PETITIONER:
LALIT NARAYAN MISHRA INSTITUTE OF ECONOMIC DEVELOPMENT ANDSO

Vs.

RESPONDENT:
STATE OF BIHAR & ORS. ETC.

DATE OF JUDGMENT23/03/1988

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
MISRA RANGNATH

CITATION:
1988 AIR 1136 1988 SCR (3) 311
1988 SCC (2) 433 JT 1988 (1) 635
1988 SCALE (1)582
CITATOR INFO :
R 1992 SC1277 (22,34,88,95)

ACT:
Bihar ordinances Nos. 15 of 1986 and 30 of 1986 replaced by Bihar Private Educational Institutions (Taking over) Act, 1987-Challenging constitutional validity of-And validity of order of termination of service under Bihar Ordinance No. 15 of 1986.

HEADNOTE:
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In these writ petitions and civil appeals, Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna, a registered society, and its Registrar, Dr. Jagadanand Jha, challenged the constitutional validity of Bihar ordinances Nos. 15 of 1986 and 30 of 1986, replaced by the Bihar Private Educational Institutions (Taking over) Act, 1987 ('The Act'). Dr. Jagadanand Jha further challenged the validity of the order of termination of his services as the Registrar of the Institute, dated April 21, 1986 in the writ petition (Civil) No. 439 of 1987. As disposal of the writ petition (Civil) No. 431 of 1987 wherein the constitutional validity of the Act was challenged and the writ petition (Civil) No. 439 of 1987 above-said would virtually mean the disposal of the other writ petitions and appeals, the Court dealt with those two writ petitions.

On April 19, 1986, the State Government of Bihar promulgated ordinance No. 15 of 1986, whereby the Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna ('Institute') was taken over. On the day the ordinance was promulgated, possession of the Institute was taken over and the services of Dr. Jagadanand Jha, the Registrar of the Institute were terminated by the impugned order dated April 21, 1986. The petitioners filed Writ Petitions before the High Court, challenging the validity of the said ordinance and the order of termination of the services of Dr. Jagadanand Jha. The High Court dismissed the writ petitions, Both, the Society and Dr. Jagadanand Jha, preferred two appeals by special leave being Civil Appeal No. 4142 of 1986 and Civil Appeal No. 4141 of 1986 respectively. The Society and Dr. Jagadanand Jha also

challenged the ordinance No. 30 of 1986 by Writ Petition (Civil) No. 55 of 1987 and the constitutional validity of the Act replacing the said two ordinances.
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Allowing the writ petitions (Civil) Nos. 87 of 1987 and 439 of 1987 and Civil Appeal No. 4141 of 1986, in so far as they related to the order of termination of the services of Dr. Jagadanand Jha, and dismissing the writ petitions (Civil) Nos. 55 of 1987 and 431 of 1987 and Civil Appeal No. 4142 of 1986, the Court,
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HELD: The provisions of the Act are the same as those of the two ordinances Nos. 15 and 30 of 1986. The first attack on the validity of the Act and the ordinances was founded on the plea of violation of Article 14 of the Constitution. It was contended that the Act and the ordinances were discriminatory in nature and violative of Article 14 of the Constitution of India and should be struck down. The contention was wholly misconceived. The ordinances were not promulgated and the Act was not passed for the purpose of nationalisation of the Institute only. It was apparent from the provisions of the ordinances and the Act that the private educational institutions as defined therein were to be taken for the purpose as mentioned in the Preambles to the ordinances and the Act in a phased manner. All the institutions which answered the description given in section 2(a) of the Act were to be nationalised. It was not correct to say that the Institute had been signled out for nationalisation. [319E; 321D; 323D-F]

There can be no doubt that when nationalisation had to be done in a phased manner, all the institutions cannot be taken over at a time. The nationalisation in a phased manner contemplates that by and by the object of nationalisation will be taken over. In implementing the nationalisation of the private institutions in phased manner, the Legislature had started with the Institute, and the question of singling out the Institute or treating it as a class by itself did not arise. It was the legislative decision that the Institute should be taken over in the first phase of nationalisation. The Legislature had not left it to the discretion of the executive government for the purpose of selecting the private educational institution for the first phase. It was very difficult to assail a legislative decision. Of course, a legislative decision can be assailed if it is violative of any provision or part III of the Constitution. So far as Article 14 was concerned, the Court did not think that it had any manner of application inasmuch as the question of discrimination did not arise as soon ss it was conceded that it was a case of in a phased manner and that for the first phase the Institute had been chosen by the Legislature itself. The Institute had been chosen by the legislative process. It was true that the ordinance Were promulgated under Article 213 of the Constitution, bot it could not be characterised as an executive act. In any even, ultimately, the Legislature itself had
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passed the Act with the inclusion of the Institute in the Schedule thereto as the only institution to be nationalised in the first phase. Even assuming that the question of discrimination might arise also for the purpose of selection for the first phase, there were justifiable reasons for selecting the Institute for the first phase of nationalisation; the State had changed the name of the Institute, provided the site for the Institute, got the building constructed through its own agencies and funds and

supervised the prescription of syllabi. The fact could not be excluded that since 1975 it is the State of Bihar nurturing the Institute, spending money and exercising necessary control over it, and these facts fully justified the propriety of legislative wisdom in selecting the Institute for nationalisation in the first phase. [323G-H; 324B-C; 325C-E]

There could be no doubt that on the date the ordinances were promulgated and the Act was passed, the same could not be challenged on the ground of non-implementation of the legislative intent in nationalising similar institutes by amending the Schedule. If a legislative enactment cannot be challenged as discriminatory on the date it is passed, it is difficult to challenge the same as violative of Article 14 of the Constitution on the ground of inaction of the executive in implementing the purposes of the Act, regard being had to the fact that it was the Legislature which had made the selection for the first phase of nationalisation. If no such selection had been made by the Legislature and the entire thing had been left to the discretion of the Government, it might have been possible to complain of discriminatory treatment. It is common knowledge that when any litigation ensues and remains pending, the Government generally does not take any step till the final disposal of the litigation. It was apparent that in view of the pendency of litigations, the State Government had granted approval of only temporary affiliation to the three institutions mentioned in the additional affidavit of the petitioner-society and that too on certain conditions. If the State Government had no intention of taking over other institutions in accordance with the provisions of the Act, it would have sanctioned permanent affiliation to the three institutions. The Court could not accept the contention of the petitioner-society that the professed object of nationalisation in phases was a mere pretence and a colourable device to single out the Institute or that the facts of exclusion of eleven similarly situated Institutes and the subsequent recognition of the three other Institutes imparted vice of discrimination to the impugned Act. The question of discrimination or discriminatory treatment of the Institute did not arise and the contention of the petitioner-society in this regard was rejected. [325G-H; 326A-B; F; 327E-F]

