KARNATAKA HIGH COURT

Anjuman Hami-e-Muslimeen

Vs.

Educational Appellate Tribunal

Writ Petn. No. 15012 of 1980

(K. Jagannatha Shetty and M.N. Venkatachaliah, JJ.)

18.12.1980

JUDGMENT

Venkataciialiah, J.

1. This writ petition by an Educational Institution of a "religious minority" presents the question of constitutional validity of Ss. 6. 8. 1(1 and 12, Karnataka Private Educational Institutions-(Discipline & Control) Act, 1975 (Karnataka Act No. 10 of 19751.

> The matter has come before us upon a reference made by Rama Jois, J., who was of the view that the earlier decision of this bench in *Holy Christ Education Society, Bangalore v. State of Karnataka*[1] might require reconsideration in the light of the decision of the Supreme Court in *All Saints High School v. Govt. of A. P*[2].

2. Before we examine the question, a brief advertence to the factual antecedents leading up to the writ petition may he necessary:

> Anjuman Hami-e-Muslimeen, the first petitioner, is stated to be an Educational Trust established in the year 1919 by the Navayat Muslims of Bhatkal Taluk of Uttara Kannada District, founded for the purpose of establishing and administering educational institutions for imparting education to the members of the Muslim Community in general and Navayat Muslims in particular. The said trust, it is stated, is registered under the provisions of the Bombay Public Trusts Act. 1950. The trust has established and is administering the "Anjuman Arts, Science and Commerce College" (Petitioner 2) at Bhatkal.
>
> It is not disputed that petitioners 1 and 2 are institutions established and administered by a religious minority to which Art. 30(1) of the Constitution is attracted.
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> Dr. Sayed Anwar Ali, third respondent herein, it would appear, was appointed in the year 1972 as Principal of the said "Anjuman Arts, Science and Commerce College". On 20-9-

1978, College Board of Petitioner 2 caused a notice dated 29-11-1978 (sic) tc Se issued to the third respondent calling upon him to offer explanation respecting certain complaints as to his conduct as such Principal.

[1] ILR (1979) 2 Kant. 2255
[2] AIR 1980 S C 1042

Subsequently. it would appear, a domestic inquiry was initiated and a certain H. D. Kazi, a retired member of the Karnataka Administrative Service, was appointed as the Inquiry Officer who framed charges and conducted the inquiry in which the third respondent participated. On the basis of the report of the Inquiry Officer, a further notice dt. 18-3-1980 was issued asking the third respondent to show cause why he should not be dismissed from service on the charges held proved at the inquiry and, that, on 8-4-1980 after considering the representation made by third respondent, the College Board is stated to have ordered dismissal of respondent 3 from service. The order was served on the respondent 3 on 14- 4-1980.

Third respondent filed an appeal before the Educational Appellate Tribunal viz., the District Judge at Karwar under S. 8, Karnataka Private Educational Institutions (Discipline & Control) Act, 1975 (hereinafter referred to as the 'Act'). On 25-7-1980 the Appellate Tribunal made an order staying the operation of the order of dismissal under appeal. The said appeal is binding decision before the appellate tribunal.

3. In this writ petition, petitioners contend that provisions relating to appeal and the powers of the appellate authority under the 'Act' constitute impermissible inroads on the fundamental right of a minority community to administer its institution, and those provisions are therefore inapplicable to and unenforceable against a minority institution and that the Educational Appellate Tribunal must be held to have no jurisdiction to entertain and proceed with the appeal. A writ of prohibition is, accordingly. sought against respondent 1 directing it to forbear from proceeding with the appeal E.A.T. No. 3 of 1980.

4. We have heard Sri R. N. Byra Reddy, learned counsel for the petitioners, Sri T. S. Ramachandra, learned counsel for respondent 3 and the learned Advocate General, for respondent 2. As the question involved in this petition is common t-, certain other petitions pending in this Court, we also permitted Sri J. A. Sequera, learned counsel appearing for petitioners in those petitions to address arguments.

