

PETITIONER:

THE MANAGING BOARD OF THE MILLI TALIMI MISSION, BIHAR, RANCHI

Vs.

RESPONDENT:

THE STATE OF BIHAR & ORS.

DATE OF JUDGMENT 14/08/1984

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

VARADARAJAN, A. (J)

MUKHARJI, SABYASACHI (J)

CITATION:

1984 AIR 1757

1985 SCR (1) 410

1984 SCC (4) 500

1984 SCALE (2) 251

ACT:

Right of minority educational institution-Right to get affiliation from the Universities-Whether the right to affiliation or to obtain aid from the Government is a fundamental right so as to violate Article 30-Whether the refusal to give affiliation by the statutory authorities in the instant case without just and sufficient cause amounts to violation of Article 30 of the Constitution or simply an arbitrary and illegal action-Supreme Court can award costs against a State for disobedience of the orders of the Court to produce documents called for and for failure to perform constitutional duties by institutions.

HEADNOTE:

The appellant-Institution was started as a Teachers Training College under a Society which was established as far back as 1972, though the college itself was established and started in July 1977. On 22.9.1977 the institution made an application to the Government for grant of affiliation or recognition of the same in response to which a most extraordinary order was passed by the Government directing the University for refusing affiliation on the strange ground that all proposals for affiliation by the non-Government Teachers Training Colleges be rejected and that no student be allowed to appear as a private candidate. However, since the above decision was not applicable to minority institutions which was reiterated by a latter ordinance called Bihar non-Government Teachers Training College ordinance on June 5, 1978, it was incumbent on the institution to prove that it was a minority institution before it could be granted affiliation, on 24.2.1978 the appellants filed an application before the Ranchi University for grant of affiliation on June 15, 1978, the Government wrote to the Ranchi University for inspection of the appellants college. On 6.2.1980. Joint Secretary to the Government of Bihar sent letter to the Ranchi University and the Deputy Commissioner, Ranchi for inspection of the appellants' college. Although the institution applied for affiliation in 1978 and claimed to be a minority institution which was never disputed at any point of time the Government took three years to take a decision about affiliation of the

appellants' college. On 5.3.1980, the University Authorities inspected the appellants' college and recommended its affiliation which was followed by a report by the District Development officer, Ranchi on 30.6.1980 recommending affiliation. But, despite these facts no final decision was taken by the Government as a result of which the appellants had to move the High Court for directing the Government to grant affiliation. On the High Court's direction to the Government to decide recognition and affiliation

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the appellants' college within a specified time, on 3.11.1980, the Government granted recognition and approval for affiliation for three sessions only, i.e. 1977-78, 1978-79 and 1979-80. On 10.11.1980, the University wrote to the Government recommending further grant of affiliation to the appellants' college. On 22.11.1980 the appellants applied for grant of permanent affiliation. But, somehow or the other, on 27.11.1980 for undisclosed reasons, the Government passed a strange order cancelling the recognition and approval for affiliation granted to the appellants' college vide its letter dated 3.11.1980. This order was challenged before the High Court which quashed the same on 18.5.1981. Thereafter, on 17.8.1981 the State of Bihar filed a Special Leave Petition before the Supreme Court which was dismissed on 30.11.1981. However, on 7.9.1981, three minority colleges, alongwith the appellants' college, were granted recognition and affiliation by the Government by virtue of the High Court's orders.

The appellants again wrote to the High Court to direct the State Government to dispose of the application of the appellants for permanent recognition filed by them on 22.11.1980. On 16.9.1982, the Education Commissioner, Bihar again made a recommendation. This recommendation was made after inspection by the Educational Commissioner in the presence of the local authorities as also the University authorities and after coming to a conclusion that the institution was a minority institution. Despite this, since no action was taken by the Government the appellants were compelled to file another Writ Petition in the High Court on 3.5.1983 with a prayer to allow the students of the appellants' college to appear at the University Examination, but the Writ Petition was dismissed by the High Court in limine. Hence, the appeal by Special Leave of this Court

Allowing the appeal, the Court

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HELD: (Per majority)