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The next attack of the petitioner-society to the impugned Act was A founded on violation of the provision of Article 19(1)(c) of the Constitution. The question was whether the fundamental right of the petitioner society, as conferred by Article 19(1)(c), had been infringed or not, and, further, whether the fundamental right to form association, as contained in Article 19(1)(c) of the Constitution, also included within it the concomitants or the activities or the objects or purposes of an association. [327F; 328E ]

Article 19(1)(c) confers a right on the citizens to form association. In exercise of such a right, the petitioner-society had constituted itself into an association. That right of the Society remained unimpaired and uninterfered with by the impugned Act and ordinances. There was no doubt that the Institute had been taken over by the provisions of the ordinances and the Act. It was true that with the taking over of the Institute, the Society had lost its right of management and control of the Institute, but that is the consequence of all acquisitions. When a property is acquired, the owner loses all control, interest,

and ownership of the property. Similarly, the Society, which was the owner of the Institute, had lost all control and ownership of the Institute. It might be equally true that the Institute was the only activity of the Society, but what was concerned was the right of the Society to form association. So long as there was no interference with the Society, its constitution or composition, it was difficult to say that because of the taking over or acquisition of the Institute, which was the only property of activity of the Society, the fundamental right of the Society to form association had been infringed. The decision of this Court in Damyanti Naranga v. Union of India, [1971] 3 SCR 240, had not manner of application to the present case. The observations made in the decision of this Court in All India Bank Employees' Association v. National Industrial Tribunal, [1962] 3 SCR 269, supported the view the Court had taken that the fundamental right guaranteed under Article 19(1)(c) does not extend to or embrace within it the objects or purposes or activities of an association. It does not carry with it a further guarantee that the objects or purposes or activities of an association so formed shall not be interfered with by law except on grounds as mentioned in Article 19(4). In the circumstances, the contention of the petitioner-society that because of acquisition of the Institute, the Society had lost its right of management over the Institute, and the Institute being the main or the only activity of the Society, the impugned legislations interfered with the right of the society to form and continue the association and, as such, were unconstitutional and void under Article 19(1)(c) of the Constitution. was unsound and rejected. [329C-D; 330B-C, E; 331E-G; 332A-B] 315

Another ground on which the validity of the Act and the ordinances was assailed was the absence of legislative competence of the State Legislature, Counsel for the petitioner-society submitted that having regard to the pith and substance of the Act, the Act fell within Entry 66 of List I and the Entry 25 of List III and Entry 66 of List I must be harmoniously construed, but to the extent of overlapping, the power conferred by Entry 66 must prevail over the power of the State under Entry 25. [332C, F]

By the impugned Act, the Legislature has not laid down any law relating to the subjects mentioned in the Entry 66, List I, or in Entry 25, List III. The Act only provides for the taking over of private educational institutions in phases and has taken over the Institute to start with for the first phase. An Entry in any of the Lists of Seventh Schedule will apply when a law is enacted by the Legislature on any of the subjects mentioned in the Entry. In this case, the impugned Act does not lay down any law touching the subject referred to in Entry 66, List I, or Entry 25, List III. Therefore, neither of these two Entries applied. The Entry that applies to the impugned legislation is Entry 42 of List III, pertaining to acquisition and requisition of property. The taking over of the private educational institutions and the Institute in the first phase is nothing but acquisition of property. The Institute was the property of the petitioner-society and by the impugned Act the property stood transferred to and vested absolutely in the State Government free from all encumbrances. The only Entry relevant is Entry 42 of List III. As soon as Entry 66 of List I was excluded, it was irrelevant which of the Entries-25 or 42 of List III-was applicable, in either case, the State Legislature was competent to make the enactment. There was no substance in the contention of the petitioner-society

that the Act was invalid because the State Legislature had lacked competence in passing the same. [333B-F]

As it is held that the impugned Act is really a legislation relating to acquisition of property within the meaning of Entry 42 of list III, the question might arise whether after the repeal of Article 31(2) by the Constitution (Fourty-Forth Amendment) Act, 1978, any compensation was compulsorily payable for the acquisition of property. The point was not ultimately pressed, and the Court was not called upon to decide the point or express any opinion on the same. [334B-D]

The Court then dealt with the case of Dr. Jagadanand Jha, Registrar of the Institute, whose services were terminated by an order dt. April 21, 1986, as a result of the ordinance No. 15 of 1986 promulgated on April 19, 1986. [334D-E]

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The petitioner Dr. Jagadanand Jha was not a member of the teaching staff; he was the Registrar of the Institute, which comes within the expression "other categories of staff" under sub-section (4) of Section 6 of the said ordinance. It is true that under sub-paragraph (4), it has been provided that sub-paragraphs (2) and (3) shall apply mutatis mutandis, but such application will be limited to the term of appointment and other conditions of service of a member of non-teaching staff of the institution. In other words, the State Government may appoint a committee for the purpose of considering the term of appointment and other conditions of service of the members of the non-teaching staff, and has to decide accordingly. It was thus apparent that the State Government proceeded on the basis that under sub-paragraph (4) of paragraph 6 of the ordinance, it was to consider the question of termination of the services of the members of the non-teaching staff as in the case of the members of the non-teaching staff, as provided in sub paragraph (3) of paragraph 6 of the ordinance. Even then, the Court was not impressed with the manner and haste in which the order of termination had been passed. Although it was alleged that a Committee had been formed and the State Government had terminated the services of the petitioner on the report of the Committee, the Court could not understand the necessity for such haste; in the circumstances, it would not be unreasonable to infer that the Committee or the State Government had not properly applied its mind before the order of termination of the services of Dr. Jha was made. [336E-H; 337A-B]

There can be no dispute that when there is a legislative direction for termination of the services of employees, the compliance with the principles of natural justice may not be read into such direction and, if such terminations are effected without giving the employees concerned an opportunity of being heard, no exception can be taken on the same. But in this case, sub-paragraph (4) of paragraph 6 of the ordinance does not contain any direction for the termination of the services of the members of non-teaching staff. Even in spite of that, if the State Government wanted to terminate the services of the petitioner Dr. Jha, it could not be done without giving him an opportunity of being heard, for such an act on the part of the State Government would be an administrative act. It is clear from the provision of sub-paragraph (4) of paragraph 6 that the services of the members of the non-teaching staff have been intended to be continued. The services of the petitioner Dr. Jha, who had been working in the post of Registrar of the Institute for a long time,

could not be terminated without giving him an opportunity of being heard. Counsel for the respondents also did not oppose this view. Therefore as the petitioner had not been given an opportunity of being
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heard, the impugned order of termination of the services of the petitioner could not be sustained. [337C-G; 338A]

Both the Society and Dr. Jha were not able to substantiate the allegation of mala fides against the then Chief Minister of Bihar. Even assuming although holding to the contrary, that the Chief Minister had acted mala fide, the same could not vitiate the legislative process in the exercise of which the impugned Act and the ordinances had been respectively passed and promulgated. The respondents also had failed to prove the alleged mismanagement of the Institute by the Society or Dr. Jha; the allegation of mismanagement was not pressed . [338B-C]

