THE HIGH COURT OF TRIPURA
A G A R T A L A

W.P.(C) No.84 of 2015

Petitioners:

1. **Hindi Junior High School Trust,**
   Hindi Higher Secondary School, represented by its Managing Trustee Sri Tarun Kuman Jain, Kunjaban Road, P.O. Abhoynagar, P.S. West Agartala, District – West Tripura

2. **Sri Tarun Kumar Jain,**
   son of Sri Hiralal Jain, Secretary, Ad-hoc School Managing Committee, Hindi Higher Secondary School and member of Hindi Junior High School Trust, P.O. Abhoynagar, P.S. West Agartala, District – West Tripura

By Advocate :

Mr. A. Bhowmik, Advocate

-V E R S U S-

Respondents:

1. **The State of Tripura,**
   represented by its Principal to the Department of School Education, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District – West Tripura

2. **The Additional Secretary & Director,**
   to the Department of School Education, Government of Tripura, P.O. Agartala, P.S. West Agartala, District – West Tripura

3. **The Director,**
   School Education Department, Government of Tripura, P.O. Agartala, P.S. West Agartala, District –West Tripura

By Advocate :

Mr. S. Deb, Sr. Advocate
Mr. J. Majumder, Advocate

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing : 09.03.2016

Date of delivery of Judgment and order : **29.09.2016**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

By means of this writ petition, the petitioner No.1 which is a trust being represented in this petition by the petitioner No.2 has questioned the show cause notice under No.F.15(1-18)/SE/GIA/2011/5623 dated 28.02.2015, Annexure-P/17 to the writ petition, by invoking the right as envisaged by Article 30(1) of the Constitution inasmuch as the petitioner No.1, hereinafter referred only as the petitioner, has been recognized as a Minority Educational Institution covered under Article 30(1) of the Constitution of India by the National Commission for Minority Education Institute on 10.03.2014 as is evident from the certificate dated 10.03.2014, Annexure-P/9 to the writ petition. In this regard, it may be relevant to mention that in exercise of powers conferred by Clause (c) of Section 2 of the National Commission Minorities Act, 1992, the Central Government by the notification under No.F.1-1/2009/NCM has notified the Jain Community as a minority community in addition to 5(five) communities already notified as minority communities viz. Muslims, Christians, Shiks, Buddhist and Zoroastrians (Parsis) who were notified as such vide Notification No.816(E) dated 23.10.1993.

[2] From the affidavit filed by the petitioner on 14.09.2015, it appears that the trust was constituted on 30.08.2006 by the members of the Jain Community. In the trust deed, Annexure-A to the said affidavit dated 14.09.2015, out of various objects as declared by the settler, one of the objects reads as under:

> **"Whereas the settler decided and created a trust with an object for starting a Hindu Medium School as per Jain Philosophy at Agartala especially for the wards of Jain Community people and wards of public in general who are interested in Hindi Medium education and a trust was formed, created for establishing, administering and running Hindi Medium School and Public charitable and Social services with various objects to serve the public in the field of Education, Hospital and Vocational Training etc. and various service activities for the upliftment for mankind and services to the needy in general, mainly in the educational field."**

It further appears that the trust deed dated 30.08.2006 is a reconstitution of the trust earlier declared and mentioned as 'Hindi Junior High School Trust' on 09.04.1960. This reconstitution, amalgamation, assignment on merger of the earlier trust to the present trust having not been the subject matter in the writ petition, any observation made in this judgment shall not be considered as approval or affirmation of this Court in respect of the said transformation of the trust. Subject to what has been observed before, this Court would proceed to decide the writ petition. It further appears that by another deed dated 10.11.2014, Annexure-B to the affidavit filed on 14.09.2015, the new trustees were incorporated in the trust.

[3] It has been asserted in the writ petition that the petitioner No.2, the managing trustee has been authorised to represent the trust by the resolution dated 05.03.2015. Hindi Higher Secondary School, according the petitioner, was founded in the year 1963 by the earlier trust and it was duly affiliated by the Central Board of Secondary Education (CBSE, in short) and in course of time, it was upgraded to the Higher Secondary level under the same trust. The said Hindi Higher Secondary School was brought under the Grant-in-Aid Scheme by the State Government w.e.f. 01.09.1989. By the Notification No.F.10(34-1)DAC/89 dated 24.10.1989, the Govt. of Tripura through the Director of School Education started providing salary and other benefits to the said school w.e.f. 01.09.1989 under the Grant-in-Aid Rules. In this regard, there is no dispute. But the petitioner has asserted that the land and building of the school were belong to the petitioner. The land of the school is comprised in Khatian No.15704 and Khatian No.3844 under Mouza- Agartala sheet No.12 and it has been recorded in the name of Hindi Junior High School Trust. The genesis of the controversy apparently has its root in the incidence when the petitioner on 14.06.2011 requested the respondents for according approval of the Managing Committee as proposed by it for managing and running the administration of the Hindi Higher Secondary School. In this regard, a letter of request dated 14.06.2011, Annexure-P/4 to the writ petition, was sent to the Director of School Education.

In reply to the said request, by the Memorandum under No.1.F.(1-18)- SE/GIA/11 dated 23.06.2011, Annexure-P/5 to the writ petition, the Director of School Education accorded approval to the proposed committee with the following observations:

> **"This Ad-Hoc Committee has been constituted in cancellation of the earlier school Managing Committee of Hindi H/S school in exercise of power conferred by Rule-6(a) of the Tripura Grant-in-Aid (Govt. Aided Schools) Rules, 2005.**
>
> **The Secretary of the Committee as cited above is hereby entrusted power to run the school as per 'The Tripura Grant-in-Aid (Govt. Aided Schools) Rules, 2005' and following the direction of the undersigned. The Secretary should convey a meeting immediately to constitute the full-fledged school Managing Committee in presence of Govt. representative."**

[4] Thereafter, on 09.09.2011 the petitioner apprised the Director of School Education its rules and regulation for management of the Hindi Higher Secondary School which includes the constitution of the managing committee. It has revealed from the said communication dated 09.09.2011 that the registered society has been created for management of the Hindi Higher Secondary School and that society is affiliated by the Central Board of Secondary Education (CBSE). According to the petitioner, as reflected in the said communication dated 09.09.2011, the said society styled as 'Hindi Junior High School' is registered as the society under the registration No.31 of 1960 and is under control of the trust. In the proposed constitution of the Managing Committee of the Hindi Higher Secondary School, the following pattern/structure has been provided as under:

"Constitution of Managing Committee of Higher Secondary School

1	Founder Group	Hindi Junior High School TRUST Board Through Nomination	:	7 (Seven) Member
2	Donor Group	Registered Society Through Nomination	:	4 (Four) Member
3	Teachers Represen-tative		:	2 (Two) Member- As per Grant-in-Aid Rule
4	Guardian Represen-tative		:	1 (one) Member- As per Grant-in-Aid Rule
5	Person from locality interested in Education		:	1 (one) Member- As per Grant-in-Aid Rule
6	District Education Officer- Govt. Represent ative		:	1 (One) Member or any officer appointed or nominated by the Directorat e of School Education in this Managing Committee - As per Grant-in-Aid Rule.
7	Non Teaching Staff		:	1 (one) Member- nominated by the Trust Total 17 Number s

Managing Committee : The Managing Committee of Hindi Higher Secondary School, shall consist of the 17(Seventeen) Members including of representatives from the , 1. Trust Board Founder Group: Trust Board Hindi Junior High School Trust nominated from Trust Board and the,

2. Door Group : 4(Four) Members nominated by Registered Society Hindi Junior High School Registration No.31 of 1963, Registered under Registrar of Societies, Govt. of Tripura or from the Trust Board.

3. 2(Two) Representative of Teachers as per Election or selection. That all the powers related with said school Management shall vest with Governing Body or the school Management Committee for the time being.

4. One Representative of Guardian as per Election or Selection or Nomination of the Founder Group 'Hindi Junior High School Trust'.

5. One Representative of locality interested in Education Development or a Registered Medical Practitioner or Officer by selection or nomination.

6. One District Education Officer or any Officer of the Education Department (School Education) Nominated by the Director of School Education Govt. of Tripura.

7. One Headmaster or Head of the School/institution as ex officio-Member of the Managing Committee. Total 17 (Seventeen) Member Managing Committee. The School Managing Committee formed for utilization Grand-in-Aid shall consists of 17(Seventeen) members with the following Office Bearer which will be selected by majority or nomination from the Managing Committee Members:

Founder and Donor Group :

1	**President**	**:**	**1(one) Ex-Officio member of the Trust Board**
2	**Vice- President**	**:**	**1(one) by majority vote in the Committee**
3	**Secretary**	**:**	**1(one) Ex-Officio member of the Trust Board. Member of the Registered Society No.31 Management Committee Secretary**
4	**Joint Secretary**	**:**	**1(one) Ex-Officio member of the Registered Society No.31 of 1963**
5	**Guardian Representative**	**:**	**1(one) By Election or Selection**
6	**Teachers Representative**	**:**	**2(two) By Election or Selection**
7	**Head Master**	**:**	**1(one) Ex-Officio member of the Managing Committee**
8	**Govt. Representative**	**:**	**As nominated by the Director of School Education Govt. of Tripura 1(one)**

9. Person interested in Education from the Locality, 1(one) may be a Doctor or Registered Medical Practitioner or Medical Officer – By nomination.

There will be 4(four) Office Bearer and 13(Thirteen) Committee Members in the managing committee Total 17(Seventeen) members in the Managing Committee including 4(four) Office bearer perpetual who will be selected or nominated by majority vote in the Managing Committee with the Hindi Junior High School Trust (Apex Body).”

[5] It is an undisputed position that by the memorandum No.F.15(1-18)-SE/GIA/11 dated 06.09.2013, Annexure-P/10 to the writ petition, the Govt. of Tripura issued no objection certificate so that the said school might get the status of Jain Minority institution from the National Commission for Minority Educational Institution, New Delhi. It has been

observed in the said memorandum dated 06.09.2013 as under:

> **"The Government of Tripura has already given the status of 'Religious Minority Community' to the Jain Community of Tripura, vide Notification No.996-1120/F.10-5/SCW/GN/RM/03/ dated 18.04.2007.**
>
> **This is issued with the concurrence of the Law Department, Government of Tripura vide order No.1264/Secry (Law)/2013 DATED 29.08.2013.**

Hence, there is no controversy as the minority status of the school but the controversy raised its hood when on 08.11.2004 by a show cause notice under No.F.15(1-39)/SE/GIA/2014/3924 issued by the Director of School Education, several irregularities and allegations were pointed out and made. In the said show cause notice, the Secretary Ad-hoc Managing Committee was asked to explain his defence within 10(ten) days in writing from the date of receipt of the notice. It had been cautioned, if no reply received, the Director of School Education shall have the power to take action ex-parte as per Rule 6(b). For purpose of reference, the entire text of this show cause notice is extracted hereunder:

