, namely, the Appellate, Tribunal which is empowered to pass "such order as it thinks fit" in relation to the disciplinary proceedings taken by the management against a teacher. According to the Petitioners this constitutes a very grave infringement of the fundamental right conferred on religious minorities by Article 30(1) of the Constitution. Relying on the various pronouncements of the Supreme Court regarding the scope of the guarantee given to minorities under the said article the Petitioners urge that by reason of the impugned provisions contained in Sections 60(7) and 61 the religious minority is substantially deprived of a most vital ingredient of its right of administration of the institution in the guise of the creation of an appellate authority and the conferment of appellate jurisdiction on such authority. It is pointed out that the power of interference conferred on the Tribunal u/s 60(7) is totally bereft of any guidelines and the Tribunal can entertain appeals against every kind of order passed by the management in any disciplinary proceedings inclusive of even orders administering only a censure or imposing some minor penalties and impose its own decision in substitution of the action taken by the management. According to the Petitioners the conferment of such a naked and uncanalised power on the appellate authority constitutes a serious infringement of the right guaranteed to them under Article 30(1) of the Constitution. The Petitioners submit that the effect of Section 60(7) would also be to embroil the educational agency in an unending series of proceeding before the Appellate Tribunal because against any and every order passed by the management in any disciplinary proceeding taken against members of teaching staff the matter may be carried before the Tribunal by the concerned teachers by filing appeals under the said Sub-section. The power of reopening of old and

closed disputes conferred u/s 61(b), notwithstanding anything contained in any judgment, decree or order of any court, was also strongly attacked by the Petitioners as constituting a grave and arbitrary inroad into the right of administration guaranteed under Article 30(1). The Petitioners contend that this cannot be regarded as a regulatory measure intended to ensure the excellence of the educational or other standards in the minority institution or to safeguard the interests of the institution as a minority institution. The Petitioners have put forward a contention that the conferment of a right on the teachers to appeal to any outside authority against orders passed by the management of the minority institutions in disciplinary proceedings taken against members of its teaching staff, itself amounts to a violation of the fundamental right guaranteed under Article 30(1). Continuing this line of argument it is said that the vice is all the greater where such appellate power is conferred in the widest possible terms without any limitation or guidelines as has been done u/s 60(7) of the Act. It was further contended by the Petitioners that the provision in Section 60(7) of the Act empowering the Tribunal to order the reinstatement of a dismissed teacher is a very grave encroachment on the minority's right of administration of the educational institutions established by it. Counsel for the Petitioners urged that it is the basic right of the religious minority to decide for itself as to the suitability of a teacher to be retained in its service in accordance with its own ideas and ideals about the standards of conduct, etc., to be possessed by members of its teaching staff and that the result of the impugned provision is to deprive the minority of this most crucial right and to transfer it to the Appellate Tribunal which is authorised to impose on the management what is deemed by it to be fit in the exercise of its unfettered discretion. In brief, according to the Petitioners the managements of the minority institutions have been subordinated by the impugned section to the dictates of an administrative superior, namely, the Appellate Tribunal, and a mere flagrant violation of Article 30(1) cannot be conceived of. On these grounds counsel for the Petitioners submitted that Section 60(7) and 61(b) of the Act should be held to be violative of Article 30(1) of the constitution and hence not enforceable against the management of educational institutions established and administered by religious and linguistic minorities.

19. On behalf of the contesting Respondents-the State of Kerala, the University of Kerala and the Respondent-principal-it was stoutly argued that the provisions contained in Section 60(7) and 61 of the Act contain only reasonable regulations conceived in the best interests of the minority institutions themselves for the purpose of ensuring their excellence as vehicles of education which object can be achieved only if there is a sense of security and contentment amongst the members of their teaching staff. Strong reliance was placed on the side of the Respondents on the observations of the Full Bench in *V. Rev. Mother Provincial and Ors. v. State of Kerala and Ors.* 1969 KLT 749 that "the proper remedy against any abuse of the disciplinary power would be an appeal" and that a provision for an appeal to a judicial or to a quasi-judicial tribunal against orders passed by the management in the exercise of disciplinary power will not be

violative of Article 30(1) of the Constitution. It was pointed out that this decision was affirmed by the Supreme Court in *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, Counsel appearing for the State and the University of Kerala, as well as the Respondent-principal appearing in person, submitted that in enacting the impugned section of the Act the legislature has only given effect to the principles laid down by the Full Bench in *Very Rev. Mother Provincial and Ors. v. State of Kerala and Ors.* 1969 KLT 749 and by the Supreme Court in *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, and made provision for a right of appeal to an Appellate Tribunal consisting of a judicial officer not below the rank of a District Judge. It was submitted on the side of the Respondents that the very fact that the appellate power is vested in a judicial authority is a sufficient guarantee that it will be exercised only fairly and reasonably and not arbitrarily and that hence the contention that the power has been conferred without guidelines is devoid of substance. It was further submitted that the power conferred on the Appellate Tribunal being only to decide disputes under and "in accordance with the provisions of the Act and the statutes made thereunder" there is no dearth of sufficient and clear guidelines to the Tribunal as to how it is to function and in what manner its powers are to be exercised. The Respondents also urged that Sections 60(7) and 61 of the Act are only regulatory measures designed to prevent the maladministration of educational institutions and to safeguard the teachers against vindictive action by way of unfair victimisation etc. It was further urged that the provision of such a minimal safeguard to the teachers against arbitrary action by the management is essential to give them a sense of security of service without which they will not be able to give out their best in the performance of their duties in the institution. On this basis it was submitted that the said provision is only a measure intended to promote the excellence of the institution as a minority educational institution and it does not in any way infringe Article 30(1) of the Constitution. The contention advanced by the Petitioners that the effect of Section 60(7) and Section 61 is to displace the disciplinary powers of the management and to vest them in an outside authority, namely, the Appellate Tribunal was strongly refuted by the Respondents. It was submitted by the Respondents that the conferment of a right of appeal to a separate authority does not, by itself, amount to displacement or the original disciplinary authority. It is only a regulatory measure intended to ensure the maintenance of a peaceful atmosphere in an educational institution by the setting up of a machinery for redressal of grievances of the teaching staff against any arbitrary action or unfair victimisation etc., by the management. Pointing out that Article 30(1) of the Constitution does not confer a right on the religious minority to maladminister an educational institution it was submitted by the Respondents that the challenge raised by the Petitioners against Sections 60(7) and 61 of the Act should be rejected as devoid of merit and the constitutionality of those provisions should be upheld by this Court.

