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HIGH COURT OF GUJARAT

SHUBHA SUDHIR THAKUR PRINCIPAL M S M HIGH SCHOOL
V/S
PS SHINDE PRESIDENT & ORS

Date of Decision: 02 November 2007

Citation: 2007 LawSuit(Guj) 3310

Hon'ble Judges: S R Brahmbhatt

Eq. Citations: 2008 (5) GLR 3753, 2008 (3) GLH 4

Case Type: Special Civil Application

Case No: 677 of 1997

Subject: Constitution

Acts Referred:
Constitution Of India Art 341, Art 342, Art 227, Art 30, Art 14, Art 30(1)
Evidence Act, 1872 Sec 106
Gujarat Secondary Education Act, 1972 Sec 40A, Sec 36(3), Sec 36(5), Sec 36(4), Sec 34, Sec 54, Sec 36(2), Sec 36(1), Sec 35, Sec 17(26), Sec 36, Sec 36(1)(a), Sec 36(1)(b)
Secondary Education Regulations, 1974 Reg 43, Reg 27, Reg 27A

Advocates: Hemant Makwana, K M Patel, Nirjar Desia

Reference Cases:
Cases Referred in (+): **47**

Judgement Text:-

S R Brahmbhatt, J

[1] The petitioner under Article 227 of the Constitution has mainly challenged the order of Gujarat Secondary Education Tribunal at Ahmedabad passed on 6.1.1997 on Application No. 251 of 1995, dismissing the said application of the petitioner and upholding the order of dismissal dated 2.6.1995 passed by the respondent School Management, on the ground that judgment and order of the Tribunal is erroneous, contrary to the facts on record and hence deserve to be quashed and set aside, the petitioner has also prayed for declaration, that the respondent No. 1a and 1b ceased to be the President and Secretary respectively of the Maharashtra Shikshan Mandal (herein after referred to as MSM for short), that the school run by MSM is not a minority institution, that provisions of sub-regulation 27?A of the Secondary Education Regulations 1974 (herein after referred to as S.E.R. 1974 for short) and its appendix do apply to the minority institutions, or in the alternative declare that Regulation 43 of the S.E.R. 1974 in so far it exempts the minority institutions from the applicability of Regulation 27 ?A of the said Regulations ultra-vires Article 14 and 30 of the Constitution of India and by way of amendment sought direction to the Respondent no. 1 for reinstating the petitioner with continuity of service and all consequential benefits.

[2] The facts in brief deserve to be set out as under.

[3] The petitioner, a qualified teacher started her career as an Assistant Teacher in the year 1976. The petitioner came to be appointed in the respondents?" school in the year 1978. The respondent MSM runs a linguistic minority school. The petitioner came to be selected and appointed as Principal in the MSM School vides appointment order dated 28.5.1992 and the petitioner joined duties as Principal on 1.6.1992. The Respondent No. 1a and 1b, soon after the petitioner?"s appointment as Principal, took charge of the posts of Mandal?"s President and Secretary respectively. As per the say of the petitioner the Respondents No. 1a and 1b started making demand involving undue expenditure from the Government Grants. The petitioner has further alleged that the said respondents started interfering with the routine administration of the School and instigating other teachers for making complaints against the petitioner. The School Management vide its order-dated 27.4.1993 placed the petitioner under suspension. On 28.04.1993 the Petitioner preferred Application No. 198 of 1993 before the Gujarat Secondary Education Tribunal and obtained ex-parte interim order right on that day staying the suspension and restraining the respondents therein, from preventing the

petitioner?"s entry in the School, from compelling her for handing over the charge of the post of the principal to anyone else, from transferring money from the Bank Account of the School to any other account of the MSM, from nominating anyone in the place of the petitioner in the Staff Selection Committee for New Appointments. And on 30.04.1993 the Tribunal, after hearing the parties, modified the same as under (1) continuing the stay against the suspension on clarification that the petitioner of her own volition would not insist upon attending the School and discharging her duties but her full salary would be paid by the management on or before 7th, of every month. The burden of salary during the period of suspension was to be borne by the school management and in default in payment of salary the petitioner would be entitled to attend the duties in the school. (2) Appointing two employees of the Tribunal for preparing List of the Record of the School and during the preparation of list the petitioner was permitted to remain present and it was to be made in her presence, one copy of the List so prepared was to be supplied to the petitioner The record thereafter was not to be removed from the school premises. It was to be kept in the custody of the school supervisor having highest marks. The record was to be utilized for framing charge etc but was not to be removed from the school premises. (3)No new appointments were to be made in the school till further orders. (4) No money to be transferred from the account of the principal of the school. No payment of any kind was to be made from the said account and it was not to be operated in any manner.

[4] The Management thereafter issued a show cause notice and charge sheet containing as many as 18 charges vide its communication dated 28.6.1993 calling upon the petitioner to submit her reply to the charge sheet. The charges were in respect of financial irregularities in having the school stationary printed, acting against the interest of school in making proposal for class reduction though not authorized or warranted, making proposal for class reduction against the interest of the minority school, making proposal for class reduction for victimizing two lady teachers and for bringing about their removal from the school and thus compelling them to rush to the tribunal and compelling the School management for incurring avoidable and unnecessary expenses.. Acting contrary to the interest of the minority school management especially in making unauthorized proposal for class reduction which was contrary to the prevailing Government Resolutions and Circular letters. The charges were also in respect of causing undue harassment to fellow teachers and staff members and complaints received from them. Non-complying with the directions and instructions issued by the school management for unreasonably long time. For not keeping and maintaining logbooks. Not taking any action against fellow teacher, supervisor for not keeping

logbook. Not bothered to comply with the remarks and instruction contained in the Inspection Report made by the concerned Government officers of the District Education Officer etc. The petitioner was called upon to submit her reply to the charge sheet within fifteen days. As the petitioner failed in submitting her reply within the stipulated time the School management appointed an independent person, principal of Bhakt Vallabh Dhola School, as Inquiry Officer vide their resolution 29.08.1993 and appointed it?"s Secretary as presenting officer. The inquiry began.

[5] The petitioner has further stated in the memo of the petition, that the school management once again compelled the petitioner to move the Tribunal, with an Application No. 734 of 1993, as they did not supply copies of documents needed for her defense and did not grant her permission for taking friend?"s help as defense assistant during inquiry. The Tribunal vide its order dated 15.12.1993 directed that the any order of punishment that may be passed against the petitioner may not be implemented for a period of fifteen days from the date of its service.

[6] The I.O. in his report dated 10.9.1995 recorded that on suspension the petitioner was asked to hand over the charge of the post of the Principal to one fellow Teacher Shri O.D. Patel but she did not obey it and moved the Tribunal and ultimately the charge was required to be handed over to one Smt Mrudula Shevde under the interim orders of the Tribunal. The first sitting of inquiry was held on 23.10.1993 The I.O. also noted that inquiry lasted from 23.10.1993 to 8.04.1995 and total 104 (in fact 105 sittings as sitting no. 62 was numbered twice) were held. He found that charge No. 1A, 1C, 1D, 2,3,4,5 ,9,11,12, and 17 proved. The Charge No. 1-B, 8A, 8B,8C, 8D, 8E,8F,8H,8I, 8J,8L,8M, and 10 partly proved and the Charge No. 7,13,14,15 and 16 not proved. Charge no. 6,8G, 8K, and 18 were treated as revoked. This report was submitted on 10.09.1995. The petitioner received I.O.?"s report dated 10.09.1995 on 12.05.1995 as per her averment in paragraph F in the memo of the application before the Tribunal. The School Management issued second show cause notice on 14.05.1995 to the petitioner calling upon her to show cause as to why she should not be dismissed from service. The petitioner submitted her reply on 23.05.1995. The School Management vide its order dated 2.06.1995 dismissed the petitioner from services. The said order was to be implemented only after office hours on 17.06.1995.

[7] As per the say of the petitioner as the Tribunal was under vacation she had to approach High Court by preferring SPL.C.A No. 4504 of 1995. This Court (Coram: N.N.Mathur, J. as he then was) protected the petitioner up to 29.06.1995 so as to

enable her to approach the concerned Tribunal. This protection was further extended up to 17.07.1995 vide orders dated 8.06.1995 and 29.06.1995. The petitioner preferred Application No. 251 of 1995 in the Tribunal. The Tribunal rejected the prayer for interim relief vides its order- dated 28.06.1995. The petitioner challenged the said order of the Tribunal in this High Court by preferring Spl.C.A 5686 of 1995 interalia praying for declaration that the provisions of 27A and its appendix of the Secondary Education Regulations 1974 do apply to the minority institution also and in the alternative for declaration that Regulation 43 of the S.E.R. 1974 in so far it exempts the minority institutions from the purview of sub-regulation 27-A, ultravires Article 14 and 30 of the Constitution of India. This Court (Coram M. S. Parikh J as he then was) disposed of the same on 13.7.1995 observing that impugned order of dismissal as had been stayed till 17.07.1995 was to remained stayed till a week after the decision of the Tribunal on the main application and Tribunal was directed to hear the main application being Application no. 251 of 1995 and decide the same, preferably within eight weeks from receipt of the writ of the court, strictly on merits without being influenced by the order of this Court reserving liberty to the petitioner to revive the petition in case of any adverse order against the petitioner as she had challenged the vires of regulation 43 in the petition. The Secondary Education Tribunal had transferred the Application to the Primary Education Tribunal as that Tribunal had initially heard the matter. The Petitioner once again moved this Court by preferring MCA 1046 of 1995 in SCA 5686 of 1995 for appropriate directions the High Court (Coram M.S.Parikh J as he then was) vide it?"s order dated 13.09.1995 directed the Secondary Education Tribunal to decide the petitioner?"s application being Application No. 251 of 1995 within period of eight weeks. As in the meantime she did not receive her wages despite the orders the petitioner moved MCA No. 886 of 1995 in SCA 4504 of 1995 in the High Court.

[8] The Tribunal, finally decided the petitioner?"s application vide its judgment and order dated 6.01.1997 impugned in this petition, dismissing her application and confirming the order of the school management dismissing the petitioner from services. The Tribunal also stayed its order for week. The petitioner therefore moved MCA no. 127 of 1997 in SCA 5686 of 1995 for it?"s revival in terms of the order dated 13.07.1995 made there under. The petitioner has not averred as to what happened to that application but it appears that the present petition was filed and ultimately on 1.04.1997 this Court (Coram: M.R.Calla J as he then was) refused the Interim Relief and fixed the matter for final hearing on 1.04.1997.

[9] Shri Patel for the petitioner submitted that Tribunal has patently erred in not

appreciating the evidence and law point in the matter and therefore, the same deserves to be quashed and set aside. Shri Patel has submitted that the inquiry proceedings conducted against the petitioner are void since the same has not been done by a Committee constituted as per provisions of sub-regulation 27-A. of S.E.R. 1974 The sub-regulation envisages Committee consisting of (1) Representative of Management (2) Representative nominated by charge sheeted employee (3) one person from the panel prepared by the District Education Officer in case of inquiry against Principal. The said Regulation came into effect from 20.5.1992 whereas the proceedings against the petitioner commenced pursuant to the charge sheet dated 26.8.1993. It was therefore incumbent upon the respondent to hold inquiry by a committee as envisaged under sub-regulation 27-A. The inquiry in the present case is therefore illegal and the consequent order of punishment of dismissal is therefore, liable to be set aside.