> **"Whereas, it is observed that Hindi H.S. School under Grant-in-Aid Scheme is being supervised by an Ad-hoc Managing Committee. The Managing Committee not yet constituted by conducting election as per Grant-in-Aid Rules,**
>
> **and**
>
> **Whereas, it appears that the School Managing Committee (SMC) not yet constituted in the School violating the Govt. Notification No.F.13(3-60)-SE/GL-I/2011 (V-II) dated 16.08.2011 as per Right of Children to Free and Compulsory Education Rules (Tripura), 2011 which was come in force w.e.f. 15.08.2011 in all Govt. and Govt. Aided Schools,**
>
> **and**
>
> **Whereas it is observed that different kinds of fees has been collected from the students in higher rates which is higher than the rates fixed by the Govt. of Tripura Education (School) Department vide Memo No.F.13(3-60)-SE/GL-I/09 dated 28.05.2011,**

and

Whereas the seniority list of Post Graduate and Graduate Teachers of Hindi H.S. School has not yet been finalized violating the direction of the Director of School Education vide Office Memo No.F.15 (1-40-SE/GIA/2014/2727 dated 19.08.2014,

and

Whereas it is observed that the Education (School) Department has crated 1(one) new post of Asstt. Headmaster in the scale of pay of Rs.9570-30,000/- with approval of the Finance Department vide Memo No.F.15(1-35)-SE/GIA/2010/3372 dated 29.09.2014 for appointment by promotion of senior most PGT in Hindi H.S. School which has already been intimated to the Secretary, Ad-hoc Managing Committee but no action has been taken to fill-up the post of AHM,

and

Whereas it appears during the inspection of School on 14.10.2014 that Rs.15,84,802/75 has been recorded as closing balance as on 06.09.2014 in the Cash Book of Non-Govt. fund. The reason of such huge amount is not known,

and

Whereas it appears that a big structure has been constructed in the East and Southern side of the School looks like a prayer hall with RCC pillar and GCI sheet roofing. It is not known to this Department whether this has been constructed with approved plan and estimate. The source of fund also not known to this Department,

and

Whereas it appears as per service book record that Sri Narayan Prasad Dasgupta, PGT (M. Sc. B. Ed) is the senior most teacher of the School. But Smt. Madhumita Datta, PGT (M.A. B.Ed.) has been engaged as Teacher-in-Charge violating the norms of seniority,

and

Whereas it is clearly stated in Rule 5(x) of 'The Tripura Grant-in-Aid (Government Aided School) Rules, 2005' 'that regular meeting of the Managing Committee should be convened at least once in every two months'. But it is reported that the Secretary, Ad-hoc Managing Committee does not convene any meeting,

and

Therefore, in exercise of the powers conferred upon me under Rules-3,4,5 and 6 of 'The Tripura Grant-in-Aid (Government Aided School) Rules 2005' show cause notice is hereby issued to the Secretary, Ad-hoc Managing Committee, Hindi H.S. School to explain the reason within 10(ten) days as whey the Secretary, Ad-hoc Managing Committee did not comply the directions of the Director of School Education, Government of Tripura,

and

> **On failure to comply with the directions as stated above, the Secretary, Ad-hoc Managing Committee is hereby asked why the Director of School Education, Govt. of Tripura shall not suspend the release of Grant-in-Aid to Hindi H.S. School as per Rule 10 of 'The Tripura Grant-in-Aid (Government Aided School) Rules 2005',**
>
> **The Secretary, Ad-hoc Managing Committee is hereby given the opportunity to explain to his defence within 10(ten) days in writing from the date of receipt of this notice. If no reply received, the Director of School Education shall have the powers to take ex-parte as per Rule 6 (b)."**

[6] In reply to the said show cause notice dated 08.11.2014, the petitioner having referred to the Articles 29 and 30 of the Constitution has questioned the interference as sought to be made by way of the said show cause. But finally, they had given some replies to the allegations made in the said show cause. Subsequently, by a communication under No.F.15(1-18)-SE/GIA/2011/5623 dated 28.02.2015, Anenxure-17 to the writ petition, the petitioner was informed of the decision of the higher authority of Education (School Department) which is as under:

> **"The Management of Hindi H/S School should follow 'The Tripura Grant-in-Aid (Govt. Aided School) Rules, 2005' if they want Grant-in-Aid i.e. financial aids form the State Government. Any violation of Grant-in-Aid rules shall be viewed seriously."**

The petitioner was categorically informed that their proposal for approval of the special constitution of Hindi H.S. School has not been accepted by 'the competent authority'. On the same date i.e. 28.02.2015, another notice under No.15(1-39)-SE/GIA/2014/5681, Annexure-P/18 to the writ petition, was issued to the petitioner in contemplation of taking action under Rule 10 of the Grant-in-Aid (Government Aided Schools)

Rules, 2005, hereinafter referred to as the Grant-in-Aid Rules. For purpose of substantive reference, the entire text of the said notice dated 28.02.2015 is extracted hereunder:

> **"N O T I C E**
>
> **WHEREAS, the Secretary, Ad-Hoc School Managing Committee, Hindi H.S. School, Abhoynagar, Agartala, West Tripura was issued a show cause notice, vide No.15(1-39)-SE/GIA/2014/3924 dated 08.11.2014 asking him to explain as to why the Ad-hoc Managing Committee did not comply with the directions given by the Director, School Education and to reply within 10 days from the date of receipt of the aforesaid notice;**
>
> **AND**
>
> **WHEREAS, in response to the aforesaid show cause notice, the Secretary of the Ad-hoc Managing Committee of the said School submitted a reply vide No.F.1-HHSS/ESTT/34/2014 dated 19.11. 2014 but the reply was not satisfactory;**
>
> **AND**
>
> **WHEREAS, in order to give a opportunity the undersigned invited the Secretary of the Ad-hoc Managing Committee to attend to clarify the position and accordingly, the meeting was held on 19.12.2014 with Sri Tarun Kumar Jain, Secretary, Ad-hoc School Managing Committee, Sri Rajendra Kumar Jain, Member, Hindi School Trusty Board and Branch Officer, Grant-in-Aid Section;**
>
> **AND**
>
> **WHEREAS, the meeting was attended by the Sri Tarun Kumar Jain, Secretary, Ad-hoc School Managing Committee, Sri Rajendra Kumar Jain, Member, Hindi School Trusty Board and Branch Officer, Grant-in-Aid section and as per decisions taken in the meeting, the Ad-hoc Managing Committee was asked to take the following steps:**
>
> **1) the Seniority list of teaches should be finalized within one month;**
>
> **2) the Ad-hoc Committee shall be re-constituted by conducting election by 31st January, 2015 as the existing Committee has already superseded the usual tenure of 3 years;**
>
> **3) the newly created post of Asstt. Headmaster shall be filled up by promotion to the senior-most Post Graduate Teacher (PGT) having requisite qualification on the basis of the final seniority list of teachers;**
>
> **4) the Right of Children to Free and Compulsory Education Rules (Tripura), 2011 shall be followed by the Managing Committee;**
>
> **5) The subscription be collected from the students as per rate fixed by the School**

Education Department among other points of decision;

AND

WHEREAS, the said Ad-hoc School Managing Committee has not yet complied with the decisions taken in the aforementioned meeting even after more than two months from the date of holding the meeting.

AND

WHEREAS, Hindi H.S. School shall, for the purpose of management and other activities be guided by the provisions of the Tripura Grant-in-Aid (Government-Aided Schools) Rules, 2005.

NOW, THEREFORE, in accordance with the provisions of Rule-10 of the Tripura Grant-in-Aid (Government Aided Schools) Rules, 2005, the Secretary, Ad-hoc School Managing Committee of Hindi H.S. School, Abhoynagar, Agartala, West Tripura is hereby asked to explain as to why action in terms of release of Grant-in-Aid School not be postponed in favour of Hindi H.S. School until the compliance of the above mentioned instruction is done by the School authority. The reply must reach the office of the undersigned within 7(seven) days from the date of receipt of this notice, failing which ex-parte decision shall be taken."

[7] Both the decisions as communicated by the letter dated 28.02.2015, Annexure-P/17 to the writ petition and the said notice dated 28.02.2015, Annexure-P/18 to the writ petition, hereinafter would be referred to respectively as the impugned decision or the decision and the impugned notice or the notice, have been challenged by means of this writ petition, on the ground that since the petitioner is a minority institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act, 2000 it has right to administer the educational institutions as per their own procedure. There is no dispute as regards the status of the petitioner. The petitioner's objection hovers around the province that the Grant-in-Aid Rules cannot by any means affect the right to administer the minority school. Hence, the decision and the notice dated 28.02.2015 are infringement on

the said right as protected under Articles 29 and 30 of the Constitution. For purpose of reference, both the Articles 29 and 30 are extracted hereunder:

> **"29. Protection of interests of minorities**
>
> **(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same**
>
> **(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them**
>
> **30. Right of minorities to establish and administer educational institutions**
>
> **(1) <u>All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice</u>**
>
> **(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause**
>
> **(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."**
>
> **[Emphasis added]**

[8] The petitioner has asserted that under Article 30(1) the minorities, here the jains, has right to administer the educational institution, which they have established, of their choice.

[9] Mr. A. Bhowmik, learned counsel appearing for the petitioner has submitted that in a plethora of decisions, the apex court has observed that right to establish and administer the minority institution by the minorities is non-negotiable.

Even the State cannot discriminate the minority institutions, within the ambit of Article 30(1) of the Constitution, in the matter of providing grants and other benefits. Mr. Bhowmik, learned counsel has further submitted that it is true that even though the words of Article 30(1) are unqualified, the apex court has held that right under Article 30(1) is not absolute or above other provisions of law. He has submitted that the same analogy has been followed by the apex court by holding that there is no reason why regulations and conditions concerning, generally the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere. As according to the apex court [**TMA Pai Foundation & Ors. vs. State of Karnataka**, reported in **(2002) 8 SCC 481**], such provisions do not in any way interfere with the right of administrational management under Article 30(1) of the constitutions. But Mr. Bhowmik, learned counsel has further submitted that such regulation much satisfy a dual test, the test of reasonableness and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons. Mr. Bhowmik, learned counsel while contending that the impugned decision and the notice if closely read would show that it has disregarded the constitutional protection as interpreted by the apex court. Clause-1 of Article 30 of the Constitution confers a right on all minorities whether they are based on religion or

languages, to establish and administer educational institution of their choice. The right conferred by the clause is an exclusive term and not subject to restriction. However, the minority institution cannot be allowed to fall below the standard excellence expected of educational institution or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be let with them, they may be compelled to live with others. Mr. Bhowmik, learned counsel has further submitted that the petitioner's school has been maintaining the standards of excellence and there is no allegation in that respect. Finally, Mr. Bhowmik, learned counsel appearing for the petitioner has summarised his submission referring what was observed **In Re: The Kerala Education Bill, 1957,** reported in **AIR 1958 SC 956** by the apex court that the educational institutions of the minorities are the different from educational institution established by the majority communities who require no special privilege or protection and yet the bill proposed to put in the same class of all educational institutions, though they had not the same characteristics and same equal burdens on unequal's. This indiscriminate application of the same provisions to different institutions having different characteristics and being unequal brings about a serious discrimination, violative of the equal protection clause of the constitution. Having referred this proposition, Mr. Bhowmik, learned counsel has submitted that the Grant-in-Aid Rules

cannot be equally imposed on the schools run by the majority communities or by the minority communities. The regulation, whatever for providing the Grant-in-Aid Rules, must recognize the right of the minorities to establish and administer their educational institutions of their choice. It cannot trample the constitutional guarantee as provided under Article 30(1).

[10] Mr. Bhowmik, learned counsel appearing for the petitioner has contended that the school does not have any relation with the TBSC and as such, they cannot be imposed as the competent authority for any purpose including for purpose of their managing committee.

[11] Mr. S. Deb, learned senior counsel appearing for the respondents has submitted that there is no quarrel with the interpretation as placed by the petitioner. But the petitioner has failed to show in this writ petition how the imposition of the Grant-in-Aid Rules what the school has been following since 01.09.1989 has all on a sudden encroached their autonomy within the meaning of Article 30(1) of the Constitution by means of the decision and the notice. The petitioner has been running the institution on Grant-in-Aid without abiding by its provisions which are mandatory in nature. There are serious allegations as to the financial management and the labour practice. Even they have not conformed to the provisions of the Grant-in-Aid Rules where it has provided that the Grant-in-Aid institution should have a duly elected managing committee being approved by the

Tripura Board of Secondary Education. Such managing committee, according to the Rule 3(g) of the Grant-in-Aid Rules, is bound to adopt a resolution to the effect that it shall abide by the existing instruction and rules and regulations of the Education (School Department). He has further submitted that the Government has the authority under Rule 10 to withdraw the grant if it is found that the school is not fulfilling any terms and conditions of the grant or violating valid instructions of the Director of School Education of the State Government or taking contrary action which is violative or in conflict with the various instructions and rules, the Government can either withdraw the Grant-in-Aid status or stop payment of grant by issuing a speaking order after allowing a reasonable opportunity of hearing.

[12] Mr. Deb, learned senior counsel has submitted that the allegations are not met with satisfactory replies. Having referred to the Para-25 of the counter affidavit filed by the respondents, Mr. Deb, learned senior counsel has contended that if the petitioner is not willing to hold the election for re-constitution of the management committee under the Grant-in-Aid Rules, they should surrender the Grant-in-Aid status of the school. In the Para-7 of the counter affidavit they have given the formation of the managing committee in a Grant-in-Aid school. Even on request of the respondents to constitute a full-fledged managing committee, the school has not constituted such committee and there is no managing committee in Hindi

H.S. School after 22.06.2014. According to Mr. Deb, learned senior counsel such defiance is a serious violation of the Grant-in-Aid Rules, which persuaded the respondents to view it seriously. In a meeting held on 19.12.2014, the Secretary of the Ad-hoc Managing Committee of Hindi H.S. School was advised to take actions which are as under:

> (a) to finalise the seniority list within one month (Dec, 2014)
> (b) to reconstitute the Managing Committee by conducting Election within 31.01.2015.
> (c) to fill-up the vacant post of Assistant Headmaster on the basis of final seniority list.
> (d) to submit a fresh proposal to adopt separate Rules for management of the school after completion of re-constitution of the new Managing Committee.
> (e) until the new rules are framed, Hindi Higher Secondary School should follow the existing Grant-in-Aid Rules, 2005.
> (f) the school management should follow the 'Right of Children for Free and Compulsory Education Rules (Tripura), 2011'.
> (g) fees may be collected from the students as per rates fixed by the Education (School) Department.