20. Article 30(1) of the Constitution gives all minorities, whether based on religion or language, two rights, namely, the right to establish and the right to

administer educational institutions of their choice. Unlike Article 19, the fundamental freedom under Clause (1) of Article 30 is absolute in terms: it is not made subject to any reasonable restrictions of the nature the fundamental rights enunciated in Article 19 may be subjected to. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions-institutions which cater to the educational needs of the citizens or sections thereof. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed, they secure the proper functioning of the institutions, in matters educational. The freedom guaranteed by Article 30(1) is intended to be a real and effective right for the protection of the minorities in the matter of setting up of educational institutions of their choice and administering them in the manner they consider best for promoting the ideas and ideals underlying the founding of the institution. The right cannot be whittled down by so-called regulative measures conceived in the interest not of the minority educational institutions but of the public or of the nation as a whole. Regulations which may lawfully be imposed either by legislative or executive action must be directed to making the institution effective as an educational institution while retaining its character as a minority institution. Such regulation must satisfy a dual test-the test of reasonableness and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community as well as other persons who resort to it. (See *In re The Kerala Education Bill 1957* AIR 1958 S.C. 956 and *Rev. Sidhrajibhai Sabbat and Ors. v. State of Gujarat* and *Anr.* AIR 1963 S.C. 540.

21. The appeal filed by the State of Kerala against the Full Bench decision of this Court in *Very Rev. Mother Provincial and Ors. v. State of Kerala and Ors.* 1969 KLT 749 was dismissed by the Supreme Court as per its judgment dated 10th August 1970 reported in *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.,* . In that judgment the scope of Article 30(1) has been explained in these terms:

Article 30(1) has been construed before by this Court. Without referring to these cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away

to enjoy the protection.

The next part of the rights relates to the administration of such institutions. Administration means "management of the affairs" of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

There is, however, an exception to this and it is that the standards of education are not a part of management as such. Those standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if Universities establish the syllabi for examinations, they must be followed subject, however, to special subjects which the institutions may seek to teach, and to 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.

Section 53 of the Kerala University Act, 1969 (Act 9 of 1969) conferred on the Syndicate of the University the power to veto any action of the governing body or the managing council in the matter of selection of the Principal of a College and entrusted the power of selection of teachers of a distinct and autonomous body under the control of the Syndicate of the University with a right given to any person aggrieved by the action of the governing body or the managing council to prefer an appeal to the Syndicate whose decision was to be final. Sub-sections (2) and (4) of Section 56 of the said Act laid down inter alia that no teacher of a private college shall be dismissed, removed or reduced in rank by the governing body or the managing council without the previous sanction and conferred on the Syndicate the power to entertain appeals from teachers against whom disciplinary action was taken by the management and to direct the reinstatement of teachers in cases of wrongful removal or dismissal, etc. Agreeing with the view expressed by the Full Bench of this Court that these provisions offend Article 30(1) of the Constitution the Supreme Court held that:

These provisions clearly take away the disciplinary action from the governing body and the managing council and confer it upon the University.

22. Strong reliance was placed by the Petitioners on the aforesaid pronouncement and it was contended that this ruling is direct authority for the position that the conferment of jurisdiction on an outside authority to entertain

appeals against orders passed by the management in disciplinary proceedings against teachers and investing such authority with power to direct the reinstatement of dismissed teachers is wholly inconsistent with the fundamental right guaranteed under Article 30(1) of the Constitution. This argument was countered by the Respondents by pointing out that the judgment reported in State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., was subsequently reviewed by the Supreme Court and in the judgment as subsequently modified on review which is reported in State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., it is expressly stated at page 746 that no opinion was being expressed by the Supreme Court on the question of constitutionality of Sub-sections (1), (2), (3) and (9) of Section 53 and Sub-sections (2) and (4) of Section 56 of the Kerala University Act, 1969 vis-a-vis Article 30(1) of the Constitution. We find that this submission of the Respondents is well founded. Hence it may not be right to regard this decision as having affirmed the conclusion of this High Court that Sub-sections (2) and (4) of Section 56 of the Kerala University Act, 1969 were violative of Article 30(1) of the Constitution.

23. The precise scope and content of the freedom enshrined in Article 30(1) of the Constitution came in for detailed discussion and education by a Bench of nine Judges of the Supreme Court in The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, . All the prior decisions rendered by the Supreme Court on the subject were elaborately reviewed in this pronouncement. The observations of the Supreme Court contained in the following passages extracted from the majority judgments in the case are of special relevance for the determination of the questions raised before us:

The consistent view of this Court has been that there is no fundamental right of a minority institution to affiliation. An explanation has been put upon that statement of law. It is that affiliation must be a real and meaningful exercise for minority institutions in the matter of imparting general secular education. Any law which provides for affiliation on terms which will involve abridgement of the right of linguistic and religious minorities to administer and establish educational institutions of their choice will offend Article 30(1). (para 14).