The impugned order dated April 21, 1986 of termination of the services of the petitioner Dr. Jha was quashed. Writ Petitions (Civil) Nos. 87 of 1987 and 439 of 1987 and Civil Appeal No. 4141 of 1986 in so far as they related to the said order of termination of the services of Dr. Jagadanand Jha, were allowed. The State Government would be at liberty to consider the question of termination of the service of Dr. Jha after giving him a reasonable opportunity to make representation. The Writ Petitions (Civil) Nos. 55 of 1987 and 431 of 1987 and Civil Appeal No 4142 of 1986 were dismissed. [338D-E]

State of Rajasthan v. Mukandchand, [1964] 6 SCR 903; Maganlal Chaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay, [1975] 1 SCR 1; in re The Special Courts Bill, 1978, [1979] 2 SCR 476; Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors., [5969] SCR 279; B.S. Reddy v. Chancellor, Osmania University, [1967] 2 SCR 214; Sakal Papers (P) Ltd. v. Union of India, [1962] 3 SCR 842; Dwarkadas Shrinivas of Bombay v. Sholapur Spinning & Weaving Co. Ltd., [1954] SCR 674; Damyanti Naranga v. Union of India, [1971] 3 SCR 840; All India Bank employees' Association v. National Industrial Tribunal, [1962] 3 SCR 269; State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhenga, [1952] SCR 889 (1009) and K.I Shephard v. Union of India & Ors., [1987] 4 SCC 431, referred to.

JUDGMENT:

CIVIL ORIGINAL/APPELLATE JURISDICTION: Writ Petition (Civil) No. 55 of 1987 etc.

(Under Article 32 of the Constitution of India)

Soli J. Sorabjee, S.N Kacker, S. Nariman, R.K Jain, Singh, Ranjit Kumar. Dhananjay Chandrachud, Rakesh Khanna, R.P. Singh, L N Sinha for the appearing parties
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The Judgment of the Court was delivered by

DUTT, J. In these writ petitions and civil appeals, Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna, a Society registered under the Societies Registration Act, 1860, and its Registrar, Dr. Jagadanand Jha, have challenged the constitutional validity of two ordinances being Bihar ordinances Nos. 15 of 1986 and 30 of 1986 replaced by the Bihar Private Educational Institutions (Taking over) Act, 1987, hereinafter referred to as 'the Act'. Dr. Jagadanand Jha has further challenged the validity of the order of termination of his service as the Registrar of the Institute dated April 21, 1986 in Writ

Petition (Civil) No. 439 of 1987. As disposal of Writ Petition (Civil) No. 431 of 1987 wherein the constitutional validity of the Act has been challenged and Writ Petition (Civil) No. 439 of 1987 in which the legality of the order of termination of service of the said Dr. Jagadanand Jha has been challenged will virtually mean disposal of the other writ petitions and appeals, we propose to deal with these two writ petitions.

The Institute, Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna, hereafter referred to as 'Institute', was initially named Bihar Institute of Economic Development and was started in 1973 under the Chairmanship of Dr. Jagannath Mishra, the then Minister of Irrigation and later on the Chief Minister of Bihar. It was named as Lalit Narayan Mishra Institute of Economic Development and Social Change to commemorate the memory of late Shri Lalit Narayan Mishra, once upon a time, Union Railway Minister. It may be noticed at this stage that the name of the Institute and the name of the Society are the same.

The Institute was basically started as a research institute. In 1974, the Magadh University recognised the Institute for the purpose of research. Subsequently, Ranchi, Patna and Bihar Universities also granted recognition to the Institute as a research institute. In March, 1977, the Magadh University declared the Institute as an autonomous Institute under section 73 of the Bihar State Universities Act, 1975.

on April 19, 1986, the State Government of Bihar promulgated ordinance No. 15 of 1986 whereby the Institute was taken over. It is alleged that the ordinance was promulgated and the Institute was taken over at the instance of the then Chief Minister of Bihar Sri Bindeshwari Dubey. The petitioner-Society has also alleged mala fides on the part of the Chief Minister of Bihar in taking over the Institute

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by promulgating the ordinance. On the day the ordinance was promulgated, possession of the Institute was taken, and the services of Dr. Jagadanand Jha, who was the Registrar of the Institute, were terminated by the impugned order dated April 21, 1986. Besides contending that the ordinance and the order of termination of the petitioner Dr. Jagadanand Jha are illegal and invalid, the petitioner-society and the said Jagadanand Jha allege that all these have happened because of the personal enmity of the Chief Minister against Dr. Jagannath Mishra the Chairman of the Society and the Institute.

The petitioners filed writ petitions before the Patna High Court challenging the validity of the said ordinance No. 15 of 1986 and the order of termination of services of Dr. Jagadanand Jha. The Patna High Court, however, by its judgment dated August 26, 1986 dismissed both the writ petitions. Both the Society and Dr. Jagadanand Jha have preferred two appeals by special leave being Civil Appeal No. 4142 of 1986 and Civil Appeal No. 4141 of 1986 respectively against the said judgment of the Patna High Court. The Society and Dr Jagadanand Jha have also challenged the ordinance No 30 of 1986 by Writ Petition (Civil) No 55 of 1987 and, as stated already, they have also challenged the constitutional validity of the Act replacing these ordinances.

At this stage, it is necessary to refer to the provisions of the Act which are the same as that of the two successive ordinances Nos 15 and 30 of 1986. Some

submissions have been made at the Bar on the Preamble to the Act which reads as follows:

"To PROVIDE FOR TAKING OVER BY THE STATE GOVERNMENT OF PRIVATE EDUCATIONAL INSTITUTIONS OF THE STATE OF BIHAR .

WHEREAS, the State of Bihar has bright prospects of rapid growth of Industrial and Economic Development, the relevancy and importance of specialised knowledge of Business Management has assumed great importance;

AND, WHEREAS, for that purpose it is necessary to ensure a high level of educational and training facilities and the co-ordination of the training with important industrial and business units;

AND, WHEREAS, it has been resolved to nationa-

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lise this branch of education in phases."

Clause (a) of section 2 of the Act defines "Private Educational Institutions" as follows:

"S. 2(a). "Private Educational Institution" means a private educational college, institute or school, affiliated to any University of the State of Bihar or recognised by the State Government and imparting education, and/or training in Business Management or Business Administration or matter connected with Economic and Social Development and/or conducting degree or diploma course in one or the other branch of education mentioned above;"

Chapter II of the Act relates to taking over of Private College/ Institute. Section 3 of chapter II runs as follows:

"S. 3(1) With effect from the date of this Act, the institution as specified in the Schedule of this Act shall stand transferred to and shall vest absolutely in the State Government free from all encumbrances.

(2) The State Government may from time to time by a notified order amend the Schedule by the inclusion of any institution and the same shall stand vested and transferred to in the State Government with effect from the date mentioned in the notification.