[10] Learned advocate for the petitioner submitted that Regulation 27-A of S.E.R. 1974 is applicable to the minority schools also as by virtue of Regulation 43 of the S.E.R. 1974 only Regulation 27 is excluded from it?"s applicability to the institutions established and administered by minority and Regulation 27-A being an independent code in itself providing only reasonable procedure for conducting the disciplinary proceedings against the staff of the institutions so as to save them from arbitrary action and victimization of staff at the hands of unscrupulous management, cannot be said to have been excluded from its applicability to the schools run by minority. The regulation 43 as stated herein above does not include Regulation 27-A on its plain reading and it could well be said that the regulation framing authorities have framed it by incorporating the regulations deserved and intended to be excluded and the regulation which is not specifically included therein cannot be said to have been included by any implications. In other words the framing of regulation 43 is legislation by incorporation and not be reference and what is not included or incorporated in the regulation could not be said to have been included merely on its being similar to other provisions which have been specifically included there in. Learned Counsel relied upon the decision of the apex court in case of Bharat Cooperative Bank Limited vs. Cooperative banks Employees Union,2007 2 CLR 160 in support of his submissions that when there is a legislation by incorporation and not by reference only the provisions specifically incorporated therein are to be considered and subsequent amendment into those provisions on ipso facto cannot be treated to have been included into the provision which contained only the un-amended earlier provision.

[11] Shri Patel for the petitioner submitted that Regulation 27-A couldn?"t be treated as

part of the Regulation 27 merely by its incorporation in that regulation by subsequent amendment. If educational institutions established and managed by minority were intended to be exempted from the purview of Regulation 27-A, like regulation 27, than regulation framing authorities would have surely effected corresponding amendment incorporating regulation 27-A also into the provisions of regulation 43 and regulation 43 being exhaustive regulation, a piece of legislation by incorporation and not by reference, fact of its non amendment clearly indicates that its authors did not intend to exclude minority institutions from the operation and applicability of Regulation 27-A of S.E.R. 1974.

[12] Shri Patel for the petitioner submitted that minority institutions have right to manage and administer their educational institutions but no right to mal-administer them. The management of minority schools cannot claim any advantageous position only on account of they being minority institutions. The minority institutions are not above the operation of law of the land. The staff of the minority institutions cannot be denied equal protection of law and equality of treatment qua staff of non-minority school in matter of disciplinary proceedings. The Courts have time and again up held the regulatory measures in form of regulations, rules framed for laying conditions of services of staff of minority institutions. The Regulation 27-A being one such type of regulations, it cannot be said to be in any way offending minority?"s rights under Article 30(1) of the Constitution to establish and administer educational institution of their choice. It merely provides for safe guard in case of any disciplinary action. No minority institution can be permitted to resort to "hire and fire?" it?"s staff members at their sweet will without following due procedure of law as it is laid down under Regulation 27-A of the S.E.R. 1974.

[13] Shri Patel has submitted that in case it is held that Regulation 27-A of the S.E.R. 1974 does not apply to the minority institution by virtue of the provisions of regulation 43,than in alternatively he submitted that declare Regulation 43 of S.E.R. 1974, in so far as it excludes minority institutions from the applicability of Regulation 27-A, ultra vires Articles 14 and 30 of the Constitution of India.

[14] Shri Patel without prejudice to the aforesaid contentions, has further submitted that order of dismissal passed on 2.6.1995 by the Hon'ble Secretary on the basis of the resolution of the governing body passed on 28.5.1995 is without authority and illegal in as much as when the governing body passed resolution, its tenure of two years provided in Rule 20 of the Memorandum of Association of the respondent No. 1 was

already over. The subsequent amendment providing for 5 years term cannot cure the defect since the amendment enhancing the tenure of office of the governing body was made only on 11.6.1995.

[15] Shri Patel has assailed the order dated 2.6.1995 passed by the School Management on the ground that the charge sheet was vague. The petitioner was not permitted to engage defense representative to assist her in the inquiry. The management witnesses left cross-examination half way and the petitioner had no opportunity to cross-examine the management witnesses, which has caused serious prejudice to the petitioner. The Presiding Officer Shri Dhabewala was also examined as management witness and his cross-examination was not permitted. The examining of Presiding Officer as management witness itself is in breach of principles of natural justice. The School Management and I.O. did not permit the petitioner, inspection of relevant documents nor did they allow her to have copies thereof.

[16] The counsel for the petitioner in the alternative submits that assuming for the sake of arguments that Regulation 27-A is not applicable to the minority school than also, the factum of inquiry and the way it had been conducted would in itself go to show that the respondents have not followed the principles of natural justice and therefore, inquiry proceedings itself was illegal and order of dismissal is required to be quashed and set aside.

[17] Shri Patel for the petitioner further submitted that the Learned Tribunal ought to have appreciated the basic lacuna in conducting the departmental inquiry against the petitioner and it ought to have quashed and set aside the order of dismissal. The Tribunal did not appreciated the facts that the Governing Body of the School Management was not competent to pass the impugned resolution nor was it competent to dismiss the petitioner and subsequent amendment to their Memorandum of Association would have no curing effect. The Tribunal ought to have appreciated the fact that the Regulation 27-A was applicable to the minority institution also as its merely lays down the procedure to be followed in case of any disciplinary proceedings against the staff members of the minority school. The Tribunal ought to have appreciated that examining of presenting officer was not permissible in the inquiry proceedings and it vitiates the entire proceedings. The Tribunal ought to have appreciated that the petitioner was wrongly denied the assistance of near friend for defending her in the inquiry proceedings and that has also vitiated the inquiry. The Tribunal ought to have appreciated the fact that I.O. ought to have permitted the petitioner the cross-examining

of the presenting officer when she made specific request for the same. The Tribunal ought to have appreciated the fact that many witnesses of the Management left the cross half way and that has affected the valuable right of the delinquent to cross-examine the management witnesses. The Tribunal ought to have appreciated the fact that IO did not have any right to revoke charges from the charge sheet. The Tribunal ought to have appreciated the fact that charges were vague and unsustainable. As the Tribunal has not appreciated these aspects its judgment and order also deserves to be quashed and set aside.

[18] Shri Patel in support of his submission relied on the following authorities:

(1) State of Kerala V/s. K.T.Shaduli, 1977 AIR(SC) 1627 wherein the apex court held that Sales Tax Officer?"s refusal to summon the wholesale dealer for cross-examination by the assessed would amount to infraction of the right conferred upon the assessed.

(2) Surath Chandra V/s. State of W.B., 1971 AIR(SC) 752 wherein the apex court held that vague and indefinite charges and failure to supply statement of allegation would render removal of Government servant void.

(3)Zuinjaroo Bhikaji Nagarkar Vs. Union of India, 1999 AIR(SC) 2881 wherein the apex court has held that mere mistake of law cannot be made basis for initiating Departmental Proceedings,

(4) C.M.C.H. Employees Union vs. C.M. College Vellore Asso., 1988 AIR(SC) 37 the apex court held that the provisions of I.D.Act cannot be said to be ultravires Article 14 and 30 of the Constitution.

(5) D.A.V College Jallundhar Vs. State of Punjab, 1971 AIR(SC) 1737 wherein the DAV college impugned SS. 4,4(2) 4(3) and 5 of the Gurunanak University Act 1969 on the ground of violation of provisions of Articles 29(1) & 30 (1) of the Constitution. Relying upon AIR 1958 SC 956 and AIR 1963 SC 540 it was held that minority has absolute right to establish, regulate and manage institution for achieving excellence.

(6) Mahindra & Mahindra Limited Vs. Union of India,1979 AIR(SC) 498 wherein the apex court held that powers conferred upon the commissioner under Section 13(2) of the Monopolies and Restrictive Trade Practices Act 1969 are wide and an application under S.13 (2) being an alternative remedy available to a party and failure to prefer an appeal cannot be construed as acquiescence. And estoppal can arise only if party to a proceeding has altered his position on faith of a representation or promise made by another.

(7) Shri Patel for the petitioner also relied upon the decision of Calcutta High Court in case of Mohd. Mia Vs. State of West Bengal, 2000 3 LLJ 1147 in support of his submission that presenting officer cannot be a Management Witness in Disciplinary Proceedings.

(8) Transport Commissioner Vs. Radha K Moorthy, 1995 1 SCC 332 Shri Pastel relied upon the judgment in support of his submission that vague charges cannot be sustained whereas Shri Desai for the respondent School Management relied upon this Judgment in support of his submission that initiation of departmental proceedings by an officer subordinate to the appointing authority was held to be unobjectionable.

(9) U.P.State Road Transport Vs. Mahesh Kumar Mishra, 2000 3 SCC 450 wherein the apex court, when the delinquent conductor was dismissed for misconduct of non issuing tickets, in absence of statements of the passengers found punishment was disproportionate.

(10) Secretary Malamnkara Syrian Catholic College vs. T.Jose, 2007 1 SCC 386 wherein the apex court has elaborately laid down the extent of regulatory measures in form of Regulations applicable to minority institution without effecting their rights under Article 30(1) of the Constitution.

(11) T.M.A.Pai Foundation vs. State of Karnataka, 2002 8 SCC 481, is also on the rights and regulations affecting the educational institutions including minority institutions.

(12) P.A. Inamdar vs.State of Maharashtra, 2005 6 SCC 537 it is also on the scope of regulations affecting the minority institutions?" rights and duties.

(13) Salmaben vs. Hajar Janab Amil Saheb, 1995 2 GLR 1799 wherein it was held that provisions regulating pay scale etc cannot be said to be offending Article 30(1) of the Constitution.

(14) Atladara Kelawni Mandal vs. State of Gujarat, 2004 1 GLR 244 wherein the single judge of this Court held that mere fact the institution is run by persons belonging to minority in itself would not be sufficient for conferment of minority status upon the institute. State cannot discriminate in the matter of grant in aid to minority but that in itself would not entitled the minority to claim better or advantageous status

(15) Dalabhai vs. Dy. Commissioner of Police, 1991 2 GLR 872 wherein the single judge of this Court quashed the charges as on the face of it they appeared to be vague and unsustainable.

(16) Frank Anthony Public School vs. Union of India, 1986 4 SCC 707 wherein the apex court observed that by any additional condition for grant in aid no inroads could be made into the rights of the minority under article 30(1) but the maintenance of high standards quality teaching rests upon the quality of it?"s teachers therefore their services condition and regulation thereof cannot be said to be offending the rights of minority institution.

(17) Bharat Cooperative Bank Limited vs. Cooperative banks Employees Union,2007 2 CLR 160 in support of his submissions that regulation 43 is a legislation by incorporation and not by reference and hence non inclusion or non incorporation therein of regulation 27-A necessarily mean that it was intended to be applicable to the minority institutions also.

(18) Achutananda Baidya vs. Prafullya kumar Gayen and others, 1997 5 SCC 76 in support of his submission that under Article 227 of the Constitution High Court in given case may even interfere with the findings of facts arrived

at by subordinate court if not based upon any evidence or based upon manifest misreading of the evidence.

[19] Shri Desai for the School Management submitted that the impugned order of dismissal passed by the School Management and confirmed by the Tribunal needs no interference under Article 227 of the Constitution of India.

[20] Shri Desai, learned counsel appearing for the respondent School Management has submitted that in the decision of this Court (Coram: D.H. Waghela, J.) in case of Jagdishchandra N. Trivedi Vs. Trustee/Principal & 2, it has been held that Regulation 27-A of the Secondary Education Regulation 1974 is not applicable to the minority school as it is forming integral part of Regulation 27, which has been categorically excluded by the provisions of Regulation 43 of the Regulations and therefore, the plea of the petitioner that the disciplinary proceedings were held in violation of the Regulation 27-A and hence vitiated would not be sustainable.