When a minority institution applies for affiliation, it agrees to follow the uniform courses of study. Affiliation is regulating the educational character and content of the minority institutions. These regulations are not only reasonable in the interest of general secular education but also conduce to the improvement in the stature and strength of the minority institutions. All institutions of general secular education whether established by the minorities or the non-minorities must impart to the students education not only for their intellectual attainment but also for pursuit of careers. Affiliation of minority institutions is intended to ensure the growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of

employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30. (para 18)

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. Das, C.J., in the In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, summed up in one sentence the true meaning of the right to administer by saying that the right to administer is not the right to maladminister. (para 20)

The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration, (para 30)

Regulations which will serve the interests of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions. (para 31)

The third set of provisions impeached by the Petitioners consists of Sections 51A and 52A. Section 51A states that no member of the teaching, other academic and non-teaching staff of an affiliated college shall be dismissed or removed or reduced in rank except after an inquiry in which he had been informed of the charges and given a reasonable opportunity of being heard and until (a) he has been given a reasonable opportunity of making representation on any such penalty proposed to be inflicted on him; and (b) the penalty to be inflicted on him is approved by the Vice-Chancellor or any other officer of the University authorised by the Vice-Chancellor in this behalf. Objection is taken by the Petitioners to the approval of penalty by the Vice-Chancellor or any other officer of the University authorised by him, First, it is said that a blanket power is given to the Vice-Chancellor without any guidance. Second, it is said that the words "any other officer of the university authorised by him" also confer power on the Vice-Chancellor to authorise any one and no guidelines are to be found there. In short, unlimited and undefined power is conferred on the Vice-Chancellor. The approval by the Vice-Chancellor may be intended to be a check on the administration. The provision contained in Section 51A, Clause (b) of the Act cannot be said to be a permissive regulatory measure in as much as it confers

arbitrary power on the Vice-Chancellor to take away the right of administration of the minority institutions. Section 51A of the Act cannot, therefore, apply to minority institutions, (para 43).

The provisions contained in Section 52A of the Act contemplate reference of any dispute between the governing body and any member of the teaching, other academic and non-teaching staff of an affiliated college which is connected with the conditions of service of such member to a Tribunal of Arbitration consisting of one member nominated by the governing body of the college, one member nominated by the member concerned and an Umpire appointed by the Vice-Chancellor. These references to arbitration will introduce an area of litigious controversy inside the educational institution. The atmosphere of the institution will be vitiated by such proceedings. The governing body has its own disciplinary authority. The governing body has its domestic jurisdiction. This jurisdiction will be displaced. A new jurisdiction will be created in administration. The provisions contained in Section 52A of the Act cannot, therefore, apply to minority institutions. (para 44)

We may now deal with the scope and ambit of the right guaranteed by Clause (1) of Article 30. The clause confers a right on all minorities, whether they are based on religion or language, to establish and administer educational institutions of their choice. The right conferred by the clause is in absolute terms and is not subject to restrictions, as in the case of rights conferred by Article 19 of the Constitution. The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education. The right to administer educational institutions can plainly not include the right to maladminister. Regulations can be made to prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of an educational institution without qualified teachers. The State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed, they secure the proper functioning of the institution, in matters educational (see observations of Shah, J., in *Rev. Sidhrajibhai Sabhai* (1963) 3 S.C.R. 837 at P. 850 : AIR 1963 S.C. 540 (Supra).] Further, as observed by Hidayatullah, C.J., in the case of *very Rev. Mother Provincial* (supra) the standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish syllabi for examinations they must be followed subject however to special subjects which the institutions may seek to teach, and to 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. (para 90)

It is, in my opinion, permissible to make regulations for ensuring the regular payment of salaries before a particular date of the month. Regulations may well provide that the funds of the institution should be spent for the purposes of education or for the betterment of the institution and not for extraneous purposes. Regulations may also contain provisions to prevent the diversion of funds of institutions to the pockets of those in charge of management or their embezzlement in any other manner. Provisions for audit of the accounts of the institution would be permissible regulation. Likewise, regulations may provide that no anti-national activity would be permitted in the educational institutions and that those employed as members of the staff should not have been guilty of any activities against the national interest. Minorities are as much part of the nation as the majority, and anything that impinges upon national interest must necessarily in its ultimate operation affect the interests of all those who inhabit this vast land irrespective of the fact whether they belong to the majority or minority sections of the population. It is, therefore, as much in the interest of minorities as that of the majority to ensure that the protection afforded to minority institutions is not used as a cloak for doing something which is subversive of national interests. Regulations to prevent anti-national activities in educational institutions can therefore, be considered to be reasonable, (para 91)

A regulation which is designed to prevent maladministration of an educational institution cannot be said to offend Clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30(1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. (para 92)

Question then arises whether there is any limitation on the prescription of regulations for minority educational institutions. So far as this aspect is concerned, the authority prescribing the regulations must bear in mind that the constitution has guaranteed a fundamental right to the minorities for establishing and administering their educational institutions. Regulations made by the authority concerned should not impinge upon that right. Balance has, therefore, to be kept between the two objectives, that of ensuring the standard of excellence of the institution and that of preserving the right of the minorities to

establish and administer their educational institutions. Regulations which embrace and reconcile the two objectives can be considered to be reasonable, (para 94)

