

(1999) 04 AHC CK 0164
In the Allahabad High Court
Case No : C.M.W.P. No. 7827 of 1995

Yogendra Nath Singh and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 05-04-1999

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 226, 29, 29(2)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16FF
Uttar Pradesh Intermediate Education Act, 1921 — Section 16FF
Constitution of India, 1950 — Article 19, 19(1), 226, 29, 29(2)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16FF
Constitution of India, 1950 — Article 19, 19(1), 226, 29, 29(2)

Citation : AIR 1999 All 356 : (1999) 2 AWC 1563 : (1999) 2 UPLBEC 1318

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : R.N. Singh and A.P. Sahi, for the Appellant; S.C. and R.G. Padia, for the Respondent

Final Decision : Allowed

Judgement

O.P. Garg, J.—By means of this writ petition, under Article 226 of the Constitution of India, the order dated 13.3.1995, Annexure-9 to the writ petition, passed by the State Government has been challenged primarily on the ground that the secular nature of the management is sought to be usurped and upturned by the imposition or introduction of minority status to an education institution, in spite of the fact that it was never intended to be established as minority institution under the bye-laws and Memorandum of Association by which it is governed. This controversy has cropped up in the following circumstances.

2. There is a registered society with the name of National Association having its own bye-laws. It established a Junior High School in Bara, district Ghazipur, in the year 1948, which came to be upgraded as Higher Secondary School in the year 1966 and in course of time, as an Intermediate College in the year 1972. It is now known as Bara Inter College, Bara, district Ghazipur. When the said

institution came to be governed by the provisions of U. P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act") in the year 1966, the Deputy Director of Education (for short "D.D.E.") approved a scheme of administration for the High School. The said scheme of administration was also amended in the year 1985 and the amended scheme of administration was enforced through letter dated 15.2.1985. a copy of which is Annexure-4 to the writ petition. The case of the petitioners is that neither the present society, namely. National Association, nor the college was either established by the minority community or was exclusively administered by it. It is further alleged that a perusal of the aims and objects, as contained in the Memorandum of Association, as well as in the scheme of administration, would indicate that the said society established the college to impart education in general without any particular benefit to either a linguistic or religious minority and that it was never intended, either initially or even when the scheme of administration came to be enforced, to confer a minority status on the institution. According to the petitioners, the State Government took upon itself, with an avowed and sole object of appeasing a particular community, at the behest of certain political persons, including the then Education Minister, U. P., to bestow, without understanding the implications thereof the status of minority institution by issuing the impugned order dated March 13, 1995 on ten schools and colleges, including Bara Inter College, Bara, district Ghazipur. The said order, it is urged, has been passed by non-application of mind, without recording the finding as to whether the institution was established and is being administered by a minority community and as to whether the Institution has its aims and objects for the purpose of providing benefit to a particular community either religious or linguistic, as contemplated under Article 30 of the Constitution of India. According to the petitioners, the declaration of minority status has been obtained with a view to do away with the various restrictions imposed by the Act and the regulations framed thereunder obviously to the serious detriment to the rights of the teaching and non-teaching staff. It is prayed that the impugned order dated 13.3.1995 be quashed and the respondents be restrained from treating Bara Inter College, Bara, district Ghazipur as a minority institution.

3. Petitioner No. 1. Yogendra Nath Singh is life member of the National Association, a registered society, which manages and runs the institution, while petitioner No. 2. Damodar Singh is a Assistant Teacher in L.T. grade in the Bara Inter College and according to both of them, if the minority status of the institution is allowed to continue, the service conditions of the teachers and other employees shall stand drastically changed and the Committee of Management shall act in its own way under the garb of the minority status of the institution. It is alleged that since the petitioners are directly affected by passing of the impugned order, they are entitled to maintain the present petition.

4. The writ petition was originally dismissed as not maintainable at the instance of the petitioners on 18.11.1996 by a learned single Judge. The petitioners filed a Special Appeal No. 855 of 1996 which was allowed on 26.2.1997 with the

direction that this writ petition shall be disposed of on merits in accordance with law. This is how the present writ petition has come up for hearing before this Court again.

5. Counter and rejoinder-affidavits have been exchanged. Heard Sri R.N. Singh, senior advocate assisted by Sri A.P. Sahi, learned counsel for the petitioners and Dr. R.G. Padia for the contesting respondent Nos. 5 and 7, as well as learned standing counsel for the respondent Nos. 1 to 4.

6. Through the counter-affidavit, filed by Imtiyaz Ahmad, a lecturer of the college under the authority of Sri Abul Hasan Khan. Manager of the society/institution as the latter was said to be laid up on account of strike of paralysis, it has been asserted that the petitioners have no right to maintain the present writ petition, which is the outcome of the grudge against the society as well as Committee of Management nurtured by the petitioner No. 1. It is maintained that since the society was formed and established in the year 1948. i.e., prior to the advent of the Constitution of India, different yardstick is to be applied for the purpose of considering case for grant of recognition as a minority institution. It is alleged that the State Government has issued a notification, a copy of which is Annexure-C.A. 1 to the counter-affidavit, fixing standards and norms, for the purpose of declaring an institution as minority institution and in pursuance thereof, the society/institution submitted a proforma, a copy of which is Annexure-C. A. 2 to the counter-affidavit, for getting itself declared as a minority institution. After making available the various details called for by the District Inspector of Schools (for short "D.I.O.S.") as well as other authorities, it is stated the college was declared as minority institution. According to the respondent Nos. 5 and 6, the college was established as a minority institution and it has throughout been administered as a minority institution, that aims/ objects of the society/ institution do not, in any manner, militate against the minority status conferred by the State Government, and that the declaration of a pre-existing fact that the institution is a minority institution is not going to curtail the legal rights of any person, including the petitioners.