[21] Shri Desai has further submitted that the Courts always strike down provisions of any regulations and rules impinging upon the rights of any minority institutions under Article 30 of the Constitutions. The minority institutions?" right to manage the educational institutes without pervasive control of the State is by now well recognized. The Rule 43, of S.E.R. 1974 exempting the minority institutions from the applicability of rule 27 whereof Rule 27-A is integral part, cannot be said to be in any way unconstitutional as canvassed by the petitioner.

[22] Shri Desai has submitted that this petition is filed under Article 227 of the Constitution of India, therefore, this Court has very limited jurisdiction to examine the controversy. The Apex Court has time and again ruled that High Courts have very limited jurisdiction under Article 227 of the Constitution of India over the orders of the subordinate court and tribunals. This Court is exercising only the supervisory power and even error of law is not open to be rectified under Article 227 nor is it open to the Court to substitute its view when another view is taken by the Tribunal, whose order is impugned in the present petition under Article 227 of the Constitution of India. Shri Desai has submitted that Tribunal has elaborately discussed all the facts and evidence on record and noted that the petitioner had in fact been afforded all the opportunity for examining the management witnesses. The Tribunal has after elaborately discussing the evidences on record and after ascertained from the parties as to whether they would like to add or adduce additional evidence and when both the side declined to do so,

recorded its findings that there was no lacuna in the inquiry proceedings, and that there was due compliance with the principles of natural justice, and that the order of penalty did not suffer from any infirmities warranting any interference. This Court under Article 227 may not alter these elaborate findings of the Tribunal even on any possibility of different view on some aspect as no error of law much less that of fact can be rectified by this Court in exercising its jurisdiction under Article 227 of the Constitution of India.

[23] Without prejudice to the aforesaid contentions Shri Desai for the Respondent School Management submitted that the Charge sheet could not be said to be vague. The School Management had to issue the Charge sheet as the petitioner acted against the interest of the School. As principal of the school the petitioner was duty bound to act only in the interest of the school and its management without being partial to a faction, which was in the managing committee when She came to be appointed. The conduct of the petitioner in violating the legitimate instructions of the new managing committee and in non complying with its requests for furnishing details, and sending the proposal to DEO for class reduction though not warranted and complaints from her fellow teachers about harassment, and her involvement in financial irregularities, necessitated issuance of charge sheet. The charge sheet contained as many as 18 charges and mere reading thereof would show that they could not be said to be vague.

[24] Shri Desai has further submitted that the petitioner is not justified in making grievance about non-examination or management witnesses leaving their cross-examination halfway as the Tribunal has noted at number of placed that the delinquent petitioner got about 9 months 10 days and 17 sittings?" time during which she was allowed to cross examine the witnesses. The petitioner?"s unnecessarily prolonged cross-examination of the management witnesses, waxed them so much, that they were left with no choice but to quit. This in itself cannot be held to be violative of right under any provisions of law. The petitioner was required to prove that she has not been afforded opportunity of haring but on the contrary, the petitioner herself has not examined any witnesses in her defense and therefore, it is not true that the petitioner has not been given any opportunity of cross-examining the witnesses. Shri Desai has also submitted that petitioner, though given all opportunity, had not examined single witness in her support. Therefore, it can well be said that the Tribunal's decision, which very elaborately deals with all these aspects, needs no interference under Article 227 of the Constitution of India.

[25] Shri Desai has relied on the following authorities:

(1) Director General Indian Council of Medical Research Vs. Dr.Anil Kumar, 1998 AIR(SC) 2592 the apex court held that there was no breach of principles of natural justice when delinquent was not furnished with the list of witnesses to be examined when he did not avail the subsequent opportunity to cross-examine. And plea of non -examination of official issuing certificate was found to be non fatal.

(2) UPSRTC vs. Ramchandra Yadav, 2000 AIR(SC) 3596 wherein the apex court held that the principles of natural justice were not violated when names of the witnesses already given to the delinquent and on a given date instead of them some other witnesses were examined.

(3) State of Orissa vs. Murlidhar Jena, 1963 AIR(SC) 404 wherein the apex court held that High Court has no power to re-appreciate the evidence. In inquiries by Tribunals technical rules of evidence are not applicable.

(4) State of UP Vs. Ramesh Chandra Mangalik, 2002 AIR(SC) 1241 wherein the apex court has held that in departmental enquiry when no material or document has been relied upon by the Inquiry Officer, copy of which or inspection thereof may not have been allowed to the delinquent employee by Department - No material has been obtained after the date of hearing nor any such material has been made use of by the Inquiry Officer - No prejudice caused -There was no violation of principles of natural justice for non supply of document.

(5) State of Tamil Nadu Vs.Thiru K.V. Perumal, 1996 AIR(SC) 2474 the apex court held that Administrative Tribunal was not to act as appellate Court over the I.O.?"s report and all the documents asked for by the delinquent need not be supplied to him especially when he did not establish its relevance.

(6) T.M.A. Pai Foundation vs.State of Karnataka, 2003 AIR(SC) 355 and submitted that all regulation applicable to the non minority schools are not per se applicable to the minority schools. The apex court has only observed that the disciplinary action against delinquent teacher or staff members

should be after proper inquiry only but not necessarily the inquiry as provided in the disciplinary rules applicable to non-minority schools.

(7) All saints High School Vs. Govt. of AP, 1980 AIR(SC) 1042 wherein the apex court held that Section 3(1) and 3(2) of the impugned legislation were offending the provisions of Article 30(1) of the Constitution.

(8) Ahmedabad St.Xaviers College Society Vs. state of Gujarat, 1974 AIR(SC) 1389 wherein the majority of the apex court bench held that Sections 33-A, 40, 41, 51-A(1) (b), 51-A(2) (b) and 52-A of the Gujarat University Act, 1949 as amended do not apply to institutions established and administrated by linguistic and religious minorities

(9) Islamic Academy of Education vs. State of Karnataka, 2003 AIR(SC) 3724 TMA Pai was clarified.

(10) General Secretary, South Indian Cashew Factories Workers Union v. Managing Director, Kerala State Cashew Development Corporation Ltd., and Ors, 2006 AIR(SC) 2208 wherein the apex court held that Domestic Enquiry against employee not vitiated merely because officer of Management conducted it.

(11) Kumaon Mandal Vikas Nigam Ltd., Appellant v. Girja Shankar Pant and others, Respondents., 2001 AIR(SC) 24 Wherein the apex court held that It is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact did there exist a bias, which resulted in the miscarriage of justice.

(12) M/s. Sukhwinder Pal Bipan Kumar and others, etc. etc., Petitioners v. State of Punjab and others, Respondents, 1982 AIR(SC) 65. Wherein the apex court held that for proving malafide onus lies heavily on person alleging it.

[26] This Court has heard the learned counsel for the parties at length and perused the records and proceedings.

[27] Before adverting to the rival contentions of the parties and examining the applicability of Regulation 27-A of the S.E.R.1974 to the disciplinary proceedings in the minority institution or challenge to the constitutionality of Regulation 43 of S.E.R.1974 the some of the glaring facts, betraying the petitioner?"s partisanship to the faction of trustees of MSM during whose tenure she was appointed as principal and who lost their dominance over managing committee in the election of the managing committee or governing body held in June 1992 to the new managing committee, as they emerge from the record and proceedings deserve to be borne in mind. The MSM is a registered public charitable trust under the provisions of Bombay Public Trust Act 1950. A Governing Body, elected by its members, manages the Mandal. The Petitioner was appointed as Principal vides order-dated 28.05.1992 and she assumed charge of her post on 1.06.1992. The Respondent No. 1a and 1b were elected to be the President and Vice President or Secretary respectively in June 1992 itself. They could take over the charge of their respective posts only on or around 15th, of July 1992. The MSM suspended the present petitioner on 27.04.1993. There appeared to be factional fights amongst the Trustees of SMS. The faction during whose tenure the petitioner came to be appointed as principal was losing its hegemony in the managing committee of MSM. The rival faction was gaining dominance over the School Management and the erstwhile Members of Managing Committee appeared to be interested in creating impediments in smooth running of the school. It goes without saying that the principal owes duty to the Trust, School and the Institution and not to the persons manning it. The petitioner?"s conduct needs to be viewed from this angle.

[28] As it is stated herein above the petitioner was appointed as principal vides order-dated 28.05.1992 and she assumed the office on 1.06.1992. After her assuming as principal the Respondent no. 1a and 1b were elected as president and vice president respectively and they could assume their offices only on or around 15.07.1992 as per the say of the petitioner. As per their version the petitioner started creating problems in smooth functioning of the school and hence ultimately she was required to be suspended on 27.04.1993. The petitioner challenged the suspension order by preferring Application No. 198 of 1993 before the Tribunal wherein she joined not only respondent no. 1a and 1b and DEO but also three trustees who were not members of the Governing Body or the Managing Committee. If it was the case of the petitioner before the Tribunal that in light of the provisions of any bylaw the Governing Body was not empowered to

suspend her and all the Trustees were required to be consulted and their consent was required for suspending her than one may understand the joining of Trustees who are non members of Governing body or Managing Committee but in absence of any such case petitioner?"s joining them as Respondent No. 3, 4and 5 and their stand in the application against the Respondent no. 1 a and 1 b and in favor of the petitioner for revoking suspension indicated that she was in fact fighting some one else?"s battle.

[29] The initial interim stay order dated 28.04.1993 as it is reflected in final interim order dated 30.04.1993 would also go a long way to indicate the factional fighting amongst the Trustees and the role played by the present petitioner therein. Under the initial interim stay order dated 28.04.1993 the Management of MSM was restrained from preventing the petitioner from entering the school premises and discharging her duties as principal and from deducting her salary etc, from compelling the petitioner for handing over the charge of the post of principal to any other person, from transferring any money laying in the account of school to any other accounts of the MSM, from nominating anyone else in the place of the petitioner in the Staff Selection Committee for appointments to various posts.

[30] The Respondent no. 1 a and 1b moved application on 29.04.1993 for vacation of such ex parte interim order which ultimately came to be modified by the Tribunal on 30.04.1993. The Tribunal has also observed in it?"s order dated 30.04.1993 in paragraph no. 3 that the inter se disputes amongst trustees of the MSM was beyond its jurisdiction and it was not expedient to go into it while deciding that application for vacating or modifying the interim order dated 28.04.1993. The Tribunal has also recorded in its order-dated 30.04.1993 in paragraph no. 4 the apprehension of the petitioner that someone from the Managing Committee was interested in taking advantage of her suspension in making appointments of people of their liking and the Res. No. 3to5 also supported the case of the petitioner and joined her in seeking prayer against the Managing Committee for continuing the earlier interim order dated 28.04.1993.

[31] The Tribunal ultimately passed an order-dated 30.04.1993. Tribunal, after hearing the parties, modified it?"s earlier order dated 28.04.1993 as under (1) continuing the stay against the suspension on clarification that the petitioner of her own volition would not insist upon attending the School and discharging her duties but her full salary would be paid by the management on or before 7th, of every month. The burden of salary during the period of suspension was to be borne by the school management and in

default of payment of salary the petitioner would be entitled to attend the duties in the school. (2) Appointing two employees of the Tribunal for preparing List of the Record of the School and during the preparation of list the petitioner was permitted to remain present and it was to be made in her presence, one copy of the List so prepared was to be supplied to the petitioner The record thereafter was not to be removed from the school premises and it was required to be kept in the custody of the school supervisor having highest marks. The record was to be utilized for framing charge etc but was not to be removed from the school premises. (3) No new appointments were to be made in the school till further orders. (4) No money to be transferred from the account of the principal of the school. No payment of any kind was to be made from the said account and it was not to be operated in any manner.