5. Articles 29 and 30 of the Constitution deal with the "cultural and educational rights" of the minorities. Referring to the background of these rights, this Court in Holy Christ Education Society's case (ILR (1979) 2 Kant. 2250 observed:

"7..... The long experience of mankind in its experiments with social and political institutions has shown that though the enlightened tolerance of the majority is, in the ultimate analysis, the real and effective safeguard of the interests of the minority,

> however, the assurance of it positive translation of this liberal faith into thoughts and acts of the community by legal norms is a compelling necessity. Such a constitutional guarantee, in preference to those political processes ordinarily to be relied on to protect the minorities, is the dyke against the ever present tendency and temptation to straitjacket the human mind. In this area the Indian Constitution makers have been liberally eclectic and have drawn upon the political experience of other countries."

6. The fundamental rights of it religious and linguistic minority under Art. .1011) are. indeed, multi-faceted. The scope of each facet arising in different contexts has been explained by the Supreme Court in a series of pronouncements See: The Kerala Education Bill, 1957 *In re, AIR 1958 S C 956*; *Sidharajbhai v. State of Gujarat*[3] *W. Proust v. State of Bihar*[4] *State of Kerala v. Mother Provincial*[5] *Ahmedabad St. Xaviers College v. State of Gujarat*[6] *G. F. College, Shahjahanpur v. Agra University*[7] *Lilly Kurian v. Sr. Lewina*[8] and in *All Saints, High School v. Govt. of A. P*[9]. In all these cases, the Supreme Court has explained the differing contexts in which the minority and cultural rights are required to he protected within the framework of the Constitution. The pronouncements of the Supreme Court show how the interpretative process could fill the interstices of the constitutional framework of the right with flesh and blood and animate the eclectic spirit of the Constitution in regard to the rights of minorities. The aspect presented by this petition is one of the facets which has also been illumined by a series of pronouncements of which last mentioned case is particularly instructive.

7. Sri Byra Reddy contends that the appellate powers conferred under the Act are so wide and sweeping, that it has virtually displaced the disciplinary powers of the management of the minority educational institutions. It is further urged that the powers of the appellate tribunal under Section 10 of the Act are actually equipollent to full-fledged appellate powers of a first appellate court under the Code of Civil Procedure. The conferment of such a blanket power. uncanalised and wholly bereft of guidelines on an authority outside the minority institution is, it is urged, a serious infraction of the rights of the minorities under Art. 3(h 1) of the Constitution. It is pointed out that even minor penalties - let alone penalties of dismissal and removal from service - are amenable to this wide appellate jurisdiction of an outside authority, and such a power cannot be regarded as merely regulatory intended to ensure the excellence of the educational standards in the institution.

8. The question is whether the impugned provisions in Ss. 6, !i. 10 and 12 of the 'Act' offend Art. 3011) of the Constitution and are accordingly unenforceable as against the minority institutions. This necessarily takes us to the sequential propositions: (i) as to the nature of the rights of minorities under Art.610(I): (ii) whether those rights are amenable to regulatory measures: (iii) if so, what is the scope and extent of such permissible regulations and (iv) whether consistent with right to 'administer' of a minority institution under Art.. 30(H, provisions creating in favour of its employees a right in regard to their service conditions to appeal to an authority outside the minority institution is within the permissible regulatory measures.

9. It is now trite proposition that the fundamental right under Art. 30 is unconditional. It is nut subject to any reasonable restrictions conceived in general public interest. Referring to the scope and an-bit of this right, the Supreme Court in Ahmadabad St. Xaviers College case (AIR 1974 S C 1389) at p. 1444) stated:

> "Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are

[3]AIR 1963 S C 140 5 AIR 1970 S C 2079 [7](AIR 1975 S C 1821)
[4] AIR 1969 SC 465 6 AIR 1974 S C 1389 [8] AIR 1979 SC 52:(1978 Lab IC 1644)
[9]AIR 1980 S C 1042

> separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community.
>
> The next part of the rights relates to the administration of such institutions. Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will he best served. No part of this management can he taken away and vested in another body without an encroachment upon the guaranteed right."
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> The power to 'administer' educational institution includes the right to choose the teachers. On this aspect, the Supreme Court said: tat p. 1445).
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> "... It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution."

