**(2011) 05 CAL CK 0092**

**Calcutta High Court**

**Case No:** Writ Petition No''s. 24463 (W) of 2007, 5355, 5402, 5508, 5581, 5872, 8288, 8291, 8600, 28189 and 28380 (W) of 2008

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| The Salesian Province of Kolkata (Northern India) | APPELLANT |
| Vs | |
| State of West Bengal and Others | RESPONDENT |

**Date of Decision:** May 6, 2011

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226, 25, 26, 27
- Employees State Insurance Act, 1948 - Section 1, 1(4), 1(5), 10, 11A
- Industrial Disputes Act, 1947 - Section 2

**Citation:** (2011) 4 CHN 456 : (2011) 130 FLR 709 : (2012) 1 LLJ 461

**Hon'ble Judges:** Aniruddha Bose, J

**Bench:** Single Bench

**Advocate:** Pratik Prokas Banerjee, Deep Chaim Kabir and Chhama Mukherjee, for the Appellant;Tarun. Kr. Chatterjee, Prasenjit Basu, Sandip Srimani, Surojit Roychowdhury, Pratik Dhar, Jayeeta Chakraborty, Asish Kr. Das, Samrat Das, S.K. Golam Gous, S.K. Humayun Rezi, Soumitra Banerjee and Rajsekhar Basu, for the Respondent

**Final Decision:** Allowed

**Judgement**

Aniruddha Bose, J.

The Petitioners in these proceedings are all societies organised under different statues belonging to Roman Catholic religious orders within the Catholic Church, who administer different educational institutions. In these writ petitions, their main complain is over expansion of the coverage of the Employees'' State Insurance Act, 1948 in respect of their institutions. The case of the Petitioners is that as a religious minority, they are entitled to protection under Articles 25, 26, 27, 29 and 30 of the Constitution of India and the action taken by the State and the Employees'' State Insurance Corporation (the Corporation) infringes their Fundamental Rights guaranteed under these Articles of the Constitution.

2. The Employees'' State Insurance Act, 1948 (the Act) was enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. This is the primary object of this statute, as it appears from the Preamble to the said Act. As per the provisions of Section 1(4) of the Act, this legislation was initially made applicable to "all factories (including factories belonging to the government) other than seasonal factories," subject to certain exceptions. Sub-section (5) of the same section however empowers the appropriate government to extend the provisions of the said statute to other establishments as well. Section 1 of the Act provides:

(1) This Act may be called the Employees'' State Insurance Act, 1948.

(2) It extends to the whole of India [* * *].

(3) It shall come into force on such [date or dates as the Central government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and [for different States or for different parts thereof].

(4) It shall apply, in the first instance, to all factories (including factories belonging to the government) other than seasonal factories:

PROVIDED that nothing contained in this Sub-section shall apply to a factory or establishment belonging to or under the control of the government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.]

(5) The appropriate government may, in consultation with the Corporation and where the appropriate government is a State Government, with the approval of the Central Government, after giving six months'' notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise:

PROVIDED that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.

3. Extension of the provisions of the Act to the "workers" of the educational "1. Short title, extent, commencement and application institutions was mooted by the Corporation in the year 2003. It appears that a meeting of the Corporation was held on 21 February 2003 under the Chairmanship of the Union Labour Minister and it was decided that the scheme may be extended to workers of educational institutions. In this regard, a communication was issued by the appropriate authority of the Corporation to the secretaries of all the State Governments, as

disclosed in affidavit-in-opposition filed on behalf of the Corporation and its officers in W.P. No. 5355(W) of 2008. On behalf of the Respondents, affidavits have not been filed in respect of all the writ petitions. On behalf of the Corporation, such affidavit has been filed in W.P. No. 24463(W) of 2007, W. P. No. 5355(W) of 2008 and W.P. No. 5581(W) of 2008, whereas on behalf of the State of West Bengal, affidavit-in-opposition has been filed only in W.P. 24463(W) of 2007. Learned Counsel for the said Respondents have adopted these affidavits in respect of other writ petitions as well. No affidavit however has been filed on behalf of the Union of India. Arguments have been advanced primarily on points of law. In the said communication dated 2 June 2003, a copy of which has been made Annexure "R1" to the said affidavit in W.P. No. 5355(W) of 2008, it has been state, inter alia:

A large number of private educational institutions have come up in the country and the low paid employees of such education institutions are not being provided any social security benefits. The matter was therefore considered by the ESI Corporation at its meeting held on 21.2.2003 under the Chairmanship of Union Labour Minister, Govt. of India and the Corporation have taken a decision that the scheme may be extended to workers of educational institutions (which include public, private, aided or partially aided institutions including those run by individuals, trustees, societies or other organisations.)