Per Fazal Ali. J

1.1. Although Article 30 of the Constitution is not included in Part III of the Indian Constitution which guarantees certain fundamental rights, yet the Supreme Court starting from the Kerala Education Bill's case, which is the locus classicus on the point in issue, right up to the case of The Ahmedabad St. Xaviers College Society & Anr. etc. v. State of Gujarat and Anr. and ending with All Saints High School, Hyderabad & Ors. v. Government of Andhra Pradesh & Ors. has clearly recognised that running of minority institutions is also as fundamental and important as the rights conferred on the other citizens of the country, with the only difference that the rights contained in Article 30 have as independent sphere of their own. The freedoms guaranteed by Article 30 are also elevated to the status of a full-fledged fundamental right within the field in which they operate. In other words, any State action which in any way destroys, curbs or interferes with such rights would be violative of Article 30. [414 G-H; 415 A-B]

1.2. Technically speaking, the right of affiliation or aid from the Government is not a fundamental right so as to violate Article 30, but the refusal to give aid or affiliation by the statutory authorities without just and sufficient grounds amounts to violation of the fundamental freedoms enshrined in Articles 30 of the Constitution. If the Government withholds giving aid or a University
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refuses to grant affiliation, the direct consequence would be to destroy the very existence of the institution itself because there may be a number of minority institutions which may not exist without the Government aid and a large number of students admitted to these institutions, in the absence of affiliation, will be deprived of acquiring higher academic status which will not only be a loss to the institution but a loss to the nation itself. It is for this purpose that Article 30 was inserted in the Constitution. [415 G-H; 416 A]

Kerala Education Bill's Case [1959] SCR 995; The Ahmedabad St Xaviers College Society & Anr. etc. v. State of Gujarat & Anr. [1975] 1 SCR 173; and All Saints High School. Hyderabad & Ors. v. Government of Andhra Pradesh & Ors. (1980) 2 SCC 178 referred to.

1:3. On a careful and detailed review of these cases the following position emerges:

(1) that while Art. 30 undoubtedly seeks to preserve the religious freedom, autonomy and its individuality; there is no fundamental right under which an institution can claim either aid or affiliation as a matter of right. It is permissible for the State or the University, as the case may be, to lay down reasonable conditions to maintain the excellence of standard of education but in the garb of doing so, refusal to grant affiliation cannot be made a ruse or pretext for destroying the individuality and personality of the said institution. If this is done, then apart from being wholly arbitrary and unreasonable it would amount to a clear infraction of the provisions of Art. 30 because what cannot be done directly is done indirectly. [420 C-E]

(2) While the State or a University has got an absolute right to insist on certain courses of study to be followed by institutions before they could be considered for affiliation but these conditions should not in any way take away the freedom of management or administration of the institution so as to reduce it to a satellite of the University or the State. This is impermissible because such a course of action directly violate Art. 30 of the Constitution. [420 F-G]

(3) While imposing conditions before granting affiliation, as indicated above, the State or the University cannot kill or annihilate the individuality or personality of the institution in question by insisting on following a particular kind of syllabus or a course of study which may be directly opposed to the aims, objects and ideals sought to be achieved by the institutions. [420 H]

(4) There is a very thin line of distinction between withholding of affiliation for a particular purpose on extraneous grounds so as to subject the institution to rigorous orders, edicts or resolutions which may run counter to the dominant purpose for which the institution has been founded, and insisting on genuine and reasonable conditions to be imposed in the larger interest of education. [421 A-B]

While affiliation itself may not be a fundamental right but refusal of affiliation on terms and conditions or situations which practically denies the progress and autonomy of the institution is impermissible as being

violative of Art. 30 of the Constitution. [421 C]

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2:1. In the instant case, the State has refused to grant affiliation on purely illusory grounds which do not exist and failed to consider the recommendation of the Education Commissioner which was made after full inspection for grant of affiliation. In other words, the affiliation was refused without giving any sufficient reasons and such a refusal contravenes the provisions of Art. 30 of the Constitution. [426 G]

2:2. The belated attempt through a subsequent affidavit filed by the State Government to show that there were certain defects in the Institution, in view of the non-production of the most important and decisive material, is nothing but an after-thought. [425 F]

2:3. The State Government's assurance to grant affiliation to the appellants college on fulfilling certain conditions is nothing but a pretext or a smoke screen to cloud the real issue. The Government did not mean business by producing a report on which Ex. J was based, which has been deliberately suppressed despite the Court's order to produce the same. Therefore, an adverse inference has to be drawn against the State Government to the effect that if the materials on which the report was based had been produced it would have exploded the case of the Government and disclosed the real state of affairs namely that the appellants institute does fulfil all the conditions imposed by the State. [425 G-H; 426 A]