(Underlining is ours)

> The right to 'administer' however is not so peremptory and absolute as not to admit of any regulator)- measures. The Supreme Court in St. Xaviers College case observed: (at p. 1441)
>
> "No right, however absolute, can be free from regulation .....
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> "All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighbourhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when it certain point is reached.'
>
> "The right of a linguistic or religious minority to administer educational institutions of their choice. though couched in absolute terms has been held by this Court to he subject to regulatory measures which the State might impose for furthering the excellence of the

standards of education....."

"The idea of giving some special rights to the minorities is not to have a kind of it privileged or pampered section of the population but to give to the minorities it sense of security and it feeling of confidence....."

The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly. efficient and sound administration, Das, C. J., in the Kerala Education Bill case 1959 S C R 995 = (AIR 1958, S C 956) (supra) I summed up in One sentence the true meaning of the right to administer by saying that the right to administer is not the right to maladminister. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration. checks and balances in the shale of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to he tempered with regulatory measures to facilities smooth administration."

The Court further observed: at p. 1398) .

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

"... Balance has, therefore, to he kept between the two objectives, that of ensuring the standard of excellence of the institution and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations which embrace and reconcile the two objectives can he considered to be reasonable."

"... The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclecticism in the administration of the institution...."

These observations of the Supreme Court make it clear that right to administer under Art. 301 1) is not absolute, and it requires to be regulated: out the validity' f the regulatory measures must pass the twin test of being at once reasonable and designed not in the larger interests of the public as it whole but in the interests of the minority institution itself. Regulations made in the interests of instructional efficiency, discipline, health, sanitation, morality fall within the area of the permissible. However. it new appellate or administrative authority with unlimited powers is not to he foisted on the administration of the minority institution. The re -son appears to be simple and not far to seek. If the right of appointment of teacher,, is the essence of the right of administration, any power vesting in an outside authority which makes that right unreal or illusory or ineffective would offend Art. 30(1). But we may hasten to add that the validity or Otherwise of any

such appellate power cannot turn merely on the circumstance that the appellate authority is an Outside authority. The appellate jurisdiction to be real and effective trust needs he located in an independent authority unconnected with and independent of the management. It it is Otherwise, and if the appellate power is vested in a person or authority "inside" the management of the institution, the concept of an appellate jurisdiction would be rendered unreal and illusory. It would he an appeal from Caesar to Caesar.

10. I here could. therefore. be no dispute on the conferral of it right of appeal to an outside authority. Otherwise sanctions for even the permissible regulatory measures would he lacking. The controversy, however, is only in regard to the contents and scope of such appellate powers. There cannot be uncanalised and unguided appellate powers vested in an outside authority. The Supreme Court while dealing with the provisions of the Kerala University Act in Lilly Kurian's case 11978 Lab I C 10,44) observed l at page 1653) :

"The conferral of a right of appeal to an outside authority like the Vice Chancellor under Ordinance 33141 takes away the disciplinary power of a minority educational authority. The Vice-Chancellor has the power to veto its disciplinary control. There is a clear interference with the disciplinary power of the minority institution..... (Para 37)

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

It is clear from these observations that the bestowal of a blanket power on an outside appellate authority to interfere with every kind of order passed by the management will virtually displace the disciplinary control of the management over its teachers and be subversive of the constitutional rights under Art. 30 (1). The observations of the Supreme Court. however, as we understand, do not mean that no appellate jurisdiction is at all permissible in an 'outside' authority. On the contrary, it is clear that an appellate jurisdiction can be vested in an outside authority but it should be regulated and controlled by guidelines. That, however, is not to understand it to mean - as contended by Sri T. S. Ramachandra - that wide appellate powers can also he conferred on an outside authority if there are guidelines for exercise of the power. The sweep of the appellate power must correspond to the ambit of the permissible regulatory measures. Our view in the matter is

supported by the decision of the Full Bench of the Kerala High Court in *Manager, St. Joseph's Training College for Women v. University Appellate Tribunal*[10], where it was observed:

"..... To put it differently, the vice vitiating the provisions consisted not in the conferment of an appellate jurisdiction on an outside authority but in clothing the appellate authority with a naked and arbitrary power without any limitations or guidelines% and also in vesting the appellate jurisdiction in an authority like the Vice-Chancellor who may have no time at all to deal with such matters expeditiously in a quasi-judicial manner. We do not understand the decision in Lilly Kurian's case (AIR 1979 S C 52) as laying down as an absolute proposition that the very conferment of a right of appeal on teachers of minority institutions in respect of orders passed by the management in any disciplinary proceeding will ipso facto violate Art. 30 (1) of the Constitution.....