It is, therefore, requested that the State Govt. may issue a notification under Sub-sec (5) of Section 1 of the ESI Act, 1948 after obtaining prior approval of the Central Govt., as required under the said Section and after notifying its intention to so doing by a notification in the Official Gazette. Draft of a notification to be issued is enclosed.

4. In the draft notification, the description of the establishments sought to be covered stipulated:

Educational institutions (including public, private, aided or partially aided run by individuals, trustees, societies or other organisations, wherein 20 or more persons are employed on any day of the preceding twelve months.

5. Thereafter, several communications had been sent by the officers of the Corporations to the Principal Secretary, Labour Department as well as the Chief Secretary to the Government of West Bengal requesting them to take steps in this respect. Copies of such communications dated 4 September, 2003, 5 January, 11 March, 21 June, 25 October 2004, 24 January, 24 August, 26 October, 2005 have been made annexures to the said affidavit filed on behalf of the Corporation. It appears that on 1 December 2005 a meeting was held in the chamber of the Minister of State, Labour Department, Government of West Bengal between the representatives of the State Government and the Officials of the Corporation and thereafter it was decided to extend the coverage of Act to educational institutions. On 5 December 2005, Officer on Special Duty and Deputy Secretary, Government of

West Bengal, Labour Department, sent a draft notification to the Joint Secretary, Government of India, Ministry of Labour and Employment, for approval in terms of Section 1(5) of the Act. A copy each of the draft notification as well as the communication to which it was enclosed has been made Annexure "R4" to the said affidavit-in-opposition. I find from this communication that the description of establishments for which approval was sought for was different from that contemplated by the ESI authorities. The description of the establishments specify:

All Private Educational Institutions namely schools, colleges and other institutions providing technical or medical or legal management or any other form of education and run by an individual, group of individuals, trustees, Corporate bodies or Societies and wherein 20 or more persons are employed or were employed on any day of the preceding twelve months.

6. The approval to such request came from the Central Government on 2 January 2006 by a communication of one V.K. Sharma, Section Officer bearing memorandum No. S-38025/23/2003-SS-I. A notification was issued on 27 January 2006 (published in the Kolkata Gazette, Extraordinary dated 31 January 2006) for giving notice of intention of the State Government to extend the provisions of the Act to the classes of establishments in respect of which approval of the Central Government was sought for. After expiry of the stipulated six month period, the actual notification extending coverage of such institutions was issued on 8 August 2006, which was published in the Kolkata Gazette Extraordinary dated 28 August 2006.

7. Thereafter, the Corporation started taking steps in respect of the institutions of the Petitioners for coverage under the Act, and notices were issued requiring the Petitioners to comply with the provisions of the Act. The Petitioners in these proceedings challenge the legality of the said notification and seek quashing of the steps taken by the Corporation under the said Act. In W.P. No. 24463(W) of 2007, leave was prayed for and obtained from this Court in terms of Rule 12 of the Rules of this Court relating to Applications under Article 226 of the Constitution of India to sue in a representative capacity and publication in a newspaper was made in terms of such leave. A photocopy of such publication has been made Annexure "P16" of W. P. No. 5355(W) of 2008.

8. Mr. Pratik Prokash Banerjee and Mr. Deep Chaim Kabir has appeared and argued in all these matters for different sets of Petitioners, except in W.P. No. 28380(W) of 2008, in which Ms. Chhama Mukherjee has appeared for the Petitioners. For the Respondents, main argument has been advanced by T.K. Chatterjee, learned Counsel for the Corporation. On behalf of State and Union of India, the stand of the Corporation has been supported. Learned Counsel for the parties have relied on a large body of authorities in support of their submissions. In this judgment, however, I shall refer to only those decisions which I found relevant for adjudication of these proceedings. On a particular point of law where several decisions have been cited, I shall refer to the main judgment on that point. On the issues which can be

adjudicated upon referring to the provisions of the statute only, I shall avoid referring to the authorities cited in support of the respective position of the parties.