3. Normally the Supreme-Court does not grant cost in case of refusal of affiliation to institutions but having regard to the manner in which the State Government has behaved and exhibited its reluctance to perform a constitutional duty and has also tried to disobey the Court's order for production of certain documents the instant case is a fit case for imposing a heavy cost on the State, apart from the directions to the State for granting affiliation to the appellant's college and to allow its students of the 1980-81, 1981-82 and 1982-83 sessions to sit in the examination. [426 F-G]

Per Sabyasachi Mukharji, J. (Concurring)

In the background of the facts and circumstances of this case, the Government action is not granting affiliation to the appellants college is action based without reason and is an act of arbitrariness. [428 F]

(Per contra)

1. Article 30 of the Constitution was engrafted for the high and noble purpose of safeguarding and protecting the rights of minorities to establish and administer educational institutions. In this case, in not granting affiliation to the appellants' college there was no discrimination against any educational institution on the ground that it was under the management of any minority whether based on religion or language. It was inaction or an act of arbitrariness on the part of the authorities. From such unreasonable and arbitrary actions or inactions institutions, educational or otherwise, belonging both to the majority or minority communities often suffer and in appropriate cases, Court should grant relief without aid or recourse to the articles of the Constitution protecting the freedom and rights of the minorities. In this case there is no evidence or even any serious allegation that affiliation was being denied to the appellants institution on the ground that it was a minority institution. [428 G-H; 429 A-B]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 404 of 1984.

Appeal by Special leave from the Judgment and Order dated the 11th July, 1983 of the Patna High Court in C.W.J.C. No. 623 of 1983.

Dr. L.M. Singhvi, Mrs. Lakshmi Kant Pande & S.K. Sinha, for the Appellant.

D. Goverdhan & B.B. Singh for the Respondents.

The following Judgments were delivered

FAZAL ALI, J. The most difficult and delicate task of our founding fathers while framing the Constitution of the largest democracy in the world was to protect, preserve and safeguard the interests of the minorities and the backward classes in order to retain the secular nature of our Constitution. Perhaps they feared that a time may come when the overwhelming majority may overshadow or dominate, devour or destroy the educational, cultural and social rights of the minorities and wreck their individuality and personality. It was this central theme that runs through the entire Constitution which has provided sufficient safeguards to protect and preserve the minority educational institutions which is the most important and vocal medium through which this section of the society can speak and seek to redress its grievances.

In this appeal we are merely concerned with the rights and obligations of the State for the protection of minority institutions and for this avowed purpose Art. 30 was enshrined in our Constitution so that they may not suffer from a sense of inferiority complex and are able to throw themselves into the main stream of the economic and political life of the country so as to march forward with the temper of the times and the needs of the nation. Although Art. 30 is not included in Part II of the Indian Constitution, which guarantee certain fundamental rights, yet this Court starting from the Kerala Education Bill's case, which is the locus classicus on the point in issue, right up to the case of The Ahmedabad St. Xavier's College Society & Anr, etc. v. State of Gujarat & Anr. and ending with All Sainis High School, Hyderabad & Ors. v. Government of

Andhra Pradesh & Ors. has clearly recognised that running of minority institutions is also as fundamental and important as the rights conferred on the other citizens of the country. Perhaps the only difference is that the rights contained in Art. 30 have an independent sphere of their own. A close scrutiny and study of the various decisions of this Court reveal that the freedoms guaranteed by Art. 30 are also elevated to the status of a full-fledged fundamental right within the field in which they operate. In other words, any State action which in any way destroys, curbs or interferes with such rights would be violative of Art. 30.

In the instant case we are mainly concerned with the rights, privileges and status of minority institutions. In dwelling on these matters four important aspects or facets have been considered by this Court, viz.:

- (1) right of the minority institutions to get aid from the Government,
- (2) right to get affiliation from the Universities,
- (3) nature and extent of the autonomy which such institutions enjoy in their internal discipline

and administration, and

- (4) right to be protected from undue or repeated interference in the independence of the institutions in the garb of achieving excellence in the standard of education.

The first question to be determined is whether the minority institutions have a fundamental right to get aid from the Government or affiliation from the Universities as a matter of course. In other words, the question posed is whether the right to affiliation or to not so as to violate Art. 30. Technically speaking the answer to this question is in the negatives but it must be stressed that the refusal to give aid or affiliation by the statutory authorities without just and sufficient grounds amounts to violation of the fundamental freedoms enshrined in Art 30 of the Constitution. If the Government withholds giving aid or a university refuses to grant affiliation, the direct consequence would be to destroy the very existence of the Institution itself because there may be a number of minority institutions which may not exist without the Government aid and a large

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number of students admitted to these institutions, in the absence of affiliation, will be deprived of acquiring higher academic status which will not only be a loss to the institution but a loss to the nation itself. It is for this purpose that Art, 30 was inserted in the Constitution.