Regulations can he made for ensuring proper conditions of service of teachers in a minority institution and for it fair procedure in matters of disciplinary proceedings. Khanna. J.. in Allahahad St. Xavicrs College case (AIR 1974 S C 1389) said'

"105. Although disciplinary control over the teachers of it minority educational institution would he with the governing council, regulations, in my opinion, can be made for ensuring proper conditions of service of the teachers and for securing a fair procedure in the matters of disciplinary action against the teachers. Such

[10] ILR (1979) 2 Ker 789 : (1980 Lab I C 47 at pp. 61 & 62)

provisions which are calculated to safeguard the interests of teachers would result in security of tenure and thus inevitably attract competent persons for the posts of teachers. Such a provision would also eliminate a potential cause of frustration amongst the teachers. Regulations made for this purpose should he considered to be in the interest of minority educational institutions and as such they would not violate Art. 30 (1)....."

11. Before we refer to the impugned provisions in the present case, we must again turn back to the decision of the Supreme Court in All Saints High School's case (AIR 1980 S C 1042). This decision can he said to he the high watermark in regard to the question debated before us. In that case, the provisions of the Andhra Pradesh Recognized Private Educational Institutions Control Act (11 of 1975) ('Andhra Act' for short) were challenged as offending the constitutional guarantee under Art. 30 (1) of the Constitution. That legislation was brought forth to safeguard the service conditions of teaching staff in recognized private educational institutions in the matter of suspension, removal, dismissal and retrenchment. It also made it compulsory for the private managements to obtain the prior permission of the competent authority before a teacher was visited with any major penalties. It also provided that suspension of a teacher pending inquiry should be for a period limited to two months after which the teacher would be deemed to have been restored to duty unless the competent authority extended suspension for a further like period. Retrenchment without prior permission of the competent authority was provided against. This legislative measure was considered necessary as it had come to the notice of the State Government that managements of private educational institutions were committing various

irregularities in matters -elating to suspension, dismissal, removal or termination of the members of the teaching staff on flimsy grounds without framing charges and without giving an opportunity to explain.

Before we turn to the ratio of the said decision, it is convenient to examine the language of the 'Andhra Act'. Section 3 (1) of the said Act prohibited dismissal, removal, termination or reduction in rank of any teacher "except with the prior approval of the competent authority". The proviso to S. 3 (1) said that if provisions of S. 3 (1) were contravened, "teachers affected" shall be deemed to be in service.

Section 3 (2) provided for the grounds of or withholding of the prior approval by the competent authority. Section 3(3) (a) and (b) regulated power of suspension providing for a time limit on the period of suspension. Section 4 provided for appeals against order of punishment. Section 4 reads:

"4. Appeal against orders of punishment imposed on teachers employed in private educational institutions. - Any teacher employed in any private educational institution - (a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated; or (h) whose pay or allowances or any of whose conditions of service are altered or interpreted (interrupted?) to his disadvantage, by any order; may prefer an appeal against the order to such authority or officer as may be prescribed: and different authorities or officers may be prescribed for different classes of private educational institutions.

Explanation - In this section, the expression 'order' includes any order made on or after the date of the commencement of this Act in any disciplinary proceeding which was pending on that date."

Section 5 makes special provisions regarding appeals in certain past disciplinary cases. Section 6 provided against retrenchment of a teacher without the prior approval of the competent authority. Section 7 provided for the mode of payment of pay and allowances of teachers and the time within which it should be so paid. These provisions were challenged by minority institutions.

The Supreme Court by a majority decision upheld the provisions of Sections 3(3) (a), 3(3) (h), 6 and 7 of the Act. However provisions in Ss. 3(U, 3(2). 4 and 5 of the 'Andhra Act' were held to offend the rights of the minority institutions under Art. 30(1) of the Constitution and were accordingly held unenforceable against the minorities.