Another conclusion which follows from what has been discussed above is that a law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1). (para 103)

Although disciplinary control over the teachers of a minority educational institution would be with the governing council, regulations, in my opinion, can be made for ensuring proper conditions of service of the teachers and for securing a fair procedure in the matter of disciplinary action against the teachers. Such provisions which are calculated to safeguard the interest of teachers would result in security of tenure and thus inevitably attract competent persons for the posts of teachers. Such a provision would also eliminate a potential cause of frustration amongst the teachers. Regulations made for this purpose should be considered to be in the interest of minority educational institutions and as such they would not violate Article 30(1). Clause (a) of Sub-sections (1) and (2) of Section 51A of the impugned Act which make provision for giving a reasonable opportunity of showing cause against a penalty to be proposed on a member of the staff of an educational institution would consequently be held to be valid. Clause (b) of those Sub-sections which gives a power to the Vice-Chancellor and officer of the University authorised by him to veto the action of the managing body of an educational institution in awarding punishment to a member of the staff, in my opinion interferes with the disciplinary control of the managing body over its teachers. It is significant that the power of approval conferred by Clause (b) in each of the two Sub-sections of Section 51A on the Vice-Chancellor or other officer authorised by him is a blanket power. No guidelines are laid down for the exercise of that power and it is not provided that the approval is to be withheld only in case the dismissal, removal, reduction in rank or termination of service is mala fide or by way of victimisation or other similar cause. The conferment of such blanket power on the Vice-Chancellor or other officer authorised by him for vetoing the disciplinary action of the managing body of an educational institution makes a serious inroad on the right of the managing body to administer an educational institution. Clause (b) of each of the two Sub-section of Sections 51A should, therefore, be held to be violative of Article 30(1) so far as minority educational institution* are concerned, (para 105)

Section 52A of the Act relates to the reference of disputes between a governing body and any member of the teaching, other academic and non-teaching, staff of an affiliated college or recognized or approved institution connected with the conditions of service of such member to a Tribunal of Arbitration, consisting of one member nominated by the governing body of the college or, as the case may be, of the recognized or approved institution, one member nominated by the member of the staff involved in the dispute and an Umpire appointed by the Vice Chancellor. Section 52A is widely worded, and as it stands it would cover within its ambit every dispute connected with the conditions of service of a member of the staff of an educational institution however trivial or insignificant it may be, which may arise between the governing body of a college and a member of the staff. The effect of this section would be that the managing committee of an educational institution would be embroiled by its employees in a series of arbitration proceedings. The provisions of Section 52A would thus act as a spoke in the wheel of effective administration of an educational institution. It may also be stated that there is nothing objectionable to selecting the method of arbitration for setting major disputes connected with conditions of service of staff of educational institutions. It may indeed be a desideratum. What is objectionable, apart from what has been mentioned above, is the giving of the power to the Vice-Chancellor to nominate the Umpire. Normally in such disputes there would be hardly any agreement between the arbitrator nominated by the governing body of the institution and the one nominated by the concerned member of the staff. The result would be that the power would vest for all intents and purposes in the nominee of the Vice Chancellor to decide all disputes between the governing body and the member of the staff connected with the latter's conditions of service. The governing body would thus be hardly in a position to take any effective disciplinary action against a member of the staff. This must cause an inroad in the right of the governing body to administer the institution. Section 52A should, therefore, be held to be violative of Article 30(1) so far as minority educational institutions are concerned. (para 106)

The reason why the Constitution-makers were at pains to grant religious minorities the fundamental right to establish and administer educational institutions of their choice is to give the parents in those communities an opportunity to educate their children in institutions having an atmosphere which is congenial to their religion. Whatever be one's own predilections those who think that man does not live by bread alone but also by the word that comes from God cannot remain indifferent to the problem of religion in relation to and as part of education, (para 135)

As a matter of fact, according to several religious minorities, the State maintains a system of schools and colleges which is not completely satisfactory to them, inasmuch as no place is given to religion and morality. The sheer omission of religion from curriculum is itself a pressure against religion. Since they realise that the teaching of religion and instruction in the secular branches cannot rightfully or successfully be separated one from the other, they are compelled to

maintain their own system of schools and colleges for general education as well as for religious instruction. (para 136)

We find it impossible to subscribe to the proposition that State necessity is the criterion for deciding whether a regulation imposed on an educational institution takes away or abridges the right under Article 30(1). If a legislature can impose any regulation which it thinks necessary to protect what in its view is in the interest of the State or society, the right under Article 30(1) will cease to be a fundamental right. It sounds paradoxical that a right which the Constitution makers wanted to be absolute can be subjected to regulations which need only satisfy the nebulous and elastic test of State necessity. The very purpose of incorporating this right in Part III of the Constitution in absolute terms in marked contrast with the other fundamental rights was to withdraw it from the reach of the majority. To subject the right today to regulations dictated by the protean concept of State necessity as conceived by the majority would be to subvert the very purpose for which the right was given. (para 175)