7. This writ petition was summarily dismissed at the initial stage on 18.11.1996 as being not maintainable at the instance of two petitioners, one of whom is life member and the other one is Assistant Teacher of the college concerned. Dr. R.G. Padia, learned counsel for the contesting respondent Nos. 5 and 6 pointed out that by the impugned order dated 13.3.1995, whereby minority status has been granted to the respondent-institution, the existing legal rights of the petitioners are not violated in any manner and that with a view to feed fat the grudge nourished by the petitioners, they have filed the present petition with an oblique motive. It would not be out of place to mention that after summary dismissal of the petition on 18.11.1996, the petitioners filed Special Appeal No. 855 of 1996 which was allowed by a Division Bench of this Court on 26.2.1997 by making the following observations ;

". . . .It cannot be said that a teacher of the institution has no focus standi to

question the order declaring the institution as minority institution. The apprehension that the change of status of the institution to a minority institution is likely to affect his service conditions cannot be said to be without any basis. It cannot also be said that a member of the society is not entitled to challenge the order which changes the status of the society. In our considered view, the writ petition should have been considered on merit."

In view of the decision of the Division Bench aforesaid. It would only be a supererogation to tread the same territory. Nevertheless, since the question of seminal significance affecting the adjectival law is of such compelling futuristic impact that further examination in the matter is necessary, particularly keeping in view the emphatic assertion by Dr. R. G. Padia that the question of locus standi is entirely distinct and separate from plea of maintainability of the writ petition under Article 226 of the Constitution of India. In support of his contention. Dr Padia placed reliance on the decision of Constitution Bench of the Apex Court in *Fertilizer Corporation Kamgar Union (Registered) Sindri and others v. Union of India and others*, AIR 1981 SC 344, in which it was observed that the maintainability of a writ petition which is co-related to the existence and violation of a fundamental right is not always to be confused with the locus to bring a proceeding under Article 32 of the Constitution of India. These two matters often mingle and coalesce with the result that it becomes difficult to consider them in watertight compartments. The Apex court further ruled that the question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding--be in under Article 226 or under Article 32 of the Constitution. In paragraph 39 of the report, it was made clear that lest there should be misapprehension, a clear distinction is to be kept between fundamental right to enforce fundamental rights and the interest sufficient to claim relief under Article 226 of the Constitution and even under other jurisdictions. The Apex Court in the aforesaid case was dealing with the question of maintainability of public interest litigation and in that context it was held that the workers who clearly have an interest in the industry may bring an action regarding an alleged wrong doing by the Board of Management. As a matter of fact, a close scrutiny of the various observation made by the Apex Court would lead one to the conclusion that it goes against the contesting respondent Nos. 5 and 6 of the present case. A very wide and broad interpretation has been given by the Apex Court with regard to locus as well as the maintainability of the petition. The present petitioners have clearly an interest in the status of the institution. If a minority status is conferred on an institution, which is not established or administered by a minority community, in that event certain special privileges are enjoyed by such grant. These privileges obviously are to the serious detriment of the members of the society and the teaching as well as non-teaching staff.

8. Dr. Padia further argued that in any case the petitioners cannot be said to be persons aggrieved by the impugned order and. therefore, in the light of the decisions of the Apex Court in *Dr. Umakant Saran Vs. State of Bihar and Others*, , and *Mani Subrat Jain etc. etc. v. State of Haryana and others* AIR 1977 SC 176, writ in the nature of mandamus cannot be issued at the instance of a person (s) who is/are not aggrieved of the impugned order. I have closely scrutinized both the aforesaid decisions cited by Dr. Padia and find it difficult to agree with him. In *Dr. Umakant Saran's* case (supra), it was found that apart from the fact that the respondent Nos. 5 and 6 of that petition had been validly appointed in accordance with the practice followed by the Government. Dr Saran (petitioner) was not eligible for consideration for appointment at the time, he had no right to question the appointment. It was in these circumstances, it was held that Dr. Umakant Saran-petitioner was not an aggrieved person. Similarly in the case of *Mani Subrat Jain* (supra). It was held that it is elementary principle of law that no one can ask for mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something. The law with regard to the issue of a writ in the nature of mandamus is clear. In order that the mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty and the aggrieved party had a legal right under the statute, to enforce its performance. Things are different in the case of issue of a writ in the nature of certiorari. As to who can challenge order of grant of minority status to a particular institution, was the question which came to be considered before a Division Bench of this Court in the case of *Shobh Nath Singh and others v. Director of Education. U. P. and others* 1991 (2) UPLBEC 1174, by which two connected Writ Petition Nos. 53 of 1977 and 18398 of 1988 were decided. One of the petitions was filed by the parents of students, students and ex-students questioning the validity of an order passed by Director of Education. U. P., declaring Jal Narain Inter College. Varanasi to be a minority institution within the meaning of Article 30 of the Constitution of India. The other Writ Petition No. 18398 of 1988 was filed by a teacher working in the said college, who was appointed as ad hoc Principal of the college, questioning the validity of the advertisement published by the Authorised Controller of the college. It was observed that the two writ petitions raised questions of serious import and it cannot be said that the petitioners in Writ Petition No. 53 of 1977 have no locus standi to question the order of the Director of Education declaring the institution to be a minority educational institution. The reasoning adopted by the Division Bench is of far reaching consequence and may be extracted below for clarity and better understanding of the issue involved :