In the 'Karnataka Act' which was brought forth for achievements of similar objectives, Ss. 6, 7, 8, 10 and 12 read:

"6. Termination of service and procedure for imposing penalties.

(1) No employee shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges and where it is proposed after such inquiry to impose on him such penalty, until he has been given a reasonable opportunity of making representations on the penalty proposed, but only on the basis of the evidence

adduced during such inquiry:
Provided that the provisions of this subsection shall not apply where an employee is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.
(2) No order imposing any penalty other than those referred to in sub-s. (1) shall be imposed on an employee except after,
(a) the employee is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation which he may wish to make and
(b) such representation, if any, is taken into consideration.
7. Communication of orders -- Every order of the Board of Management terminating the services of an employee or imposing a penalty or otherwise affecting his conditions of service to his prejudice shall be communicated in writing to the employee.
8. Appeals - (1) Any employee aggrieved by an order of the Board of Management may, within three months from the date of communication of the order, appeal against such order to the Educational Appellate Tribunal constituted under S. 10. The provisions of Ss. 4 and 5 Limitation Act, 1963, shall be applicable to such an appeal. (2) Notwithstanding anything contained in sub-s. (1), any employee aggrieved by an order of dismissal or removal made by the Board of Management at any time within one year before the date of commencement of this Act may also appeal against such order within three months from such date.
9. *** *** ***
10. Tribunal - (1)
(2) ... ...
(3) ... ...
(4) The Educational Appellate Tribunal shall
(a) for the purposes of the disposal of the appeals referred to under this Act have the same powers as are vested in a court of appeal under the Code of Civil Procedure 1908 (Central Act 5 of 1908);
(b) have the power to stay the operation of the order appealed against on such terms as it may think fit;
(c) if, after taking such fresh evidence as it considers necessary, is satisfied from the materials on record that
(i) the order of dismissal or removal was not justified, it may set aside the order and direct reinstatement of the employee on such terms and conditions (including payment of salary and other allowances from the date of dismissal till the date of reinstatement and costs, if any) as it thinks fit or give such other relief to the employee including the award of any lesser punishment in lieu of dismissal or removal as the circumstances of the case may require;
(ii) the punishment [other than those specified in sub-cl. (i)] imposed was not justified, it may set aside the punishment imposed or give such other relief to the employee including

the award of any lesser punishment in lieu of the punishment imposed as the circumstances of the case may require; and
(d) for the purpose of executing its own orders have the same powers as are vested in a court executing a decree of a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) as if such orders were decrees of a civil court.
11. *** *** ***
12. Penalties - The Manager or any other person who contravenes any of the provisions of this Act or fails or omits to carry out any order made by the Educational Appellate Tribunal shall be punished with imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both." It is seen that provisions of S. 4 of the 'Andhra Act' and provisions of Ss. 8 and 10 of the 'Act' we are concerned with are intended to serve similar purposes. The grounds on which the Supreme Court found S. 4 of the 'Andhra Act' infringing Art. 30(1) are:
"11. ... 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 Art. 30(1)."
"16. ... This provision in my opinion is too broadly worded to be sustained on the touchstone of the right conferred upon the minorities by Art. 30(1). In the first place, the section confers upon the Government the power to provide by rules that an appeal may lie to such authority or officer as it designates, regardless of the standing or status of that authority or officer. Secondly, the appeal is evidently provided for on all questions of fact and law, thereby throwing open the order passed by the management to the unguided scrutiny and unlimited review of the appellate authority. It would be doing no violence to the language of the section to interpret it to mean that, in the exercise of the appellate power, the prescribed authority or officer . can substitute his own view for that of the management, even in cases in which two views are reasonably possible...." (para 16)
By the same token Ss. 8 and 10 of the 'Act' which create a wide appellate jurisdiction in an outside body are not limited merely to the examination whether the Rules of natural justice have been violated in the course of the domestic inquiry culminating in the imposition of the penalty or to the limited question whether the order was mala fide. Jurisdiction of the appellate body is not like' the limited jurisdiction that the civil court exercises in examining the validity of the findings of a domestic inquiry. Section 10(4), more or less, creates a jurisdiction coextensive with that of a court of first appeal under the Code of Civil Procedure. The appellate tribunal can take such fresh evidence as it considers necessary and in cases where there is dismissal or removal, if the appellate tribunal is satisfied that such dismissal or removal was not justified, it may set aside the order and direct reinstatement on such terms and conditions as it may think fit. Even if the findings of misconduct recorded at the domestic inquiry are unexceptionable, the tribunal can interfere even in regard to the nature and quantum of the penalty. Even in cases of penalties other than 'dismissal' or 'removal' the appellate tribunal can interfere with the