[13] The proposal of the petitioner as was made in the alternative was clearly repelled and by the impugned notice, they have been asked to explain why the action as stipulated under Rule 10 of the Grant-in-Aid Rules shall not be taken

against the school. In the Para-25 of the counter affidavit, the respondents have asserted as under:

> **"25. That, in reply to averments and/or contentions made in Para 26 of the petition I state that, if the Ad-hoc Managing Committee or the Trust is not willing to hold the Election for reconstitution of the School Managing Committee under the Rules of 2005 then it should surrender the Grant-in-Aid status of the School. In that case State Government shall postpone to release of Grant-in-Aid. In that contingency the Trust shall exercise the full power for controlling and administering the Hindi Higher Secondary School. In those circumstances Hindi Higher Secondary School may run as Special Minority Institution. But, the financial liability for payment of monthly salaries of in service teachers and staff and pensionary benefits of retired teachers and staff should be taken by the Trust. At present the Secretary, Ad-hoc Managing Committee is the appointing authority of the teachers and staffs of Hindi Higher Secondary School. The State Government shall not take such financial liability."**

[14] While summing up his submissions, Mr. Deb, learned senior counsel has quite emphatically stated that the case of Ramkrishna Mission School as was referred by Mr. Bhowmik, learned counsel for the petitioner, cannot be compared with the school of the petitioner and hence, the proposal as advanced by the trust was not accepted by the State. He has further submitted that the writ petition is premature and there is no analogy why the petitioner shall not accept the regulatory regime introduced by way of the Grant-in-Aid Rules for extending Aid to that school. When the State grants aid to any institution in the public interest or for better public good they do attach conditionalities for purpose of optimum utilisation of the aid and to achieve the object for which the aid is provided. If the petitioner is uncomfortable for whatever reason they might have, they should surrender the Grant-in-Aid status. It is not discrimination against a minority

institution. The said action is based on ensuring good academic condition in the institution as well as for protection of the employees working under the said institution. The state cannot allow any aided institution to realize prohibiting fees or exorbitant amount in any other form after accepting the grant from the state, which is substantial in nature for meeting the financial requirement in managing the school. Mr. Deb, learned senior counsel has also reverberated that regulations for best practices towards excellence of education and welfare of the students and the employees cannot be treated in contravention to the constitutional guarantee as provided under Articles 30(1).

[15] Both Mr. Bhowmik, learned counsel for the petitioner as well as Mr. S. Deb, learned senior counsel for the respondents have placed reliance on the same set of decisions of the apex court interpreting the extent of Article 30(1) of the Constitution and those are as follows:

(a) **In Re : Kerala Education Bill, 1957,** reported in **AIR 1958 SC 956**

(b) **State of Kerala vs. Very Rev. Mother Provincial,** reported in **AIR 1970 SC 2079**

(c) **Ahmedabad St. Xavier's College Society & Anr. vs. State of Gujarat & Anr.,** reported in **(1974) 1 SCC 717.**

(d) **Frank Authority Public School Employees Association vs. Union of India,** reported in **AIR 1987 SC 311.**

(e) **St. Stephen's College vs. University of Delhi,** reported in **(1992) 1 SCC 558.**

(f) **TMA Pai Foundation & Ors. vs. State of Karnataka,** reported in **(2002) 8 SCC 481**

(g) **Islamic Academy of Education vs. State of Karnataka,** reported in **(2003) 6 SCC 697**

(h) **P.A. Inamdar & Ors. vs. State of Maharashtra, reported in (2005) 6 SCC 537**

(i) **Sindhi Education Society & Anr. vs. Chief Secretary, Government of NCT of Delhi and others**, reported in **(2010) 8 SCC 49**

The relevant part of those reports as referred by the learned counsel for the parties would be taken care of, for sake of brevity and to avert repetitions, in the subsequent part of the judgment.

[16] If the position taken by the petitioner is closely observed, it would be apparent that by the right to administer as provided under Article 30(1) of the Constitution they want unbridled right to choice in management including the right to engage teaching and non-teaching employees, right to have absolute control on admission of the students and to use the properties and assets for benefit of its own institution. However, the petitioner has, in view of the law as developed, conceded to that the regulatory regime can be allowed to operate to a permissible extent which is limited to the following aspects:

(i) Guidelines for efficiency and excellence of educational standards

(ii) Regulations ensuring the security of the service of the teachers or other employees.

(iii) Framing of rules and regulations governing the conditions of service of teachers and employees and their pay and allowances.

(iv) Appointing a high official with authority and guidance to oversee that rules regarding conditions of service are not violated but however, such authority should not be given un-channelized and arbitrary powers.

(v) Prescribing Courses of study or syllabi or the nature of books.

(vi) Regulation in the interest of efficiency of instruction, discipline, health, sanitation, morality, public order, etc.

But the petitioner has strongly advanced the plea that there cannot be any regulation which curbs the autonomy of the minority educational institution either directly or by the nominee in the managing committee of the school. No regulation can be allowed to interfere with the management autonomy, meaning the management shall be left to function beyond any control by the State. The petitioner has further asserted that in absence of the regulatory regime as introduced by the Grant-in-Aid Rules, the State shall not be in a position to withdraw the Grant-in-Aid. Even for non-compliance of forming the managing committee in terms of the Grant-in-Aid Rules cannot be treated as contravention to take action under the said Rule 10. Any action contrary thereof, would be violative of Article 30(2) of the Constitution which expressly provides that the State shall not in Grant-in-Aid to an educational institution, discriminate any educational

institution on the ground that it is under the management of a minority community whether based on religion or language. The respondents' position hardly differs from the position taken by the petitioner. The controversy rages as to the limits of the regulatory measures that may be imposed by the State for extending the Grant-in-Aid. According to the State, even if the Grant-in-Aid Rules is accepted, there will be no deficiency in the autonomy of management but the State cannot provide aid to any institution without attaching conditions or ensuring its proper utilization for achieving the object for which such aid is provided. If the petitioner is not inclined, they should either surrender the Grant-in-Aid status or observe the obligations as provided in the Grant-in-Aid Rules or the instruction as would be given by the State from time to time. The State is within its competence to take action for violation of the regime as stated and that cannot be stated to be encroachment on their autonomy. The autonomy in the context cannot be given a meaning which would warrant the State to waive all such regulations for providing the aid.

[17] Before this Court charts the development of law, it would be apposite to examine the contentions as raised by the petitioner that the petitioner cannot be asked to hold election under the Management of Recognised Non Governmental Institution (aided and unaided) 1969 framed by the State of West Bengal and adopted by the State of Tripura under Section 29 of the Tripura Board of Secondary Education Act,

1973 inasmuch as the school is affiliated to the Central Board of Secondary Education (CBSE) and not under the Tripura Board of Secondary Education (TBSE, in short). Rule 2(K) of the Grant-in-Aid Rules has defined the managing committee as the managing committee as approved by the Tripura Board of Secondary Education. The contention of the petitioner that there is no rule/instruction as to form the managing committee by election cannot be accepted inasmuch as in the Para-7 of the counter affidavit filed by the respondents the pattern and formation of the managing committee has been given elaborately on the basis of the instruction issued by the respondents. In the rejoinder filed by the petitioner, no objection has been taken regarding the pattern and formation of the managing committee as per instruction but the petitioner has raised objection as to its applicability in the minority institution in view of Article 30(1) of the Constitution. Only because the petitioner is affiliated to the CBSE, the petitioner cannot be allowed to hold that the approval required from the TBSE cannot be applicable to their institution. This is for a limited purpose only, for purpose of approving the managing committee as elected on observance of the required procedure. TBSE has not been contemplated to exercise any control over the management of the petitioner's institution. Their role is limited to that of an independent monitor having limited power to give approval to the formation of the managing committee. The State cannot, by exercise of its

authority, ask any Central Government Institution to discharge the similar function by the executive rules. Thus, this objection as raised, the petitioner does not hold any substance. However, this has no nexus with the plea raised based on the constitutional guarantee provided by Article 30(1) of the Constitution. Even the plea as raised based on Article 30(2) of the Constitution is so remote inasmuch as there is no question before this Court whether the State acted indulging indiscrimination in providing Grant-in-Aid that this Court finds that any consideration on these aspects is at all called for. The sole question that calls for consideration is the extent of regulation by the State in the matter of administration of the minority institution. It can be more particularly said that whether either by imposing Grant-in-Aid Rules or by other means the State can impose a managing committee of their pattern or formation to sub-serve their absolute control.

[18] In **In Re : The Kerala Education Bill** *(supra),* the apex court has observed as under:

> **"18. A further possibility of discrimination is said to arise as a result of the application of the same provisions of the Bill to all schools which are not similarly situate. The argument is thus developed : The Constitution, it is pointed out, deals with the schools established by minority communities in a way different from the way it deals with other schools. Thus Anglo-Indian schools are given grants under Art. 337 of the Constitution and educational institution started by all minority communities including the Anglo-Indians are protected by Arts. 29 and 30. The educational institutions of the minorities are thus different from the educational institutions established by the majority communities who require no special privilege or protection and yet the Bill purports to put in the same class all educational institutions although they have not the same characteristics and place equal burdens on unequals. This**

indiscriminate application of the same provisions to different institutions having different characteristics and being unequal brings about a serious discrimination violative of the equal protection clause of the Constitution. In support of this argument reliance is placed on the decision of the American Supreme Court in *Cumberland Coal Co. v. Board of Revision [1931] 284 U.S. 23*. That decision, in our judgment, has no application to the facts of the case before us. There the taxing authorities assessed the owners of coal lands in the city of Cumberland by applying a flat rate of 50 per cent not on the actual value of the properties but on an artificial valuation of $ 260 per acre arbitrarily assigned to all coal lands in the city irrespective of their location. It was not disputed that the value of properties which were near the river-banks or close to the railways was very much more than that of properties situate far away from the river-banks or the railways. The artificial valuation of $ 260 per acre was much below the actual value of the properties which were near the river-banks or the railways, whereas the value of the properties situate far away from the river-bank or the railways was about the same as the assigned value. The result of applying the equal rate of tax, namely, 50 per cent on the assigned value was that the owners of more valuable properties had to pay much less than what they would have been liable to pay upon the real value of those properties. Therefore, the method of assessment worked out clearly to the disadvantage of the owners of properties situate in the remoter parts of the city and was obviously discriminatory. There the discrimination was an integral part of that mode of taxing. That is not the position here, for there is no discrimination in the provisions of the said Bill and consequently the principle of that decision can have no application to this case. This does not, however, conclude the matter and we have yet to deal with the main argument that the Bill does not lay down any policy or principle for the guidance of the Government in the exercise of the wide powers vested in it by the Bill.

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20. Re. Question 2 : Articles 29 and 30 are set out in Part III of our Constitution which guarantees our fundamental rights. They are grouped together under the sub-head `Cultural and Educational Rights'. The text and the marginal notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of the community which constitute minority communities. Under clause (1) of Art. 29 any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own has the right to conserve the same. It is obvious that a minority community can effectively conserve its language, script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institutions of its choice is a necessary concomitant to the right to conserve its distinctive language, script or culture and that is what is conferred on all minorities by Art. 30(1) which has hereinbefore been quoted in full. This right, however, is subject to clause 2 of Art. 29 which provides that no citizen shall be denied admission into any educational

institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

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23. Having disposed of the minor point referred to above, we now take up the main argument advanced before us as to the content of Art. 30(1). The first point to note is that the Article gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the article say and means is that the religious and the linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the Article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children. The next thing to note is that the Article, in terms, 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. The key to the understanding of the true meaning and implication of the Article under consideration are the words 'of their own choice' It is said that the dominant word is 'choice' and the content of that Article is as wide as the choice of the particular minority community may make it. The ambit of the rights conferred by Art. 30(1) has, therefore, to be determined on a consideration of the matter from the points of view of the educational institutions themselves. The educational institutions established or administered by the minorities or to be so established or administered by them in exercise of the rights conferred by that Article may be classified into three categories, namely, (1) those which do not seek either aid or recognition from the State, (2) those which want aid, and (3) those which want only recognition but not aid.

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25. As regards the second category, we shall have to sub-divide it into two classes, namely, (a) those which are by the Constitution itself expressly made eligible for receiving grants, and (b) those which are not entitled to any grant by virtue of any

express provision of the Constitution but, nevertheless, seek to get aid.