".....A minority institution enjoys several benefits and is exempt from the operation of several regulatory provisions contained in the U. P. Intermediate Education Act. Students and their parents are vitally interested in the character

of the institution. claims a right to say that it will appoint only a Christian as the Head of the institution shows that the character of the institution is not irrelevant. Section 16FF shows that in the matter of appointment of Head of institution and in the matter of appointment of teachers, the constitution of the Selection Committee is entirely different in the case of a minority educational institution. It is wholly composed of the members nominated by the Management whereas in the case of non-minority educational institutions, a majority of the members are nominated by the Education Department. The manner of appointment of teachers and the manner in which they are selected for appointment reflects upon the quality and content of the education imparted in the institution. So far as the petitioner in the other writ petition is concerned, there can, of course, be no question about his locus standi to maintain the writ petition. It must be remembered that the institution in question is in receipt of substantial grant-in-aid besides obtaining recognition from the Board."

A firm finding was recorded that the students, ex-students or parents of students as well as teachers have locus standi to challenge the order of the Director of Education passed u/s 16FF of the Act declaring an institution as minority institution. The present petitioners have a special interest in the subject-matter, i.e., the status of the institution-whether it is minority institution or otherwise-for one simple reason that the minority institution enjoys several benefits and is exempt from the operation of several regulatory provisions contained in the various enactments by which protection is extended to the members of the society who are running the institution, stated in Articlcs, members of the teaching and non-teaching staff and the students. If the petitioners have some concern deeper than that of a busy body, they cannot be told off at the gates although whether the issue raised by them is justifiable, may still remain to be considered. In the tight of the above decisions, particularly direct Division Bench decision of this Court in Sabhnath Singh's case (supra), as well as the observations made in the special appeal filed against the order dismissing the present petition. I take the view that the petitioners have not only the locus, but the writ petition itself is maintainable to consider and determine the controversy raised under Article 226 of the Constitution of India.

9. Dr. R.G. Padia, learned counsel for the respondents further pointed out that the present writ petition suffers from the defect of non-Joinder of the parties and since all the affected parties are not arrayed, effective relief cannot be granted in their absence. It was pointed out that the impugned order dated 13.3.1995, a copy of which is Annexure-9 to the writ petition relates to the grant of minority status to ten institutions mentioned therein and the respondent-institution is only one of them. The assertion of Dr. Padia is that it was necessary that all the institutions should have been impleaded as respondents. I find it difficult to agree with the learned counsel for the obvious reason that though the Government Order dated 13.3.1995, which has been challenged in this writ petition relates to conferment of minority status under the provisions of Section 16FF of the Act, the petitioners have nothing to do with other nine institutions

which are located in different cities of the State. The petitioners are concerned and aggrieved only on account of the fact that the minority status has been granted to Bara Inter College, Bara, Ghazipur, which according to them could not be conferred. If the relief claimed in the present petition is allowed, the other nine institutions covered by the Government Order would not be affected, in any manner. No relief has been claimed in respect of the other institutions and, therefore, it was wholly unnecessary to implead them as party to the writ petition. The plea of non-joinder raised on behalf of the contesting respondents is not only untenable but also misconceived.

10. Now, it is the time to consider the basic question whether the State Government has granted minority status to the respondent-institution in conformity with the constitutional mandate contained in Article 30(1) of the Constitution of India and the provisions of Section 16FF of the Act, and the guidelines issued to regulate the matter. The provisions of Section 16FF of the Act appear to have been made with a view to secure and extend the benefits envisaged under Articles 29 and 30 of the Constitution. It is stipulated that the provisions contained in the Act in regard to regulating the conditions regarding recruitment, appointment and other service conditions of teachers, including Principals shall not be applicable to the educational institutions recognized under the Act so far as those institutions are concerned, which are established and run by the minorities. This Section, thus, provides a saving clause in the case of a minority institution-certain provisions of the Act are modified in their application to minority institutions. Whether an institution can be characterized as a minority institution would depend on the establishment of certain facts which have to be tested by the touchstone of the provisions of Articles 29 and 30 of the Constitution. It is, therefore, necessary to go into the details of the provisions of these Articles.