Recognition or affiliation creates an interest in the University to ensure that the educational institution is maintained for the purpose intended and any regulation which will subserve or advance that purpose will be reasonable and no educational institution established and administered by a religious or linguistic minority can claim recognition or affiliation without submitting to those regulations. That is the price of recognition or affiliation, but this does not mean that it should submit to a regulation stipulating for surrender of a right or freedom guaranteed by the Constitution, which is unrelated to the purpose of recognition or affiliation. In other words, recognition or affiliation is a facility which the university grants to an educational institution, for the purpose of enabling the students there to sit for an examination to be conducted by the university in the prescribed subjects and to obtain the degree conferred by the university, and therefore, it stands to reason to hold that no regulation which is unrelated to the purpose can be imposed. If, besides recognition or affiliation, an educational institution conducted by a religious minority is granted aid, further regulations for ensuring that the aid is utilised for the purpose for which it is granted will be permissible. The heart of the matter is that no educational institution established by a religious or linguistic minority can claim total immunity from regulations by the legislature or the University if it wants affiliation or recognition; but the character of the permissible regulations must depend upon their purpose. As we said, such regulations will be permissible if they are relevant to the purpose of securing or promoting the object of recognition or affiliation. There will be borderline cases where it is difficult to decide whether a regulation really subserves the purpose of recognition or affiliation. But that does not affect the question of principle. In every case, when the reasonableness of a regulation comes up for consideration before the Court, the question to be asked and answered is whether the regulation is calculated to subserve or will in effect subserve the purpose of recognition or affiliation, namely, the excellence of the institution as a vehicle for general secular

education to the minority community and to other persons who resort to it. The question whether a regulation is in the general interest of the public has no relevance, if it does not advance the excellence of the institution as a vehicle for general secular education as, pex-hypothesi, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards. This is the reason why this Court has time and again said that the question whether a particular regulation is calculated to advance the general public interest is of no consequence if it is not conducive to the interests of the minority community and those persons who resort to it. (para 177)

It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in leaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important fact of the right to administer an educational institution, (para 183)

It was argued for the Petitioners that Clause (1)(b) of Section 51A has the effect of vesting in the Vice-Chancellor a general power of veto on the right of the management to dismiss a teacher. The exact scope of the power of the Vice-Chancellor or of the officer of the University authorised by him in this Sub-section is not clear. If the purpose of the approval is to see that the provisions of Sub-section 51A(1)(a) are complied with, there can possibly be no objection holding the power of approval even in a nominee of the Vice-Chancellor. But an uncanalised power without any guideline to withhold approval would be a direct abridgement of the right of the management to dismiss or remove a teacher or inflict any other penalty after conducting an enquiry. (para 192)

The relationship between the management and a teacher is that of an employer and employee and it passes one's understanding why the management cannot terminate the services of a teacher on the basis of the contract of employment. Of course, it is open to the State in the exercise of its regulatory power to require that before the services of a teacher are terminated, he should be given an opportunity of being heard in his defence. But to require that for terminating the services of a teacher after an inquiry has been conducted, the management should have the approval of an outside agency like the Vice-Chancellor or of his nominee would be an abridgement of its right to administer the educational institution. No guidelines are provided by the legislature to the Vice-Chancellor for the exercise of his power. The fact that the power can be delegated by the Vice-Chancellor to any officer of the University means that any petty officer to whom the power is delegated can exercise a general power of veto. There is no obligation under the Sub-sections (1)(b) and (2)(b) that the Vice-Chancellor or his nominee should give any reason for disapproval. As we said a blanket power without any guideline to disapprove the action of the management would

certainly encroach upon the right of the management to dismiss or terminate the services of a teacher after an inquiry. While we uphold the provisions of Sub-clauses (1)(a) and (2)(a) of Section 51A, we think that sub-clauses (1)(b) and (2)(b) of Section 51A are violative of the right under Article 30 of the religious minority in question here. In *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, this Court, no doubt, upheld provisions similar to those in Sections 51A(1)(b) and 51A(2)(b). But the subsequent decisions of this Court leave no doubt that the requirement of subsequent approval for dismissing or terminating the services of the teacher would be bad as offending Article 30(1). In (1971) Supp. S.C.R. 588 : AIR 1971. S.C. 1737) Clause 17 of the impugned statute related to the requirement of subsequent approval for termination of the services of teachers. This Court struck down the provision as an abridgement of the right to administer the educational institution established by the minority in question there, (para 193)

Section 52A states that any dispute between the governing body and any member of the teaching, other academic and non-teaching staff of an affiliated college or recognized or approved institution, which is connected with the conditions of service of such member, shall, on a request of the governing body, or of the member concerned be referred to a Tribunal of Arbitration consisting of one member nominated by the governing body of the college, or, as the case may be, the recognised or approved institution, one member nominated by the member concerned and an Umpire appointed by the Vice-Chancellor and that the provisions of the Arbitration Act would apply to such arbitration proceeding, (para 194)

This provision subserves no purpose and we feel no doubt that it will needlessly interfere with the day-to-day management of the institution. Any and every petty dispute raised by a member of the teaching or non-teaching staff will have to be referred to arbitration if it seems to touch the service conditions. Arbitrations, not imparting education, will become the business of educational institutions. This section is in our opinion bad in its application to minorities, (para 195)

24. The ambit of the protection guaranteed by Article 30(1) of the Constitution again came in examination by a Division Bench of the Supreme Court in *The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another*, Krishna Iyer, J., who delivered the majority judgment held that Article 30 does not invalidate provisions of a regulatory character which are intended to secure the better administration of an institution. Accordingly it was held that statute 14A of the Agra University Statutes requiring that each affiliated college must be under the management of a regularly constituted governing body or managing committee on which the staff of the college shall be represented by the Principal as well as the senior-most teacher of the college did not violate the fundamental right under Article 30(1) of the Constitution since the principal and the senior-most teacher could not be regarded as outsiders and their presence on the managing committee could only ensure the better administration of the college.