[32] It would not be out of place here to refer to the initial observations made by I.O. in his report dated 10.09.1995 wherein he has recorded that the School Management while suspending the petitioner on 27.04.1993, had asked her to hand over the charge of her post to one Assistant Teacher Shri O.D.Patel but instead of handing him the charge she handed the charge to School Supervisor Smt. Mrudula Shevde in presence of the commission appointed by the Tribunal vide its order-dated 30.04.1993. It may be noted here that in the Interim Order dated 30.04.1993 Petitioner insisted that charged should be given to the Supervisor who received the highest marks and not to the one whom the School Management wanted it to be given i.e. Shri O.D.Patel. The petitioner?"s insistence for not handing over the charge to Shri O.D.Patel as per the order of suspension and her insistence that it may be handed over only to the supervisor having highest marks, assumes significance from the fact that the Charge-sheet contained a charge that Petitioner did not respond to the School Management?"s requests for sending file pertaining to Smt. Mrudula Shedve?"s appointment as supervisor, and that the petitioner did not take any action against Smt. Shevde when she as supervisor did not maintain logbook.

[33] The Petitioner?"s own appointment as Principal and its subsequent approval were on the basis that that the School was minority institution. Despite this the Petitioner in this petition, even before praying for her reinstatement, which prayer is sought to be incorporated subsequently by way of draft amendment only in the year 2007, has prayed for declaration that Respondent No. 1a and 1b have ceased to be the president and Secretary of the Mandal and further prayed for declaration that the School run by Maharashtra Shikshan Mandal is not a minority institution. It has come on record that petitioner without consulting the new school management sent unwarranted,

unauthorized proposal for class reduction, an act said to be against the interest of school, and her lame defense that the erstwhile Secretary /school management had approved the same and it would have approved it, had it been continuing at the relevant time revealed her comradeship with the faction of trustees who had recently lost dominance over the managing committee or governing body to the new managing committee or governing body headed by respondent no.1a and 1b.

[34] Against this backdrop now let us examine the petitioner?"s challenge to the initiation of inquiry, its procedure, findings of inquiry officer, action of disciplinary authority in dismissing the petitioner, findings and reasoning of the Tribunal and its order impugned in this petition and applicability of sub-regulation 27-A of S.E.R. 1974 to the minority institution and constitutional validity of Regulation 43 of the S.E.R. 1974.

[35] It is most expedient to refer to the relevant provisions of the Gujarat Secondary Education Act 1972, The Gujarat Secondary Education Regulations 1974 and its operation in the filed of regulating the service conditions of the teaching and non teaching staff working in the registered private secondary schools.

[36] It is most important to note that the petitioner has not challenged any of the provisions of the Gujarat Secondary Education Act 1972 or its constitutional validity. The entire petition is conspicuously silent so far as challenge to the provisions of the Gujarat Secondary Education Act 1972 is concerned. As no foundation was laid in the pleadings, the Counsel for the petitioner naturally did not advance any oral or written submissions impugning any of the provisions of the Gujarat Secondary Education Act 1972.

[37] The Gujarat Secondary Education Act 1972, provide for regulation of Secondary education in the State of Gujarat. The relevant provisions need to be set out as under:

> Section 17 : Powers and duties of the Board : Subject to the provisions of this Act, the powers and duties of the Board shall be as follows, namely:- .....
>
> Sub-clause (26) : to lay down qualifications, methods of selection and conditions of appointment, promotion and termination of employment and rules for conduct and discipline of the headmaster and the teaching and non-teaching staff of registered private secondary schools;

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Section : 34. Recruitment and condition of service of persons appointed in registered private secondary schools:

(1) Fifteen per cent of vacancies of the teaching staff of a registered private secondary school shall be filled up by the persons belonging to the Scheduled Castes and Scheduled Tribes :

Provided that where a person belonging to a Scheduled Caste or Scheduled Tribe is not available for filling any such vacancy, the vacancy shall be filled up as otherwise provided in this Act.

Explanation ? In this sub-section.

(a) "Scheduled Castes" means such castes, races or tribes or parts of, or groups within, such castes, races or tribes, as are deemed to be Scheduled Castes in relation to the State of Gujarat under article 341 of the Constitution of India.

(b) "Schedule Tribes" means such tribes or tribal communities or parts of, or groups within, such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the State of Gujarat under article 342 of the Constitution of India.

(2) Subject to sub-section (1), the Board shall by regulations regulate the recruitment and conditions of service including conduct and discipline of persons appointed as headmaster, teachers and members of non-teaching staff of registered private secondary schools in the State;

Provided that the conditions of service applicable immediately before the appointed day to the guaranteed staff shall not be varied to their disadvantage except with the previous approval of the State Government;

Provided further that it shall be lawful for any registered private secondary

school imparting post basic education to make, with the previous approval of the Board, additional regulations, consistent with the basic nature and concept of posts basic education and not inconsistent with the regulations made by the Board for regulating the conditions of service of persons appointed as head-master, teachers and members of non-teaching staff of that school.

Section 35 : Registered private secondary schools to have selection Committees ? (1) For every registered private secondary school there shall be following two committees, namely:-

(a) a school staff selection committee for the purpose of recruiting the teaching staff of the school other than the head master.

(b) a special school committee for the purpose of recruiting the head-master, and for the purpose of the initial recruitment of the headmaster and the teaching staff of a school started after the appointed day.

(2) The school staff selection committee shall consist of the following members, namely :-

i. Two representatives of the management of the school to be nominated by the management.

ii. The headmaster of the school;

iii. In the case of a school the total number of teachers in which is more than six, two teachers to be elected by the teachers of the school from amongst themselves, and in the case of a school the total number of teachers in which is or is less than six, one teacher to be elected by the teachers of the school from amongst themselves; and

iv. One representative of the Board to be nominated by the Board.

(3) The special school committee shall consist of the following members, namely :-

i. Two representatives of the management of the school to be nominated by the management.

ii. Two representatives of the Board to be nominated by the Board.

(4) Subject to the provisions of sub-section (1) of section 34, the school staff selection committee or, as the case may be, the special school committee shall select persons for appointment as teachers of the school from amongst the persons [who are qualified to be appointed as such in accordance with the regulations made in this behalf]

Provided that for the purpose of such selection preference shall be given to a protected teacher, if he is otherwise eligible.

5. The special school committee shall select persons for appointment to the post of headmaster of the school from amongst persons referred to in sub-section (4) or from amongst the teachers in the school:

Provided that for the purpose of such selection, preference shall be given to a senior teacher [serving in the school or schools under the same management] if he is otherwise eligible and suitable.

(6) Whenever the persons from amongst whom a teacher or a headmaster is to be selected includes a person who is related to any member of the governing body or other body in charge of the management of the school or to any member of the school staff selection committee or, as the case may be, the special school committee, the member concerned of such committee, shall disclose the fact of such relationship to the members of the Committee and if any such person is selected by the Committee, his selection shall be

subject to approval by an officer of the Board authorized in that behalf. Such approval shall be sought by the Committee within a week from the date of selection of the persons concerned and the authorized officer of the Board shall communicate his decision within fifteen days from the date of receipt of the reference by him.

(7) Any appointment of a head master or a teacher made in contravention of the provisions of this section shall be ineffective.

Explanation : For the purpose of sub-section (6), a person shall be said to be related to a member if he is related to him in any of the following capacities, namely :-

Son, grandson, son-in-law, brother, daughter, grand-daughter, wife, nephew, first cousin (paternal or maternal), wife's brother, sister's husband, husband, husband's brother, husband's sister, wife's sister, daughter-in-law, and sister-in-law.

Section 36 : Dismissal, removal and reduction in rank of certain persons -

(1) No person who is appointed as a headmaster, a teacher or a member of non-teaching staff of a registered private secondary school shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager until -

(a) he has been given by the manager a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, and

(b) the action proposed to be taken in regard to him, has been approved in writing by an officer authorized in this behalf by the Board:

Provided that nothing in this sub-section shall apply to any person who is appointed for a temporary period only.

(2) The officer referred to in clause (b) of sub-section (1) shall communicate his decision within a period of forty-five days, from the date of receipt by him of the proposal under the said clause (b) and if such decision is not communicated to the manager by the said officer within such period the action proposed to be taken under the said clause (b) shall be deemed to have been approved by the said officer.

3. Where a headmaster, a teacher or a member of non-teaching staff of a registered private secondary school is suspended by the manager of the school pending any inquiry proposed to be held against him, the fact of such suspension together with the grounds therefor, shall be immediately communicated by the manager to an officer authorized in this behalf by the Board, and such suspension shall be subject to ratification by the said officer within a period of forty five days from the date of the receipt of the communication in this behalf by such officer and if such ratification is not communicated to the manager by the said officer within such period, the suspension under reference shall cease to have effect on the expiry of such period.

4. Where a head master, a teacher or a member of the non-teaching staff of a registered private secondary school desires to submit his resignation, the resignation shall be tendered by him in person to the District Education Officer concerned and shall not be accepted by the manager unless it is so tendered and forwarded to him by such officer duly endorsed. The acceptance of any such resignation tendered in contravention of this sub-section shall be ineffective.

5. Any person aggrieved by an order of the authorized officer under clause (b) of sub-section(1) may make an appeal to the Tribunal within a period of thirty days from the date of the decision of the authorized officer.

40(A) : Nothing contained in clause (26) of section 17, sections 34 and 35 and clause (b) of sub-section(1) and sub-section (2), (3), (4) and (5) of

section 36 shall apply to any educational institutions established and administered by a minority, whether based on religion or language.

[38] It needs to be noted that under Section 54 of the Gujarat Secondary Education Act 1972 the State is empowered to make the first regulations and Section 53 empowers the Board to make regulations after it was constituted. The State of Gujarat while exercising its powers under Section 54 promulgated the Secondary Education Regulations 1974. These regulations came into force on and from 6th, March 1974. Regulation 27 provides for conduct and discipline of Head master, teachers and members of the non-teaching staff of the registered private secondary schools in State. The Regulation 43 of S.E.R 1974 exempts Educational Institutions established and administered by minority whether based on religion or language, from the applicability of many regulations including regulation 27 of the S.E.R. 1974.The State of Gujarat amended Regulation 27 of S.E.R 1974 by incorporating sub-regulation 8 vide GR dated 17.02.1989 and incorporating sub-regulations 27-A , 9, and 10 in Regulation 27 vide GR dated 20.05.1992 making Sub Regulation 27-A as integral part of Regulation 27 of S.E.R 1974.

[39] The placement of sub-regulation 27-A in the regulation book after sub-regulation 8 and before sub-regulation 9 and 10 in the Regulation 27 followed by Regulation 28 in itself is suggestive of sub-regulation 27-A being an integral part of Regulation 27 and as such no further amendment in Regulation 43 was necessitated so as to include Sub-regulation 27-A in it for exempting minority institutions from its applicability.