quantum of punishment and award a lesser punishment. Even if two views are reasonably possible the appellate tribunal can substitute its own views for that of the management. This jurisdiction is not a limited jurisdiction which can be said to he correlative of the rights of the employees under S. 6(1). Provisions in the 'Act' touching the scope of the appellate jurisdiction cannot be read down in relation to minority institution as suggested by Sri T. S. Ramachandra, as being limited to the nature of jurisdiction a Civil Court exercises in examining the validity on the finding of a domestic inquiry. "It is the creation of the power" it is said "and not its exercise that is subject to objection and the objection would not be removed even though the powers conferred were never exercised at all" (See *Ottawa v. Ottawa Corporation*[11] *-). (at p. 269)*.

12. The foregoing discussions would show that appellate jurisdiction created under Ss. 8 and 10 of the 'Act' in regard to minority institutions offends the fundamental rights guaranteed under Art. .1011).

13. But S. 6, in providing certain safeguards in relation to conditions of service of teachers is within the area of permissible regulations and can exist independently of the provisions relating to appeals. Indeed, in Lilly Kurian's case (1978 Lab I C 1644 at p. 1653) (S C). it was observed:

> .....provision for giving a reasonable opportunity of showing cause against a penalty to be proposed on a member of the staff of an educational institution would consequently he held to he valid.
> In all Saits High School's case (AIR 1980 S C 1042). Chandrachud. C. J.. observed:
> "15..... I do not think that in the name of discipline and in the purported exercise of the fundamental right of administration and management, any educational institution can he given the right to 'hire and fire' its teachers. After all, though the management may he left free to evolve administrative policies of an institution, educational instruction has to he imparted through the instrumentality of the teachers. and unless they have a constant assurance of justice. security and fair play it will he impossible for them to give of their best which alone can enable the institution to attain the ideal of educational excellence.....'

14. Section 12 refers to penalties for contravention of the provisions of the 'Act' and for disobedience of the order made by the appellate tribunal. In the view that we have taken, the provisions of this section in so far as they speak of penalties for disobedience of orders made by the tribunal are. equally, not attracted to minority institutions. The rest of

[11] AIR 1916 P. C. 267

S. 12 cannot be said to he unreasonable. It is only intended to enforce obligations correlative to the permissible regulatory measures which are otherwise valid.

15. Indeed, our earlier pronouncement in Holy Christ Education Society's case (ILR (1979) 2

Kant. 2255) is consistent with the above principles and is not inconsistent with the pronouncement of the Supreme Court in All Saints High School case (AIR 1980 S C 1042) and our decision in Holy Christ Education Society's case does not require reconsideration.

16. In the result, this petition is allowed in part. We hold and declare the provisions of Ss. 8, 10. and to the corresponding extent S. 12 of the 'Act', infringe the rights of minorities under Art. 30(I) of the Constitution and are unenforceable against such minority institutions. Accordingly, these provisions cannot be enforced as against petitioners I and 2. Consequently, it must he held that first respondent tribunal has no jurisdiction to entertain third respondent's appeal E.A.T. No. 3 of 1980. Accordingly. a writ of prohibition shall issue to respondent I to forbear from proceeding with appeal E.A.T. No. 3 of 1980

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In the circumstances, parties are directed to hear their own costs.

Venkatachaliah, J.

17. After we pronounced our order. Sri T. S. Ramachandra. learned counsel for respondent 3 made an oral application for grant of a certificate of fitness to appeal to the Supreme Court from our order. We think that the conclusions we have reached are based on a series of pronouncements of the Supreme Court on the subject and this matter does not involve any question or questions of law of general importance needing to be decided by the Supreme Court. We accordingly refuse the certificate prayed for.
Order accordingly.