25. The next decision to be referred to is Lily Kurian Vs. Sr. Lewina and Others, whereunder the Supreme Court disposed of the appeals filed by the present Respondent-principal against the judgment dated July 19, 1973 rendered by this Court allowing the second appeals filed by the managing board and the substitute Principal of the College and decreeing the suits for declaration and injunction filed by them. The principles laid down by the Supreme Court while dealing with the question of constitutionality of Clauses (1) and (4) of Ordinances framed by the Syndicate u/s 19(j) of the Kerala University Act, 1957 are of direct relevance in the present case. The material provisions of Ordinance 33 referred to supra were as follows:

33(1) Suspension.-The management may at any time place a teacher under suspension where a disciplinary proceedings 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 for 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.

* * *

(3) 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 was contended in the Supreme Court on behalf of the management of the College that the conferment of appellate powers on an outside authority like the Vice-Chancellor was an illegal abridgement of the right of management enshrined in Article 30(1) of the Constitution. It was also urged that "directing a dismissed Principal who is the academic head of the College to hold office against the wishes of the founders of the college without specific power in that regard is an anathema to the right of administration guaranteed by Article 30(1) of the Constitution." According to the management the conferment of power on the

Vice-Chancellor to order the reinstatement of a dismissed teacher was destructive of the right of management and strong reliance was placed on the observations in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, at page 1428 as lending support to the said argument. Another submission made on behalf of the management was that the interposition of an outside authority like the Vice-Chancellor with power vested in him to veto the disciplinary control of the management demits the entire disciplinary power of a minority educational institution to such outside authority and that there was thus complete interference with the right of administration guaranteed under Article 30(1). Substantially upholding these contentions raised by the management, the Supreme Court held that Clause (4) of Ordinance 33 was inconsistent with the fundamental right guaranteed to minorities under Article 30(1) of the Constitution and that hence its provisions would not be applicable to an educational institution established and managed by religious or linguistic minorities like the St. Joseph's Training College for Women, Ernakulam. The reasons which prompted the Supreme Court to arrive at the said conclusion are contained mainly in the following passages extracted from the judgment:

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, (para 36)

The conferral of a right of appeal to an outside authority like the Vice Chancellor under Ordinance 33(4) takes away the disciplinary power of a minority educational authority. The Vice Chancellor has the power to veto its disciplinary control. There is a clear interference with the disciplinary power of the minority institution. The State may "regulate" the exercise of the right of administration but it has no power to impose any "restriction" which is destructive of the right itself. The conferral of such wide powers on the Vice Chancellor amounts in reality, to a fetter on the right of administration under Article 30(1). This, it seems to us would so affect the disciplinary control of a minority educational institution as to be subversive of its constitutional rights and can hardly be regarded as a "regulation" or a "restriction" in the interest of the institution. (para 37)

An analysis of the judgments in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, clearly shows that seven out of nine judges held that the provisions contained in Clause (b) of Sub-sections (1) and

(2) of Section 51A 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. On the contrary, the two dissenting Judges were of the view that these provisions were permissive regulatory measures, (para 51)

The power of appeal conferred on the Vice Chancellor under Ordinance 33(4) is not only a grave encroachment on the institution's right to enforce and ensure discipline in its administrative affairs but it is uncanalised and unguided in the sense that no restrictions are placed on the exercise of the power. The extent of the appellate power of the Vice Chancellor is not defined; and, indeed, his power are unlimited. The grounds on which the Vice Chancellor can interfere in such appeals are also not defined. He may not only set aside an order of dismissal of a teacher and order his reinstatement, but may also interfere with any of the punishments enumerated in items (ii) to (v) of Ordinance 33(2), that is to say, he can even interfere against the infliction of minor punishments. In the absence of any guidelines, it cannot be held that the power of the Vice-Chancellor under Ordinance 33(4) was merely a check on maladministration (para 52).

As laid down by the majority in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , 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 *St. Xavier's College's* case squarely applies to the facts of the present case and accordingly it must be held that the impugned Ordinance 33(4) the University of Kerala is violative of Article 30(1) of the Constitution. If the conferral of such power on an outside authority like the Vice Chancellor, which while maintaining the formal character of a minority institution destroys the power of administration, that is, its disciplinary control, is held justifiable because it is in the public and national

interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be, to use the well-known expression, a "teasing illusion", a "promise of unreality" (para 53)"

A contention was advanced before the Supreme Court on behalf of the State and the Respondent-principal that the observations contained in the majority judgment in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, at p. 1430 should be understood as limited in their scope only to cases where the statutory provision insists that the management of a minority institution should obtain the prior approval of an outside authority like the Vice Chancellor or the Syndicate of a University before taking disciplinary action against a principal or a teacher and that they can have no application in a case where the institute merely confers an appellate jurisdiction on an outside authority. Repelling the said contention the Supreme Court said:

A distinction is, however, sought to be drawn between the provisions contained in Clause (b) of Sub-sections (1) and (2) of Section 51A of the Gujarat University Act, 1949 which provided that no penalty could be inflicted on a member of the teaching staff without the prior approval of the Vice Chancellor or his nominee, and that contained in Ordinance 33(4) which confers on the Vice Chancellor the power to hear an appeal against an order of dismissal. It is said that while a provision making the prior approval of the Vice Chancellor a condition precedent against dismissal, removal or reduction in rank of an employee creates a fetter on the exercise of a disciplinary control, which the employer undoubtedly has, the provision conferring on the Vice Chancellor a power to hear an appeal leaves the power of the employer untouched. We are afraid, the distinction tried to be drawn is without any basis.