26. Anglo-Indian educational institutions come within sub-category (a). An Anglo-Indian is defined in Art. 366(2). The Anglo-Indian community is a well-known minority community in India based on religion as well as language and has been recognised as such by this Court in *The State of Bombay v. Bombay Education Society : [1955] 1 SCR 568 at p. 583*. According to the figures set out in the statement of case filed by the two Anglo-Indian institutions represented before us by Shri Frank Anthony, about which figures there is no dispute, there are 268 recognised Anglo-Indian schools in India out of which ten are in the State of Kerala. Anglo-Indian educational institutions established prior to 1948 used to receive grants from the Government of those days. Article 337, presumably in view of the special circumstances concerning the Anglo-Indian community and to allay their natural fears for their future well being, preserved this bounty for a period of ten years. According to that Article all Anglo-Indian educational institutions which were receiving grants up to the financial year ending on March 31, 1948, will continue to receive the same grant subject to triennial diminution of ten per cent until the expiry of ten years when the grant, to the extent it is a special concession to the Anglo-Indian community, should cease. The second proviso imposes the condition that at least 40 per cent of the annual admissions must be made available to the members of communities other than the Anglo-Indian community. Likewise Art. 29(2) provides, inter alia, that no citizen shall be denied admission into any educational institution receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. These are the only constitutional limitations to the right of the Anglo-Indian educational institutions to receive aid. Learned counsel appearing for two Anglo-Indian schools contends that the State of Kerala is bound to implement the provisions of Art. 337. Indeed it is stated in the statement of case filed by the State of Kerala that all Christian schools are aided by that State and, therefore, the Anglo-Indian schools, being also Christian schools, have been so far getting from the State of Kerala the grant that they are entitled to under Art. 337. Their grievance is that by introducing this Bill the State of Kerala is now seeking to impose, besides the constitutional limitations mentioned in the second proviso to Art. 337 and Art. 29(2), further and more onerous conditions on this grant to the Anglo-Indian educational institutions although their constitutional right to such grant still subsists. The State is expressly applying to them the stringent provisions of Cls. 8(3), and 9 to 13 besides other clauses attracted by clause 3(5) of the Bill curtailing and, according to them, completely taking away, their constitutional right to manage their own affairs as a price for the grant to which, under Art. 337, they are entitled unconditionally except to the extent mentioned in the second proviso to that article and in Art. 29(2). Learned counsel for the State of Kerala does not seriously dispute, as indeed he cannot fairly do, that so far

as the grant under Art. 337 is concerned the Anglo-Indian educational institutions are entitled to receive the same without any fresh strings being attached to such grant, although he faintly suggests that the grant received by the Anglo-Indian educational institutions under Art. 337 is not strictly speaking 'aid' within the meaning of that word as used in the Bill. We are unable to accept that part of his argument as sound. The word 'aid' has not been defined in the Bill. Accordingly we must give this simple English word its ordinary and natural meaning. It may, in passing, be noted that although the word "grant" is used in Art. 337 the word 'aid' is used in Art. 29(2) and Art. 30(2), but there can be no question that the word "aid" in these two Articles will cover the 'grant' under Art. 337. Before the passing of the said Bill the Anglo-Indian educational institutions were receiving the bounty formerly from the State of Madras or Travancore-Cochin and after its formation from the present new State of Kerala. In the circumstances, the amount received by the Anglo-Indian institutions as grant under Art. 337 must be construed as 'aid' within the meaning of the said Bill and these Anglo-Indian educational institutions in receipt of this grant payable under Art. 337 must accordingly be regarded as 'aided schools' within the meaning of the definitions in clause 2, sub-cls. (1) and (6). The imposition of stringent terms as fresh or additional conditions precedent to this grant to the Anglo-Indian educational institutions will, therefore, infringe their rights not only under Art. 337 but also under Art. 30(1). If the Anglo-Indian educational institutions cannot get the grant to which they are entitled except upon terms laid down by the provisions of the Bill then, if they insist on the right of administration guaranteed to them by Art. 30(1) they will have to exercise their option under the proviso to clause 3(4) and remain content with mere recognition, subject to certain terms therein mentioned which may also be an irksome and intolerable encroachment on their right of administration. But the real point is that no educational institution can in modern times, afford to subsist and efficiently function without some State aid and, therefore, to continue their institutions they will have to seek aid and will virtually have to surrender their constitutional right of administering educational institutions of their choice. In the premises, they may, in our opinion, legitimately complain that so far as the grants under Art. 337 are concerned, the provisions of the clauses of the Bill mentioned in question 2 do in substance and effect infringe their fundamental rights under Art. 30(1) and are to that extent void. It is urged the learned counsel for the State of Kerala that this Court should decline to answer this question until rules are framed but if the provisions of the Bill are obnoxious on the face of them, no rule can cure that defect. Nor do we think that there is any substance in the argument advanced by learned counsel for Kerala that this Bill has not introduced anything new and the Anglo-Indian schools are not being subjected to anything beyond what they have been submitting to under the Education Acts and Codes of Travancore or Cochin or Madras. In 1945 or 1947 when those Acts and codes came into operation there were no fundamental rights and there can be

no loss of fundamental right merely on the ground of non-exercise of it. There is no case of estoppel here, assuming that there can be an estoppel against the Constitution. There can be no question, therefore, that the Anglo-Indian educational institutions which are entitled to their grants under Art. 337 are being subjected to onerous conditions and the provisions of the said Bill which legitimately come within question 2 as construed by us infringe their rights not only under Art. 337 but also violate their rights under Art. 30(1) in that they are prevented from effectively exercising those rights. It should be borne in mind that in determining the constitutional validity of a measure or a provision therein regard must be had to the real effect and impact thereof on the fundamental right. See the decisions of this Court in *Rashid Ahmad v. Municipal Board Kairana: 1950 SCR 566 at p.571, Mohd. Yasin v. The Town Area Committee, Jalalabad : 1952 SCR 572 at p. 577* and *The State of Bombay v. Bombay Education Societies* (supra).

27. Learned counsel for the State of Kerala next urges that each and every one of the Anglo-Indian educational institutions are getting much more than what they are entitled to under Art. 337 and that consequently, in so far as these Anglo-Indian educational institutions are getting more than what is due to them under Art. 337, they are, as regards the excess, in the same position as other Anglo-Indian educational institutions started after 1948 and the educational institutions established by other minorities who have no right to aid under any express provision of the Constitution but are in receipt of aid or seek to get it. This takes us to the consideration of the cases of the educational institutions which fall within sub-category (b) mentioned above, namely, the institutions which are not entitled to any grant of aid by virtue of any express provision of the Constitution but, nevertheless, seek to get aid from the State.

28. We have already seen that Art. 337 of the Constitution makes special provision for granting aid to Anglo-Indian educational institutions established prior to 1948. There is no constitutional provision for such grant of aid to educational institutions established by the Anglo-Indian community after 1948 or to those established by other minority communities at any time. The other minority communities or even the Anglo-Indian community in respect of post-1948 educational institutions have no constitutional right, fundamental or otherwise, to receive any grant from the State. It is, however, well-known that in modern times the demands and necessities of modern educational institutions to be properly and efficiently run require considerable expense which cannot be met fully by fees collected from the scholars and private endowments which are not adequate and, therefore, no educational institution can be maintained in a state of efficiency and usefulness without substantial aid from the State. Articles 28(3), 29(2) and 30(2) postulate educational institutions receiving aid out of State funds. By the bill now under consideration the State of Kerala also contemplates the granting of aid to educational institutions. The said Bill, however, imposes stringent terms as conditions

precedent to the grant of aid to educational institutions. The provisions of the Bill have already been summarised in detail in an earlier part of this opinion and need not be recapitulated. Suffice it to say that if the said Bill becomes law then, in order to obtain aid from State funds, an educational institution will have to submit to the conditions laid down in Cls. 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 20. Clause 36 empowers the Government to make rules providing for the giving of aids to private schools. Learned counsel appearing for the educational institutions opposing the Bill complain that those clauses virtually deprive their clients of their rights under Art.30(1).

29. Their grievances are thus stated : The gist of the right of administration of a school is the power of appointment, control and dismissal of teachers and other staff. But under the said Bill such power of management is practically taken away. Thus the manager must submit annual statements (Cl. 5). The fixed assets of the aided schools are frozen and cannot be dealt with except with the permission of the authorised officer (Cl. 6). No educational agency of an aided school can appoint a manager of its choice and the manager is completely under the control of the authorised officer, for he must keep accounts in the manner he is told to do and give periodical inspection of them, and on the closure of the school the accounts must be made over to the authorised officer (Cl. 7). All fees etc. collected will have to be made over to the Government (Cl. 8(3)). Government will take up the task of paying the teachers and the non-teaching staff (clause 9). Government will prescribe the qualification of teachers (clause 10). The school authorities cannot appoint a single teacher of their choice, but must appoint persons out of the panel settled by the Public Service Commission (Cl. 11). The school authorities must provide amenities to teachers and cannot dismiss, remove, reduce or even suspend a teacher without the previous sanction of the authorised officer (Cl. 12). Government may take over the management on being satisfied as to certain matters and can then acquire it outright (Cl. 14) and it can also acquire the aided school, again on its satisfaction as to certain matters on which it is easily possible to entertain different views (Cl. 15). Clause 20 peremptorily prevents a private school, which means an aided or recognised school, from charging any fees for tuition in the primary classes where the number of scholars are the highest. Accordingly they contend that those provisions do offend the fundamental rights conferred on them by Art. 30(1).

30. Learned counsel appearing for the State of Kerala advances the extreme contention that Art. 30(1) confers on the minorities the fundamental right to establish and administer educational institutions of their choice and nothing more. They are free to exercise such rights as much as they like and as long as they care to do so on their own resources. But this fundamental right goes no further and cannot possibly extend to their getting financial assistance from the coffers of the State. If they desire or seek to obtain aid from the State, they must submit to the terms on which the State offers aid to all other educational institutions

established by other people just as a person will have to pay 15 naye paise if he wants to buy a stamp for an inland letter. Learned counsel appearing for the two Anglo-Indian schools as well as learned counsel appearing for the Jamait-ul-ulema-i-Hind, on the other hand, insist in their turn, on an equally extreme proposition, namely, that their clients' fundamental rights under Art. 30(1) are, in terms, absolute and not only can it not be taken away but cannot even be abridged to any extent. They draw our attention first to Art.30(1) which confers on the citizens the fundamental right to carry on any business and then to clause 6 of that article which permits reasonable restrictions being imposed on that fundamental right and they contend that, as there is no such provision in Art. 30(1) conferring on the State any police power authorising the imposition of social control, the fundamental rights under Art. 30(1) must be held to be absolute and cannot be subjected to any restriction whatever. They reinforce their arguments by relying on Arts. 28(3), 29(2) and 30(2) which, they rightly submit, do contemplate the grant of aid to educational institutions established by minority communities. Learned counsel also strongly rely on Arts. 41 and 46 of the Constitution which, as directive principles of State policy, make it the duty of the State to aid educational institutions and to promote the educational interests of the minorities and the weaker sections of the people. Granting of aid to educational institutions is, according to learned counsel, the normal function of the Government. The Constitution contemplates institutions wholly maintained by the State, as also institutions receiving aid from the State. If, therefore, the granting of aid is a governmental function, it must, they say, be discharged in a reasonable way and without infringing the fundamental rights of the minorities. There may be no fundamental right given to any person or body administering an educational institution to get aid from the State and indeed if the State has not sufficient funds it cannot distribute any. Nevertheless if the State does distribute aid it cannot, they contend, attach such conditions to it as will deprive the minorities of their fundamental rights under Art. 30(1). Attaching stringent conditions, such as those provided by the said Bill and summarised above, is violative of the rights guaranteed to the minorities by Art. 30(1). Surrender of fundamental rights cannot, they conclude, be exacted as the price of aid doled out by the State.