11. The scope and extent of the Fundamental Right guaranteed under Article 30(1) of the Indian Constitution to religious and linguistic minority "to establish and administer educational institutions of their choice" generated a great controversy, problems continued to arise in this area, probably because of the two extreme attitudes pulling in opposite directions. Sometimes authorities act as if the minorities have no special constitutional protected rights dragging the minority institutions to the Courts while at others certain minority institutions act under the mistaken notion or otherwise that they are totally immune from any kind of Regulation and fetters. A survey of all the important decisions of the Supreme Court on various facets of minority rights would indicate that the Supreme Court has, while protecting the minority institutions and giving them the freedom to establish the institutions of "their choice" has not spared such institutions from subjecting to the Regulations made for maintaining uniform educational standards and achieving excellence in this sphere. While the broad test is well-settled, its application in the concrete case has always presented problems.

12. There now appears to be a general and broad based consensus about the content and dimensions of the Fundamental Right guaranteed under Article 30(1) of the Constitution. Without burdening this judgment unnecessarily with series of authorities, an attempt would be to refer only to the barest minimum decisions to highlight the scope and extent of the Fundamental Right available to the minority community under Article 30(1) of the Constitution. In the oft quoted case of *S. Azeez Basha and Another Vs. Union of India (UOI)*, , a Constitution Bench of the Apex Court observed in paragraph 19 of the report, as follows :

"(19). Under Article 30(1) "all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice." We shall proceed on the assumption in the present petition that Muslims are a minority based on religion. What then is the scope of Article 30(1) and what exactly is the right conferred therein on the religious minorities? It is to our mind quite clear that Article 30(1) postulates that the religious community will have the right to establish and administer educational institutions of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. An argument has been raised to the effect that even though the religious minority may not have established the educational institution, it will have the right to administer it, if by some process it had been administering the same before the Constitution came into force. We are not prepared to accept this argument. The Article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it.."

The above view came to be reiterated in a subsequent decision of the Apex Court in the case of *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, . It was observed that.

".....The right guaranteed to religious and linguistic minorities by Article 30(1) is two fold, to establish and to administer educational institutions of their choice. The key to the Article lies in the words "of their own choice". These words indicate that the extent of the right is to be determined, not with reference to any concept of State necessity and general societal interest but with reference to the educational institutions themselves, that is, with reference to the goal of making the institutions "effective vehicles of education for the minority community or other persons who resort to them--"

13. The real reason embodied in Article 30(1) of the Constitution is not too far to seek, in *The Ahmedabad St. Xavier's College Society and Another Vs. State of*

Gujarat and Another, , the Supreme Court pointed out that the spirit behind Article 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions, of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole. Similarly, in Lily Kurian Vs. Sr. Lewina and Others, , it was observed that protection of the minorities is an article of faith in the Constitution of India. The right to the administration of the institutions of minority's choice, enshrined in Article 30(1) of the Constitution means "management of the affairs of the institution". Unlike Article 19(1), the fundamental freedom under Article 30(1) is absolute in terms ; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Article 19 may be subjected to. All minorities, linguistic or religious have, by Article 30(1), an absolute right to establish and administer educational institutions of their choice ; and any law or executive direction which seeks to infringe the subsistence of that right under Article 30(1) would, to that extent, be void.

14. The controversy with different aspects came to be considered by the Division Benches of this Court also in the case of Badrul Hasan Quadiri v. State of U. P. and others. 1992 (1) UPLBEC 362 ; U. P. Madhyamik Shikshak Sangh and another v. State of U. P. 1995 AWC 191 and Shree Gujarati Samaj (Registered) Kanpur v. State of U. P. and others AIR 1998 All 244. From the catena of decisions of the Apex Court as well as this Court, it is well established that the twin requirements must exist before an institution could be granted recognition as a minority institution under Article 30(1) of the Constitution. It was further laid down that both the conditions must be read conjunctively with the result that minority communities can have the right to administer an educational institution as a minority institution, only if it was established by them and not otherwise.

15. The words "establish and administer" used in Article 30(1) are to be read conjunctively. Right claimed by a minority community to administer the educational institution depends upon the proof of establishment of the institution. The proof of the fact of establishment of the institution is thus a condition precedent for claiming the right to administer the institution. For the proper determination of the character of the institution, it is necessary to examine the antecedent history of the institution right from its inception in the light of the principles of law enunciated by several decisions of the Apex Court and the High Courts. Before an institution can be granted the status of minority institution, it

has got to be established, as a matter of fact, that the institution has been established and has all through been administered by the minority community atone. Incidentally, in the instant case, parties have been able to bring on record quite a fair bit of material bearing on the point from which certain conclusions may easily be drawn. The first question that falls for consideration is whether the institution was established as a minority institution. Obviously for the decision of this question, we have to go back to the origin of the institution and ascertain whether the institution was established by the Muslim Minority community for imparting education to the members of that community. The expression "established" occurring in Article 30(1) implies and means "to bring into existence". The enquiry, therefore, is to be confined to the question as to who brought the institution in existence and with what aims and objects in view. 16. The institution for the first time came to be established in the year 1948 by a Society which was known as National Association. Bara, Ghazipur. The first document which has been brought on record is Annexure-1 Memorandum of Association of the Society by which the origin of the Society/institution, may be traced. It is dated 27.8.1951. As many as 21 persons claiming themselves to be members of the governing body and to whom, by the Rules of the Society, the management of the affairs was entrusted, joined to form a Society and sought registration under the Societies Registration Act (Act No. XXI of 1860). Out of 21. 7 members are non-Muslims. Kailash Nath Srivastava, a retired Deputy Director of Education, was the first signatory to the Memorandum of Association. He was made the Chairman of the Society. The Articles of Memorandum of Association have a direct bearing on the aims and objects, which the Association was to fulfill. The relevant clauses may profitably be reproduced for a better understanding of the controversy. They run as follows :

"1. The name of the Society will be National Association. Bara (Ghazipur).

