(1988) 04 CAL CK 0018

Calcutta High Court

Case No: C.R. No. 6875 (W) of 1984

Maheswari Balika Vidyalaya and Others		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision: April 22, 1988

Acts Referred:

- Constitution of India, 1950 - Article 226, 26, 29, 30, 30(1)
- West Bengal Board Of Secondary Education Act, 1963 - Section 22(3), 3(1), 3(2), 4, 5

Citation: 92 CWN 1170

Hon'ble Judges: Umesh Chandra Banerjee, J

Bench: Single Bench

Advocate: Dipankar Ghosh, P.K. Mallick, Jayanta Mitra and N.K. Manna, for the Appellant;N.N. Gooptu, Suprakash Banerjee for the Board of Secondary Education, Malay Basu and Atin Banerjee for Teachers Respondent No. 10, for the Respondent

Judgement

Umesh Chandra Banerjee, J.

For the purpose of conservation of language and culture by way of establishment of educational institutions for the minority community, the framers of our Constitution thought it fit to incorporate Article 30(1) since establishment of such an institution will effectively serve the needs of the community and to provide opportunities for scholars and other eminent persons to propogate a useful career - either as an educationist or otherwise for the benefit of the minority community. Language of Article 30(1) of our Constitution as used by the framers is significant. Article 30(1) provides :

All minorities whether based on religion or language shall have their right to establish and administer educational institutions of their choice.

The expression "minorities" has a very wide import by reason of the user of the expressions "religion" or "language". Anyone of those two criteria would be able to bring home the right to establish and administer educational institution. The expression "choice" also is of very wide import since the educational institution established and administered by minority need not be of any particular class nor is it necessary that admission should be confined to members of the minority community. It may have a purely general secular character. The three decisions of the Supreme Court in the case of Rev. Father W. Proost and Others Vs. The State of Bihar and Others, , The Ahmedabad St. Xavier''s College Society and Another Vs. State of Gujarat and Another, and In re : Kerala Education Bill (59 SCR 995) lend support to the view expressed above.

2. Once a minority community establish such a state of affairs on the basis of religion or language, the right to establish an educational institution ripens and there cannot be any curbing of the same. The Constitution recognises such a right. But the issues arises as to whether the expressions "shall have the right" mean and imply an absolute right; and unfettered right or some restraint somewhere ought to be exercised so as to avoid any ipsidixit. Can it be said that the right to establish and administer educational institutions mean and imply administer in any manner whatsoever as the person in control of administration deem fit? Would it be a subjective satisfaction all the time irrespective of any legitimate State control or can it be contrary to any law as is prevalent in the country? - the questions are interesting as well as important.

3. But before adverting into the contentions in regard thereto, a brief reference to the factual aspect ought to be made at this juncture.

4. The petitioner No. 1 Maheswari Balika Vidyalaya and Maheswari Vidyalaya said to have been established by Maheswari Sabha consisting of members of the Maheswari Community. The Maheswari Sabha is a registered Society under the Societies Registration Act 1860. The petitioners contended that Maheswari community is a distinct sect of Vaishnab community having its faith in Vaishnabism. The members of the Maheswari community belonged to a particular sect of Vaishnavism having faith in the teaching of Guru Vallava Charia. The petitioners further contended that Guru Vallavacharia was a pioneer of Vaishnavism which is a reformist movement in Hindu religion and which has rejected manifold absurdities found in Smriti. Guru Vallavacharia preached for service to humanity. He never believed in castism and the Vaishnab followers of Guru Vallavacharia formed a distinct religious community and are minorities within the meaning of Article 26, 29 and 30 of the Constitution. The respondents on the otherhand however, contended that the word "religion" in Article 30(1) is confined to the well-defined religion of India-such as Hinduism, Islam, Sikhism, Christianity, Jainism, etc.'' It was contended that assuming that Vaishuavism is a reformed sect of Hinduism which has