31. We are thus faced with a problem of considerable complexity apparently difficult of solution. There is, on the one hand the minority rights under Art. 30(1) to establish and administer educational institutions of their choice and the duty of the Government to promote education, there is, on the other side the obligation of the State under Art. 45 to endeavour to introduce free and compulsory education. We have to reconcile between these two conflicting interests and to give effect to both if that is possible and bring about a synthesis between the two. The directive principles cannot ignore or override the fundamental rights but must, as we have said, subserve the fundamental rights. We have already observed that

Art. 30(1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to mal-administer. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided. Learned Attorney-General concedes that reasonable regulations may certainly be imposed by the State as a condition for aid or even for recognition. There is no right in any minority, other than Anglo-Indians, to get aid, but, he contends, that if the State chooses to grant aid then it must not say - "I have money and I shall distribute aid but I shall not give you any aid unless you surrender to me your right of administration." The State must not grant aid in such manner as will take away the fundamental right of the minority community under Art. 30(1). Shri G. S. Pathak appearing for some of the institutions opposing the Bill agrees that it is open to the State to lay down conditions for recognition, namely, that an institution must have a particular amount of funds or properties or number of students or standard of education and so forth and it is open to the State to make a law prescribing conditions for such recognition or aid provided, however, that such law is constitutional and does not infringe any fundamental right of the minorities. Recognition and grant of aid, says Shri G. S. Pathak, is the governmental function and, therefore, the State cannot impose terms as condition precedent to the grant of recognition or aid which will be violative of Art. 30(1). According to the statement of case filed by the State of Kerala, every Christian school in the State is aided by the State. Therefore, the conditions imposed by the said Bill on aided institutions established and administered by minority communities, like the Christians, including the Anglo-Indian community, will lead to the closing down of all these aided schools unless they are agreeable to surrender their fundamental right of management. No educational institutions can in actual practice be carried on without aid from the State and if they will not get it unless they surrender their rights they will, by compulsion of financial necessities, be compelled to give up their rights under Art. 30(1). The legislative powers conferred on the legislatures of the States by Arts. 245 and 246 are subject to the other provisions of the Constitution and certainly to the provisions of Part III which confers fundamental rights which are, therefore, binding on the State legislatures. The State legislatures cannot, it is clear, disregard or override those provisions merely by employing indirect methods of achieving exactly the same result. Even the legislature cannot do indirectly what it certainly cannot do directly. Yet that will be the effect of the application of these provisions of the Bill and

according to the decisions of this Court already referred to it is the real effect to which regard is to be had in determining the constitutional validity of any measure. Clauses 6, 7, 9, 10, 11, 12, 14, 15 and 20 relate to the management of aided schools. Some of these provisions, e.g., 7, 10, 11(1), 12(1)(2)(3) and (5) may easily be regarded as reasonable regulations or conditions for the grant of aid. Clauses 9, 11(2) and 12(4) are, however, objected to as going much beyond the permissible limit. It is said that by taking over the collections of fees, etc., and by undertaking to pay the salaries of the teachers and other staff the Government is in reality confiscating the school fund and taking away the prestige of the school, for none will care for the school authority. Likewise clause 11 takes away an obvious item of management, for the manager cannot appoint any teacher at all except out of the panel to be prepared by the Public Service Commission, which, apart from the question of its power of taking up such duties, may not be qualified at all to select teachers who will be acceptable to religious denominations and in particular sub-clause (2) of that clause is objectionable for it thrusts upon educational institutions of religious minorities teachers of Scheduled Castes who may have no knowledge of the tenets of their religion and may be otherwise weak educationally. Power of dismissal, removal, reduction in rank or suspension is an index of the right of management and that is taken away by clause 12(4). These are, no doubt, serious inroads on the right of administration and appear perilously near violating that right. But considering that those provisions are applicable to all educational institutions and that the impugned parts of Cls. 9, 11 and 12 are designed to give protection and security to the ill paid teachers who are engaged in rendering service to the nation and protect the backward classes, we are prepared, as at present advised, to treat these clauses 9, 11(2) and 12(4) as permissible regulations which the State may impose on the minorities as a condition for granting aid to their educational institutions. We, however, find it impossible to support cls. 14 and 15 of the said Bill as mere regulations. The provisions of those clauses may be totally destructive of the rights under Art. 30(1). It is true that the right to aid is not implicit in Art. 30(1) but the provisions of those clauses, if submitted to on account of their factual compulsion as condition of aid, may easily be violative of Art. 30(1) of the Constitution. Learned counsel for the State of Kerala recognizes that Cls. 14 and 15 of the Bill may annihilate the minority communities' right to manage educational institutions of their choice but submits that the validity of those clauses is not the subject-matter of question 2. But, as already explained, all newly established schools seeking aid or recognition are, by clause 3(5), made subject to all the provisions of the Act. Therefore, in a discussion as to the constitution validity of clause 3(5) a discussion of the validity of the other clauses of the Bill becomes relevant, not as and by way of a separate item but in determining the validity of the provisions of clause 3(5). In our opinion, sub-clause 3 of clause 8 and Cls. 9, 10, 11, 12 and 13 being merely regulatory do not offend Art.30(1), but the provisions of sub-clause (5) of clause 3 by making the aided educational

> **institutions subject to Cls. 14 and 15 as conditions for the grant of aid do offend against Art. 30(1) of the Constitution."**

[19] The apex court has restated the law similarly in **State of Kerala vs. Very Rev. Mother Provincial,** reported in **AIR 1970 SC 2079**.

[20] Further, the apex court in **Ahmedabad St. Xavier's College Society & Anr. vs. State of Gujarat & Anr.,** reported in **(1974) 1 SCC 717,** the apex court had occasion to observe as under:

> **"9. Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Articles 25 and 26 and rights in respect of language, script, culture as contemplated hi .Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality.**
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> **19. The entire controversy centers round the extent of the right of the religious and linguistic minorities to administer their educational institutions. The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee of body consisting of persons selected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution.**
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> **20. The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not in 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 *Kerata Education***

Bill **case (supra) 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 mal-administer.**

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31. Regulations which will serve the interest 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.

32. Education should be a great cohesive force in developing integrity of the nation. Education develops the ethos of the nation. Regulations are, therefore, necessary to see that there are no divisive or disintegrating forces in administration.

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41. Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is a part of the administration. The university will always have a right to see that there is no mal-administration. If there is mala administration, the university will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students. In *State of Kerala v. Very Rev. Mother Provincial etc.* (supra) this Court said that if the administration goes to a body in the selection of whom the founders have no say, the administration would be displaced. This Court also said that situations might be conceived when they might have a preponderating voice. That would also affect the autonomy in administration. The provisions contained in Section 33A(i)(a) of the Act have the effect of displacing the management and entrusting it to a different agency. The autonomy in administration is lost. New elements in the shape of representatives of different type are brought in. The calm waters of an institution will not only be disturbed but also mixed. These provisions in Section 33A(1)(a) cannot therefore apply to minority institutions.

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47. <u>In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration</u>.

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74. Clause (1) of Article 30 gives right to all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. Analysing that Clause it would follow that the right which has been conferred by the Clause is on two types of minorities. Those minorities may be based either on religion or on language. The right conferred upon the said minorities is to establish and administer educational institutions of their choice. The word 'establish' indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the affairs of the institution.. Administration connotes management of the affairs of the institution. The 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 interest of the community in general and the institution in particular will be best served. The words 'of their choice' qualify the educational institutions and show that the educational 'institutions established and administered by the minorities need not be of some particular class; the minorities have the right and freedom to establish and administer such educational institutions as they choose. Clause (2) of Article 30 prevents the State from making discrimination in the matter of grant of aid to any educational institution on the ground that the institution is under the management of a minority whether based on religion or language.

* * * *

90. 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 mal-administer. 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 (fee observations of Shah J. in *Rev. Sidhajbhai Sabhai,*

supra, p. 850). Further, as observed by Hidayatullah CJ. 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.

91. 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 incharge 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 inhibit 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.

92. 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. Such a right cannot be allowed to be whittled down by any

measure masquerading as a regulation. As observed by this Court in the case of Rev. *Sidhajbhai Sabhai* (supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution effective as an educational institution. Such regulation must satisfy a dual test-the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

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94. If a request is made for the affiliation or recognition of an educational institution, it is implicit in the request that the educational institution would abide by the regulations which are made by the authority granting affiliation or recognition. The said authority can always prescribe regulations and insist that they should be complied with before it would grant affiliation or recognition to an educational institution. To deny the power of making regulations to the authority concerned would result in robbing the concept of affiliation or recognition until it conforms to a certain standard. The fact that the institution is of the prescribed standard indeed inheres in the very concept of affiliation or recognition. It is, therefore, permissible for the authority concerned to prescribe regulations which must be complied with before an institution can seek and retain affiliation and recognition. 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.

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95. It has not been disputed on behalf of the petitioners that if the State or other statutory authorities make reasonable regulations for educational institutions, those regulations would not violate the right of a minority to administer educational institutions. We agree with the stand taken by the petitioners in this respect. It would be wrong to assume that an unrestricted right as in Article 30 postulates absence of regulations. Regulations can be prescribed in spite of the unrestricted nature of the right. The unrestricted nature of the right connotes freedom in the exercise of the right. Even the words 'freedom' and

'free' have certain limitations. In *James v. The Commonwealth* : *(1936) A.C. 578* the Privy Council dealt with the meaning of the words 'absolutely free' in Section 92 of the Constitution of Australia. It was said :

> **'Free' in itself is vague and indeterminate. It must take its colour from the context. Compare for instance, its use in free speech, free love, free dinner and free trade. Free speech does not mean free speech; it means speech hedged in by all the laws against defamation, blasphemy, sedition and so forth; it means freedom governed by law,....'**

The First Amendment of the American Constitution provides inter alia that the Congress shall make no law respecting establishment of religion or prohibiting the free exercise thereof. Dealing with that Amendment, the US Supreme Court held in the case of *Reynolds v. United States: 98 U. S. 145 (1878)* that that Amendment did not deprive the Congress of the power to punish actions which were in violation of social duties or subversive of good order. The contention advanced on behalf of the appellant in that case that polygamy was a part of his religious belief and the Act of the Congress prohibiting polygamy violated his free exercise of religion was repelled. In the case of *Cantwell v. Connecticut : 310 U.S. 296 (1940)* Roberts J. speaking for the US Supreme Court observed in respect of the First Amendment :

> **'Thus the Amendment embraces two concepts-freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection.'**

Similar view was expressed by Latham CJ. in the case of *Adelaide Company of Jehovah's Witnesses Inc.* (supra); while dealing with Section 116 of the Australian Constitution when he said that 'obligation to obey the laws which apply generally to the community is not regarded as inconsistent with freedom'. It would, therefore, follow that the unrestricted nature of a right does not prevent the-making of regulations relating to the enforcement of that right.

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99. Argument has been advanced on behalf of the respondents that unless a law or regulation is wholly destructive of the right of minorities under Article 30(1), the same would not be liable to be struck down. This argument is untenable and runs counter to the plain language of Article 13. According to that article, a law would be void even if it merely abridges a fundamental right guaranteed by Part III and does not wholly take away that right. The argument that a law or regulation could not be deemed to be unreasonable unless it was totally destructive of the right of the minority to administer educational institutions was

expressly negatived by this Court in the case of *Rev. Sidhajbhai Sabhai* (supra). After referring to the case of *Re. Kerala Education Bill* (supra) this Court observed in the case of *Rev. Sidhjbhai Sabhai*:

> **'The Court did not, however, lay down any test of reasonableness of the regulation. The Court did not decide that public or national interest was the sole measure or test of reasonableness: it also did not decide that a regulation would be deemed unreasonable only if it was totally destructive of the right of the minority to administer educational institution. No general principle on which reasonableness' or otherwise of a regulation may be tested was sought to be laid down by the Court. The Kerala Education Bill case, therefore, is not an authority for the proposition submitted by the Additional Solicitor General that all regulative measures which are not destructive or annihilative of the character of the institution established by the minority, provided the regulations are in the national interest or public interest, are valid.'**

* * * *

172. In considering the question whether a regulation imposing a condition subserves the purpose for which recognition or affiliation is granted, it is necessary to have regard to what regulation the appropriate authority may make and impose in respect of an educational institution established and administered by a religious minority and receiving no recognition or aid. Such an institution will, or course, be subject to the general laws of the land like the law of taxation, law relating to sanitation, transfer of property, or registration of documents, etc., because they are laws affecting not only educational institutions established by religious minorities but also all other persons and institutions. It cannot be said that by these general laws, the State in any way takes away or abridges the right guaranteed under Article 30(1). Because article 30(1) is couched in absolute terms, it does not follow that the right guaranteed is not subject to regulatory laws which would not amount to is abasement. It is a total misconception to say that because the right is couched in absolute terms, the exercise of the right cannot be regulated or that every regulation of that right would be an abridgement of the right Justice Holmes said in *Hudson Country Water Co., v. McCarter: 209 U. S. 349* :

> **'All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighbourhood of principles of policy which are other than those on which the particular right is funded, and which become strong enough to hold their own when a certain point is reached.'**

No right, however absolute, can be free from regulation. The Privy Council said in *Commonwealth of Australia v. Bank of New South Wales : 1950 A. C. 235* that regulation of freedom of trade and commerce is compatible with their