2. The objects of the Association are as follows :

(a) To start and maintain Schools and Colleges for imparting moral, intellectual and physical education.

(b) To start and maintain Schools and Colleges for imparting cultural education to the students.

(c) To impart technical and agricultural education to the students of the institutions in order to enable them to start a successful career.

(d) To construct buildings of the schools and open and maintain hostels and other residential quarters for the scholars reading in the institution opened by the Association.

(e) To found and establish reading rooms, frequent classes, libraries and other such institutions for the cultural advancement of the public.

(f) To acquire, hold and manage funds and properties for one or more of the above objects.

(g) To establish and acquire by lease, exchange, sale, gift or of otherwise any movable or immovable property for the benefit of the above objects.

(h) To sell, manage, improve or give in lease any of the properties of the Association.

(i) To make necessary arrangement for games and to pay special attention to the physical development and military training of the students.

(j) To render pecuniary help to intelligent and poor students of the institutions and to award merit scholarship to deserving students and to help them in their studies if funds permit.

3. The name and addresses and occupations of the members of the governing body to whom by Rules of the Society the management of the affairs is entrusted is given below :

.....

The Rules and Regulations of the Association are contained in Annexure-2 to the writ petition. They deal with the membership of the Association, cessation of membership, management, office bearers, duties and powers of the various office bearers, their term and the procedure for holding of the meetings, funds, amendment of the constitution and dissolution of the Association. Any person paying Rs. 500 or more as donation to the Association may become life member of it and shall be known as Patron of the Association. Similarly any person paying Rs. 100 or more but less than Rs. 500 is to be life member and any person paying Rs. 12 only shall be eligible for the membership of the Association. Under the aegis of the Society. Junior High School, Bara, was established which ultimately came to be up-graded stage after stage as Intermediate College in the year 1972 and came to be known as Bara Inter College, Bara. The said School came to be governed under the provisions of the Act. The original Scheme of Administration of Junior High School, Bara, is Annexure-3 to the writ petition and the list of the office bearers of the Committee of Management is appended thereto. Besides ex-officio members, there were 12 members/office bearers of the committee, out of whom 4 are non-Muslims. Kaliash Nath who was the Chairman of the Society is also shown to be the President of the Committee of Management. After the amendment of the Act in the year 1980, amended Scheme of Administration of the Bara Intermediate College was approved by the D.D.E. The amended Scheme of Administration is annexed with the letter of the D.D.E. dated 15.2.1985, a copy of which is Annexure 4 to the writ petition. The amended Scheme of Administration contemplates that any person who is the well wisher of the Society/Institution regardless of his caste, creed, and religion may become the member of the General Body. The clause dealing with the constitution of the committee of management contemplates that the selection/election of the office bearers and the members of the committee shall be in such a manner that there shall be no monopoly or domination of any particular caste, religion, community or family in the management of the affairs of the institution.

The amended Scheme of Administration is clearly in keeping with the amended provisions of the Act and the Regulations framed thereunder.

17. The contesting respondent Nos. 5 and 6, though have asserted that the Society/Institution was established by the muslim minority community, have not brought on record any document of the establishment of the Society/ institution. They have, however, filed a list of the members of the General Body of the Association, a copy of which is Annexure-6 to the writ petition to indicate that all the 21 members belonged to the Muslim community and that the office bearers and members of the governing body of the National Association, Bara, Ghazipur, Calcutta Branch as listed from serial numbers 1 to 45 in Annexure-9 to the writ petition, are Muslims, both these documents do not bear any date and, therefore, cannot be treated to be documents connected with the origin of the Association/Institution. It was also urged that all the members and office bearers of the Committee of Management, and the Manager of the Committee of Management as well as the Principal who is ex-officio members of the committee, have been Muslims for a number of years. These documents relate to the recent past and have no connection with the origin of the Society/Institution. The documents Annexures-1 to 4 filed by the petitioners, therefore, have to be taken into consideration to determine as to by whom and for whose benefit the Society/ Institution was established. The provisions of the Memorandum of Association and the bye-laws are explicit in terms. They make it clear that the institution was established by certain reputed persons of the locality which included not only Muslims but also a number of Hindus. The Association/ institution was established for the spread and promotion of education in general, and not merely for the benefit of any particular community. The aims and objects of the Society, which brought the institution into existence, indicate that the basic object was to impart general and technical education to all and sundry and it was provided that the institution shall be run on the lines prescribed by the Education Department of Uttar Pradesh. This fact cannot also be lost sight of that the membership of the society was open to all and not confined to any particular community. It is further significant to note that the Scheme of Administration of the institution does not indicate that it is a closed house confined only to any particular section of the Society. To put differently, the institution was established by an Association which was brought into existence by prominent citizens of district Ghazipur for the dissemination of education in general and the education, which was to be imparted in the institution, was also of a general character. There is nothing in the documents, referred to above, that the institution has been established for the benefit of a particular linguistic or religious minority community. A reference was made to the decision of this Court in *Bengali Education Society and another v. State of U. P. and others*. Civil Misc. Writ No. 2265 of 1977 decided on 6.2.1997, in which minority status was not granted to the institution which was established by the Bengali minority community in Uttar Pradesh for a distinct script, language, and culture of its own on the ground that the object of the Society was to impart general scientific, technical and physical education to