In the present case, we would like to confine our judgment only to the question of refusal of affiliation to a minority institution by the State and the University. To begin with, in Kerala Education Bill's case (supra), Das, C.J.. speaking for the majority (Venkatarama Aiyar, J. having given his separate judgment) observed thus;

"The minorities evidently desire that education should be imparted to the children of their community in an atmosphere congenial to the growth of their culture. Our Constitution makers recognised the validity of their claim and to allay their fears conferred on them the fundamental rights referred to above ... They also desire that scholars of their educational institutions should go out in the world well and sufficiently equipped with the qualifications necessary for a useful career in life. But..... the scholars of unrecognised schools are not permitted to avail themselves of the opportunities for higher education in the University and are not eligible for entering the public services. Without recognition, therefore, the educational institutions established or to be established by the minority communities cannot fulfil the real objects of their choice and the rights under Art, 30 (1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions. There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the Educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Art. 30(1). We repeat that the legislative power is subject to the fundamental rights and the legislature cannot indirectly take away or abridge the fundamental

rights which it could not do directly and yet that will be the result if the said Bill containing any offending clause becomes law."

(Emphasis ours)

The observations and the ratio of this case were fully affirmed

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and expounded by this Court in a 9-Judge Bench decision in St. Xaviers College case (supra) where all the Judges speaking in the same strain held that withholding of aid or affiliation in such a manner as to destroy or efface the autonomy and individuality of a minority institution violates Art. 30. In this connection, the Judges by separate judgements made the following observations:-

"The consistent view of this Court has been that there is no fundamental right of a minority institution to affiliation. An explanation has been put upon that statement of law. It is that affiliation must be a real and meaningful exercise for minority institutions in the matter of imparting secular education. Any law which provides for affiliation on terms which will involve abridgement of the right of linguistic and religious minorities to administer and establish educational institutions of their choice will offend Article 30 (1). The educational institutions set up by minorities will be robbed of their utility if boys and girls cannot be trained in such institutions for University degrees. Minorities will virtually lose their right to equip their children for ordinary careers if affiliation be on terms which would make them surrender and lose their rights to establish and administer educational institutions of their choice under Article 30.....The establishment of a minority institution is not only ineffective but also unreal unless such institution is affiliated to a University for the purpose of conferment of degrees on students.

.....
Affiliation of minority institutions is intended to ensure the growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution."

(Ray, C.J.)

"We agree with the judgment of Hon'ble the Chief Justice just pronounced and with his conclusions that ss. 40, 41, 33A(1) (a), 33A(1)(b), 51A and 52A of the Act violate the fundamental rights of minorities and cannot, therefore, apply to the institutions established and administered by them.

.....
The right under Art. 30 cannot be exercised in vacuo. Nor

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would it be right to refer to affiliation or recognition as privileges granted by the State. In a democratic system of Government with emphasis on education and enlightenment of its citizens, there must be elements which give protection to them. The meaningful exercise of the right under Art. 30(1) would and must necessarily involve recognition of the secular education imparted by the minority institutions without which the right will be a mere husk. This Court has so far consistently struck down all attempts to make affiliation or recognition on terms tantamount to surrender of its rights under Art. 30(1) as abridging

or taking away those rights. Again as without affiliation there can be no meaningful exercise of the right under Art. 30(1), the affiliation to be given should be consistent with that right. nor can it indirectly try to achieve what it cannot directly do."

(Jaganmohan Reddy, J.)

I am of the view that it is permissible for the State to prescribe reasonable regulations like the one to which I have referred earlier and make it a condition precedent to the according of recognition or affiliation to a minority institution. It is not, however, permissible to prescribe conditions for recognition or affiliation which have the effect of impairing the right of the minority to establish and administer their educational institutions. Affiliation and recognition are, no doubt, not mentioned in article 30(1) position all the same remains that refusal to recognize or affiliate minority institutions unless they (the minorities) surrender the right to administer those institutions would have the effect of rendering the right guaranteed by article 30(1) to be wholly illusory and indeed a testing illusion.

What is said above with regard to aid or recognition applies equally to affiliation of a college to the University because but for such affiliation the student will not be able to obtain a University degree which is recognized as a passport to several professions and future employment in Public Service.