> **absolute freedom; that Section 92 of the Australian Commonwealth Act is violated only when an Act restricts commerce directly and immediately as distinct from creating some indirect or consequential impediment which may fairly be regarded as remote. Likewise, the fact that trade and commerce are absolutely free under Article 301 of the Constitution is compatible with their regulation which will not amount to restriction."**

[21] In a subsequent decision in **Frank Anthony Public School Employees Association vs. Union of India,** reported in **AIR 1987 SC 311**, the apex court had occasion to revisit the law as to the autonomy of the minority institution in administering it and observed as under:

> **"8. The content of the Fundamental Right guaranteed by Article 30(1) of the Constitution has been the subject of several decisions of this Court. The leading case is that a Constitution bench of seven judges, *In re The Kerala Education Bill , 1957* : *AIR 1958 SC 956*. In an oft quoted passage S.R. Das, Chief Justice, explained the content of Article 30(1) as follows:**
>
> > **'The first point to note is that the article gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the article says and means is that the religious and the linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children. The next thing to note is that the article, in terms, 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. The key to the understanding of the true meaning and implication of the article under consideration are the words 'of their own choice'. It is said that the dominant words is 'choice' and the content of that article is as wide as the choice of the particular minority community may make it. The ambit of the rights conferred by Article 30(1) has, therefore, to be determined on a consideration of the matter from the points of view of the educational institutions themselves.'**

Educational Institutions, it was said, could be classified into three categories(1) those which did not seek aid or recognition from the State (2) those which sought aid and (3) those which wanted recognition only but not aid. It was said that the institutions of the first category were outside the scope of the Kerala Education Bill the question of vires of whose provisions was referred to the court in the reference. In the second category of schools, it was pointed out, there were two classes, those entitled to receive grants under the Constitution and those which were not entitled to any grant under any provision of the Constitution, but, nevertheless, sought aid. Under Article 337 of the Constitution, Anglo-Indian Schools which were receiving the grant upto March, 31, 1948 were entitled to receive the grants for a period of ten years subject to a graded triennial diminution. Anglo-Indian Schools which were receiving grants, but not more than what they were entitled to receive under Article 337 of the Constitution, came within the first class of the second category and it was held that their Constitutional right to receive the grant could not be subjected to any restrictions as those sought to be imposed by the provisions of the Kerala Education Bill. Any attempt to impose any such restrictions on Anglo-Indian Schools which received no more aid than that to which they were entitled to receive under the Constitution would infringe their rights under Article 337 and under Article 30(1) of the Constitution. We may straight away mention here that the period of ten years stipulated by Article 337 having expired there is now no question of Anglo-Indian Schools being entitled to any special protection. Shri Frank Anthony sought to argue that what was truly decided by the Court was that any condition imposed for granting recognition to unaided minority Educational Institutions would infringe on the right of administration granted to them by Article 30(1)of the Constitution. <u>We do not read the decision as laying down any such proposition. What was decided was that Anglo-Indian Schools which were entitled to receive grants under the Constitution and which received no more aid than that to which they were entitled under the Constitution could not be subjected to stringent terms as fresh or additional conditions precedent to enable then to obtain the grant. Such conditions would infringe their rights under Article 337 and violate their rights under Article 30(1)</u>. To place an interpretation as that suggested by Shri Anthony would be subversive of the right guaranteed by

Article 30(1) since it would make the extent of the right depend on the receipt or non-receipt of aid. If one thing is clear, it is this that the Fundamental Right guaranteed by Article 30(1) cannot be surrendered, wholly or partly, and the authorities cannot make the grant of aid conditional on the surrender of a part of the Fundamental Right. In the very case it was observed:

> **'Recognition and grant of aid, says Shri G.S. Pathak, is the governmental function and, therefore, the State cannot impose terms as condition precedent to the grant of recognition or aid which will be violative of Article 30(1). According to the statement of case filed by the State of Kerala, every Christian school in the State is aided by the State. Therefore, the conditions imposed by the said Bill on aided institutions established and administered by minority communities, like the Christians, including the Anglo-Indian community, will lead to the closing down of all these aided schools unless they are agreeable to surrender their fundamental right of management. No educational institution can in actual practice be carried on without aid from the State and if they will not get it unless they surrender their rights they will, by compulsion of financial necessities, be compelled to give up their rights under Article 30(1). The legislative powers conferred on the legislative of the States by Articles245 and 246 are subject to the other provisions of the Constitution and certainly to the provisions of Part III which confers fundamental rights which are, therefore, binding on the State legislature. The State legislature cannot, it is clear, disregard or override those provisions merely by employing indirect methods of achieving exactly the same result. Even the Legislature cannot do indirectly what it certainly cannot do directly.'**

The learned Chief Justice then proceeded to consider the case of the Anglo-Indian Schools which received aid in excess of that granted by Article 337 and the other minority schools which received aid from the Government. One of the principal submissions there was that the gist of the right of administration of a school was the power of appointment, control and dismissal of teachers and other staff and that under the Kerala Education Bill such power of management was practically taken away. Dealing with the submission the learned Chief Justice observed,

> **'The right to administer cannot obviously include the right to mal-administer. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against**

> **the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided.'**

9. Proceeding to consider whether the various clauses of the Bill merely prescribed reasonable regulations or conditions for the grant of aid, the Court observed that Clauses 7, 10, 11(1), 12(1)(2)(3) and (5) might easily be regarded as reasonable regulations or conditions for the grant of aid. We may mention here that Clause 10 of the Bill required the Government to prescribe the qualifications to be possessed by persons for appointments as teachers in Government schools and in private schools. The procedure for selection of teachers in Government schools and aided schools was laid down in Clause 11. Clause 12 prescribed the conditions of service of the teachers of aided schools, obviously intended to afford some security of tenure to the teachers of aided schools. It provided that the scales of pay applicable to the teachers of Government schools shall apply to all the teachers of aided schools. Sub-clause (4) of Clause 12 which was not mentioned by the Court as a clause which could easily be regarded as reasonable regulation, provided that no teacher of an aided school shall be dismissed, removed, reduced in rank or suspended by the Manager without the previous sanction of the authorised officer. Clause 11 Sub-clause (2) was another clause which the court was unable to readily identify as reasonable. In regard of Clauses 9, 11 and 12 the court while holding that they were 'serious inroads on the right of administration' and that they came 'perilously near violating their right', nevertheless held, "but considering that these provisions are applicable to all educational institutions and that the impugned parts of Clauses 9, 11 and 12 are designed to give protection and security to the ill paid teachers who are engaged in rendering service to the nation and protect the backward classes, we are prepared as at present advised, to treat these Clauses 9, 11 (2) and 12(4) as permissible regulations which the State may impose on the minorities as a condition for granting aid to their educational institutions."

10. In *Rev. Sidhajbhai Sabhai and Ors. v. State of Bombay and Anr.: [1963] 3 SCR 837* the Court summarised the decision in the reference in regard to the Kerala Education Bill and proceeded to observe:

> **'The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it**

> **is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be but a 'teasing illusion', a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.'**

In *State of Kerala etc. v. Mother Provincial etc. : AIR 1970 SC 2079*. It was conceded by the petitioners representing the minority communities (as indeed they were bound to do having regard to the authorities of the Court) that the State or the University to which these institutions were affiliated may prescribed standards of teaching and the Scholastic efficiency expected from colleges. It was also conceded that to a certain extent conditions of employment of teachers, hygiene and physical training of students can be regulated. While administration was explained "management of the affairs" of the institution and it was said that this management should be free of control so that the institution could be moulded in accordance with the management's ideas of how the interests of the community in general and the institution in particular would be best served. It was pointed out that there was an exception to this and it was that the standards of education were not a part of management as such. It was said,

> **'These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others.'**

One of the questions in the case related to the validity of Section 56 Sub-sections (2) and (4). Section 56(2) provided that no teacher of a private college should to dismissed, removed or reduced in rank without the previous sanction of the Vice-Chancellor or placed under suspension for a

> **continuous period exceeding fifteen days without such previous sanction. Section 56(4) provided that a teacher against whom disciplinary action was taken shall have a right of appeal to the Syndicate. It was held that these provisions clearly took away the disciplinary action from the governing body and the managing council and conferred it on the University. The view of the High Court that Sub-sections (2) and (4) were ultra vires Article 30(1) of the Constitutions in respect of minority institutions was upheld.**
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> **13. Thus, there, now, appears to be a general and broad consensus about the content and dimension of the Fundamental Right guaranteed by Article 30(1) of the Constitution. 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'. It follows that regulatory measures which are designed towards the achievement of the goal of making the minority educational institutions effective instruments for imparting education cannot be considered to impinge upon the right guaranteed by Article 30(1) of the Constitution. The question in each case is whether the particular measure is, in the ultimate analysis, designed to achieve such goal, without of course nullifying any part of the right of management in substantial measure. The provisions embodied in Sections 8 to 11 of the Delhi Schools Education Act may now be measured alongside the Fundamental Right guaranteed by Article 30(1) of the Constitution to determine whether any of them impinges on that fundamental right. Some like or analogous provisions have been considered in the cases to which we have referred. Where a provision has been considered by the Nine Judge Bench in *Ahmedabad St. Xaviers College v. State of Gujarat* (supra), we will naturally adopt what has been said therein and where the Nine Judge Bench is silent we will have recourse to the other decisions."**

[22] In **St. Stephen's College vs. University of Delhi,** reported in **(1992) 1 SCC 558,** it has been held by the apex court as under:

> **"28. There is by now, fairly abundant case law on the questions as to 'minority', the minority's right to 'establish', and their right to 'administer' educational institutions. These questions have arisen in regard to a variety of institutions all over the country. They have arisen in regard to**

Christians, Muslims and in regard to certain sects of Hindus and linguistic groups. The Courts in certain cases have accepted without much scrutiny the version of the claimant that the institution in question was founded by a minority community while in some cases the Courts have examined very minutely the proof of the establishment of the institution. It should be borne in mind that the words 'establish' and 'administer' used in Article 30(1) are to be read conjunctively. The right claimed by a minority community to administer the educational institution depends upon the proof of establishment of the institution. The proof of establishment of the institution, is thus a condition precedent for claiming the right to administer the institution. Prior to the commencement of the Constitution of India, there was no settled concept of Indian citizenship. This Court, however, did reiterate that the minority competent to claim the protection of Article 30(1) of the Constitution, and on that account the privilege of establishing and maintaining educational institutions of its choice, must be a minority of persons residing in India. They must have formed a well-defined religious or linguistic minority. It does not envisage the rights of the foreign missionary or institution, however, laudable their objects might be. After the Constitution, the minority under Article 30 must necessarily mean those who form a distinct and identifiable group of citizens of India. Whether it is 'old' stuff or 'new product', the object of the institute should be genuine, and not devices or dubious. There should be nexus between the means employed and the ends desired. As pointed out in *A.P. Christian Educational Society case : (1986) 2 SCC 667* 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.

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41. It was contended that St. Stephen's College after being affiliated to the Delhi University has lost its minority character. The argument was based on some of the provisions in the Delhi University Act and the Ordinances made thereunder. It was said that the students are admitted to the University and not to the College as such. But we find no substance in the contention. In the first place, it may be stated that the State or any instrumentality of the State cannot deprive the character of the institution, founded by a minority community by compulsory affiliation since Article 30(1) is a special right to minorities to establish educational institutions of their choice. The minority institution has a distinct identity and the right to administer with continuance of such identity cannot be denied by coercive action. Any such coercive action would be void being contrary to the constitutional guarantee. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised by a body of persons in whom the founders have faith and confidence. Such a management body of the

institution cannot be displaced or reorganised if the right is to be recognised and maintained. Reasonable regulations however, are permissible but regulations should be of regulatory nature and not of abridgment of the right guaranteed under Article 30(1).