promote the advancement of learning generally with special reference to the needs of the Bengali children in upper India and to facilitate the study of Bengali language and literatures keeping in view the fact that any person paying to the society a lump sum donation of Rs. 500 may become a life member of the society or of the Managing Committee contemplated under the Rules. There was also a provision for admitting as honorary members the persons distinguished for special attainment, literary, scientific or otherwise or who took an active interest in the educational advancement of the welfare of the society. The State Government took the view that since the Rules and Regulations of the Society, aforesaid provided for unrestricted admission as a member of the Society to any person and the membership was not confined to the persons whose mother tongue was Bengali, the requisite conditions, contemplated under Article 30(1) of the Constitution could not be deemed to have been satisfied. It was held in the aforesaid case that merely on the basis that the Rules and Regulations of the Society without confining the same to only those persons who have Bengali language as their mother tongue and that the general education is to be imparted to the students of all the communities without any restriction, would not be sufficient to deny the minority status. The matter was directed to be reconsidered by the Director of Education, U. P., Lucknow, in the light of the various observations made in the body of the judgment. The learned single Judge in the said case -appears to have based his findings on the decision of the Apex, Court in *re Kerala Education Bill, 1957* AIR 1958 SC 956 , wherein it was observed that the real import of Articles 29(2) and 30(1) is that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it, the minority institution does not shed its character and cease to be a minority institution. The Apex Court took the view that, indeed, the object of-conservation of distinct language, script and culture of a minority may be better served by propagation amongst non-members of a particular community. Similarly in *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.,* , the Apex Court had taken the view that it is 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. This observation was made with reference to the initial right to of the minority community to establish institutions. It was further observed that the management must be free of control so that founders or their nominees can mould the institution as they think fit and in accordance with their ideals of how the interest of community in general and the Institution in particular will be best served.

18. The members of the minority community, though have been given a right to establish the institution of their own choice and to conserve their distinct language, script or culture, they continue to be the part of the society in general. Their rights cannot be worked out in isolation. Of necessity, they have to interact and compete with the members of other minority or majority communities. It was in this context that the Hon''ble Supreme Court in the case of *St. Xavier's*

College (supra) observed that the object of Article 30 is to enable children of minorities to go out in the world fully equipped. All persons whether in the majority or in the minority have the right under Article 25 freely to profess, practice and propagate religion. Any section of the citizen which includes the majority as well as, minority shall have under Article 29, the right to conserve their distinct language, script or culture. That is why the minorities are given a specific right in respect of the educational institutions under Article 30. Article 30(1) gives the right to linguistic minorities as well where no question of religion arises. It is, therefore, not at all possible to exclude secular education from Article 30.

19. It is well-embedded proposition of law that the establishment of the minority educational institutions solely for their own benefit is not permissible. Such an institution cannot draw a line to keep at bay the students of other minority and majority communities. There has to be a proper mix of students of different communities even in an institution which has been granted minority status. As a matter of fact, a complete answer to the various submissions made by the learned counsel for the petitioners in the present case is to be found in the decision of the Constitution Bench of the Supreme Court in the case of *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.,* . It was ruled that the choice of institution provided in Article 30(1) does not mean that the minorities could establish educational institution for the benefit of their own community people. Indeed, they cannot. It is legally impermissible to construe Article 30(1) as conferring the right on the minorities to establish educational institution only for their own benefit. The minorities are not entitled to establish and administer educational institution for their exclusive benefit. The observations of the Constitution Bench contained in paragraph 82 are of great significance and may profitably be extracted as below :

"Even in practice, such claims are likely to be met with considerable hostility. It may not be conducive to have relatively a homogeneous society. It may lead to religious bigotry which is the bane of mankind. In the nation building with secular character sectarian schools or colleges ; segregated faculties or Universities for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a "melting pot" in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential, therefore, that there should be proper mix of students of different communities in all educational institutions."

20. It would not be out of place to mention that in the case of *Bengali Education Society (supra)*, the Bye-laws made a specific provision that the Society was established with a special reference to the needs of the Bengali children in Upper India and to facilitate the study of Bengali language and literature. The Rules

further indicated that the Bengali minority community had retained the domination and control over the institution even though some non-Bengali persons could be inducted as members. In the instant case, there is not even a faint suggestion throughout the length and breadth of the Memorandum of Association, Rules and Regulations, or the Scheme of Administration that the Society or the institution was established for the benefit of the Muslim community. It is true that in the light of *St. Stephen's College case* (supra), no minority institution can be established solely for its own benefit and there should be proper mix of students of different communities in all educational institutions, including the institution established by the minority community but the fact remains that the minority community in order to claim the benefit of Article 30 of the Constitution of India must establish the institution of its choice with a view to conserve its language, script and culture. There is not even a faint suggestion throughout the aims and objects. Rules and the Bye-laws of the Society and the various clauses of the Scheme of Administration of the institution that the institution was established even remotely for the benefit of the minority community. If a Society is not established for the benefit of religious or linguistic minority and if the institution run by the Society is also not established for the benefit of a minority community, such an institution cannot be conferred the status of a minority institution.