[40] This Court is unable to accept the submission of Learned Counsel for the petitioner that as the Regulation 43 is an exhaustive regulation, capable of being termed as a piece of incorporating legislation rather than a legislation by reference, it?"s non amendment after introduction of Regulation 27-A with its appendix on the statute book, clearly indicate the intentions of it?"s author not to exempt the minority institutions from its applicability. This submission needs to be viewed in light of relevant provisions of the parent Act i.e. Gujarat Secondary Education Act 1972. As first of all it deserve to be borne in mind that entire set of the S.E.R 1974 are framed and promulgated under the provisions of Section 54 of the Gujarat Secondary Education Act 1972 and it being subordinate or delegated legislation cannot run contrary to the express provisions of the parent Act i.e. Gujarat Secondary Education Act 1972. Assuming, for the sake of examining the plea, without accepting that Regulation 43 is exhaustive and it?"s a piece of incorporating subordinate legislation and not subordinate legislation by reference,

requiring incorporation of Regulation 27-A into it than also in light of provisions of the parent Act i.e Gujarat Secondary Education Act 1972 especially provisions of Section 40-A of the GSE Act1972 , Sub-regulation 27-A cannot be applied to the minority institutions. The subordinate legislation or delegated legislation cannot have any provisions repugnant to the provisions of it?"s parent statute. As it is noted herein above the Gujarat Secondary Education Act 1972 contains Section 40-A which exempts educational institutions established and administered by minority from rigors of many regulatory provisions, similar to the one in Regulation 27 and 27-A, likely to affect adversely their rights under Article 30 (1) of the Constitution.

[41] This Court (Coram: D.H.Waghela J.) in the case of Jagdishchandra N. Trivedi Vs. Trustee/Principal & 2, Special Civil Application No. 6057 of 2006 decided on 04.04.2006, has held that Regulation 27-A of the Gujarat Secondary Education Regulation, 1974 is not applicable to the minority school as it is forming integral part of Regulation 27, which has been categorically excluded by the provisions of Regulation 43 of the Regulations.

[42] The alternative challenge, to the constitutional validity of Regulation 43 of the S.E.R 1974 that if it is held to be covering Sub-regulation 27-A and on that basis exempting the educational institutions established and managed by minority from it?"s applicability than it is ultravires Article 14 of the Constitution of India, needs to be viewed from the angle that the petitioner has no where impugned any of the provisions of the Gujarat Secondary Education Act 1972 as unconstitutional or violating any of her fundamental rights. As it is set out herein above Section 40-A of the Gujarat Secondary Education Act 1972 in terms exempts Educational Institutions established and administered by minority from the rigors of many identical provisions. In light of the clear and unchallenged provisions of Section 40-A of the Gujarat Secondary Education Act 1972 it would be jurisprudentially imprudent to say that Regulation 27-A is an independent regulation applicable to the minority institutions contrary to the provisions of the parent act i.e. Gujarat Secondary Education Act 1972. If it is held that sub-regulation 27-A is an independent regulation not covered by the provisions of Regulation 43 and hence the educational institutions established and managed by minority are to be regulated as per the provisions of Sub-regulation 27-A, than it would amount to imposing those restrictions upon the minority institutions, wherefrom such institutions are unequivocally exempted by Section 40A of the parent Act i.e. Gujarat Secondary Education Act 1972. In other words the restrictions excluded by the parent Act i.e. Gujarat Secondary Education Act 1972 and which have not been challenged by the petitioner, would be

again imposed upon the minority institutions under the provisions of sub-regulation 27-A, a piece of subordinate or delegated legislation. Such interpretation would deal a great blow to the very basic tenets of administrative law and principles governing the delegated and subordinate legislation.

[43] Thus as per the existing scheme of the Gujarat Secondary Education Act 1972 and the regulations framed there under i.e. S.E.R. 1974, sub-regulation 27-A cannot be applied to the educational institutions established and managed by minority. In absence of any challenge to the provisions of Section 40-A of the Gujarat Secondary Education Act 1972 this court need not elaborately dwell upon the submission and the authorities cited in support thereof, that sub-regulation 27-A of the S.E.R.1974 merely regulates the procedure for conducting disciplinary proceedings so as to ensure reasonable opportunity to the delinquent staff member of the registered private secondary school and hence it being merely regulatory, cannot be said to be infringing minority?"s rights under Article 30(1) of the Constitution. The apex court has by now in its various decisions delineated the scope for regulating affairs of the institutions run by minority without offending their rights under Article 30(1) of the Constitution. The relevant observations of the apex court as well as this court from the decisions cited by both the sides in support of their respective case deserve to be set out as under:

(1) D.A.V. College Vs. State of Punjab, 1971 AIR(SC) 1737 the apex court has observed as under:

34. It is contended that these provisions interfere with the Petitioners in the management of their institutions, in that the Colleges are required to constitute a regular governing body for each of them, of not more than 20 persons to be approved by the University Senate. Of these two representatives of the University and the Principal of the College are to be ex-officio members. According to the Petitioners the Managing Committee of their institution is composed of 24 members under the D. A. V. College Trust and Management Society registered under the Societies Registration Act (Act 21 of 1860). It will be observed that under Clause 1 (3) if the petitioners do not comply with the requirements under Clause 1 (a) their affiliation is liable to be withdrawn. Similarly it is stated that Clause 17 also interferes with the petitioners' right to administer their College as the appointment of all the staff has to be approved by the Vice-Chancellor and that subsequent changes will also have to be reported to the University nor Vice Chancellor's

approval. We have already held that the petitioners' institutions are established by a religious minority and therefore under Article 30 this minority has the right to administer their educational institutions according to their choice. Clauses 2 (1) (a) and 17 of Chapter V in our view certainly interfere with that right." In this judgment the Court has further observed as under: "

35. In the case of Kerala Education Bill, 1958 AIR(SC) 956 dealing with Article 30 (1) this Court observed at page 1053: "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 Article 30 (1) has therefore to be determined on a consideration of the matter from the points of view of the educational institutions themselves". While so stating it was nonetheless observed :

"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 institution to be aided." Similarly in Rev. Sidhrajbhai Sabbai v. State of (Gujarat) Bombay, 1963 AIR(SC) 540 it was held that :

"Unlike Article 19 the fundamental freedom under Clause (1) of Article 30 is absolute in terms; it is not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Article 19 may be subjected to. All minorities, linguistic or religious have by Article 30 (1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30 (1) would to that extent be void. This however, is not to say that it is not open to the State to impose regulations upon the exercise of this right ..... Regulation made in the true interests of efficiency of instruction discipline health sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the

substance of the right which is guaranteed, they secure the proper functioning of the institution in matters educational."

36. We have already seen that in 1969 - 2 SCR 73 = (AIR 1969 SC 465) the provisions of Section 48-A which required the selection of the teachers of all affiliated Colleges including the Colleges established by the minorities, to be made by the University Service Commission, was held to interfere with the rights of the petitioners in that case. In that case while the petition was pending in the Court, Section 48-B was added to the Bihar State University Act whereby notwithstanding the provisions of Section 48-A exemption was given to the minority institutions to make appointments with the approval of the Commission and the Syndicate, the petitioners claimed exemption under Section 48-B and submitted that as an affiliated College established by a minority based on religion or language they are exempted from Section 48-A and that if this petition was accepted they will withdraw the petition which had become superfluous. When this prayer was not acceded to by the State and consequently it was held that they were entitled to the exemption claimed. This decision is not therefore an authority for the proposition that even the requirement that the staff of a minority educational institution be appointed, dismissed or removed only with the approval of the University or the State does not infringe the right to administer the institution guaranteed under Article 30 (1).

37. In our view there is no possible justification for the provisions contained in Clauses 2 (1) (a) and 17 of Chap. V of the statutes which decidedly interfere with the rights of management of the Petitioners Colleges. These provisions cannot therefore be made as conditions of affiliation the non-compliance of which would involve disaffiliation and consequently they will have to be struck down as offending Article 30 (1)." (2) Ahmedabad St.Xaviers College Society Vs. State of Gujarat, 1974 AIR(SC) 1389 the apex court observed as under: By majority: Sections 33A, 40 41, 51A(1)(b), 51A(2)(b) and 52A of the Gujarat University Act, 1949 amended do not apply to institutions established and administered by linguistic and religious minorities. All parties will pay and bear their own costs. (3) All Saints High School vs. State of A.P., 1980 AIR(SC) 1042 the apex court has held that "11. The form in which Sec. 3 (2) is couched is apt to mislead by creating an

impression that its real object is to cast an obligation on the competent authority to approve a proposal under certain conditions. Though the section provides that the competent authority "shall" approve the proposed order if it is satisfied that it is based on adequate and reasonable grounds, its plain and necessary implication is that it shall not approve the proposal unless it is so satisfied. The conferment of such a power on an outside authority, the exercise of which is made to depend on purely subjective considerations arising out of the twin formula of adequacy and reasonableness, cannot but constitute an infringement of the right guaranteed by Article 30 (1)12. I find it difficult to save Ss. 3 (1) and 3 (2) by reading them down in the light of the objects and reasons of the impugned Act. The object of the Act and the reasons that led to its passing are laudable but the Act, in its application to minority institutions, has to take care that it does not violate the fundamental right of the minorities under Article 30 (1). Sections 3 (1) and 3 (2) are in my opinion unconstitutional in so far as they are made applicable to minority institutions since, in practice, these provisions are bound to interfere substantially with their right to administer institutions of their choice. Similar provisions were held to be void in Very Rev. Mother Provincial; D. A. College and Lilly Kurian. There is no distinction in principle between those provisions and the ones contained in Section 3 (1) and 3 (2). 13. For these reasons, I am in agreement with Brother Fazal Ali that Section 3 (1) and 3 (2) of the impugned Act cannot be applied to minority institutions, since to do so will offend against Article 30 (1)" (4) Frank Anthony Public School Employees Association Vs. Union of India, 1987 AIR(SC) 311 the apex court observed as under "We therefore, hold that Section 10 of the Delhi Education Act which requires that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority and which further prescribes the procedure for enforcement of the requirement is a permissible regulation aimed at attracting competent staff and consequently at the excellence of the educational institution. It is a permissible regulation which in no way detracts from the fundamental right guaranteed by Art. 30(1), to the minority

institutions to administer their educational institutions. Therefore, to the extent that Section 12 makes Section 10 inapplicable to unaided minority institutions, it is clearly discriminatory" It further observed in he same judgment as under "20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do hot encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not. understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the Government 21. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV (except Section 8(2)) in the manner provided in the Chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff. (5) C.M.C.H.E.U vs. C.M.V Vellore, 1988 AIR(SC) 37 The apex court held that provisions of ID Act do not infringe the rights of Minority under Article 30(1) of the