If the conversion of affiliated colleges of the minorities

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into constituent colleges contravenes article 30(1), the fact that such conversion is in pursuance of a scheme which permits the grant of autonomy to an individual college would not prevent the striking down of the impugned provision."

(Emphasis ours)

(Khanna, J.)

"Over the year, this Court has held that without recognition or affiliation, there can be no real or meaningful exercise of the right to establish and administer educational institutions under Article 30(1).

The heart of the matter is that no educational institution established by a religious or linguistic minority can claim total immunity from regulations by the legislature or the university if it wants affiliation or recognition; but the character of the permissible regulations must depend upon their purpose. As we said, such regulations will be permissible if they are relevant to the purpose of securing or promoting the object of recognition or affiliation."

(Mathew, J.)

"It is true that, if the object of an enactment is to compel a minority Institution, even indirectly, to give up the exercise of its fundamental rights, the provisions which have this effect will be void or inoperative against the minority Institution, The price of affiliation cannot be a total abandonment of the right to establish and administer a minority Institution conferred by Art, 30(1) of the Constitution. This aspect of the matter, therefore,

raises the question whether any of the provisions of the Act are intended to have that effect upon a minority Institution. Even if that intention is not manifest from the express terms of statutory provisions, the provisions may be vitiated if that is their necessary consequence or effect."

(Beg, J.)

"However, in case of an affiliating University affiliation cannot be denied to a minority institution on the sole ground that it is managed by a minority whether based on religion or language or on arbitrary or irrational basis. Such a denial would be violative of Arts. 14 and 15(1) and will be struck

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down by courts. Again, Art, 13(2) prohibits the State from taking away or abridging the right under Art, 30(1). Since the State cannot directly take away or abridge a right conferred under Art. 30(1), the State cannot also indirectly take away or abridge that right by subjecting the grant affiliation to conditions which would entail the forbidden result."

(Diwedi, J.)

On a careful and detailed review of the cases cited above, the following position emerges;

- (1) that while Art, 30 undoubtedly seeks to preserve the religious freedom, autonomy and its individuality; there is no fundamental right under which an institution can claim either aid or affiliation as a matter of right. It is permissible for the State or the University, as the case may be, to lay down reasonable conditions to maintain the excellence of standard of education but in the garb of doing so, refusal to grant affiliation cannot be made a ruse or pretext for destroying the individuality and personality of the said institution. If this is done, then apart from being wholly arbitrary and unreasonable it would amount to a clear infraction of the provisions of Art, 30 because what cannot be done directly is done indirectly.
- (2) While the State or a University has got an absolute right to insist on certain courses of study to be followed by institutions before they could be considered for affiliation but these conditions should not in any way take away the freedom of management or administration of the institution so as to reduce it to a satellite of the University or the State. This is wholly impermissible because such a course of action directly violates Art. 30 of the Constitution.
- (3) While imposing conditions before granting affiliation, as indicated above, the State or the University cannot kill or annihilate the individuality or personality of the institution in question by insisting on following a particular kind of syllabus or a course of study which may be directly opposed to the aims, objects and ideals sought to be achieved by the institutions.

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- (4) There is a very thin line of distinction between withholding of affiliation for a particular purpose on extraneous grounds so as to subject the institution to rigorous orders, edicts or resolutions which may run counter to the dominant purpose for which the institution has been

founded, and insisting on genuine and reasonable conditions to be imposed in the larger interest of education.

Thus, all the authorities mentioned above clearly laid down that (while affiliation itself may not be a fundamental right but refusal of affiliation on terms and conditions or situations which practically denies the progress and autonomy of the institution is impermissible as being violative of Art. 30 of the Constitution.) It is not necessary for us to dwell on the other aspects of the matter because we are not concerned with them in this particular case.

We now proceed to discuss the facts of the present case which, we are constrained to observe, reveal a most distressing and disturbing attitude exhibited by the University and the Government of Bihar as well. In fact, the reason and the motive for refusing affiliation to the Milli Talimi Mission Bihar, Ranchi are so obvious and manifest that even the Standing Counsel for the State of Bihar, despite his best efforts, found himself unable to support the action of the University. We are indeed amazed how the respondents have behaved in filing their affidavits in the highest court of the land and have violated the express orders of this Court with impunity. In order to buttress what we have said, it may be necessary to give a short history of the Institution in question.