(3) All the assets and properties of the institution, Governing Body/Managing Committee/Association, whether movable or immovable including lands, buildings, workshop, stores, instruments, machinery, vehicles, cash balance, reserve fund, investment, furniture and others shall on the date of taking over, stand transferred to and vested in the State Government free from all encumbrances."

Section 4(1) of the Act provides that the Commissioner shall be deemed to have taken charge of the Institution which stands vested in the State Government under the provisions of the Act. Section 6 relates to the determination of terms of services of the teaching staff and the other employees of the Institution. The Schedule to the Act specifies the name of the Institute, namely. "L.N. Mishra Institute of

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Economic Development and Social Change, Patna" in terms of section 3(1) of the Act. Under the Preamble to the Act, it is necessary to rationalise private education relating to business management in view of a very good possibility of a

rapid industrial and economic development of the State of Bihar. The nationalisation has been resolved to be made in phases. It has been already noticed that under section 3(1) of the Act, the Institution mentioned in the Schedule will be transferred to the State Government and will be actually vested in it free from all encumbrances. The Schedule mentions only one Institute and in view of section 3(1) it has vested in the State Government. It is said that the first phase relates to the taking over of the Institute and that has been done. Section 3(2) also provides for amendment of the Schedule by including any institution. In other words, the other institutions which answer the description of private educational institutions as defined in clause (a) of section 2 of the Act will also be nationalised, not at a time, but in phases, the first phase having started with the take over of the Institute. This, in short, is the scheme of the Act.

The first attack to the validity of the Act and the said two ordinances is founded on the plea of violation of Article 14 of the Constitution. It is submitted by Mr. Sorabjee, learned Counsel appearing on behalf of the petitioner-Society, that while it is true that Article 14 forbids class legislation, it does not, however, forbid reasonable classification. We are reminded of the principle of law as laid down in State of Rajasthan v. Mukandchand, [1964] 6 SCR 903; Maganlal Chaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay, [1975] 1 SCR 1 and in re The Special Courts Bill, 1978, [1979] 2 SCR 476. In all these cases, it has been laid down that in order to satisfy the test of permissible classification under Article 14, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that the differentia must have a rational relationship to the object sought to be achieved by the statute in question. It is urged by the learned Counsel that the impugned Act on the face of it does not disclose any basis or principle for singling out the Institute and for treating it as a class by itself. It is submitted that neither in the preamble nor in the provisions of the Act is there the slightest indication for treating the Institute as a class by itself.

Much reliance has been placed by the learned Counsel for the petitioner on the decision of this Court in Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors., [1959] SCR 279. In that case, the
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Central Government in exercise of its power under section 3 of the Commissions of Enquiry Act, 1952, issued a notification dated December 11, 1956 appointing a Commission of Enquiry to enquire into and report in respect of certain companies mentioned in the Schedule attached to the notification and in respect of the nature and extent of the control and interest which certain persons named in the notification exercised over these companies. Das, C.J. speaking for the Court observed that it was not established that the petitioners and their companies had been arbitrarily singled out for the purpose of hostile and discriminatory treatment and subjected to a harassing and oppressive enquiry. It was further observed that nowhere in the petitions was there even an averment that there were other persons or companies similarly situated as the petitioners and their companies. Certain principles of law have been laid down in that decision. These principles still hold the field and are helpful in considering the

constitutionality of a statute. One of these principles is that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself.

The other decision that has been relied upon by the petitioner is B.S. Reddy v. Chancellor, Osmania University, [1967] 2 SCR 214. What happened in that case was that section 5 of the Osmania University (Second Amendment) Act, 1966 introduced into the Osmania University Act, 1959 a new section 13A whereby it was provided that the person then holding the office of the Vice-Chancellor of the University could only hold that office until a new Vice-Chancellor was appointed, and that such new amendment must be made within 90 days of the commencement of the said amendment Act whereupon the old Vice-Chancellor would cease to hold office. It was held by this Court that there was no justification for the impugned legislation, that is, the provision of section 13A, resulting in a classification of the Vice-Chancellors into two categories, namely, the appellant as the existing Vice-Chancellor and the future Vice-Chancellors to be appointed under the Osmania University Act. It was held that both these categories constituted one single group or class, and that even assuming that the classification of these two types of persons as coming under two different groups could be made, nevertheless, it was essential that such a classification must be founded on an intelligible differentia which would distinguish the appellant from the Vice Chancellors appointed under the Osmania University Act. The Court held that there was no intelligible differentia on the basis of which the classification could be justified.

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On the basis of the above principles of law as laid down by this Court, it is submitted by the learned Counsel for the petitioner that while it is true that a single individual may be treated as a class by himself on account of some special circumstances or reasons applicable to him as laid down by this Court in Dalmia's case (supra), such classification must be founded on an intelligible differentia which distinguishes the person classified from others falling outside the classification. It is urged that even though nationalisation of institutes is permissible in a phased manner, and a single institution like the Institute with which we are concerned may be singled out as a class by itself, it must be founded on an intelligible differentia that distinguishes it from other institutions and such differentia for classification must have a rational nexus to the object sought to be achieved by the Act. It is the case of the petitioner-Society that there are eleven other similar institutes, which have been specifically named in the petition and there is nothing in the Act to indicate why the Institute has been singled out. Moreover, there is also nothing to indicate either in the Preamble or in the provisions of the Act that the singling out of the Institute from the other institutions and treating it as a class by itself, has a reasonable relation to the object sought to be achieved by the Act. It is, accordingly, submitted that the Act and the ordinances are discriminatory in nature and violative of Article 14 of the Constitution and should be struck down on that ground.

The contention made on behalf of the petitioner-Society is wholly misconceived. The ordinances were not promulgated and the Act was not passed for the purpose of

nationalisation of the Institute only. It is apparent from the provisions of the ordinances and the Act that the private educational institutions as defined therein are to be taken over for the purpose as mentioned in the Preambles to the ordinances and the Act in a phased manner. All the institutions which answer the description as given in section 2(a) of the Act are to be nationalised. It is, therefore, not correct to say that the Institute has been singled out for the purpose of nationalisation.

There can be no doubt that when nationalisation has to be done in a phased manner, all the institutions cannot be taken over at a time. The nationalisation in a phased manner contemplates that by and by the object of nationalisation will be taken over. Therefore, in implementing the nationalisation of private institutions in a phased manner, the Legislature has started with the Institute. Therefore, the question of singling out the Institute or treating it as a class by itself does not arise, for as the provisions of the Act and the ordinances go, all the
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private educational institutions, as defined in section 2(a) of the Act, A will be nationalised in a phased manner.

It is the legislative decision that the Institute should be taken over in the first phase of the nationalisation. The Legislature has not left it to the discretion of the executive Government for the purpose of selecting the private educational institution for the first phase. It is very difficult to assail a legislative decision. Of course, there can be no doubt that a legislative decision can be assailed if it is violative of any provision of Part III of the Constitution. So far as Article 14 is concerned, we do not think that it has any manner of application inasmuch as the question of discrimination does not arise as soon as it is conceded that it is case of nationalisation in a phased manner and for the first phase the Institute has been chosen by the Legislature itself.