Constitution (6) Salmaben S.Dordawala vs. Hajar Janab Amil, 1995 2 GLR 1799 a division bench of this court held that Primary Education Tribunal constituted under the provisions of Section 40F of Bombay Primary Education Act has jurisdiction to decide all the disputes under Section 40E between the management and a teacher of recognized private primary school run by minority and such dispute are covered by Section 40E and no other section. As the prescription of pay scale would be a regulatory measure, the schools run by minority would not be exempted there from. The Court distinguished the facts of that case from the facts of the case of Benson Knock, 1984 1 GLR 691 as the disputes with regard to pay scale would not fall under any of the exempted provisions mentioned under Section 40H of the Act. (7)T.M.A. Pai Foundation, 2003 AIR(SC) 355 the apex court observed as under "162-G. Q. 5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof and appointment of staff, employees, teachers and Principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities? A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an University or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate Tribunals could be constituted, and till then, such Tribunals could be presided over by a Judicial Officer of the rank of District Judge The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution. Regulations can be framed governing

service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee. (8) Atladara Kelavni Mandal Vs. State of Gujarat this Court held that minority institutions cannot claim any additional rights in respect of grant. The minority and non minority institutions are at par in respect of receiving grant. The Judgment is not on the aspect with regard to disciplinary action to be taken against the delinquent staff member of minority institution.(9) "Islamic Academy of Education v. State of Karnataka, 2003 AIR(SC) 3724" the apex court while explaining TMA Pai?"s ratio observed in respect of aided minority?"s status under Article 30(1) so far as general regulations are concerned. " Whilst discussing Article 30 under heading "To what extent the rights of aided private minority institutions to administer can be regulated" reliance has been placed, in the majority Judgment, on previous judgments in the cases of Re: Kerala Education Bill, 1958 AIR(SC) 956; Rev. Sidhajbhai v. State of Bombay, 1963 3 SCR 837); Rev. Father Proost v. State of Bihar, 1969 AIR(SC) 465; State of Kerala v. Very Rev. Mother Provincial, 1970 2 SCC 417; Ahmedabad St. Xaviers College Society v. State of Gujarat, 1974 1 SCC 717. All these cases have recognised and upheld the rights of minorities under Article 30. These cases have held that in the guise of regulations, rights under Article 30 cannot be abrogated. It has been held, even in respect of aided minority institutions that they must have full autonomy in administration of that institution. It has been held that the right to administer includes the right to admit students of their own community/language. Thus an unaided minority professional college cannot be in a worse position than an aided minority professional college. It is for this reason that paragraph 68 provides that a different percentage can be fixed for unaided minority professional colleges. The expression "different percentage for minority professional institutions" carries different meaning than the expression "certain percentage for unaided professional colleges." In fixing percentage for unaided minority professional colleges the State must keep in mind, apart from local needs, the interest/need of that community in the State. The need of that community, in the State, would be paramount vis-a-vis the local needs". (10) P.A.Inamdar Vs. State of Maharashtra, 2005 AIR(SC) 3226 the apex court has observed as under The apex Court has further observed as under "Articles 19(1)(g), 29(2) and 30(1):

inter-relationship between : 94. 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 instill 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 measure because the right to administer does not include the right to mal-administer. 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. 95. 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 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 practicing 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. 96. 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 freewill, admit students of non-minority community. However, non-minority students cannot be forced upon it. The only restriction on the freewill of the minority educational institution admitting students belonging to 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. 97.Aid and affiliation or recognition, both by State, bring in some amount of regulation as a condition of receiving grant or recognition. The scope of such regulations, as spelt out by 6-Judge Bench decision in Rev. Sidhrajbhai case, 1963 AIR(SC) 540 and 9-Judge Bench case in St. Xavier's 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 the education and efficiency of administration so as to prevent it from falling in standards. These tests have met the approval of Pai Foundation. However, Rev. Sidhrajbhai's case and St. Xavier's 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 where Kirpal, CJ,

speaking for majority has ruled (vide 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 where Kirpal, CJ has dealt with St. Xavier's in details). No right can be absolute. Whether a minority or a non- minority, no community can claim its interest to be above the national interest. The apex court further observed as under " minority institutions receiving State aid : Conditions which 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 fulfillment of the objectives of the grant without diluting the minority status of the educational institution, as held in Pai Foundation (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." (11) Secy. Malankara Syrian catholic College vs. T.Jose, 2007 1 SCC 386 The apex court held that Minority Institutions?" rights under Article 30(1) are protective only and reverse discrimination is not permissible. The State regulations, made in public interest and not impinging upon the rights of minority to establish and administer educational institutions of their choice, are applicable to the minority institution also. But the apex Court also held that Section 57(3) of Kerala University Act 1974 providing for seniority cum fitness for promotion to the post of principal from was unconstitutional as it did interfere with the Minority?"s right to chose person for the post of principal of their minority institution.

[44] The Learned Counsel for the petitioner relying upon the judgment submitted that regulations like 27-A cannot be said to be in any way infringing upon the rights of the minority institutions under Article 30 (1) of the Constitution. This Court is unable to accept the submission as it is stated herein above the petitioner has not challenged the provisions of Section 40-A of the Gujarat Secondary Education Act 1972 which in no uncertain terms exempts educational institutes established and managed by minority from the purview of Section 17(26), 34,35, and clause (b) of sub-section (1) and sub-section (2) (3),(4) and (5) of section 36, of the Gujarat Secondary Education Act 1972. The Section 17(26) empowers the Secondary Board to lay down qualifications, methods

of selection and conditions of appointment promotion and termination of employment and rules for conduct and discipline of the headmaster and the teaching and non teaching staff of registered private secondary schools, Section 34 provides for recruitment and conditions of service of persons appointed in registered private secondary schools. Section 35 provides for constitution of selection committee for staff recruitment in the registered private secondary schools. Clause (b) of sub-section (1), sub-section (2),(3), and(5) of Section 36 provide for written approval of the authorized officer of the Board for proposed action against the staff members, for time limit within which the said authorized officer of the Board has to communicate his approval if not than deeming fiction for approval, for suspension of the headmaster, teacher, or a member of non teaching staff, for their resignation and for remedy to aggrieved party to move the Tribunal against the order of authorized officer under clause (b) of subsection (1) of Section 36. This court has to reiterate that when the petitioner does not challenge provisions of Section 40-A which exempts the minority institutions from the purview of Sections like clause (26) of Section, Section 34, 35, and 36 than it would be absolutely not open to this Court to impose the restrictions upon the minority institutions which are expressly made not applicable to them. The aforesaid decisions go to show that only those regulations, which are not impinging upon the right of minority to establish and administer educational institutions of their choice. As it is stated herein above it might have been different if the petitioner had also challenged constitutional validity of the provisions of Section 40-A of the Gujarat Secondary Education Act 1972 which in unequivocal terms exempts minority institutions from the purview of identical provisions.

[45] It would be most appropriate at this place to refer to some of the identical provisions in the Bombay Primary Education Act 1947, Bombay Primary Education Rules 1949 and its amendments with some of the observations made there on in various judgments of this court. It may be noted here that a division bench of this Court has in case of Benson Knock Semual vs. State of Gujarat, 1984 1 GLR 691 held that clauses 1(2) 5, 13(1), 15, 24,27, and 30 of Schedule F as amended in the year 1978 in the Bombay Primary Education Rules to be offending Article 30(1) of the Constitution. The clauses, 13 and 15 respectively pertained to the termination of service of a teacher and in respect of inquiry to be held before terminating of services of employees. In the same year in another case of Shri Safal Kelavni Mandal Vs. State of Gujarat, 1984 2 GLR 1488 a division bench of this Court upheld provisions of Rule 109(2) and 109 (5) of Primary Education Rules, pertaining to the pay scale and allowances of the staff members of Recognized Primary Schools as merely regulatory and therefore not infringing the rights of the minority to establish and

administer educational institutions of their choice under Article 30(1) of the Constitution. On account of observations of this Court in case of Benson Knock Semual vs. State of Gujarat, 1984 1 GLR 691 the State had to amend the provisions of the Bombay Primary Education Act being Gujarat Amendment of 1986 and introduced Chapter VII-A containing provisions from Section 40-A to 40 H as it is recorded by this Court in paragraph 11 of the Judgment in case of Salmaben S. Dordawala . The relevant provisions of Bombay Primary Education Act are set out as under :

> Section 40B : Dismissal removal or reduction in rank of teachers ? (1)(a): No teacher of a recognized private primary school shall be dismissed or removed or reduced in rank nor service be otherwise terminated until-
>
> i. he has been given by the manager an opportunity of showing cause against the action proposed to be taken in regard to him; and
>
> ii. the action proposed to be taken in regard to him has been approved in writing by the administrative officer of the school board in the jurisdiction of which the private primary school is situate:
>
> (b) The administrative officer shall communicate to the manager of the school in writing his approval of the action proposed, within a period of forty five days from the date of the receipt by the administrative officer of such proposal.
>
> 2. Where the administrative officer fails to communicate either approval or disapproval within a period of forty five days specified in clause (b) of sub-section (1), the proposed action shall be deemed to have been approved by the administrative officer on the expiry of the said period.
>
> 3. xxx xxxx xxxx
>
> 4. Where a teacher of private primary school is suspended by the manager of the school pending any inquiry proposed to be held against him, the fact of his suspension together with the ground therefor shall be communicated

within a period of seven days, after such suspension by the manager to the administrative officer of the school board in the jurisdiction of which the school is situated, and such suspension shall be subject to ratification by the administrative officer within a period of forty five days from the date of receipt of communication in this behalf by the administrative officer and if such ratification is not communicated to the manager by the administrative officer within such period, the suspension of such teacher shall cease to have effect on the expiry of the said period:

Provided that a teacher shall, during the period of suspension, be entitled to such subsistence allowance, and on such terms and conditions as may be prescribed.

2. Any teacher aggrieved by the order of the administrative officer under sub-clause (ii) of clause (a) of sub-section (1) may make an appeal to the Tribunal within a period of thirty days from the date on which the administrative officer has approved or deemed to have approved the action.

Explanation, - For the purpose of this section, and section 40C,-

(a) "manager" in relation to a private primary school means a person or body of persons in charge of the control or of management of the school;

(b) "teacher" means a teacher of a recognized private primary school;

(c) "Tribunal" means a Tribunal constituted under Section 40F.

Section 40H : Savings : Nothing contained in sub-clause (ii) of Clause (a) and clause (b) of sub-section (1) and sub-sections (2), (4) and (5) of Section 40B and section 40C shall apply to any recognized private primary school established and administered by a minority, whether based on religion or language.

Thus even cursory glance at these provisions would show that the legislature in its wisdom has introduced provisions of Section 40-H and 40-A in the Bombay Primary Education Act and Gujarat Secondary Education Act respectively exempting the educational institutions established and administered by minority from the purview of identical provisions so as to protect their rights to establish and administer the educational institutions of their choice. It may incidentally be noted that the apex court also in case of Bharat Sevashram Sangh vs. State of Gujarat, 1987 AIR(SC) 494 while examining the challenge to the provisions of the Gujarat Secondary Education Act 1972 observed in respect of Section 40-A that in view thereof even minority cannot maker any grievances.

[46] This Court reiterate that petitioner has not challenged any of the provisions of the Gujarat Secondary Education Act 1972 much less it?"s provisions of Section 40-A in any manner in the present petition. Nor has the petitioner or her Counsel pointed out any decision or authority declaring that provisions of Section 40-A of the Gujarat Education Act 1972 are unconstitutional or ultra vires or are in any way whittled down by subsequent judicial pronouncements. In this view of the matter the provisions of sub-regulation 27-A being integral part of regulation 27 of S.E.R 1974 cannot be said to be applicable to the educational institutions established and administered by minority. On the same reasoning when the parent Act i.e. Gujarat Secondary Education Act 1972 contains specific provision of Section 40-A to exempt the educational institutions established and administered by minority from the purview of provisions mentioned there in, holding regulation 43 ultra vires only on account that it excludes the educational institutions established and administered by minority from the purview of sub-regulation 27-A would not only amount to re-imposing the very restrictions upon the educational institutions established and administered by minority where from they have been categorically exempted but also amounting to giving overriding effect to the subordinate legislation over it?"s parent statute and also contrary to the view expressed by any judicial pronouncement.