revolutionised the Hindu way of thinking it is a part of. Hinduism and cannot be termed to be a separate religion for the purpose of Article 30(1) of the Constitution. As regard Guru Vallavacharia the respondents contended that he was never the founder of any religion but had only interpreted the Vendanta Sutras in a different form from the way it has been interpreted by Shankaracharya and Ramanujam and Guru Vallavacharia at all material times was and still is being treated as a great philosopher and saint, but he was never the founder of any religion capable of being interpreted to be within Article 30(1) of the Constitution. As regards language aspect, the respondents contended that since the medium of instruction in the concerned school is Hindi and since Hindi is a national language prevailing throughout the country, it cannot be termed to be a minority language either in the State of West Bengal or in any part within the territory of India. On the language issue, the petitioners, however, contended that since about early Eighteenth Century people mainly from the visitors'' community from the State of Rajasthan came down to Bengal for the purpose of search of trade and commerce, and settled mainly in the city of Calcutta. It appears that Maheswari community was the pioneer amongst the early migrants from the State of Rajasthan. All these people have their common spoken language, i.e. Marwari and as such, community was and still is known and called as "Marwaries". The Maheswari community is also part of the Marwari community which has a separate language exclusively used and spoken by the Marwari community. It has also a separate script which is different from Hindi script and is known as "Modia script".

5. For the purpose of preservation of the Marwari language and for upliftment of moral, mental, social'' and economical standars and for advancement of education, the Masheswari Sabha was registered under the Societies Act and established a School at Premises No. 4, Sabharam Baisakh Street from out of the donations from important personalities in Maheswari community in 1941 as a Primary School. Subsequently in 1949 the primary school was elevated to the status of a Middle School and was affiliated to the West Bengal Board of Secondary Education. Admittedly, from the very inception the school was managed by the Maheswari Sabha through a Managing Committee though in terms of the Rules then prevailing due elections were held up to 1965 and further admitted fact ought to be noted that the medium of instructions is Hindi in the concerned school.

6. It appears from records that for some reason or other, (which has not been made known to this Court) the respondents Nos. 10 to 21 being teachers of the concerned School were put under suspension by the Secretary of the school, by reason wherefor the suspended teachers lodged a compliant before the Secretary, West Bengal Board of Secondary Education for withdrawal of the order of suspension. It further appears that one of the teachers were also dismissed from service and the complaint was also lodged to the Board by the dismissed teacher as well. Subsequently, the teachers filed a writ petition before this Court being C.O. No. 11657-65(W) of 1982. This Court, however, was pleaded to reject the petition as the

petitioners had already filed appeals before the Appeal Committe of the Board. Subsequently, the Appeal Committe heard the matter upon notice to the petitioner as well as the respondents being the appellants in the above-noted appeal and the Board by an order dated 27th of February 1984 rejected the preliminary objections as regards the minority institution and subsequently the Board was pleased to set aside the order of suspension as well as the terminatation order against the respodnents and by reason wherefor the present writ petition has been moved by the petitioners inter alia contending that the assumption of jurisdiction by the Board in regard to the minority institution cannot be had in the facts of the case under consideration.

7. Another redeeming feature ought also to be noticed however in this context that on 16th August, 1978, the Head Mistress of the concerned school addressed a letter to the Secretary, West Bengal Board of Secondary Education intimating that as the provisions of Article 26 and 30 of the Constitution of India apply to the concerned school, necessary applications to the Secretary, Government of West Bengal, were made as early as 18th of September 1968 for framing of Rules in regard to the powers, functions etc. of the Managing Committee of the School. It is also intimated that the Director of Public Instruction, West Bengal, has also forwarded the application to the Secretary of the Board with recommendation for consideration. In the paragraph of the letter noted above, the head-mistress requested the concerned Authority to look into the matter as regards the grant of special Constitution in favour of the school at an early date so that the Managing Committee of the school may be reconstituted. Subsequently by his letter dated 12th of September 1970 the Secretary of the Board intimated the Headmistress of the school that the special constitution under Rule 33 of the New Rule may continue until further decision of the State Government in this matter. It was pointed out that continuance of the special constitution however will not in any way affect the right of the Board to supersede the Managing Committee of any such school and appointment of an Administrator may be effected if occasion so arises. Incidentally, it is to be noted that as early as 1961 the special constitution was sanctioned and the Managing Committee was directed to be formed from out of the three nominees of the Maheswari Sabha to represent the category of founders - one from persons interested in education, one from donor category, if any 3 from the guardians'' representation, one medical practioner, 2 from the teachers'' representative and the Headmistress being the Ex-Officio member of the Managing Committee.