The decision of this Court in the cases of Dalmia (supra) and Osmania University (supra) have no manner of application because in those two cases the question of discrimination did really arise. But, in the instant case, there cannot be any discrimination when nationalisation has to be made in phased manner.

It is, however, submitted that there was no justification to pick and choose the Institute even for the first phase. As has been stated already, the Institute has been chosen by legislative process. It is true that the ordinances were promulgated under Article 213 of the Constitution of India, but it cannot be characterised as an executive act. In any event, ultimately the Legislature itself has passed the Act with the inclusion of the Institute in the Schedule thereto as the only Institution to be nationalised in the first phase. Even assuming that the question of discrimination may arise also for the purpose of selection for the first phase, we are of the view that there are justifiable reasons, which will be stated presently, for selecting the Institute for the first phase of nationalisation.

Mr. Kacker, learned Counsel appearing on behalf of the Chief Minister of Bihar, has placed before us two resolutions of the Education Department of the Government of Bihar dated June 10, 1975 and November 21, 1975. By the first mentioned resolution, it was decided to rename the Bihar Institute of Economic Development as Lalit Narayan Mishra Institute of Economic Development and Social Change

to commemorate the memory of late Shri Lalit Narayan Mishra, who was the Railway Minister, and to enlarge the working scope of the Institute and to develop it into a significant and useful memorial.

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It was also resolved that the entire expenditure of the Institute would be borne by the State government (Education Department) and for this purpose annual grants would be sanctioned. A steering committee under the chairmanship of the Education Minister was constituted. It is not disputed that since June, 1975 every expenditure for maintaining and running the Institute has been incurred by the State of Bihar. It is submitted by Mr. Kacker that the facts disclosed in the writ petition have brought out prominently the interest the State had taken in not only financing, but also controlling the entire development and running of the Institute. The total amount of money spent by the State Government in nurturing the Institute works out to about Rs.1.60 crores. Facts also disclose that not only the State had changed the name of the Institute, but also provided the site for the Institute, got the building constructed through its own agencies and funds and even supervised the prescription of syllabi. There is much force in the contention of Mr. Kacker that in a sense the State Government was running the entire Institute without nationalisation and when it decided to nationalise such institutions for the purposes mentioned in the Preambles of the Act and ordinances, this Institute was chosen to be the very first with all sense of justification and propriety. In considering the propriety of legislative wisdom in selecting the Institute in the first phase of nationalisation, we cannot exclude the fact that since 1975 it is the State of Bihar which has been nurturing the Institute spending a considerable sum of money and exercising necessary control over it, as contended on behalf of the petitioner-Society. The facts stated above, in our opinion, fully justify the propriety of legislative wisdom in selecting the Institute as the subject-matter of nationalisation in the first phase.

It is, however, complained on behalf of the Institute that since April 19, 1986 when the first ordinance was promulgated, no other institution has been added to the Schedule, though nearly two years have passed in the meantime. It is submitted that this fact demonstrates that the professed object of nationalisation in phases is a mere pretence and a colourable device to single out the Institute for discriminatory treatment. The taking over of the Institute is an act of legislation and not an act of the Government. The question to be considered is whether at the time when the ordinances were promulgated or the Act was passed, the same suffered the vice of discrimination or not. There can be no doubt that on the date the ordinances were promulgated and the Act was passed, the same could not be challenged on the ground of non-implementation of the legislative intent in nationalising similar institutes by amending the Schedule. If a

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legislative enactment cannot be challenged as discriminatory on the date it is passed, it is difficult to challenge the same as violative of Article 14 of the Constitution on the ground of inaction of the executive in implementing the purposes of the Act, regard being had to the fact that it was the Legislature which had made the selection for the first phase of nationalisation. If no such selection had been made by the Legislature and the entire thing had been left to the discretion of the Government, it might have been

possible to contend of discriminatory treatment. The respondents have, however, given an explanation for not including the other similar institutions in the programme of nationalisation, to be precise, in the Schedule to the Act.

In paragraph 24 of the counter-affidavit of the respondents Nos. 1, 3 and 4 affirmed by Shri Ram Shankar Prasad, Deputy Secretary, Department of Education, Government of Bihar, it has been stated, inter alia as follows:

> "Since the validity of the Act is under cloud, being the subject matter of challenge before this Hon'ble Court, the State Government has not yet taken over other Institutes. However, it is submitted that the proposal to take over two other institutes in the second phase is at the final stage and is awaiting the final decision with regard to the validity of the Act. When the cloud is cleared, further step for taking over other institutes imparting education in similar branch will be taken."

It is common knowledge that when any litigation ensues and remains pending, the Government generally does not take any step till the final disposal of the litigation. It is also the case of the respondents that because of the pendency of the litigation challenging the validity of the ordinances and the Act, the Government did not take any steps for nationalisation of similar institutes for the second phase.

A grievance has been made on behalf of the petitioner-Society that even after the promulgation of the ordinances, three other Institutes, the details of which have been set out in the additional affidavit, have been recognised. An explanation for the recognition of the three Institutes has been given in paragraph 25 of the counter-affidavit of the respondents Nos. 1, 3 and 4. The explanation is that the affiliation is granted under the Bihar State University Act by the University with the approval of the State Government. Three Institutes mentioned in paragraph 4 of the additional affidavit of the petitioner-Society were
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recommended by the concerned university for affiliation. The State Government has concurred in the grant of temporary affiliation subject to certain conditions and only for two sessions. In other words, the explanation is that permanent affiliation has not been granted by the State Government. It is also the case of the said respondents that these institutions are not imparting training in the various courses which are being taught in the Institute. The Institute has sponsored and taken out various research programmes and training in computer which are not available in the three institutions named in paragraph 4 of the additional affidavit. It is thus apparent that in view of the pendency of litigations, the State Government has granted approval to only temporary affiliation to the three institutions and that too on certain conditions. If the State Government had no intention of taking over other institutions in accordance with the provisions of the Act, in that case, the Government would have sanctioned permanent affiliation to the three institutions. It is made clear in the affidavit of the respondents Nos. 1, 3 and 4 that the State Government, after the disposal of the litigations, that is to say, after the disposal of these writ petitions and the civil appeals, would go on with the nationalisation of other institutions by the amendment of the Schedule to the Act. Therefore, although there has been delay in

implementing the provisions of the Act, such delay is unintentional and because of the pendency of litigations. In the circumstances, we are unable to accept the contention made on behalf of the petitioner-Society that the professed object of nationalisation in phases is a mere pretence and a colorable device to single out the Institute or that the facts of exclusion of eleven similarly situated Institutes and the subsequent recognition of the three other Institutes impart vice of discrimination to the impugned Act. As has been stated already, the question of discrimination or discriminatory treatment of the Institute does not arise and the contention of the petitioner-Society in this regard is rejected.