The Institution in dispute, Milli Talimi Mission Bihar, Ranchi, was started as a Teachers Training College under a Society which was established as far back as 1972, though the College itself was established and started in July 1977. On 22.9.1977 the Institution made an application to the Government for grant of affiliation or recognition of the same in response to which a most extraordinary order was passed by the Government directing the Universities for refusing affiliation on the strange ground that all proposals for affiliation by the Non-Government Teachers Training Colleges be rejected and that no student be allowed to appear as a private candidate. However, in the case of minority institutions the State Government in sub-para (3) of paragraph (1) stated thus:

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"(3) The above decision as described vide decision nos. (1) and (2) above shall not be applicable in cases of colleges run by the minority community. Government decision in this regard to their cases shall be intimated separately."

In view of the above, it was incumbent on an institution to prove that it was a minority institution before it could be granted affiliation. Thereafter, on 24.2.1978 the appellants filed an application before the Ranchi University for grant of affiliation. This was followed by issue of Bihar Non-Government Teachers Training College Ordinance on June 5, 1978. On June 15, 1978 the Government wrote to the Ranchi University for inspection of the appellant's College. On 13.8.1979 the Government notified that the decision regarding affiliation would be governed by its circular dated 1.10.1973 (Annexure B), which laid down certain conditions for grant of affiliation, and that with regard to the minority institutions a final decision would be taken later. Thereafter, a writ was filed in the Patna High Court where it was decided that section 2 of the Ordinance, referred to above, would not apply to minority training colleges. On 6.2.1980 Joint Secretary to the Government of Bihar sent letters to the Ranchi University and the Deputy Commissioner, Ranchi for

inspection of the appellants' college. It would appear that although the Institution applied for affiliation in 1977 and claimed to be a minority institution, which was never disputed at any point of time, yet it took three years for the Government to take a decision about affiliation of the appellant's college.

On 5.3.1980, the University authorities inspected the appellants' college and recommended its affiliation which was followed by a report by the District Development Officer, Ranchi on 30.6.1980 recommending affiliation. But, despite these facts no final decision was taken by the Government as a result of which the appellants had to move the High Court again for directing the Government to grant affiliation and the High Court gave a direction to the Government to decide recognition and affiliation of the appellants' college within a specified time. On 3.11.80, the Government granted recognition and approval for affiliation for three sessions only, i.e., 1977-78, 1978-79 and 1979-80.

On 10.11.1980, the University wrote to the Government recommending grant of affiliation to the appellants' college. On 22.11.1980, the appellants applied for grant of permanent affiliation. But, somehow or the other, on 27.11.80, for undisclosed reasons,

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the Government passed a strange order cancelling the recognition and approval for affiliation granted to the appellants' college vide its letter dated 3.11.80. This order was challenged before the High Court which quashed the same on 18.5.81.

Thereafter, on 17.8.81 the State of Bihar filed a special leave petition before this Court which was dismissed on 30.11.81. However, on 7.9.81 three minority colleges, alongwith the appellants' college, were granted recognition and affiliation by the Government.

Ultimately, the High Court had to be moved again which directed the State Government to dispose of the application of the appellants for permanent recognition which was filed by them on 22.11.80. On 16.9.82, the Education Commissioner, Bihar again, made a recommendation for grant of affiliation to the appellants' college, which may be extracted thus:

"In this connection the notings of the Joint Secretary may kindly be seen at pages 62-64. Also the Judgment of the High Court be seen at page 137 according to which the restrictions of the Ordinance is not applicable to Minorities Institutions. In addition to this, this institution has also been got inspected in which the local authorities were present. There is unanimous recommendation that this training institution be affiliated. The recommendation of the University may kindly be seen at p. 150. Accordingly, this college be temporarily granted recognition and affiliation for the sessions 1980-81 to 1982-83 for the present."

A perusal of the above recommendation shows that the Institution in question was inspected in the presence of the local authorities as also the University authorities who unanimously recommended that the Institution was a minority institution and should be granted affiliation and recognition at least for the session 1980-81 to 1982-83. Despite this, nothing tangible seems to have happened which compelled the appellants to file another writ petition in the High Court on 3.5.1983 for examination of the students of the appellants' college who had passed the 1982-83 session. But the writ petition was dismissed by the High Court in limine. Hence, this appeal by special leave to this Court.

After leave was granted we directed the respondents to produce Ex. J. (Education Commissioner's recommendation) and the data on

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the basis of which the concerned authorities had recommended that affiliation should be granted to the appellants college but till today no attempt has been made to produce those documents and the learned counsel for the State of Bihar was unable to give any explanation for this most extraordinary action on the part of the State Government.