8. It, however, appears that the special constitution enjoyed by the concerned school has been in vogue till date.

9. It is at this jucture the rival contentions ought to be noted in some greater detail.

10. Mr. Ghosh appearing for the petitioner contended that the impugned order cannot be sustained since the only ground on which it is based is contrary to the Single Bench decision of this Court. Incidentally it is to be noted, however, that the

judgment of the learned Single Judge has not been placed before this Court. In any event, Mr. Ghosh submitted that the question still remains as to whether the Appeal Committee has the jurisdiction to entertain the appeal on the wake of the facts that the petitioner is a minority institution. It was contended, that the jurisdiction to hear the appeal emanates from section 22(3) of the West Bengal Board of Secondary Education Act, which is violative of Article 30 of the Constitution since the section makes a serious inroad into the petitioners exclusive right to administer the school as guaranteed by Article 30. The right to suspend or dismiss a teacher, Mr. Ghosh contended, is an integral part of the right to administer the school, and the effect of section 22(3) read with regulation 9 is that an outside body, viz., the Appeal Committee becomes the sole Arbiter of these questions; their decision is final and even a suit will not lie. These provisions, it was contended, therefore, divest the school of an important and vital part of its rights to administer which constitute an infringement and/or restriction on its right guaranteed by Article 30 of the Constitution.

11. It was further contended that the Regulation making power of the State must satisfy a dual test; (a) it must be reasonable and (b) it must be made to ensure excellence of education. Mr. Ghosh submitted that section 22(3) is so widely worded that each and every decision of the Managing Committee which is adverse to the teacher may be appealed against, regardless of whether the teacher concerned is seiously affected or only slightly affected. Further it was submitted that there is no provision for an appeal by the Management against a decision of the Appeal Committee, and as such the provision of section 22(3) is directly in conflict with Article 30 by reason wherefor there ought to be a declaration to that effect. In support of his contentions, strong reliance was placed on the decision of the Supreme Court in the case of Lily Kurian Vs. Sr. Lewina and Others, . In that decision the Supreme Court observed :

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

12. Similar is the view expressed by the Supreme Court in the case of All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, .

The Supreme Court observed :

Section 4 of the Act provides that any teacher employed in a private educational institution, (a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated, or (b) whose pay or allowance or any of those conditions of service are altered Dr interpreted to his disadvantage, may prefer an appeal to such authority or officer as may be prescribed. This provision in my opinion is too broadly worded to be sustained on the touchstone of the right conferred upon the minorities by Article 30(1).In the first place, the section confers upon the Government the power to provide by rule an appeal may lie to such authority or officer as it designates, regardless of the standing'' or status of that authority or officer. Secondly, the appeal is evidently provided for on all questions of fact and law, thereby throwing open the order passed by the management to the unguided scrutiny and unlimited review of the appellate authority. Iy would be doing no violence to the language of the section to interpret it to mean that, in the exercise of the appellate power, the prescribed authority or officer can substitute his own view for that of the management, even in cases in which two views are reasonably possible. Lastly, it is strange, and perhaps an oversight may account for the lapse, that whereas a right of appeal is given to the aggrieved teacher against an order passed by the management, no corresponding right is conferred on the management against an order passed by the competent authority u/s 3(2) of the Act. It may be recalled that by section 3(1), no teacher can be dismissed, removed, etc. except with the prior approval of the competent authority. Section 3(2) confers power on the competent authority to refuse to accord its approval if there are no adequate and reasonable grounds for the proposal. In the absence of the provision for an appeal against the order of the competent authority refusing to approve the action proposed by the management, the management is placed in a gravely disadvantageous position vis-a-vis the teacher who is given the right of appeal by section 4. By reason of these infirmities I agree with the conclusion of my learned Brothers that section 4 of the impugned Act is unconstitutional, as being violative of Art. 30(1).
Section 5 is consequential upon section 4 and must fall with it.