The next attack of the petitioner-Society to the impugned Act is founded on violation of the provision of Article 19(1)(c) of the Constitution. It is urged on behalf of the petitioner-Society that in taking over the Institute, there has been an infraction of the fundamental right of the Society to form association. It is contended that by the impugned Act the management of the Society has been totally displaced and its composition changed. All assets and properties are vested in the State Government and the Commissioner is deemed to have taken charge of the Institute. It is submitted that all incidents of ownership and management have been taken over by the State and what is being left to the company is paper ownership and management and, as

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such, in substance and effect the right of association of the Society is clearly affected. It is submitted that the Act is not saved under Article 19(4) of the Constitution because the fundamental right of the Society to form association has been interfered with not in the interests of the sovereignty and integrity of India or public order or morality.

At this stage, it may be pertinent to refer to the fact that by the impugned ordinances and the Act, what has been taken over is the Institute. Although the name of the Society and of the Institute is the same, these are two different entities. It is not disputed that by the impugned legislations the Institute and not the Society has been taken over. No restriction whatsoever has been imposed on the functioning of the Society. Indeed, the provisions of the ordinances and the Act do not refer to the Society but to the Institute. The entire argument of the petitioner-Society is founded on the infraction of the fundamental right of the Society to form association.

The question, therefore, is whether the fundamental right of the petitioner-Society, as conferred by Article 19(1)(c), has been infringed or not. It has been stated already that the Society has not been taken over by the impugned Act or ordinances. The Institute has been established by the Society in implementation of one of its objects. In other words, the Institute constitutes one of the activities of the Society. The question naturally arises whether the fundamental right to form association, as contained in Article 19(1)(c) of the Constitution, also includes within it the concomitants or the activities or the objects or purposes of an association.

Our attention has been drawn to the principles laid down in two decisions of this Court relating to the interpretation of the provisions of the Constitution, namely, Sakal Papers (P) Ltd. v. Union of India, [1962] 3 SCR 842 and Dwarkadas Shrinivas of Bombay v. Sholapur Spinning & Weaving Co. Ltd., [1954] SCR 674. In these two

decisions, it has been laid down that while considering the nature and content of the fundamental rights, the Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle them down, but must interpret the same in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible restrictions. Further, in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspects, and that the correct approach in such cases should be to enquire as to what in substance is the loss or injury caused to the citizens and not
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merely what manner and method has been adopted by the State in placing the restriction.

The above principles, as laid down in those two decisions, are well settled and no exception can be taken to them. It is true that the provisions of the Constitution, particularly the provisions relating to the fundamental rights, should not be construed in a pedantic manner, but should be construed in a manner that would enable the citizens to enjoy the rights in the fullest measure. But, that does not surely mean and it was not the intention of this Court to lay down that in construing the provisions relating to fundamental rights, it should be stretched to the extent of covering even certain extraneous matters which would be far from the ambit and scope of the fundamental rights. Article 19(1)(c) confers a right on the citizens to form association. In exercise of such a right the petitioner-Society has constituted itself into an association. That right of the Society remains unimpaired and uninterfered with by the impugned Act and ordinances. It is, however, complained that the only activity of the Society was its right of management of the Institute which was founded in implementation of its objects. Having been taken over, the Society only exists in paper. Such interference with the activity of the Society is really, interference with the right of the Society to form association. It is submitted that Article 19(1)(c) not only guarantees the fundamental right to form association, but also its continuation. It is further submitted that in law interfering with or divesting the management of the Society of the Institute is clear interference with its right to continue the Association.

In support of the above contentions, reliance has been placed on behalf of the petitioner-Society on Sholapur Spinnig & Weaving Company's case (supra). In that case, the question that came up for consideration was whether by the impugned ordinance there was deprivation of the rights of the Company in violation of Article 31(2) of the Constitution. It was the contention of the Government that it had taken over the superintendence of the affairs of the Company and that the impugned legislation was merely regulative in character. In rejecting the said contention, this Court observed that the promulgating the ordinance the Government had not merely taken over the superintendence of the affairs of the Company, but in effect and substance had taken over the undertaking itself and, in the circumstances, practically all incidents of ownership had been taken over by the State and nothing was left with the Company but the mere husk of title. In the premises, the impugned statute had over-stepped the limits of legitimate Social Control Legislation and infringed the fundamental right of
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the Company guaranteed to it under Article 31(2) of the Constitution and is, therefore, unconstitutional. This Court found as a fact that the undertaking itself was taken over in the guise of regulatory legislation in violation of Article 31(2) of the Constitution. The facts of that case are completely different from those of the present case. There can be no doubt that the Institute has been taken over by the provisions of the ordinances and that Act. It is true that with the taking over of the Institute, the Society lost its right of management and control of the Institute, but that is the consequence of all acquisitions. When a property is acquired, the owner loses all control, interest and ownership of the property. Similarly the Society, which was the owner of the Institute, has lost all control and ownership of the Institute. It may be equally true that the Institute was the only activity of the Society, but we are concerned with the right of the Society to form association. So long as there is no interference with the Society, its constitution or composition, it is difficult to say that because of the taking over or acquisition of the Institute, which was the only property or activity of the Society, the fundamental right of the Society to form association has been infringed.

Mr. Sorabjee, learned Counsel for the petitioner-Society, has placed strong reliance upon the decision of this Court in Damyanti Naranga v. Union of India, [1971] 3 SCR 840. In that case, by a legislative enactment, namely, the Hindi Sahitya Sammelan Act, 1962, the institution known as the Hindi Sahitya Sammelan was declared an institution of national importance. By the said Act a statutory Sammelan was constituted as a body corporate by the name of the Hindi Sahitya Sammelan. Under section 4(1) of the Act, the Sammelan was to consist of the first members of the Hindi Sahitya Sammelan, which was a registered Society founded for the development and propagation of Hindi and all persons who might become members thereafter in accordance with the rules made in that behalf by the first governing body to be constituted by the Central Government by notification. The Act provided for vesting in the Sammelan of all property, movable or immovable, of or belonging to the Society. The constitutionality of the Act was challenged accordingly on the ground that it interfered with the right of the petitioners to form association under Article 19(1)(c) of the Constitution. It has been held that the Act does not merely regulate the administration or the affairs of the Society; what it does is to alter the composition of the Society itself. The result of this change in composition is that the members, who voluntarily formed the Society, are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admis-

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sion to membership they had no say. Further, it has been observed that the right to form association necessarily implies that the persons forming the Society have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law by which members are introduced in the voluntary association without any option being given to the members to keep them out or any law which takes away the membership of those who have voluntarily joined, will be a law violating the right to form association. It has also been held that the right guaranteed by Article 19(1)(c) is not confined to the initial stage of forming an association, but it also includes within it the right to continue the association.

The decision in Damyanti's case (supra) has no manner of application to the facts of the present case. In that case, the composition of the Society was interfered with by introducing new members, which was construed by this Court as interference with the fundamental right of the Society to form association and to continue the same. In the instant case, the composition of the Society has not been touched at all. All that has been done is to nationalise the Institute of the Society by the acquisition of the assets and properties relating to the Institute. The Society may constitute its governing body in accordance with its rules without any interference by the Government.