The State has filed an affidavit raising all sorts of pleas which could not be supported by the counsel for the State. It would appear that practically no reasons were given by the State as to why despite the recommendations of several authorities, which were made after a full and proper inspection, the affiliation was refused. In paragraph 7 of one of the affidavits filed by the respondents it is mentioned that before grant of affiliation, the following conditions must be fulfilled by an institution:-

- (a) that there must be full-time qualified Principal and Lecturers in proportion of 1: 15;
- (b) the institution must have a recognised High School attached to it;
- (c) it must have sufficient land of its own to provide adequate accommodation for classrooms, hostels, play-grounds, residences of lecturers, gymnasium, canteen, etc., and the college must run during the day time like the schools;
- (d) the admission registers, attendance registers to be properly maintained;
- (e) that in no case it will charge capitation fee or any tuition fee from students.
- (f) that there should be residential accommodation for at least one-fourth of the staff.
- (g) that hostel accommodation to at least one-fifth of the students is provided;
- (h) that there should be a stable source of income to run the college."

It is manifest that if these conditions were fulfilled then affiliation could be granted as a matter of course on the findings and decision taken by the Government itself. In reply to the affidavit filed by the

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appellants, the defence of the State was that after inspection of the Institution it was found by a team of Inspectors that the Institute suffered from the following infirmities:-

- "(i) There were no full-time qualified Principal or Lecturers.
- (ii) That there was no recognised school attached to it.
- (iii) The college runs during evening hours which makes impracticable for practice classes in schools which run during day time.
- (iv) The college had no building of its own.
- (v) The library and laboratory were not properly maintained."

It is rather strange that while a previous expert Committee after inspecting the said Institute found it in order but subsequently the Government without referring to the data submitted by the expert Committee, which was the basis of Ex. J. seems to have suddenly given a go-bye to the same and taken the defence that in view of the defects and non-fulfilment of the conditions it was not possible to grant affiliation without even mentioning in what manner and

to what extent the recommendation of Education Commissioner and the materials on which it was based was wrong and why the five new conditions were sought to be imposed.

Despite repeated orders of this Court to the respondents to produce the report of the Education Commissioner and the details thereof, the same was not done and a belated attempt was made to show that there were certain defects in the Institution. In view of the non-production of the most important and decisive material we are unable to accept the subsequent affidavit of the respondents which is nothing but an afterthought.

The State Government in its counter-affidavit has stated that it was prepared to grant affiliation to the appellants' college on fulfilling certain conditions. We are however, satisfied that this is nothing but a pretext or a smoke-screen to cloud the real issue. Indeed, if the Government meant business it should have the courage to produce the report on which Ex. J. was based, which has been deliberately suppressed despite our orders to produce the same. We are, therefore, compelled to draw an adverse inference against the State

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Government to the effect that if the materials on which the report was based had been produced it would have exploded the case of the Government and disclosed the real state of affairs, viz, that the appellants Institute does fulfil all the conditions imposed by the State.

Thus, the position is that the State has refused to grant affiliation on purely illusory grounds which do not exist and failed to consider the recommendation of the Education Commissioner which was made after full inspection for grant of affiliation. In other words, the affiliation was refused without giving any sufficient reasons and such a refusal contravenes the provisions of Art. 30 of the Constitution.

For the reasons given above, we find that this is a fit case where this Court should step in to strike down the Government action which is violative of Art. 30 of the Constitution and which does not fall within the guidelines indicated in the various authorities cited in our judgment. The heart of the matter is that as the Government did not like the recommendation of the Education Commissioner and was not prepared to grant affiliation for undisclosed reasons, the act of the Government was a colourable exercise of jurisdiction which deprived the appellants' Institution of its constitutional rights.

Normally, this Court does not grant costs in such cases but having regard to the manner in which the State Government has behaved and exhibited its reluctance to perform a constitutional duty and has also tried to disobey our orders for production of certain documents, we must impose a heavy cost on the State.

We, therefore, allow this appeal with costs quantified at Rs. 5,000 (Rupees five thousand only) to be paid to the appellants within three months from today, set aside the Order of the High Court dismissing the writ petition in limine as also the Order of the Government refusing affiliation and peremptorily direct the Government to grant affiliation to the appellants' college and allow its students of the 1980-81, 1981-82 and 1982-83 sessions to sit in the examination, both written and practical, as the case may be. We would, however, like to add that if there are cogent reasons and sufficient material before the State or the University to show that the appellants' Institute has not fulfilled the conditions which may be imposed hereafter,

it is open to it to withdraw the affiliation provided the conditions imposed are reasonable and justifiable.