21. Dr. R.G. Padia, learned counsel for the contesting respondents urged that a distinction has to be made with reference to the society which established the institution prior to the advent of the Constitution and the Society establishing a minority institution after the commencement of the Constitution. Admittedly, the institution, in question had been established before the commencement of the Constitution of India. So far as protection available under Article 30(1) of the Constitution is concerned, the provisions contained therein are wide enough to cover both the pre-Constitution and post-Constitution Institutions. In *Aziz Basha's case* (supra), the submission that even though the religious minority may not have established the educational institution, it will have the right to administer it if by some process it has been administering the same before the Constitution came into force, was not accepted on the ground that Article 30(1) clearly shows that the minority will have the right to administer educational institutions of their own choice provided they have established them, but not otherwise. This Article cannot be read to mean that even the educational institution has been established by somebody else, any religious minority would have right to administer it because for some reason or the other, it might have been administering it before the Constitution came into force. Dr. Padia pointed out that presently the management of the institution is totally in the hands of the members of the Muslim community. All the Managers of the Committee of Management/Society have been Muslims as would be evident from the certificate, Annexure-C.A. 7 to the counter-affidavit issued by the Principal of the College. This certificate indicates that since the year 1965 onwards, all the Managers including the one who was working. i.e., nine in number belong to the

Muslim community. A list, Annexure-C. A. 8, to the counter -affidavit, of the members of the existing Committee of Management, has been filed to reflect the same position. It was also pointed out that before the start of the classes, a prayer in Urdu is recited and that on all Fridays, institution is run between 6 a.m. to 11.30 a.m. in order to enable the students to offer Namaz : that Urdu is the special subject which is taught in Xth and XIIth classes, that the proceedings of the meetings of the Society. the Committee of Management and the annual functions are all conducted and recorded in Urdu. It is not disputed that Bara Inter College. Bara, has been recognized and is governed by the provisions of the Act. The same curriculum, which is applicable to all other institutions has been adopted by the respondent-institution. There is no special curriculum adopted by the respondents which may have special reference to the Muslim minority community. Urdu is an optional subject as provided under the relevant Regulations framed under the Act and every institution is free to provide the option to its students. If Urdu is taught as an optional subject in place of Sanskrit or any other language, it would not indicate that the institution was established to serve the Urdu language or script. In the rejoinder-affidavit. It has been stated that Sanskrit is also a subject, taught in the institution. Sri Sita Ram Upadhyay is Sanskrit teacher who teaches Sanskrit in Classes VI to Xth in the institution : at times when the situation warrants. S/Sri Sarju Singh Yadav and Virendra Singh Yadav who are teachers in the institution are deployed to teach Sanskrit.

22. From the various averments and documents brought on record by the contesting respondents, it is established that the Society and the institution are presently in the control of Muslim minority community and that this community is managing the affairs of the institution. This by itself was not sufficient to declare the institution as a minority institution. As pointed out above, the various documents pertaining to the origin of the Society and the institution would make it clear that the institution was not established solely by the minority community with a view to conserve its language, script and culture. To sum up, it may be mentioned that the Society/Institution came to be established by certain prominent citizens which included not only members of the Muslim community but several Hindus ; it was established for the spread and promotion of the education in general ; there was no provision specially with reference to the Muslim minority community ; the basic object of the establishment of the institution was to impart general and technical education to all and sundry ; institution was not established for the benefit of the minority community ; institution was to be run on the lines prescribed by the Education Department of Uttar Pradesh ; membership of the Society was open to all and not confined to any particular community ; any person of any caste, creed or community can become a member of the General Body of the society by depositing the requisite amount ; and the Scheme of Administration as approved by the D.D.E. after the amendment of the Act also reflects the same characteristic and totally negates the contention raised by the respondents regarding minority character of the

institution. Not only this, the Scheme of Administration of the institution makes positive unambiguous provision that the management of the institution shall not be allowed to pass in the hands of the members of a particular caste, creed, religion, community and family with a view to avoid monopoly, total domination and control. From the above facts, there can be no escape from the conclusion that the institution was not established as a minority institution by the members of any particular community for its own benefit or for the promotion of any religious thought and ideals. Even though, at present, the institution is being managed by a minority community, the institution cannot be granted the status of a minority institution as the minority community, which is managing it had not established the institution. As said above the requirements of establishment and management, as occurring in Article 30(1) of the Constitution, have to be read conjunctively. The twin requirements are required to be established and in the absence of either of them an institution cannot be granted minority status. In view of the finding that the respondent-institution was not established by any minority community, it could not be granted minority status even though presently it is being managed by a minority community.