We must accordingly, hold that Ordinance 33(4), Chapter LVII of the Ordinance framed by the Syndicate of the University u/s 19(j) of the Kerala University Act, 1969 would not be applicable to an educational institution established and managed by a religious or linguistic minority like St. Joseph's Training College for Women, Ernakulam.

26. It is in the light of the aforesaid principles laid down by the Supreme Court that the constitutionality of Sections 60(5) and (7) and 61 of the Act has to be tested. Although it was strongly contended before us by the counsel for the Petitioners that in view of the observations of the Supreme Court in paragraph 37 of the judgment in *Lily Kurian Vs. Sr. Lewina and Others*, the conferment of a right of appeal to any outside authority will, by itself, constitute an unauthorised fetter on the right of administration guaranteed under Article 30(1) of the Constitution, we do not understand those observations as laying down such a wide proposition. Having due regard to the context in which those observations were made by the Supreme Court we consider it right to understand those observations as laying down only that the conferment of an appellate jurisdiction on an outside authority like the Vice Chancellor of the University without any limitations or guidelines would so affect the disciplinary control of a minority

educational institution as to be subversive of its constitutional right under Article 30(1). To put it differently, the vice vitiating the provisions consisted not in the conferment of an appellate jurisdiction on an outside authority but in clothing the appellate authority with a naked and arbitrary power without any limitations or guidelines and also in vesting the appellate jurisdiction in an authority like the Vice Chancellor who may have no time at all to deal with such matters expeditiously in a quasi-judicial manner. We do not understand the decision in Lily Kurian Vs. Sr. Lewina and Others, as laying down as an absolute proposition that the very conferment of a right of appeal on teachers of minority institutions in respect of orders passed by the management in any disciplinary proceeding will ipso facto violate Article 30(1) of the Constitution. As observed by Khanna, J., in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, at.p. 1430 although disciplinary control over the teachers of a minority educational institution would be with the governing council regulations can be made for ensuring proper conditions of service of the teachers and for securing a fair procedure in the matter of disciplinary action against the teachers. Regulations made for this purpose should be considered to be in the interest of the minority educational institution and, as such they would not violate Article 30(1). It was on this ground that the Supreme Court upheld Clause (a) of Sub-sections (1) and (2) of Section 51A of the Gujarat University Act (50 of 1949) which made provision for giving a reasonable opportunity of showing cause against a penalty to be proposed on a member of the staff of an educational institution. Sub-section (6) of Section 60 of the Act is an exact counterpart of Clause (a) of Sub-section (1) of Section 51A of the, Gujarat Act. It lays down that no disciplinary action shall be taken against a teacher without giving him a reasonable opportunity of showing cause against the action proposed to be taken against him. In view of the observations of the Supreme Court upholding the validity of Clause (a) of Sub-section (1) of Section 51A of the Gujarat University Act, it is manifest that Sub-section (6) of Section 60 of the Act is a perfectly valid provision. When once it is held that the legislature has the power to lay down such a stipulation regarding the procedure to be followed by the management of a minority educational institution in the matter of taking disciplinary action against a teacher, one has necessarily to recognise the existence of a concomitant legislative power to provide also the machinery for rendering such a provision effective. The constitution of a supervisory authority-appellate or revisional-vested with the power to investigate and determine whether there has been due compliance by the management with the provisions of Sub-section (6) in taking a disciplinary action against a teacher is an indispensable measure for the effectuation of the legislative purpose underlying the enactment of the Sub-section. Without such a minimal check and safeguard the provisions of Sub-section (6) will have no real purpose or meaning and will be reduced to a mere teasing illusion. We do not, therefore, find it possible to uphold the contention of the Petitioners that the conferment of an appellate jurisdiction on an outside authority in respect of orders passed by the management in disciplinary proceedings will, by itself, offend Article 30(1) of the constitution. The

constitutionality of any such provision for appeal will essentially have to be determined in each case with reference to the nature and scope of the power conferred by the impugned statute and also the suitability of the authority named in the statute to be entrusted with the quasi-judicial function of deciding appeals fairly, objectively and expeditiously. It is, however, clear that the bestowal of a blanket power on an outside appellate authority to interfere with every kind of order passed by the management without any restriction as to the grounds on which such interference can be made will virtually displace the disciplinary control over its teachers and it will constitute a violation of Article 30(1) in the case of minority institutions.

27. Let us now examine the precise nature of the appellate power conferred by Sub-sections (5) and (7) of Section 60 of the Act. True, the repository of the power is a judicial officer of the rank of a District Judge. He has to function as a statutory judicial tribunal. But, no guidelines whatever have been provided by the legislature as to the grounds on which and the circumstances in which the appellate tribunal can interfere with an order passed by the management in a disciplinary proceeding; nor is there any limitation as to the nature of the orders against which appeals will lie. On the plain language of Sub-section (7) any order of whatsoever kind passed by the management against a teacher in a disciplinary proceeding can be taken up in appeal before the appellate tribunal. Appeals will thus lie against orders which merely administer a warning or censure, or impose some minor punishment. Likewise an appeal can be preferred by a teacher even in a case where a disciplinary proceeding is closed by merely transferring the teacher from one institution to another institution under the same management on the basis that it is not desirable to continue the teacher in the former institution after the occurrence of the events which gave rise to the disciplinary proceeding. In all such cases the tribunal is empowered to interfere with the decision taken by the management. Sub-sections (5) and (7) do not specify the grounds on which interference by the appellate tribunal will be justified. On the other hand, the tribunal is expressly empowered to pass such order in the matter as it may deem including an order of reinstatement of the teacher concerned. The jurisdiction of the Tribunal thus goes far beyond that of scrutinising whether the disciplinary proceeding has been conducted in conformity with the procedure laid down in Sub-section (6) as well as the principles of natural justice, or whether it is an action taken *mala fide* or vindictively as a measure of victimisation, etc. The Appellate Tribunal is thus vested with a blanket power to interfere with every order passed by the management in disciplinary matters. It can reopen the findings entered by the disciplinary authority and determine for itself even pure questions of fact as to the guilt or otherwise of the teacher and determine according to its own unfettered discretion what order should be passed in the disciplinary proceeding. The result is that the disciplinary power over the teachers is effectively transferred from the management to the Appellate Tribunal, thereby substantially taking away the autonomy of the management in regard to a most vital facet of administration of the educational

institution.