[47] It is most expedient at this stage to clarify that in absence of any challenge to the constitutionality of Section 40-A and Sec.17(26) of the Gujarat Secondary Education Act 1972 this Court in the present petition did not examine the question as to how far the procedure for holding disciplinary proceedings prescribed in common law for safeguarding staff members of registered private secondary school ensuring them fair

opportunity be restricted under the protective umbrella of Article 30(1) of the Constitution of India in case of educational institutions established and administered by minority. It may be noted that sub-regulation 27(A) cannot be termed as mere procedure for affording "reasonable opportunity" as envisaged in Section 36(1)(a), which is not included in Section 40-A; as it would be covered by provision of Section 17(26), whereunder, rules for conduct and discipline of the Headmaster and the Teaching and Non-teaching staff of registered private secondary school are to be framed, which in terms has been included in Sec.40(A) and hence any elaborate regulation providing for compulsory inclusion of an outsider or any other outside agency other than the Managing committee of the minority school is not permitted to be framed as it is expressly excluded by virtue of Section 40-A. This judgment shall not be construed to mean that in appropriate case containing challenge to the constitutionality of Section 40-A and Section 17(26) so far as it exempts educational institutions established and administered by minority from the purview of the provisions like 27-A of the S.E.R. 1974, being merely regulatory and hence not offending Article 30(1) of the Constitution, cannot be examined.

[48] After having come to the conclusion that Sub-regulations 27-A has no applicability to the educational institutions established and administered by minority, let us examine the provisions applicable to such institutions in case of disciplinary actions against member of its staff. The Section 36 (1) (a) provides that no headmaster, teacher or other member of non - teaching staff is to be removed dismissed or reduced in rank without affording him reasonable opportunity of showing cause. This provision is not excluded from its applicability to the educational institutions established and administered by minority. Now therefore let us examine as to whether the punishment imposed upon the petitioner is only after affording her reasonable opportunity.

[49] The School Management had enlisted as many as 18 charges against the petitioner. The charge-sheet contained, in adequate details, the imputations and incidences of misconduct with dates and other relevant material details, sufficient to know for the delinquent as to what she has to explain and what is against her. The Charges therefore cannot be said to be vague so as to render it liable to be quashed.

[50] The Tribunal as well as the inquiry officer has recorded that first sitting of inquiry was held on 23.10.1993 The I.O. also noted that inquiry lasted from 23.10.1993 to 8.04.1995 totaling 104 sittings. The petitioner in the first instance did not send her reply to the charge-sheet to the school management with in the stipulated time. The petitioner

has mainly assailed the inquiry proceedings on the ground that the school management did not permit her the assistance of near friend, that the school management and I.O. did not supply documents to the petitioner. The presenting officer ought not to have examined as witness for the management. Some of the management witnesses left the cross half way.

[51] Before adverting to the findings of the Tribunal it is expedient to set out the real scope of the Tribunal?"s jurisdiction under the provisions of the Gujarat Secondary Education Act 1972. The Tribunal constituted under the provisions of Section 39 of the Gujarat Secondary Education Act 1972 to exercise the jurisdiction in respect of matters enlisted in Section 36(5) and 38 of the Gujarat Secondary Education Act 1972. A division bench of this Court in case of Satsanghi Shishuvihar Kelavni Trust Vs. P.N.Patel, 1977 GLR 615 unequivocally held that Tribunal has very wide powers under Section 38 and 39 of Gujarat Secondary Education Act 1972 to examine the legality and validity of impugned order of dismissal passed by the school management. The relevant observations from the judgment deserve to be set out as under :

> Para 13 : ".... Further proceedings at page 171 it was pointed that in cases where an industrial dispute was raised on the ground of dismissal, the Tribunal's jurisdiction as per the settled decisions was a limited jurisdiction, by invoking limitations as laid down in Indian Iron & Steel Co. Ltd. V. Their Workmen, 1958 AIR(SC) 130. The powers of the Tribunal to interfere with cases of dismissal were not unlimited because the Tribunal did not act as a Court of appeal and substituted its own judgment for that of the management. Under the industrial law it had been laid down that the classes of cases in which the Tribunal would be justified in interfering with the order of dismissal would be those where on the material, the finding of the management was completely baseless or perverse. This petition held good till this fetter even on the Industrial Tribunal was removed when sec.11A was introduced in the Industrial Disputes Act. The change introduced by the legislature by enactment of the new section 11A has been duly considered in Workmen of Firestone Tyre and Rubber Co. of India Ltd. V. Management, 1973 AIR(SC) 1227. their Lordships pointed out that the words "in the course of adjudication proceedings, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicated that the Tribunal was clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by the

employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, had now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct was correct. The limitation imposed on the powers of the Tribunal by the decision in Indian Iron & Steel Co. Ltd., 1958 AIR(SC) 130 case could no longer be invoked by an employer, because the Tribunal was at liberty to consider not only whether the finding of misconduct recorded by an employer was correct; but also to differ from the said finding if a proper case was made out. What was once largely in the realm of the satisfaction of the employer, had ceased to be so and now it was the satisfaction of the Tribunal that finally decided the matter. Further proceedings at page 1241 Trier Lordships pointed out that the jurisdiction of the Tribunal to reappraise the evidence and to come to its own conclusion enures to it upon the dispute referred to it and the Tribunal may hold that the misconduct is not proved or that the misconduct proved does not warrant punishment of dismissal or discharge. Under the new section 11A even though the Tribunal may hold that the misconduct is proved, it may be of the opinion that the order of discharge or dismissal for the said misconduct was not justified. In other words, the Tribunal may hold that the proved misconduct did not merit punishment by way of discharge or dismissal. It could under such circumstances award to workman only lesser punishment instead. The power to interfere with the punishment and alter the same was now conferred on the Tribunal because of the wide jurisdiction to hold discharge or dismissal as unjustified. It is true that the proviso under sec.11A restricted the Tribunal's power to the material on record by way of evidence taken by the management at the enquiry or evidence led before the Tribunal. Even such a restrictive proviso does not appear in our scheme and sec. 39(9) gives the widest jurisdiction to the Tribunal to decide a dispute after the termination takes place on merits by finding out whether such a termination was wrong or unlawful or otherwise unjustified and by directing reinstatement in service. Sec. 39(9) further provides that such a direction shall be complied with by the manager on pain of penalty provided in sec. 42 where on conviction a fine to the extent of Rs.100 to Rs.1000 can be imposed, and such direction being of continuing nature, unless it is fully complied with, the management would be punished for such continuing wrong and would be under the continuous pain of penalty. Therefore, for this new cheap and effective remedy in supersession of the jurisdiction of the

Civil Courts provided to this poorly paid weak section of the teachers when guaranteeing the tenure of service under our scheme, the Tribunal has been given such wide jurisdiction to take evidence and come to its own conclusion on merits of the dispute, exercising all the powers of the Civil Court under sec. 39(6) as supplemented by the other procedural provisions of Civil Procedure Code. The enquiry at this later stage is full enquiry on merits so that a just order can be passed looking to the four-fold interests involved in this controversy of the teachers, the management, the student community and also the larger public interest of this academic field as represented by the Board or the Education Department. That however is to be done when a final dispute is to be resolved on merits....."

The proposition that Tribunal has wide powers to re-appreciate or even take fresh evidence is reflected in other decisions of this Court in case of Gomanbhai G.Patel Vs. Valavada vibhai Sarvajanik Kelavni Mandal, 1979 1 GLR 477 and in case of Shardadevi K.Sharma Vs. Navjivan Girls High School, 1981 GLR 1116 Thus from the decisions of this Court cited herein above it becomes clear that the Tribunal has all powers to examine the impugned order of dismissal and for this purpose even to take fresh evidence also.

[52] In view of this scope of Tribunal?"s jurisdiction and powers, it becomes most important to note that the Tribunal in the instant case has in the very first paragraph of the impugned judgment recorded thus " Pursuant to the directions of this Tribunal on behalf of the school management entire record of the inquiry proceedings and all the exhibits are produced before this Tribunal and L.A. for the applicant as well as the L.A. for the management have submitted that they do not want to lead any fresh evidence and they will reply upon the oral and documentary evidence produced before the inquiry committee." Thus an opportunity afforded by the Tribunal for even leading fresh evidence in support of their respective stand has been expressly declined by both the parties, now against this denial to avail the opportunity to substantiate her defense the petitioner?"s grievances regarding denying of opportunity, breach of principles of natural justice, and lacuna in the departmental inquiry deserves to be viewed.

[53] The Tribunal has elaborately discussed all the aspect of proceedings and punishment. The Tribunal has recorded in the instant case that the relevant rules and

provisions of grant in aid code do not provide for affording the delinquent, help of near friend as Defense Assistant and looking to the nature of charges and the way petitioner conducted the proceedings it can well be said that no prejudice is caused to the petitioner on her not getting any help of near friend in inquiry. It may be noted that the Tribunal has also recorded that in fact on the insistence of the petitioner ultimately in the 90th sitting she was permitted to bring her defense assistant but she did not avail the same. One may be justified in submitting that such belated permission for taking help of near friend after cross examination of witnesses from management was over amounted to an empty formality and it could have no effect of curing the defect of non permitting the defense assistant. As against this one may possibly argue that if the petitioner really wanted to avail the help of her friend for defending her in the inquiry than she could have availed the opportunity and that near friend could have asked for recalling of witnesses for their cross examination. But as she has not availed the permission now she may not be permitted to raise this contention at this stage especially when even before the Tribunal also she has not availed the offer of leading fresh evidence. This Court has considered rival submission and perused the findings of the Tribunal on this aspect and it appears that no prejudice is caused to the petitioner on her not getting help of near friend at early stage in the inquiry.

[54] The Tribunal?"s findings with regards to the petitioner?"s contentions on non-supply of relevant documents also need to be considered. The Tribunal has recorded that though documents were not supplied to the petitioner along with the charge sheet the Present Officer right in the second sittings unfolded the entire case and produced as many as 180 documents copies whereof were supplied hat to the petitioner. The petitioner was also permitted to take inspection of original record from 21.11.1993 to 27.11.1993. Only thereafter the 10 witnesses of management were examined whom the petitioner cross -examined on various dates from 1.04.1994 to 13.01.1995 The Tribunal has recorded that the delinquent had been given all the relevant documents. The Tribunal has in paragraph 4 of its judgment enlisted five documents, which were not supplied to the petitioner. The Tribunal has further observed that Document at serial no 3 and 5 pertained to the charge no. 16 which is not proved. Thus non-supply of these two documents is really of no consequence. The Document mentioned at serial no. 4 was it was her own letter and hence non-supply thereof also could not have caused any prejudice to the petitioner. The D.E.O.?"s report for the year 1991-1992 was supplied to the petitioner whereas the D.E.O?"s report for the year 1992-1993 had not arrived by the time of inquiry. The Tribunal has recorded findings that all the documents relied upon by the management produced at Exhibit No.3 to Exhibit No. 186 were in fact given

to the petitioner. The judgments cited in support of this submission are different on facts and hence not applicable besides the petitioner has also not specified as to which documents were not supplied and how they were relevant for her defense or as to what prejudice was caused due to it non-supply.

[55] The contention with regard to Presenting Officer?"s acting as witness vitiated the inquiry has no substance. Shri Patel for the petitioner also relied upon the decision of Calcutta High Court in case of Mohd. Mia Vs. State of West Bengal, 2000 3 LLJ 1147 in support of his submission that presenting officer cannot be a Management Witness in Disciplinary Proceedings as he would fill in the lacuna left by other witnesses in the case of the prosecution. The contention deserves to be viewed in the context of the facts of the present case. As it?"s reported by I.O. the Presenting Officer in the very second sitting itself unfolded the entire case of the management in his written statement and produced all the relevant documents during the course of his statement. At that timed no witnesses of management had been examined and the statement of presenting officer was more in a nature of putting forth the case of the school management in written form before the I.O. Had the P.O. been examined lastly at the end of the closing of the case of the school management when all witnesses of the management had completed their depositions and their cross-examination was also over than certainly one would have genuine apprehension about his attempting to fill in the lacuna left in the case of the prosecution In the case of Mohmad Mia the officer whose testimony was being objected as presenting office cum prosecution witness was not only presenting officer but the very author of the charge sheet and the its issuing authority who had remained present throughout the examination of other witnesses during inquiry. In view of this it was rightly objected. Whereas in the instant case the P.O. was the very First Witness or the one who unfolded the case of the prosecution. Thus the contention is bereft of merits and hence deserves to be rejected.