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SABYASACHI MUKHARJI, J. I agree with the order proposed by my learned brother Justice Fazal Ali. For the purpose of disposing of this appeal, it is sufficient to state that on the 5th March, 1980 the university authorities inspected the appellants' college and recommended its affiliation which was followed by a report by the Government on 30 June, 1980 recommending affiliation. But despite these, no final decision was taken by the Government as a result of which the appellants had to move the High Court for directing the Government to decide recognition and affiliation of appellants' college within a specified time. On 3rd November, 1980 the Government granted recognition and approval for affiliation for three sessions namely 1977-78, 1978-79 and 1979-80. On the 10th November, 1980, the University wrote to the Government recommending grant of affiliation. On 22nd November, 1980, the appellants applied for grant of permanent affiliation. But the Government on 27th November, 1980 passed an order cancelling the recognition and approval for affiliation granted to the appellants' college vide its letter dated 3rd November, 1980. This order was challenged before the High Court. The High Court quashed the said order dated 27th November, 1980 on 18th May, 1981. On the 17th August, 1981, the State of Bihar filed a special leave petition before this Court which was dismissed on 30th November, 1981. The High Court was moved again for directing the State Government to dispose of the application of the appellants for permanent recognition which was filed by them on 22nd November, 1980. On the 16th September, 1982 the Education Commissioner Bihar again made a recommendation for grant of affiliation to the appellants' college the extract from which has been set out in the judgment of my learned brother. In the recommendation, the education Commissioner recommended that the college be temporarily granted recognition and affiliation for the sessions 1981-82 and 1982-83 for the present. Another writ petition thereafter was filed and nothing happened for the examination of the students of the appellants' college who had passed the 1982-83 session. But this writ petition was dismissed by the High Court in limine. This appeal arises out of the said order.

There were certain data which were gathered by the expert committee and were the basis of Ex. J. There was a previous order for the production of Ex. J. That has not been produced and no explanation has been given. I agree with my learned brother that from the affidavits it is clear that practically no reasons have been given by the State as to why despite the recommendations of several authorities which were made after a full and proper inspections, the

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affiliation was refused. The government had stated that if certain conditions were fulfilled then there was no objection to the granting of affiliation. It is not clear from the records produced and also from the inferences drawn from the non-production of the records i.e., from Ex. J. that these conditions have not been substantially fulfilled. It appears, therefore, and I agree respectfully with my learned brother that no cogent or proper reasons have been placed before us to indicate why appellants have not been placed before us to indicate why appellants have not been granted affiliation and why the recommendations and reasons of the Education Commissioner for grant of affiliation to this college were not properly considered.

It is manifest from paragraph 7 of the affidavits filed by the respondents that before grant of affiliation, certain conditions were required to be fulfilled by the institution. These conditions have been mentioned in the judgment of my learned brother. It further appears from the affidavits filed by the appellants that the defence of the State was that five conditions were found not fulfilled after inspection by a team of inspectors. I agree that it is strange that while previous Expert Committee after inspecting the institute found it to be in order but subsequently the government, without referring to the data submitted by the Expert Committee, appears to have taken this view about non-fulfilment of certain conditions. No cogent materials or reliable evidence were produced before us that there was any proper inspection and as a fact the five alleged defects were there. I agree that in the context of the facts of this case and further in the context of non-production of Ex. J., the alleged plea of non-fulfilment of certain conditions was a pretext. In the premises, the government action in not granting affiliation in the background of the facts and circumstances of this case is action based without reason and is an act of arbitrariness. On this ground alone I agree with the order proposed by my learned brother. As I find the action of the respondents is arbitrary and unreasonable, it is not necessary for me to express my views on Article 30 of the Constitution in this case. Article 30 was engrafted for the High and Noble purpose of safeguarding and protecting the rights of minorities to establish and administer educational institutions. In this case I do not find that in not granting affiliation to the appellants' college there was any discrimination as such against any educational institution on the ground that it was under the management of any minority whether based on religion or language. It was inaction or an act of arbitrariness on the part of the authorities. From such unreasonable and arbitrary actions or inactions, institutions

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educational or otherwise, belonging both to the majority or minority communities often suffer and in appropriate cases, courts should grant relief without aid or recourse to the articles of the Constitution protecting the freedom and rights of the minorities. I do not find in this case any evidence or even any serious allegation that affiliation was being denied to the appellants' institution on the ground that it was a minority institution.

I agree with great respect with the order proposed by my learned brother, Fazil Ali, J.

S.R. Appeal allowed.

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