9. The Petitioners have founded their case mainly on three grounds. First, it has been argued that the provisions of Section 1(5) of the Act has not been complied with in the manner prescribed in the statute. Mr. Kabir has submitted that the impugned notification should be struck down applying the principle of procedural ultra views on this count. The second ground of challenge is that extension of coverage of the Act infringes the Fundamental Rights of the Petitioners to establish and administer educational institutions of their choice, in that coverage of their educational institutions under the said Act would interfere with their right of effective administration of their institutions. It has been further submitted that the Petitioners being a religious minority having special status under the Constitution of India, the educational institutions established or administered by them cannot be termed as private educational institutions. On this point, the Petitioners'' case is that the said notification does not apply to their institutions. The other ground of challenge to the steps initiated by the Respondent Corporation under the said Act is on extent of coverage of the statute in the event the said notification covers the subject establishments. It has been contended that the teachers cannot come within the definition of employees under the said Act, and hence such teachers would have to be kept outside the scope of coverage.

10. The status of the Petitioners as a religious minority and their case that the subject institution have been established and are being administered by them have not been seriously disputed in these proceedings. On behalf of the Respondents, my attention has been drawn to the character of the statute. This being a beneficial legislation, it has been urged that the statutory provisions should be construed in such manner that it enures to the benefit of the employees of the institution whose welfare is the primary object of this Act. It has been submitted that steps taken by the State Respondents was in accordance with the provisions of the Act before extension of the provisions of the Act to any establishment or class of establishments which the Act originally did not cover. There was consultation with the Corporation, approval of the Central Government was obtained and publication of a notice was made in the Official Gazette for a period of six months indicating the intention of the State Government to do so before effecting actual extension.

11. Submission of the Petitioners on breach of sequence postulated in the Act is that the order in which such steps are to be taken would be publication of the notice indicating intention of the appropriate government to effect such extension first, followed by consultation with the Corporation and thereafter approval of the Central Government was to be sought for. My attention has been drawn to the provisions of the Act, and it has been contended that use of the expression "after" in Sub-section (5) of Section 1 implies that the notice should be published first, followed by the two steps of consultation with the Corporation and approval of the Central Government.

12. I am unable to accept this argument. In my opinion, the sequence has been specified in the said Sub-section only, and the steps are required to be taken in the order stipulated therein. In the said provision, consultation with the Corporation has been stipulated first. Thereafter, the statute specifies that approval of the Central Government should be taken. The third step specified is publication of notice. The word "after" guides the second part of the sentence, and indicates when the extension of the provision shall take effect. It means such extension would be applicable only after the six months" notice of intention of the appropriate government is given by notification in the Official Gazette. The term "after" cannot alter the sequence stipulated in the said provision of the statute itself. The same view has been taken by the Andhra Pradesh High Court in the case of K. Venkaleswara and Ors. v. State of Andhra Pradesh and Ors. reported in 1980 (40) FLR 318, and I agree with this interpretation of the said provision.

13. Next, I shall deal with submissions of the Petitioners that if the provisions of the Act are extended to the educational institutions of the Petitioners, that would interfere with their Fundamental Right guaranteed under Article 30(1) of the Constitution. It was argued on their behalf that in any event, welfare of employees in these institutions are taken care of through various beneficial measures. Argument was also advanced that running of educational institutions by a religious minority cannot be considered to be activities of "industrial, commercial or agricultural or otherwise". The establishments undertaking these activities can be brought within the ambit of the said Act under the provisions of Section 1(5).