In this connection, we may refer to a decision of this Court in All India Bank Employees' Association v. National Industrial Tribunal, [1962] 3 SCR 269. Ayyangar, J, speaking for the Court, observes that the right guaranteed by Article 19(1)(c) of the Constitution does not carry with it a concomitant right that unions formed for protecting the interests of labour shall achieve their object such that any interference to such achievement by any law would be unconstitutional unless it could be justified under Article 19(4) as being in the interests of Public order or morality. The right under Article 19(1)(c) extends only to the formation of an association or union and in so far as the activities of the association or union are concerned or as regards the step which the union might take to achieve its object, they are subject to such laws as may be framed and such laws cannot be tested under Article 19(4). This observation supports the view we have taken that the fundamental right guaranteed under Article 19(1)(c) does not extend to or embrace within it the objects or purposes or the activities of an association. In other words, it does not carry with it a further guarantee that the objects or purposes or activities of an association so formed shall not be interfered with by law except on grounds as mentioned in Article 19(4), namely, sovereignty and integrity of India or Public order or

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morality. In the circumstances, the contention made on behalf of the petitioner-Society that because of the acquisition of the Institute, the Society lost its right of management over the Institute and the Institute being the main or the only activity of the Society, the impugned legislations interfere with the right of the Society to form and continue the association and, as such, unconstitutional and void under Article 19(1)(c) of the Constitution, is unsound and rejected.

Another ground on which the validity of the Act and ordinances has been assailed is absence of legislative competence of the State Legislature. It is submitted by the learned Counsel appearing on behalf of the petitioner-Society that the professed aims and objects of the Act are to ensure the high level of educational and training facilities and to nationalise this branch of education and, accordingly, having regard to the pith and substance of the Act, it falls within Entry 66 of List I. Entry 66 is as follows:

> "66. The co-ordination and determination of standards in institutions or higher education or research and scientific and technical institutions. "

We may also refer to Entry 25 of List III which runs as follows:

> "25. Education, including technical education, medical education and universities subject to the

provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour. "

Counsel submits that Entry 25 of List III and Entry 66 of List I must be harmoniously construed, but to the extent of overlapping the power conferred by Entry 66 must prevail over the power of the State under Entry 25. On the other hand, it is submitted by Mr. Kacker that the impugned legislation does not even purport to deal with co-ordination and determination of standards in taking over institution of higher education. Counsel submits taking over of such institutions would affirmatively be covered under Entry 25 itself and, negatively, what is carved out is only co-ordination and determination of standards. It is submitted that Entry 25 of List III is enough to sustain the Act.

By the impugned Act, the Legislature has not laid down any law relating to the subjects mentioned in Entry 66, List I, or in Entry 25, List III. The Act only provides for the taking over of private educa-

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tional institutions in phases and has taken over the Institute to start with for the first phase. It may be that the purpose of such taking over or nationalisation of private educational institutions is to ensure a high level of educational and training facilities and the co-ordination of the training with important industrial and business units. An Entry in any of the Lists of Seventh Schedule will apply when a law is enacted by the Legislature on any of the subjects mentioned in the Entry. In the instant case, as has been noticed already, the impugned Act does not lay down any law touching the subject referred to in Entry 66, List 1, or Entry 25, List III. In our opinion, therefore, neither of these two Entries applies. Even assuming that one of these two Entries applies. then it is Entry 25, List III, and not Entry 66, List I; as contended on behalf of the respondents. The impugned legislation if held to be one on education or technical education, is surely not relating to any matters referred to in Entry 66, List I. We are, however, of the view that Entry 25 also has no application.

The Entry that applies to the impugned legislation is Entry 42 of List III pertaining to acquisition and requisition of property. The taking over of the private educational institutions and of the Institute in the first phase is nothing but acquisition of property. The Institute was the property of the petitioner-Society and by the impugned Act the property stands transferred to and vested absolutely in the State Government free from all encumbrances. Thus, the Institute has been acquired by the impugned legislation and, therefore, the only Entry which is relevant is Entry 42 of List III. As soon as Entry 66 of List l is excluded, it is quite irrelevant which of the Entries-25 or 42 of List III-is applicable. Therefore, whether it is Entry 25 or Entry 42, in either case, the State Legislature is competent to make enactment There is, therefore, no substance in the contention made on behalf of the petitioner-Society that the Act is invalid because the State Legislature lacked competence in passing the Act.

Now the question is whether after the repeal of Article 31(2) by the Constitution (Forty-Fourth Amendment) Act, 1978, any compensation is compulsorily payable for acquisition of property. The question may arise, as it is held that the impugned Act is really a legislation relating to acquisition of property within the meaning of Entry 42 of List III. Indeed, while urging that the Act falls within the ambit of Entry 66 of List I and, as such, beyond the

competence of the State Legislature, Mr. Sorabjee submits that it does not come within the purview of Entry 42 of List III, as no compensation for the acquisition of the Institute has been provided for. He has drawn our attention to
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the observation of Chandrasekhara Aiyar, J. in the State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga, [1952] SCR 889 (1008) that payment of compensation is an essential element of the valid exercise of the power to take. Besides drawing our attention to the said observation, the learned Counsel has not pursued the point; on the contrary, it is submitted by him that as on the date of the decision in Kameshwara Singh's case (supra), that is, before its amendment by the Constitution (Seventh Amendment) Act, 1956, Entry 42 related to "principles on which compensation for property acquired or acquisition for any other public purpose is to be determined and the form and the manner in which such compensation is to be given", so the said observation was made. This means that the learned Counsel is of the view that after the repeal of Article 31(2) of the Constitution, no compensation is compulsorily payable for the acquisition of property. In other words, the point is not ultimately pressed. In the circumstances, we are not called upon to decide the point or express any opinion on the same.

Now we may deal with the case of Dr. Jagadanand Jha, Registrar of the Institute. The first ordinance, namely, ordinance No. 15 of 1986, was promulgated by the Governor on April 19, 1986 and the service of Dr. Jha were terminated by an order dated April 21, 1986 which is extracted below:

> "The Governor of Bihar in exercise of power under section 6 and sub-sections (2), (3) &(4) of Bihar Private Educational Institutions (Take over) Ordinance, 1986 and Bihar Ordinance No. 15 of 1986 and Education Department Notification No. 99/C has considered the report of the Committee and has come to the conclusion appointment and promotion of officers and workers was not done as per rules of the University, nor in accordance with Government directions and notifications and their stay in the Institute was not in the interest of the said Institute. Therefore, the services of following persons are dispensed with immediate effect:
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> 1. Dr. Jagannath Mishra-Chairman-cum-Director General.
> 2. Sri Jagadanand Jha-Registrar."