13. In the same line also the Supreme Court observed in the case of State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., and in the case of The Ahmedabad St. Xavier''s College Society and Another Vs. State of Gujarat and Another, as also the decision of the Gujarat High Court in the case of Benson Enock Samuell Ahmedabad v. State of Gujrat & Ors., reported in AIR 1984 Gujrat 49.

14. Further reliance was also placed on the decision of this Court in the case of In Re: Kailash Nath Roy, . In that decision this Court observed:

It is now well established that the liguistic and religious minorities are entitled to administer their educational institutions according to their own choice in view of the fundamental right guaranteed under Art. 30(1) of the Constitution. The State Government cannot interfere with this fundamental right of the linguistic and

religious minorities. The right is, however, not absolute and is not free from regulation as observed by A.N. Ray C.J. in the decision of the Supreme Court in the The Ahmedabad St. Xavier''s College Society and Another Vs. State of Gujarat and Another, . Much reliance has been placed by the learned Senior Standing Counsel on the above observation of the learned Chief Justice. It is contended by him that the State is always entitled to lay down rules by way of regulatory measures for the proper administeration of the school. There can be no doubt that regulatory measures can be taken by the State in regard to minority institutions for the smooth and, efficient running of the same, but the measures should be such as not to interfere with the administeration and management of the school.

15. Mr. Advocate-General appearing, however, for the West Bengal Board of Secondary Education submitted that section 22(3) of the West Bengal Act of 1963 read with Regulation 3 of the Appeal Regulation cannot be termed to be in any way derogatory to the provisions of Article 30 of the Constitution. It was submitted that the State Government has the authority to issue necessary directives for the proper conduct and efficient administration of the concerned school having the entire educational atmosphere of the State in mind and while so doing the State Government is within its rights to hear the objections or grievances of teachers, and it does not in any way conflict with the powers of the minority institution as engrafted in the Constitution under Article 30(1) of the Constitution.

16. Incidentally, however, it is to be noted that the invalidity and the vires of section 22(3) of the West Bengal Act has not been challenged in the petition at all. The only ground that has been taken is that by reason of a pending Rule, the Board ought not to have proceeded with the matter. In may view, that is not sufficient material on record to challenge the vires of a particular statute and I am in agreement with the contention of Mr. Advocate-General that validity of a statute is not open for consideration, unless sufficient opportunity is given to the party concerned to make proper representation in the counter affidavit. No prayer for amendment has been made, neither any application for amendment has been made to incorporate such a plea as regards the invalidity of the statute. It is not a more plea of technically but a substantial rule of procedure, which in my view, cannot be brushed aside. I am conscious of the fact that technicalities cannot outweigh the concept of justice, but as noted above, lack of avernment or pleadings in regard to the invalidity of a statute cannot be termed to be a mere technicality. It is also to be borne in mind, however, that the Law Courts should always presume in favour of the validity "of the statute rather than its invalidity and in the absence of a specific plea to that effect, Law Courts ought not to go into such an issue.

17. In that view of the mater, I am to consider the issue as regards the vires aspect of the matter as contended by Mr. Ghosh. Giving, however, full credence to the submission of Mr. Ghosh, let us now, therefore, factually analyse as to whether the impugned order has in fact made a dent on the powers of the Managing Committee