23. The submission on behalf of the petitioners that the institution was granted minority status with a view to please a particular minority community and that the impugned Order dated 13.3.1995, Annexure-9 to the writ petition, issued by the State Government has a political hue, is not without any merit. There is a specific averment in the writ petition that the minority status was granted to a number of institutions, including the respondent-institution at the behest of Sri Shakir Ali, the then Education Minister in a mechanical manner without comprehending the implications and adopting the procedures prescribed for the purpose. The State Government had originally issued an order on 20.4.1994 specifying certain circumstances in which the minority status may be conferred on certain institutions within the meaning of Section 16FF of the Act. This Government Order was superseded by order dated 6.10.1994 laying down the norms for granting recognition to the minority institutions. The Government Order dated 6.10.1994 came to be challenged before a Division Bench of this Court in the case of U. P. Madhyamik Sikshak Sangh (*supra*) on the ground that the norms contained in the said Government Order do not lay down the criteria of the educational institutions having been established and administered by the minority community is the condition precedent for the grant of recognition. Placing reliance on the decision of Apex Court in *Azeez Basha's* case (*supra*), the writ petition was disposed of on 7.11.1994 with the observations that:

"....Both the requirements, i.e., establishment and administration of the educational institution by the minority must exist before any recognition, under Article 30(1) of the Constitution, can be granted to an institution. Unless it is shown that the institution was both established by the minority and is being administered by it, no recognition under Article 30(1) of the Constitution can be granted to it. The Government and its authorities are directed to grant recognition under Article 30(1) of the Constitution only to such institutions, which

satisfy the twin requirements, referred to above."

In the light of the above observations of this Court. Government order dated 6.10.1994 was supplanted with further directions that only that institution which has been established by the minority community and is being managed by it should be recognized as a minority institution. In the instant case, the impugned order, granting the minority status appears to have been passed on the basis of the unamended or unsupplanted Government Order dated 6.10.1994 and it was for this reason that the State Government failed to make an enquiry about the origin of the establishment of the institution. The information given in proforma appended to the Government Order, a copy of which is Annexure-C. A. 2 to the counter-affidavit, indicates that most of the information given in it was not correct. In column 5 of the proforma. it was mentioned that the institution was established by the Muslim community with a view to impart education to the members of the Muslim minority community and with a view to conserve Urdu language, its script and Muslim culture. This information was not based on any document in pursuance of which the Association or the institution was brought into existence. The procedure governing the grant of recognition has been laid down in Government Order dated 18.4.1994, a copy of which is Annexure-R.A. 1 to the rejoinder-affidavit, A bare perusal of the Government Order, aforesaid, would indicate that screening has to be done by a Committee consisting of D.D.E. (Secondary), Additional Director of Education (Basic) and Joint Director of Education (Women) in case of High School and Intermediate Colleges. The report received by the Government has to be submitted for decision by a Committee consisting Principal Secretary (Education), Secretary (Law) and Secretary to the Chief Minister or the Secretary to the Governor. There is nothing on record to indicate that the procedure prescribed under the aforesaid Government Order has been adopted in the present case. In view of the finding that the institution, in question was not established by the Muslim minority community, the State Government was not justified in conferring the minority status on the respondent-institution. The impugned Government Order dated 13.3.1995, Annexure-9 to the writ petition with regard to the institution Bara Inter College, Bara. district Ghazipur appearing at Sl. No. 8 thereto, was passed in a mechanical, casual and perfunctory manner without realizing its implications. The Apex Court has cautioned the concerned authorities in the matter. The object of the institution should be genuine and not devious or dubious. There should be nexus between the means employed and the ends desired. There must exist some positive index to enable the educational institution to be identified with religious or linguistic minorities. Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and it is essential, to make it absolutely clear that no ill-fit or camouflaged institution should get away with the constitutional-protection. These are the observations made by the Apex Court in St. Stephen's College case (supra). In an earlier case A. P. Christian Medical Education Society v. State of A.P. and another 11086 2 SCC 667, the Apex Court has been highly critical of the fraudulent minority status claimed by some groups to exploit students,

teachers and staff. It was observed that the object of Article 30(1) is not to allow bogies to be raised by pretenders. Sometimes, the persons who had formed the minority society merely seek to reap unfair advantage over other similar educational institutions by claiming fraudulently the status of a minority educational institution. It was clarified that the institution must be educational institution of minority in truth and reality and not mere masked phantoms. The question as to what constitutes a minority educational institution is of great significance because the character of a minority educational institution carries with it a good amount of privileges and protections which are not available to a non-minority educational institution. The Court has tried to restrict the misuse of the benefits granted to the minorities. In spite of the fact that the authorities were cautioned and fore-warned in the matter by the Apex Court the State Government has passed the impugned order in a casual manner. The impugned order, therefore, cannot be sustained for the obvious reason that it is in teeth of the various decisions of the Apex Court as well as this Court, which have been cited above. The effect of the impugned order is that the institution, which was never established by the Muslim minority community has been granted minority status perhaps only on the ground that the said institution is being managed by the minority community. The impugned order is illegal, infirm and rests on weak and feeble footing. Therefore, it has to be quashed.

24. In the result, the writ petition succeeds and is allowed. The impugned order dated 13.3.1995, Annexure-9 to the writ petition is hereby quashed. Parties are directed to bear their own costs.