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54. The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means 'management of the affairs of the institution'. This management must be free from control so that the founder 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. But the standards of education are not a part of the management as such. The standard concerns the body politic and is governed by considerations or the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The State, therefore has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others. There is a wealth of authority on these principles. See: *State of Bombay v. Bombay Education Society : AIR 1954 SC 561, Re : Kerala Education Bill, 1957: AIR 1958 SC 956; Sidhajbhai Sabhai v. State of Bombay : AIR 1963 SC 540 ; Rev. Father Proost and Ors. v. State of Bihar : AIR 1969 SC 465 and State of Kerala v. Mother Provincial : (1970) 2 SCC 417.*

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59. The need for a detailed study on this aspect is indeed not necessary. The right to minority whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to mal-administer. The State being he controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations, contracts, torts etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of

> **depriving the right of minorities to educate their children in their own institution. That is a privilege which is implied in the right conferred by Article 30(1).”**

[23] Subsequently of **St. Stephen’s College** *(supra)* in **TMA Pai Foundation & Ors** *(supra),* the apex court restated the law in the following terms:

> **107. The aforesaid decision does indicate that the right under Article 30(1) is not so absolute as to prevent the Government from making any regulation whatsoever. As already noted hereinabove, in *Sidhajbhai Sabhai case : AIR 1963 SC 540* it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the Government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law. It will further be seen that in *Sidhajbhai Sabhai case : AIR 1963 SC 540* no reference was made to Article 29(2) of the Constitution. This decision, therefore, cannot be an authority for the proposition canvassed before us.**
>
> *** * * ***
>
> **122. The learned Judge then observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. Recognizing that the right to administer educational institutions could not include the right to mal-administer, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation *"must satisfy a dual test — the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it". (SCC p. 783, para 92)* It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the**

institution. Therefore, a balance has 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 that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.

* * * *

135. We agree with the contention of the learned Solicitor-General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. We find it difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

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

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

138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the

establishment and administration of educational institutions vis-à-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St. Xavier's College case : (1974) 1 SCC 717 that : (SCC p. 743, para 9)

> ***"The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality."***

In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.

* * * *

140. We have now to address the question of whether Article 30 gives a right to ask for a grant or aid from the State, and secondly, if it does get aid, to examine to what extent its autonomy in administration, specifically in the matter of admission to the educational institution established by the community, can be curtailed or regulated.

141. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30(1) illusory. The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then, is the meaning, scope and effect of Article 30(2)? Article 30(2) only means what it states viz. that a minority institution shall not be discriminated against where aid to educational institutions is granted. In other words the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the

substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

142. The implication of Article 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it, subject to the fulfilment of the requisite criteria, and the State gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.

143. This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfilment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

144. It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. <u>When an educational institution is maintained out of State funds, no religious instruction can be provided therein. Article 28(1) does not state that it applies only to educational institutions that are not established or maintained by religious or linguistic minorities. Furthermore, upon the receipt of aid, the provisions of Article 28(3) would apply to all</u>

educational institutions whether run by the minorities or the non-minorities. Article 28(3) is the right of a person studying in a State-recognized institution or in an educational institution receiving aid from State funds, not to take part in any religious instruction, if imparted by such institution, without his/her consent (or his/her guardian's consent if such a person is a minor). Just as Articles 28(1) and (3) become applicable the moment any educational institution takes aid, likewise, Article 29(2) would also be attracted and become applicable to an educational institution maintained by the State or receiving aid out of State funds. It was strenuously contended that the right to give admission is one of the essential ingredients of the right to administer conferred on the religious or linguistic minority, and that this right should not be curtailed in any manner. It is difficult to accept this contention. If Articles 28(1) and (3) apply to a minority institution that receives aid out of State funds, there is nothing in the language of Article 30 that would make the provisions of Article 29(2) inapplicable. Like Article 28(1) and Article 28(3), Article 29(2) refers to '*any educational institution maintained by the State or receiving aid out of State funds*'. A minority institution would fall within the ambit of Article 29(2) in the same manner in which Article 28(1) and Article 28(3) would be applicable to an aided minority institution. It is true that one of the rights to administer an educational institution is to grant admission to the students. As long as an educational institution, whether belonging to the minority or the majority community, does not receive aid, it would, in our opinion, be its right and discretion to grant admission to such students as it chooses or selects subject to what has been clarified before. Out of the various rights that the minority institution has in the administration of the institution, Article 29(2) curtails the right to grant admission to a certain extent. By virtue of Article 29(2), no citizen can be denied admission by an aided minority institution on the grounds only of religion, race, caste, language or any of them. It is no doubt true that Article 29(2) does curtail one of the powers of the minority institution, but on receiving aid, some of the rights that an unaided minority institution has, are also curtailed by Articles 28(1) and 28(3). A minority educational institution has a right to impart religious instruction — this right is taken away by Article 28(1), if that minority institution is maintained wholly out of State funds. Similarly on receiving aid out of State funds or on being recognized by the State, the absolute right of a minority institution requiring a student to attend religious instruction is curtailed by Article 28(3). If the curtailment of the right to administer a minority institution on receiving aid or being wholly maintained out of State funds as provided by Article 28 is valid, there is no reason why Article 29(2) should not be held to be applicable. There is nothing in the language of Articles 28(1) and (3), Article 29(2) and Article 30 to suggest that, on receiving aid, Articles 28(1) and (3) will apply, but Article 29(2) will not. Therefore, the contention that the institutions covered by Article 30 are outside the injunction of Article 29(2) cannot be accepted."

[24] In Islamic Academy of Education vs. State of Karnataka, reported in **(2003) 6 SCC 697,** the apex court held as under:

> **"120. So far as institutions imparting professional education are concerned, having regard to the public interest, they are bound to maintain excellence in the standard of education. To that extent, there cannot be any compromise and the State would be entitled to impose restrictions and make regulations both in terms of Article 19(1)(g) and Article 30 of the Constitution of India. The width of the rights and limitations thereof of unaided institutions whether run by a majority or a minority must conform to the maintenance of excellence. With a view to achieve the said goal, indisputably, the regulations can be made by the State.**
>
> **121. The right to administer does not amount to the right to maladminister and the right is not free from regulation. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions.**
>
> **122. Article 30(1) of the Constitution does not confer an absolute right. The exercise of such right is subject to permissible State regulations with an eye on preventing maladministration. Broadly stated, there are 'permissible regulations' and 'impermissible regulations'.**
>
> **123. Some of the permissible regulations/ restrictions governing enjoyment of Article 30(1) of the Constitution are:**
>
> **(i) Guidelines for the efficiency and excellence of educational standards (see *Sidhajbhai v. State of Gujarat : AIR 1963 SC 540, State of Kerala v. Mother Provincial: (1970) 2 SCC 417 and All Saints High School v. Govt. of A.P. : (1980) 2 SCC 478)*.**
>
> **(ii) Regulations ensuring the security of the services of the teachers or other employees (see *Kerala Education Bill, 1957, Re: AIR 1958 SC 956 and All Saints High School v. Govt. of A.P.: (1980) 2 SCC 478)*.**
>
> **(iii) Introduction of an outside authority or controlling voice in the matter of service conditions of employees (see *All Saints High School v. Govt. of A.P.: (1980) 2 SCC 478)*.**
>
> **(iv) Framing rules and regulations governing the conditions of service of teachers and employees and their pay and allowances (see *State of Kerala v. Mother Provincial8 and All Saints High School v. Govt. of A.P.: (1980) 2 SCC 478).***
>
> **(v) Appointing a high official with authority and guidance to oversee that rules regarding**

> **conditions of service are not violated, but, however, such an authority should not be given blanket, uncanalised and arbitrary powers (see *All Saints High School v. Govt. of A.P. : (1980) 2 SCC 478*).**
>
> **(vi) Prescribing courses of study or syllabi or the nature of books (see *State of Kerala v. Mother Provincial and All Saints High School v. Govt. of A.P.: (1980) 2 SCC 478*).**
>
> **(vii) Regulation in the interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like (see *Sidhajbhai v. State of Gujarat: AIR 1963 SC 540*).**
>
> **124. Subject to what has been stated in T.M.A. Pai Foundation: (2002) 8 SCC 481 some of the impermissible regulations are:**
>
> **(i) Refusal to affiliation without sufficient reasons (All Saints High School v. Govt. of A.P. (1980) 2 SCC 478).**
>
> **(ii) Such conditions as would completely destroy the autonomous administration of the educational institution (All Saints High School v. Govt. of A.P. : (1980) 2 SCC 478).**
>
> **(iii) Introduction of an outside authority either directly or through its nominees in the Governing Body or the Managing Committee of minority institution to conduct the affairs of the institution (All Saints High School v. Govt. of A.P. : (1980) 2 SCC 478).**
>
> **(iv) Provision of an appeal or revision against an order of dismissal or removal by an aggrieved member of staff or provision for the Arbitral Tribunal (see *Ahmedabad St. Xavier's College Society v. State of Gujarat: (1974) 1 SCC 717, Lily Kurian v. Sr. Lewina: (1979) 2 SCC 124 and All Saints High School v. Govt. of A.P. (1980) 2 SCC 478).*"**

[25] In P.A. Inamdar & Ors. vs. State of Maharashtra, reported in **(2005) 6 SCC 537** on revisiting the law on the question of extent of the regulation vis-a-vis the autonomy for the minority institution as guaranteed under Article 30(1) of the Constitution, the apex court refurbished its statement as under:

"20. Before we embark upon dealing with the issues posed before us for resolution, we would like to make a few preliminary observations as a preface to our judgment inasmuch as that would outline the scope of the controversy with which we are actually dealing here. At the very outset, we may state that our task is not to pronounce our own independent opinion on the several issues which arose for consideration in *Pai Foundation: (2002) 8 SCC 481*. Even if we are inclined to disagree with any of the findings amounting to declaration of law by the majority in *Pai Foundation: (2002) 8 SCC 481* we cannot; that being a pronouncement by an eleven-Judge Bench, we are bound by it. We cannot express dissent or disagreement howsoever we may be inclined to do so on any of the issues. The real task before us is to cull out the ratio decidendi of *Pai Foundation : (2002) 8 SCC 481* and to examine if the explanation or clarification given in Islamic Academy2 runs counter to *Pai Foundation: (2002) 8 SCC 481* and if so, to what extent. If we find anything said or held in Islamic Academy2 in conflict with *Pai Foundation: (2002) 8 SCC 481* we shall say so as being a departure from the law laid down by *Pai Foundation : (2003) 6 SCC 697* and on the principle of binding efficacy of precedents, overrule to that extent the opinion of the Constitution Bench in Islamic Academy: (2003) 6 SCC 697.

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91. The right to establish an educational institution, for charity or for profit, being an occupation, is protected by Article 19(1)(g). Notwithstanding the fact that the right of a minority to establish and administer an educational institution would be protected by Article 19(1)(g) yet the founding fathers of the Constitution felt the need of enacting Article 30. The reasons are too obvious to require elaboration. Article 30(1) is intended to instil confidence in minorities against any executive or legislative encroachment on their right to establish and administer educational institution of their choice. Article 30(1) though styled as a right, is more in the nature of protection for minorities. But for Article 30, an educational institution, even though based on religion or language, could have been controlled or regulated by law enacted under clause (6) of Article 19, and so, Article 30 was enacted as a guarantee to the minorities that so far as the religious or linguistic minorities are concerned, educational institutions of their choice will enjoy protection from such legislation. However, such institutions cannot be discriminated against by the State solely on account of their being minority institutions. The minorities being numerically less qua non-minorities, may not be able to protect their religion or language and such cultural values and their educational institutions will be protected under Article 30, at the stage of law-making. However, merely because Article 30(1) has been enacted, minority educational institutions do not become immune from the operation of regulatory measures because the right to administer does not include the right to maladminister. To what extent the State regulation can go, is the issue. The real purpose sought to be achieved by Article 30 is to give minorities some additional protection. Once

aided, the autonomy conferred by the protection of Article 30(1) on the minority educational institution is diluted as provisions of Article 29(2) will be attracted. Certain conditions in the nature of regulations can legitimately accompany the State aid.

92. As an occupation, right to impart education is a fundamental right under Article 19(1)(g) and, therefore, subject to control by clause (6) of Article 19. This right is available to all citizens without drawing a distinction between minority and non-minority. Such a right is, generally speaking, subject to the laws imposing reasonable restrictions in the interest of the general public. In particular, laws may be enacted on the following subjects: (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business; (ii) the carrying on by the State, or by a corporation owned or controlled by the State of any trade, business, industry or service whether to the exclusion, complete or partial of citizens or otherwise. Care is taken of minorities, religious or linguistic, by protecting their right to establish and administer educational institutions of their choice under Article 30. To some extent, what may be permissible by way of restriction under Article 19(6) may fall foul of Article 30. This is the additional protection which Article 30(1) grants to the minorities.

93. The employment of expressions 'right to establish and administer' and 'educational institution of their choice' in Article 30(1) gives the right a very wide amplitude. Therefore, a minority educational institution has a right to admit students of its own choice, it can, as a matter of its own free will, admit students of non-minority community. However, non-minority students cannot be forced upon it. The only restriction on the free will of the minority educational institution admitting students belonging to a non-minority community is, as spelt out by Article 30 itself, that the manner and number of such admissions should not be violative of the minority character of the institution.