28. Further, the provision in Sub-section (7) in so far as it enables the teachers to drag the management before an external appellate authority whenever any order is passed by it against the concerned teacher in the exercise of the disciplinary power will seriously hamper the effective exercise of the management's disciplinary control over the teaching staff. As observed by Khanna, J. in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, at p. 1430 the situation brought about by such a provision is that the managing board of the educational institution would be embroiled by its employees in a series of proceedings before the Appellate Tribunal. This would act as a spoke in the wheel of effective administration of an educational institution. It is not possible to regard such a provision as a reasonable regulation intended to ensure the excellence of the institution as a minority educational institution.

29. It was strongly urged on the side of the Respondents that the fact that the appellate power is conferred the Act on a judicial officer holding the rank of a District Judge operates as a sufficient safeguard against any arbitrariness in the functioning of the appellate authority and that hence it was unnecessary for the legislature to lay down any further guidelines as to the mode of exercise of the appellate power. We do not find it possible to agree with this contention. No doubt when a judicial officer is appointed as the appellate authority he can certainly be trusted to conduct the proceedings before him in a strictly judicial manner in perfect conformity with the principles of natural justice. The absence of guidelines as to the procedure to be followed by the appellate authority may not, therefore, vitiate the conferment of the power. But, the scope of the power to be exercised by the appellate authority must be defined by the statute itself. In the absence of any specification regarding the limits of the power the appellate authority which is a creation of the statute cannot cut down the scope of the section and forge any limitations on its own and thereby impose a fetter on the unrestricted right of appeal conferred on the teacher by the legislature. Hence, the fact that the appellate power is conferred on a judicial officer is of no consequence in dealing with the objection that the appellate authority has been conferred a blanket power without any guidelines as to the grounds on which interference by it would be justified. The following observations of Khanna, J. in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, at p. 1430 are apposite in this context:

It is, as observed by the Judicial Committee in the case of *Trustees of the Roman Catholic Separate Schools for Ottawa v. Ottawa Corporation* 1917 A.C. 76 : AIR 1919 P.C. 96 the creation of the power and not its exercise that is subject to objection and the objection would not be removed even though the powers conferred were never exercised at all.

30. To sum up, the powers conferred on the appellate authority by Sub-sections (5) and (7) of Section 60 of the Act are uncanalised and unguided in the series

that no restrictions are placed on the exercise of the power. The extent of the appellate power is not defined; and indeed the powers of the appellate authority are unlimited. The grounds on which the appellate tribunal can interfere in such appeals are also not defined. The tribunal may not only set aside an order of dismissal of a teacher and order his reinstatement but may also interfere with every kind of order passed by the management in a disciplinary proceeding, inclusive of orders inflicting minor punishments. In the absence of any guidelines it is not possible to hold that the conferment of the appellate power by Sub-sections (5) and (7) of Section 60 was merely a check on maladministration. All the vitiating factors pointed out by the Supreme Court with respect to Ordinance 33(4) of the Ordinances framed u/s 19(j) of the Kerala University Act, 1969 which was held to offend Article 30(1) of the Constitution are present in the impugned Sub-sections of Section 60. We would accordingly hold that Sub-sections (5) and (7) of Section 60 of the Act are inconsistent with the fundamental right guaranteed to religious and linguistic minorities by Article 30(1) of the Constitution and hence they cannot be applied to an educational institution established and managed by a religious or linguistic minority like the St. Joseph's Training College for Women, Ernakulam. With great respect we must express our disagreement with the observations to the contrary contained in *Benedict Mar Gregorios v. State of Kerala* and Ors. 1976 KLT 458 (F.B.).

31. The conclusion that emerges from the foregoing discussion is that the appellate tribunal has acted wholly without jurisdiction in entertaining and dealing with the appeals preferred by the Respondent principal under Sub-sections (5) and (7) of Section 60 of the Act. All the impugned orders (sic)d by the appellate tribunal have (sic) be set as(sic)on this (sic)nd.

32. review (sic) the conclusion reached by us that the provisions Section 60(7) of the Act cannot be applied to the Petitioners' institution it is unnecessary for us to go into the question of validity of Section 61(b) which confers power on the appellate tribunal to reopen past disputes and to adjudicate upon such disputes under the provisions of Section 60(7).

33. Since the orders of the appellate tribunal impugned in these cases have to be declared null and void on the ground that the Tribunal had no jurisdiction to entertain the appeals we are not called upon to consider the remaining contentions raised by the Petitioners relating to the merits of those orders.

34. In the result, C.R.P. No. 1668 of 1977 as well as O.P. Nos. 4031 of 1976, 2090 of 1977, 3244 of 1977 and 3592 of 1978 are allowed and orders passed by the Tribunal impugned in these cases will stand set aside on the limited ground indicated above. The parties will bear their respective costs in all these petitions.