having due regard to the provisions of Article 30(1) of the Constitution - this is assuming the concerned institution be termed to be minority institution. Language used in Article 30(1) is very specific. The minorities shall have the right to establish and administer educational institution of their choice - establishment and administration of educational institution, therefore, are the two pre-dominant factors in the right of the minorities under Article 30(1) of the Constitution. But can it be said that the expression "right" is absolute and subject to no limitation whatsoever? One will have to keep in mind that this expression "right" refers to (1) establishment - there is no difficulty in regard thereto and no interference can be caused in such establishment. But the problem arises in regard to administration - what was the intent of the framers of our Constitution? - to provide them with such an absolute power so as not to be amendable to any restriction whatsoever. It is on this aspect, however, the establishment of an educational institution would have to be construed. The framers of our Constitution with a view to achieve excellence in the filed of education even on the minorities have engrafted this provision into the Constitution. Now if at a subsequent stage it appears that instead of having the educational excellence, the concerned institution has been a source of degenerated form of education - would it still be said that no-one has any authority to interfere and save the institution from such a degeneration? In my view, the framers of our Constitution had not the same concept at that point of time when our Constitution came into force. This article has been inserted for an all-round development of our culture, of our religion and scholastic aptitude. On this background, it will, therefore, have to be judged as to whether Article 39(1) confers as absoulte power? In the event of there being a State regulation as regards the working hours, salary and other allowances and conditions of employment of teachers, can it be said that it has violated the provisions of Article 39(1) of the Constitution? This, in my view, would lead to a not only a difficult but an impossible situation for those who are in employment with such minority institutions. The authoritarian power cannot always say - "I will do whatever I feel like doing". Can it be said that such an attitude is permissible to continue because of the provisions 39(i) of the Constitution? I am unable to subscribe to such a view. Assuming teachers are dismissed without disclosing any reason whatsoever; and in a manner contrary to the well-established principles of law and contrary to the long catena of decisions - can it be said that since the institution is a minority institution - that''s the end of the matter? Could that ever be the intention of our framers of the Constitution that teachers would be driven out on an administrative ipsdixit and without any rhyme or reason? And there would be no remedy left. Can it be said to be conducive to the growth and development of the education of the country? - Can it be said that this conduct of the concerned institution would go a long way in the matter of maintaining educational excellence? The answer, in my view, would be in the negative. Educational excellence cannot be achieved in the event the teachers are made subject to the wrath of authorities.

18. In this context the observations of the Supreme Court in the case of Frank Anthony Public School Employees'' Association Vs. Union of India (UOI) and Others, seem to be very aposite. In that decisions the Supreme Court observed:

The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contement and decent living standards to teachers, and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental rights guaranteed by Article 30(1) of the Constitution. The Management of a minority educational institution cannot be permitted under the guise of the fundamental right guaranteed by Article 39(1) of the Constitution, to opress or exploit its employees any more than any other private employee. Opression or exploitation of the teaching staff of an educational institution is bound to lead inevitably to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who restore to it. The management of minority institutions cannot complain of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of Article 30(1) which is to make the institution an effective vehicle of education.

19. Exploitation of teaching staff of an educational insitutition resulting in discontentment of the teaching staff cannot be protected under Article 30(1)of the Constitution. As noted above, the purpose of engrafting Article 30(1) into the Constitution is for attainment of excellence in the educational sphere. Discontentment of teachers cannot possibly lead to such an excellence and as a matter of fact it would instead of achieving the goal which the Constitution provides cause total chaos and confusion in the field of education which is wholly unwarranted and cannot possibly be said to be within the ambit of Art. 30(1) of the Constitution.

20. Mr. Ghosh appearing for the petitioner submitted that the views expressed by the Supreme Court in All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, and in the case of State of Kerala v. Mother Provincial (AIR 1970 SC 079) run counter to the views expressed by the Supreme Court in the case of Frank Anthony (supra). AS regards the two cases noted above, the Supreme Court in Frank Anthony''s case noted :