Paragraph 6 of the ordinance, which is verbatim the same as
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section 6 of the Act, reads as follows: A

> "6. Determination of terms of services of the teaching staff and other employees of the institution.-(1) As from the date of the notified order, all the staff employed in the institution shall cease to be the employee of the institution;
>
> Provided that they shall continue to serve the institution on an ad-hoc basis till a decision under sub-section (3) and (4) is taken by the State Government.
>
> (2) The State Government will set up one or more Committees of experts and knowledgeable persons which will examine the bio-data of each member of the teaching staff and ascertain whether appointment, promotion or confirmation was made in

accordance with the University Regulation or Government direction/circular and take into consideration all other relevant materials, such as qualification, experience, research degree etc. and submit its report to the State Government.

(3) The State Government on receipt of the report of the Committee or Committees, as the case may be, will decide in respect of each member of teaching staff on the merits of each case, whether to absorb him in Government service or whether to terminate his service or to allow him to continue on an ad-hoc basis for a fixed term or on contract and shall, where necessary, redetermine the rank pay, allowance and other conditions of service.

(4) The State Government shall similarly determine the term of appointment and other conditions of service of other categories of staff of the Institution on the basis of facts to be ascertained either by a committee or by an officer entrusted with the task and the provisions of subsections (2) and (3) shall apply mutatis mutandis to such case.

Under paragraph 6(1), all the staff employed in the institution shall cease to be the employees of the Institute from the date of the notified order. Under the proviso, however, such employees will continue on an ad-hoc basis till a decision under sub-paragraphs (3) and (4) is taken by the Government. Under sub-paragraph (2) of para-
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graph 6, the State Government is to set up one or more committees of experts and knowledgeable persons for the purpose of ascertaining whether or nor appointment, promotion or confirmation of each member of the teaching staff was made in accordance with the University Regulation or Government direction/circular and to submit its report to the State Government. Sub-paragraph (3) of paragraph 6 enjoins the State Government to decide in respect of each member of teaching staff on the merits of each case whether to absorb him in Government service or to terminate his service or to allow him to continue on an ad-hoc basis for a fixed term or on contract etc. Subparagraphs (2) and (3) relate to the members of teaching staff of the concerned institution. Sub-paragraph (4) of paragraph 6 of the ordinance deals with the cases of other categories of staff of the institution. It provides that the State Government shall similarly determine the term of appointment and other conditions of service of other categories of staff of the institution. It is clear that there is some distinction between sub-paragraph (3) and sub-paragraph (4). While under subparagraph (3), the State Government is to decide, among other things, whether the service of a member of teaching staff will be terminated or not, under sub-paragraph (4), the State Government has not been enjoined to decide whether the service of any member of a nonteaching staff will be terminated or not, all that has been directed to be decided by the State Government under sub-paragraph (4) relates to the term of appointment and other conditions of service.

Admittedly, the petitioner Dr. Jagadanand Jha was not a member of the teaching staff, but, as noticed already, he was the Registrar of the Institute, which comes within the expression "other categories of staff" under sub-paragraph (4). It is true that under sub-paragraph (4) it has been provided that sub-paragraphs (2) and (3) shall apply mutatis mutandis but, such application will be limited to the term of appointment and other conditions of service of a member

of non-teaching staff of the institution. In other words, the State Government may appoint a committee for the purpose of considering the term of appointment and other conditions of service of the members of the non-teaching staff and the State Government has to decide accordingly.

It is thus apparent that the State Government proceeded on the basis that under sub-paragraph (4) of paragraph 6 of the ordinance, the State Government was to consider the question of termination of the services of members of non-teaching staff as in the cases of members of teaching staff, as provided in sub-paragraph (3) of paragraph 6
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of the Ordinance. Even then, we are not impressed with the manner and haste in which the order of termination has been passed. the ordinance was promulgated on April 19, 1986 and the order of termination was made on April 21, 1986. Although it is alleged that a Committee was formed and the State Government terminated the services of the petitioner on the report of the Committee, we fail to understand the necessity for such haste and, in the circumstances, it will not be unreasonable to infer that the Committee or the State Government had not properly applied its mind before the order of termination of the services of Dr. Jha was made.

There can be no dispute that when there is a legislative direction for termination of the services of employees, the compliance with the principles of natural justice may not be read into such direction and, if such terminations are effected without giving the employees concerned an opportunity of being heard, no exception can be taken to the same. But, in the instant case, sub-paragraph (4) of paragraph 6 of the ordinance does not contain any direction for the termination of services of the members of non-teaching staff. Even in spite of that, if the State Government wants to terminate the services of the petitioner Dr. Jha, it cannot be done without giving him a reasonable opportunity of being heard, for such act on the part of the State Government would be an administrative act. In this connection, we may refer to our decision in K.I. Shephard v Union of India & Ors., [1987] 4 SCC 431 wherein it has been held that the scheme-making process under section 45 of the Banking Regulation Act, 1949 being administrative in nature, the rules of natural justice are attracted, as the scheme provides for the termination of services of the employees. It is clear from the provision of sub-paragraph (4) of paragraph 6 that the services of the members of non-teaching staff have been intended to be continued. The petitioner Dr. Jha has been working in the post of Registrar of the Institute for a pretty long time. We are, therefore, of the view that his services cannot be terminated without giving him an opportunity of being heard. The learned Counsel, appearing on behalf of the respondents, also do not seriously oppose the view that in such circumstances, the petitioner Dr. Jha should have been given an opportunity of being heard.

It is alleged in the impugned order of termination that the appointment and promotion of the petitioner were not done as per the rules of the University nor in accordance with the Government directions and notifications and his stay in the Institute was not in the interest of the Institute. If the Petitioner was given an opportunity to
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make a representation, he could substantiate that the above findings were erroneous. In any event, as the petitioner was not given an opportunity of being heard, the impugned order of termination of the services of the petitioner cannot be

sustained.

Before parting with the cases, we may record that both the Society and Dr. Jha have not been able to substantiate the allegation of mala fide against the then Chief Minister of Bihar. Even assuming, although holding to the contrary, that the Chief Minister had acted mala fides, the same cannot vitiate the legislative process in the exercise of which the impugned Act and ordinances were respectively passed and promulgated. The respondents also have failed to prove the alleged mismanagement of the Institute by the Society or by Dr. Jha. Indeed, they have not pressed the allegation of mismanagement.

For the reasons aforesaid, the impugned order of termination dated April 21, 1986 of the petitioner Dr. Jagadanand Jha is quashed. Writ Petitions (Civil) Nos. 87 of 1987 and 439 of 1987 and Civil Appeal No. 4141 of 1986 in so far as they relate to the said order of termination of services of the petitioner Dr. Jagadanand Jha are allowed. The State Government will be at liberty to consider the question of termination of service of the petitioner after giving him a reasonable opportunity to make representation.

The Writ Petitions (Civil) Nos. 55 of 1987 and 431 of 1987 and Civil Appeal No. 4142 of 1986 are dismissed

There will be no order for costs in any of these matters.

S.L.

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