94. Aid and affiliation or recognition, both by the State, bring in some amount of regulation as a condition of receiving grant or recognition. The scope of such regulations, as spelt out by a six-Judge Bench decision in *Rev. Sidhajbhai case : AIR 1963 SC 540* and a nine-Judge Bench case in *St. Xavier's: (1974) 1 SCC 717* must satisfy the following tests: (a) the regulation is reasonable and rational; (b) it is regulative of the essential character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it; (c) it is directed towards maintaining excellence of education and efficiency of administration so as to prevent it from falling in standards. These tests have met the approval of *Pai Foundation : (2002) 8 SCC 481*. However, Rev. *Sidhajbhai case : AIR 1963 SC 540* and St. Xavier's *: (1974) 1 SCC 717* go on to say that no regulation

can be cast in 'the interest of the nation' if it does not serve the interest of the minority as well. This proposition (except when it is read in the light of the opinion of Quadri, J.) stands overruled in *Pai Foundation : (2002) 8 SCC 481* where Kirpal, C.J., speaking for the majority has ruled (vide SCC p. 563, para 107)—

'Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf.'

(Also see, paras 117 to 123 and para 138 of *Pai Foundation : (2002) 8 SCC 481 where Kirpal, C.J. has dealt with St. Xavier's : (1974) 1 SCC 717* in detail.) No right can be absolute. Whether a minority or a non-minority, no community can claim its interest to be above national interest.

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103. To establish an educational institution is a fundamental right. Several educational institutions have come up. In *Kerala Education Bill : AIR 1958 SC 956* 'minority educational institutions' came to be classified into three categories, namely, (i) those which do not seek either aid or recognition from the State; (ii) those which want aid; and (iii) those which want only recognition but not aid. It was held that the first category protected by Article 30(1) can 'exercise that right to their hearts' content' unhampered by restrictions. The second category is most significant. Most of the educational institutions would fall in that category as no educational institution can, in modern times, afford to subsist and efficiently function without some State aid. So it is with the third category. An educational institution may survive without aid but would still stand in need of recognition because in the absence of recognition, education imparted therein may not really serve the purpose as for want of recognition the students passing out from such educational institutions may not be entitled to admission in other educational institutions for higher studies and may also not be eligible for securing jobs. Once an educational institution is granted aid or aspires for recognition, the State may grant aid or recognition accompanied by certain restrictions or conditions which must be followed as essential to the grant of such aid or recognition. This Court clarified in *Kerala Education Bill : AIR 1958 SC 956* that 'the right to establish and administer educational institutions' conferred by Article 30(1) does not include the right to maladminister, and that is very obvious. Merely because an educational institution belongs to a minority it cannot ask for aid or recognition though running in unhealthy surroundings, without any competent teachers and which does not maintain even a fair standard of teaching or which teaches matters subversive to the welfare of the scholars. Therefore, the State may prescribe reasonable regulations to ensure the excellence of the educational institutions to be granted aid or to be recognised. To wit, it is open to the State to lay

> **down conditions for recognition such as, an institution must have a particular amount of funds or properties or number of students or standard of education and so on. The dividing line is that in the name of laying down conditions for aid or recognition the State cannot directly or indirectly defeat the very protection conferred by Article 30(1) on the minority to establish and administer educational institutions. Dealing with the third category of institutions, which seek only recognition but not aid, Their Lordships held that 'the right to establish and administer educational institutions of their choice' must mean the right to establish real institutions which will effectively serve the needs of the community and scholars who resort to these educational institutions. The dividing line between how far the regulation would remain within the constitutional limits and when the regulations would cross the limits and be vulnerable is fine yet perceptible and has been demonstrated in several judicial pronouncements which can be cited as illustrations. They have been dealt with meticulous precision coupled with brevity by S.B. Sinha, J. in his opinion in *Islamic Academy: (2003) 6 SCC 697*. The considerations for granting recognition to a minority educational institution and casting accompanying regulations would be similar as applicable to a non-minority institution subject to two overriding considerations: (i) the recognition is not denied solely on the ground of the educational institution being one belonging to minority, and (ii) the regulation is neither aimed at nor has the effect of depriving the institution of its minority status.**

[26] In P.A. Inamdar *(supra)* the apex court in no unambiguous term has observed as follows:

> **"123. <u>Conditions which can normally be permitted to be imposed on the educational institutions receiving the grant must be related to the proper utilisation of the grant and fulfilment of the objectives of the grant without diluting the minority status of the educational institution, as held in *Pai Foundation: (2002) 8 SCC 481* (see para 143 thereof). As aided institutions are not before us and we are not called upon to deal with their cases, we leave the discussion at that only</u>."**

[27] In Sindhi Education Society & Anr. vs. Chief Secretary, Government of NCT of Delhi and others, reported in **(2010) 8 SCC 49,** the apex court having noticed the law as interpreted by the apex court has observed thus:

> **"18. As already noticed, there is no dispute to the fact that appellant is a minority institution and the**

Society is one which enjoys the status of a linguistic minority and thus is entitled to all the constitutional benefit and protection under Articles 29 and 30 of the Constitution. Firstly, one has to examine what is a minority. 'Minority', would include both religious and linguistic minorities.

112. Every linguistic minority may have its own social, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 64(1)(b), could be enforced against the general or majority category of the Government aided school but, it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to interference with their right of choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character or status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.

113. A linguistic minority institution is entitled to the protection and the right of equality enshrined in the provisions of the Constitution. The power is vested in the State to frame regulations, with an object to ensure better organization and development of school education and matters incidental thereto. Such power must operate within its limitation while ensuring that it does not, in any way, dilute or impairs the basic character of linguistic minority. Its right to establish and administer has to be construed liberally to bring it in alignment with the constitutional protections available to such communities.

114. The minority society can hardly be compelled to perform acts or deeds which *per se* would tantamount to infringement of its right to manage and control. In fact, it would tantamount to imposing impermissible restriction. A school which has been established and granted status of a linguistic minority for years, it will not be proper to stop its grant-in-aid for the reason that it has failed to comply with a condition or restriction which is impermissible in law, particularly, when the teacher appointed or proposed to be appointed by such institution satisfy the laid down criteria and/or eligibility conditions. The minority has an inbuilt right to appoint persons, which in its opinion are better culturally and linguistically compatible to the institution."

[28] Mr. Deb, learned senior counsel has rightly highlighted where in **TMA Pai Foundation** *(supra)* it has been laid down that the regulation by the State is permitted and for that purpose, the State has correlative duty of good administration.

[29] Mr. Deb, learned senior counsel has also contended that by way of rejoinder affidavit the scope of the writ petition cannot be expanded. He has submitted that the petitioner does not have any right to ask the State to follow any particular pattern as the petitioner has made endeavour to make reference to 'Rules for Management of the Schools' run by Ramkrishna Mission Trust in the State of West Bengal, 1990. In this regard, Mr. Deb, learned senior counsel has referred a decision of the apex court in **Sri-La-Sri Subramania Desika Gnanasambanda Pandarasannadhi vs. State of Madras and Anr.,** reported in **AIR 1965 SC 1578,** where it has been held as under:

> **"17. That takes us to the consideration of the question as to whether the two reasons given by the High Court in support of this decision are valid. The first reason, as we have already indicated, is that the High Court thought that the plea in question had not been raised by the appellant in his writ petition. This reason is no doubt, technically right in the sense that this plea was not mentioned in the first affidavit filed by the appellant in support of his petition; but in the affidavit-in-rejoinder filed by the appellant this plea has been expressly taken. This is not disputed by Mr. Chetty, and so, when the matter was argued before the High Court, the respondents had full notice of the fact that one of the grounds on which the appellant challenged the validity of the impugned Order was that he had not been given a chance to show cause why the said notification should not be issued. We are, therefore, satisfied that the High Court was in error in assuming that the ground in question had not been taken at any**

stage by the appellant before the matter was argued before the High Court."

The said decision has no ramification in the context of this case.

[30] Having regard to the right guaranteed under Article 30(1), as interpreted by the apex court, it appears that Grant-in-Aid Rules has not been tailored for purpose of regulating the minority institutions where the State extends the aid in terms thereof. Mr. Bhowmik, learned counsel was not fallacious when he had referred to the special rules made for the Ramkrishna Mission School at Agartala. With due regard to the special requirement, the State may frame executive rules for discharging correlative duty of good administration. The respondents are very categorical that the grant is provided under Grant-in-Aid Rules and that can only be continued if the terms of the Grant-in-Aid Rules are conformed to by the management. It is an undisputed position of fact that at present there is no managing committee within the meaning of the Grant-in-Aid Rules as stated. The managing committee is the custodian of the management of the aid and in absence of such management committee, the State has every right to be seriously apprehensive. Hence, the action taken by the State so far, cannot be held to be arbitrary or predatory in nature on encroaching the autonomy of administering the minority school, particularly, in the context of this case. Since 1989, when the school had no minority

status, they are getting the aid under the Grant-in-Aid Rules. To cope with the sudden change in the status, the regulatory regime has not been tuned up taking into consideration the requirement of Article 30(1) of the Constitution. Conditions which can normally be permitted to be imposed on the educational institutions receiving the grant must be related to the proper utilisation of the grant and fulfilment of the objective of the grant without diluting the minority status of the educational institutions as held in **TMA Pai Foundation** *(supra)*. In this regard, a reference may be made to the notification dated 16.05.1990 by the Education Department issued in exercise of powers conferred by section 26 of Tripura Board of Secondary Education Act, 1993 by amending the Management of Recognized non-Government Institution (Aided and Unaided) Rules, 1969 framed by the Govt. of West Bengal vide notification No.1598 Edn. (S) dated 15.09.1959 including its amendments which are adopted in the State as per provisions of Section 26 of the Tripura Board of Secondary Education Act, 1976, whereunder the formation of the management committee of recognized non-government institution, aided and unaided has been provided in a particular pattern. Based on the said amendment rules read with the principal rules, the management or the managing committee are elected or the finance sub-committee is formed. In the principal rule i.e. Recognized non-Government Institution (Aided and Unaided) Rules, 1969 framed by the

State of West Bengal, the following rule has been incorporated:

> **"33. Power of the State Government to frame further rules for certain Institutions- Nothing in these rules shall affect the power of the State Government to frame, on the application of any Institution or class of Institution, to which the provisions of article 26 or article 30 of the constitution of India may apply, further or other rules for the composition, powers, functions of the Management Committee or Committees of such Institution or class of Institutions."**

It surfaces on reading of the Grant-in-Aid Rules, the similar provisions are not available there. If the Grant-in-Aid Rules is enforced in its present form, the autonomy of administration as provided under Article 30(1) of the Constitution would to a greater extent be impaired, which the Constitution would not permit.

[31] This Court has on keen reading of the notice dated 28.02.2015 found that the State has contended as under:

> **"Whereas Hindi H.S. School, shall for purpose of management and other activities be guided by the provisions of Tripura Grant-in-Aid (Government Aided Schools) Rules, 2005."**

This Court is now of the considered view that the State cannot be permitted to assert its control completely impairing the right to administer of a minority educational institution qua the Grant-in-Aid Rules. As such, the said notice so far it relates to the formation of the managing committee is concerned, is found in contravention to the fundamental precept of autonomy of management to the minority institution as provided under Article 30(1) of the Constitution.

While observing as such, this Court shall clearly hold that when the State would provide the Grant-in-Aid to any minority school they shall enjoy the right to oversee and regulate for achieving the object for which the aid is provided. The right to administer and the regulation as stated shall create fine balance. For that fine balance, a new set of rules is essentially required. Further, the State may find itself in a role, or ask the minority institution to abide by rules/regulation for maintaining the excellence in education, welfare of the students and employees and the consequential fiscal/financial decisions vis-a-vis the aid. If it is found that the minority institution has been flouting such regulation or instruction or direction of the State, the State will have right to withdraw the grant. However, before taking such extreme step, the State must afford the school or its managing committee opportunity to have their say. Thus, the issues raised in the notice, except which is related to administer the school, in terms of the Grant-in-Aid Rules may remain for consideration of the State. For that purpose, the State may issue fresh notice if they think it apposite in the fitness of things.

[32] Having held so, the respondents are directed to frame new rules for the minority institutions including the petitioner having due regard to the observations made hereinabove with required expedition but by any rate not later than 31.05.2017. Till then no action may be taken by the State

against the petitioner for the 'irregularities' as alleged. The State and the petitioner shall be at liberty to form an Ad-hoc committee by entering into a bilateral agreement after due consultation, in view of the observation in this judgment, in the interregnum to administer the school.

[33] In the result, the writ petition stands allowed. There shall be no order as to costs.

JUDGE

Sujay