14. In view of the decision of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, an establishment which imparts education would come within the ambit of the expression "industry". So far as establishments established and administered by the a religious minority are concerned, the authorities are uniform that bringing them within a regulatory mechanism without direct interference with their administration would not constitute violation of their Fundamental Right guaranteed under Article 30(1) of the Constitution of India. It was held so in the case of In Re: Kerala Education Bill (AIR 1958 SC 956) and The Ahmedabad St. Xavier''s College Society and Another Vs. State of Gujarat and Another, The very question of applicability of a welfare or beneficial legislation to educational establishments of a religious minority was considered by the Hon''ble Supreme Court in the case of Christian Medical College Hospital Employees'' Union and Another Vs. Christian Medical College Vellore Association and Others, and it was held:

18. In view of the observations of this Court in All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, Frank Anthony Public School Employees'' Association Vs. Union of India (UOI) and Others, and Y. The clamma''s case AIR 1987 SC 1210) (supra) it has to be held that the provisions of the Act which provide for the reference of an industrial dispute to an Industrial Tribunal or a

Labour Court for a decision in accordance with judicial principles have to be declared as not being violative of Article 30(1) of the Constitution. It has to be borne in mind that these provisions have been conceived and enacted in accordance with the principles accepted by the International Labour Organisation and the United Nations Economic, Social and Cultural Organisation. The International Covenant on Economic, social and Cultural Rights, 1966 which is a basic document declaring certain specific human rights in addition to proclaiming the right to work as a human right treats equitable conditions of work, prohibition of forced labour, provision for adequate remuneration, the right to a limitation of work hours, to rest and leisure, the right to form and join trade unions of ones'' choice, the right to strike etc. also as human rights. The Preamble of our Constitution says that our country is a socialist republic. Article 41 of the Constitution provides that the State shall make effective provision for securing right to work. Article 42 of the Constitution provides that the State shall make provision for securing just and humane conditions of work and for maternity relief. Article 43 of the Constitution states that the State shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. These rights which are enforced through the several pieces of labour legislation in India have got to be applied to every workman irrespective of the character of the management. Even the management of a minority educational institution has got to respect these rights and implement them. Implementation of these rights involves the obedience to several labour laws including the Act which is under consideration in this case which are brought into force in the country. Due obedience to those laws would assist in the smooth working of the educational institutions and would facilitate proper administration of such educational institutions. If such laws are made inapplicable to minority educational institutions, there is every likelihood of such institutions being subjected to maladministration. Merely because an impartial tribunal is entrusted with the duty of resolving disputes relating to employment, conditions of workmen it cannot be said that the right guaranteed under Article 30(1) of the Constitution of India is violated. If a creditor of a minority educational institution or a contractor who ha built the building or a institution is permitted to file a suit for recovery of the money or damages as the case may be due to him against such institution to sale to realise the decretal amount due under the decree passed in such suit is Article 30(1) violated? Certainly not. Similarly the right guaranteed under Article 30(1) of the Constitution is not violated, if a minority school is ordered to be closed when an epidemic breaks out in the neighborhood, if a minority school building is ordered to be pulled down when it is constructed contrary to town planning law or if a decree for possession is passed in favour of the true owner of the land when a school is built on a land which is not owned by the management of a minority school. In the same way if a dispute is raised by an employee against the management of a minority educational institution such

dispute will have necessarily to be resolved by providing appropriate machinery for that purpose. Laws are now passed by all the civilised countries providing for such a machinery. The Act with which we are concerned in this case is an Act which has been brought into force for resolving such industrial disputes. Sections 10, 11-A, 12 and 33 of the Act cannot, therefore, be construed as interfering with the right guaranteed under Article 30(1) of the Constitution. The High Court was in error in thinking that the power of the Industrial Tribunal or the Labour Court under the Act was uncanalised, unguided and unlimited and in thinking that the said power was equivalent to the power of the Vice-Chancellor or any other officer nominated by him functioning under the Gujarat University Act, 1949 which was the subject matter of decision in the The Ahmedabad St. Xavier''s College Society and Another Vs. State of Gujarat and Another, Accordingly, we are of the view that the provisions of Ss. 9A, 10, 11A, 12 and 33 of the Act are applicable to the minority educational institutions like the Christian Medical College and hospital at Vellore also.