Apart from the learned judges who constituted the Nine Judge Bench, other learned Judges have also indicated the same view. In the leading case of the In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, the Constitution Bench observed that, as then advised, they were prepared to

treat the clauses which were designed to give protection and security to the ill paid teachers who were engaged in rendering service to the nation as permissible regulations. The observations were no doubt made in connection with the grant of aid to educational institutions but that cannot make any difference since, aid, as we have seen, cannot be made conditional on the surrender of the right guaranteed by Article 30(1). In State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., , it was said that to a certain extent the State may regulate conditions of employment of teachers. In All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, , Chandrachud, D.J., expressly stated that for the maintenance of educational standards of an institution it was necessary to ensure that it was completely staffed and, therefore, conditions of service prescribing minimum qualifications for the staff, their pay scales, their entitlement, other benefits of service and the safeguards which must be observed before they were removed or dismissed from service or their services terminated were permissible measures of a regulatory character. Kailasam, J. expressed the same view in almost indentical language. We, therefore, hold that section 10 of the Delhi Education Act which requires that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits, of the employees of a recognised private school shall not be Jess than those of the employees of the corresponding states in schools run by the appropriate authority and which further prescribes the procedure for enforcement of the requirement is a permissible regulation aimed at attracting competent staff and consequently at the excellence of the educational institution. It is a permissible regulation which in no way detracts from the fundamental right guaranteed by Article 30(1) to the minority institutions to administer their educational institutions. Therefore, to the extent that section 12 makes section 10 inapplicable to unaided minority institutions, it is clearly discriminatory.

21. In my view, there is no contra finding nor any contra observations. As such, Mr. Ghosh''s submission that the Two-Judge Bench decision of the Supreme Court ought not to be considered as against a larger Bench need not be dealt with in detail.

22. Having considered the law on the subject let us now proceed to deal with the impugned order and in order to appreciate the contentions in regard thereto, relevant extracts of the order are quoted hereinbelow.

The learned lawyers appearing on behalf of the appellants argued that this is not a minority community, but merely a sect of Hinduism, and that in the High Court the former President of the Managing Committee denied that they are a minority community. In an affidavit, the former President categorically denied that the school was being run by a minority community. In the written statement filed by the appellants before the Hon''ble Supreme Court it was denied that Maheswary Community was or would ever be a linguistic minority in the State of West Bengal. If it is a minority community, then certainly subject to certain regulatory measures, the

managing committee has a right to administer the institution and keep their religious practice going. In this connection a reference may be made to rule 33 of the Rulers for Management of Recognised Non-Government Institutions (Aided and Unaided) 1969. In this rule power has been given to the State Government to" frame on the application of any institution which the provisions of Article 26 or Article 30 of the Constitution apply to frame Special Rules laying down the powers and functions of the managing committee. Admittedly no such application has been submitted to the State Government. This also supports the case of the appellants that the Maheswary Community is not a minority one.

The learned lawyers appearing on behalf of the appellants argued that even if it is assumed that the school is run by a minority community, the Board or the Government can take certain regulatory measures. These regulatory measures can be taken only when it is decided that the community which runs the institution is a minority community. Except stating that the school is being run by the Maheswari Sabha through a managing committee, that he language spoken is ''Mudia'' and that the script is ''Devnagari'', the respondent-President could not show anything to establish that the school is administered by a minority community. Unless it is conclusively established that the school is an institution run by a minority community, the Appeal Committee will have jurisdiction to entertain the appeals.

It was also argued by the learned lawyers appearing on behalf of the appellants that the Hon''ble High Court in an order directed the maintenance of status quo in a case wherein this issue was involved, and therefore the Appeal Committee cannot decide the issue. But the question whether a community is a minority one is to be determined by the State Government, and this cannot be determined by the Appeal Committee. In the absence of any decision in this regard, the community which runs the institution does not appear to be a minority community, and as such, the Appeal Committee has jurisdiction to entertain the appeals against the managing committee.

Hence ORDERED that the appeals be admitted.

It is against this order the petitioners have moved this Court under Article 226 of the Constitution. Can this order be said to be an illegal exercise of power or contrary to the mandate of Article 30(1) of the Constitution of India? In the view expressed above, in my view the answer is in the negative. The order under appeal thus can not be said to be arbitrary or illegal, warranting an intervention of this Court.

In that view of the matter, this petition fails. The Rule is discharged. All interim orders are vacated. There will be no order as to costs.