[56] The Inquiry Officer has in paragraph 10 of his report recorded that as many as 19 witnesses were examined on behalf of the school management and after completion of examination in chief of each witness the petitioner was requested to cross-examine him but the petitioner made a request that let the chief examination of all the management witnesses be over than she may be permitted to cross-examine them all which was accepted. Accordingly except MR.Dhabewala the P.O. all the 18 witnesses were cross - examined in detail by the petitioner. The Petitioner continued her cross examining the management witnesses right from 1.04.1994, the 21st sitting of inquiry to 13.01.1995 the 90th sitting of inquiry. The I.O. has further recorded that in the 2nd sitting dated

31.10.1993 the petitioner was informed that in the next sitting she may cross-examine said Shri Dhabewala. In the 4th sitting dated 29.11.1993 when the petitioner was requested to commence cross-examination of Mr. Dhabewala she expressed her inability to commence the cross examination of Mr.Dhabewala on that date. Thereafter in the 6th sitting dated 4.12.1993 once again the petitioner was requested to commence the cross-examination of Mr.Dhabewala but she requested for time. As Mr.Dhabewala?"s statement was recorded on 31.10.1993 the petitioner was afforded one more opportunity on 7.12.1993 to cross-examine said Mr.Dhabewala The sitting was adjourned. Thereafter in the 8th sitting of the inquiry on 12.12.1993 the petitioner was once again requested to cross?examine said Mr.Dhabewala even at that timer also the petitioner requested for time for preparing herself for cross examination. The same was noted and she was afforded last chance to cross-examine Mr.Dhabewala. Thus on 13.12.1993 in the 9th, sitting the petitioner was afforded last opportunity to cross examine Mr.Dhabewala but she refused to cross examine him on the ground that his examination as witness itself was contrary to rules. She also made an endorsement that she did not want to examine any witnesses from her side and no witnesses?" cross ?examination had remained to be done and she did not want to further cross-examine any one. The petitioner raised question of cross- examination of Mr.Dhabewala only in the 90th, sitting dated 13.01.1995. As it was settled in the 9th sitting of the inquiry it was not permitted to be agitated. The I.O. has further recorded that Mr Dhabewala was the first to give his written statement. In view of this one can safely infer that petitioner was not really interested in completing the inquiry proceedings and in fact Mr. Dhabewala?"s written statement unfolding the case of the management cannot be said to be a witness?"s testimony made with view to make up the deficiency in the case of management.

[57] The Tribunal has also recorded that the Learned Advocate for the school management agreed that the partly proved charges may be treated as not proved and submission be advanced on that basis. The Counsels for parties thus confined their respective submissions only on the charges, which were said to have been proved in I.O.?"s report. The Tribunal has elaborately discussed and analyzed each and every charges and recorded its finding thereon.

[58] The Tribunal has recorded that charge Nos. 1A-, 2, 3, 4, 5, 9, 11, 12 and 17 are proved, whereas, charge Nos. 6 and 18 were dropped and charge Nos. 7, 13, 14, 15 and 16 were not proved and charge No. 13, 8, and 10 were partly proved. As it is recorded herein above the charges which have been taken as partly proved by the

inquiry officer, have been considered as not proved and the Tribunal has only concentrated on the charges which have been taken as proved by the management.

[59] The charges in respect of getting printed answer books and supplementary from Swastik printers without genuinely calling the competitive prices from the real parties, the Tribunal has come to the conclusion that even if the depositions of the witnesses, who left halfway and cross-examination are not be relied upon, then also, the applicant/petitioner has in her reply at Ex. 208 admitted that she called for the quotations from the parties go to show that she was aware about the quotations as she was the one, who had called for the quotations from the parties and except Swastik Printers from whom the work was taken, all the others were found to be fictitious party and non existing party. Thus Tribunal has observed about fictitious party and parties in non-existence and observed that if she was of the view that they were existing, then, it was her duty to prove that she has called for the tenders from other parties through public advertisement and she has accepted the quotations from these parties. Thus, it is proved that the entire transactions was within the knowledge of the applicant/petitioner and therefore, the Tribunal has also come to the conclusion that the charges are proved beyond doubt. The Tribunal has therefore discusses the charges in respect of three transactions. The tribunal has also relied upon Section 106 of the Indian Evidence Act, 1872 and held that onus to prove thereafter was resting upon the petitioner for proving the facts about the existence of the parties.

[60] The second set of charges being charge Nos. 2, 3 4 and 5 were in respect of the applicant's/petitioner's action against the interest of school management as she proposed class reduction. The petitioner sent two proposals for class reduction without taking the management into confidence namely proposal for reduction of 9th class dated 3.7.1992 and on 18.8.1992 for reduction of 12th class. The petitioner was well aware that as minority institution the school enjoyed certain relaxation in respect of maintaining of students strength for continuing the classes. The class reduction proposal was to be sent by the management only or at least after the necessary approval from the management. In the instant case the petitioner in order to work against the existing new managing committee and for bring about retrenchment of two teachers whom she did not like without authority send the proposal dated 3.07.1992 and 18.08.1992 for class reduction. The petitioner deliberately ignored the Resolution of School Mandal for not to make any proposal for class reduction. Thus fellow teacher Smt Surekha Amin and Charulata Shithalapure had to rush to the Tribunal against their being rendered surplus wrongfully. Smt Piplapure in her Application No. 43 of 1993 and Smt Surekha Amin in

her Application 610 of 1992 on 9.06.1993 and 4.02.1993 respectively got verdict from the Tribunal disapproving class reduction. Both the teachers gave evidence against the petitioner during inquiry. The D.E.O sent a letter dated 29.06.1992 informing the petitioner that the school being minority it enjoys certain relaxation in the criterion for maintaining student strength and hence class reduction was not warranted. The petitioner on 3.07.1992 received this letter as her signature is noticed thereon. Despite this letter once again vide letter dated 18.08.1992 the petitioner sent proposal for 12th class reduction. This time fellow teacher Shri Adhawa was to be affected who has given evidence against the petitioner at length in the inquiry. The I.O and Tribunal has unequivocally recorded that petitioner?"s reply that she did not think it fit to consult the new management and this action clearly lacked bonafide.

[61] The charge No. 11 was in respect of non-supply of information asked for by the management by its letter dated 3.1.1993 and 18.3.1993 Exh. 181 and 182 respectively issued on the basis of the representation of Smt. Mendke dtd 3.8.1992 against the up gradation of Smt. G.M.Patel. This was completely ignored by the petitioner, which has been found to be proved. The I.O. and the Tribunals has held that the charge regarding harassment and mental torture to one senior teacher Shri P.N. Shimpee as complained by him by letter dated 23.1.1993 and 31.3.1993 was also proved. With regard to the charge of non-compliance with the instructions of the management as by letter dated 17.3.1993 (Exh.183) the management had called for the file of Smt. Shevde regarding her appointment as supervisor and the petitioner had not submitted the file and defied the instructions of the management. The Tribunal has recorded the reason put forward by the petitioner that it was not replied due to heavy pressure of examination work as well as financial year ending work as lame excuses.

[62] As the Tribunal has examined each of the proved charge very minutely and analyzed evidence thereon this Court while exercising jurisdiction under Article 227 of the Constitution need not detain itself much on every charge and its evidence suffice it to say that the findings recoded by the Tribunal and its satisfaction about conducting of inquiry the reasoning of I.O for holding that the charges were proved and its own conclusion that school management lost confidence in the petitioner so as to retain her as principal are not so perverse as to call for any interference.

[63] The school being minority school was exempted from the purview of sub-regulation 27-A. Thus the grounds that the inquiry proceedings were not held in accordance with the provisions of sub-regulation 27-A would not be available to the petitioner. The

question as to whether the petitioner was given reasonable opportunity before the impugned order came to be passed. The discussion of I.O. and the Tribunal on the aspect of opportunity to the petitioner show that the petitioner was afforded more than reasonable opportunity as full f lagged inquiry was conducted and in that inquiry the charges were held to be proved. The apex court has in case of Canara Bank, 2005 6 SCC 321 as under :

> "Para ? 14 : Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."
>
> Thus looking the facts and circumstances of the case, it cannot be said that the proceedings were conducted in breach of the principles of natural justice.

[64] The Tribunal was justified in arriving at the conclusion that the petitioner could not retain confidence of School Management on account of her dubious acts against the interest of the institution. As it is stated herein above in the petitioner?"s conduct right from her assuming charge as principal to her filing the petition before this court clearly betrays that she was in fact fighting proxy war for the faction of trustees who lost their hegemony over the Managing Committee as the petitioner?"s act of sending unauthorized and unwarranted proposals for reduction of classes without taking into confidence the new school management, her act of not complying with the requests of the new school management for supplying information with regard to appointment of Smt Shevde as supervisor, her insistence to hand over the charge of the post of principal not to the person desired by the school management but to the supervisor

having highest marks who happened to be Smt.Shevde in whose case the relevant information and files of her appointment were not sent by the petitioner to the new school management despite categorically requested. It may also be noted that the petitioner was also charged with not taking any action against said Smt Shevde when she was not maintaining the log-book. The petitioner?"s insistence for restraining the new school management of minority school from nominating any one in her place in Staff Selection Committee for recruitment in the school. Her insistence for stay against any appointments on any posts, in the school run by minority till further orders, Her insistence for restraining the new school management from making any appointments to any posts in the school run by minority till further orders, her insistence for restraining the new management from operating the bank accounts of the school, her anxiety for declaration that school was not minority school even before making prayer for her reinstatement in this petition though her own appointment and its approval was based upon the school being minority run institution, lead to one and only conclusion that the petitioner was in fact fighting somebody else?"s battle that is the battle of other faction of trustees who lost their dominance to the new management. The restrictions, placed on the school management at the behest of the petitioner by interim order of the Tribunal in fact amounted to unreasonable restrictions on the school management, run by minority. The apex court has held that in the matter of selecting the principal of school run by minority the rule of seniority cum fitness would offend the rights of minority under Article 30(1) of the Constitution of India. The relevant observation of the apex court made in case of SECY. MALANKARA SYRIAN CATHOLIC COLLEGE v. T. JOSE AND OTHERS, 2007 1 SCC 386 reads as under:

> Para 27 : It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai. Having regard to the key role played by the principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid will make no difference.
>
> Para-28 : The appellant contends that the protection by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same

minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

Para 29 : Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum-fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority-run educational institutions even if they are aided".

Thus in light of the aforesaid, the impugned order of dismissal of the petitioner by the school management and its upholding by the Tribunal, when she was held to be acting against the interest of the institution and was held to have lost confidence and faith of new management of the minority run school, need no interference under Article 227 of the Constitution of India.

In view of this the Tribunal?"s view that petitioner could not retain the confidence of new management cannot be said to be such as to call for any interference It would be appropriate to mention at this stage that though prayed for declaration against Res.1a and 1b continuance as President and Vice Secretary and against the school?"s status as minority school no

pleadings are made in the petition and no oral or written submissions were canvassed in this behalf by her counsel.

In the result, the petition fails. The Rule is discharged. There shall be no order as to costs.

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