15. The next question which requires determination is as to whether the establishments of the Petitioners come within the ambit of the expressions "industrial, commercial, agricultural or otherwise". The question of applicability of the provisions of the Act to educational institutions was examined by a Division Bench of the High Court of Kerala in WP(C) No. 5986 of 2008 (K) Kerala CBSE School Managements Association and Ors. v. State of Kerala and Ors. reported in (2009) 3 KLT 421. Learned Counsel for the Respondents relied on this judgment. In this judgment, it has been held:

17. We hold that the notification u/s 1(5) of the ESI Act can cover an educational institution for two reasons: Our first reason is that, the educational institutions like schools are industrial establishments, in view of the decision of the Apex Court in Bangalore Water Supply and Sewerage Board''s case, (supra). Though a few Benches of lesser strength have expressed the necessity for reconsidering the dictum in Bangalore Water Supply and Sewerage Board''s case, (supra), until such a reconsideration is done by a larger Bench, we are absolutely bound by the decision of the Apex Court in Bangalore Water Supply and Sewerage Board''s case, (supra). If that be so, the only possible view that could be taken in the face of the words contained in Section 1(5) of the ESI Act is that educational institutions are also covered by the expression ''industrial establishment''. The main thrust of the argument of the writ Petitioners was that educational institution is not an industry. In view of the binding precedent mentioned above, we cannot accept the contention. Further, the interpretation of the definition of "industry" in Section 2(j) of the Industrial Disputes Act is applicable to the interpretation of the word "industrial" in Section 1(5) of the ESI Act, in view of Section 2(24) of the latter Act which reads as follows:

2. Definitions:

xxx

(24) all other words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (14 of 1947), shall have the meanings respectively assigned to them in that Act.

16. The same view has been taken by the High Court of Allahabad in the case of Maharishi Shiksha Sansthan and Anr. v. State of Uttar Pradesh and Anr. (2009) 1 LLN 381 and the High Court of Rajasthan in the case of S.B. Writ Petition No. 2291/2005 Bhopalwala Arya Higher Secondary Managing Committee v. State of Rajasthan and Ors. decided on 18 May 2005. I respectfully agree with the views taken by the High Court of Kerala, Allahabad and Rajasthan on this point. The establishments contemplated for extended coverage of the Act in the manner provided in Section 1(5) thereof cannot be confined to those involved directly in industrial, commercial and agricultural activities. In any event, in the light of the decision of the Hon''ble Supreme Court in the case of Bangalore Water Supply and Sewerage Board (supra), educational activities would also constitute industrial activities. The expression "otherwise" employed in the said provision by the legislature has to be given wide interpretation to cover establishments engaged in any kind of economic activity. Thus, in my opinion, it is permissible for the appropriate government to extend provisions of the Act to educational institutions.

17. But can the provisions of the Act be extended by the appropriate government to educational establishments established and administered by religious minority organisations? In my opinion, per se, there is no restriction on the jurisdiction of the appropriate government in extending provisions of the Act to educational establishments run by a religious minority. The statute having being enacted for welfare of the employees of an establishment, its extension to such institutions would not constitute interference with the Fundamental Right of religious minority groups to administer their own educational establishments.

18. The question which arises in these proceedings, however, is as to whether the notification issued covers educational establishments of the Petitioners. Argument of the Petitioners on this point has been that the Petitioners, as a religious minority administering their educational institutions constitute a distinct class, and they cannot be treated as private educational institutions to which the statute has been made applicable by the notification dated 6 August 2006.

19. On behalf of the Respondents, it was argued that since the educational institutions of the Petitioners are not run by the State or its agencies, they are private educational institutions only. The Respondents here draw analogy from the terms used in economics, particularly in relation to national economy where the economic activities are divided between public and private, the former denoting, in substance, governmental activities whereas the latter implies activities undertaken through personal initiative which may be pursued through individual or group efforts. The words ''private'' and public'' have different connotation in different contexts. In relation to incorporated companies, ''private'' would imply closed group

efforts whereas "public" would imply Corporations in which general public can become members by purchasing shares from the open but regulated market.

20. In the Concise Oxford English Dictionary (eleventh edition 2004 third impression 2005), the word "private" means:

1. for or belonging to one particular person or group only. >(of thoughts, feelings, etc.) not to be shared or revealed. >(of a person) not choosing to share their thoughts and feelings. >(of a place) secluded. >alone and undisturbed by others. 2. (of a person) having no official or public position. >not connected with one's work or official position. 3 (of a service or industry) provided or owned by an individual or commercial company rather than the state. >relating to a system of education or medical treatment conducted outside the state system and charging fees. 4. Relating to or denoting a transaction between individuals.

21. In relation to service or industry, the ownership of private individual or commercial company has been emphasised. Specifically with regard to education, reference has been made in the said dictionary to something outside the state sector, and indication is that such service would be rendered upon charging of fees, which again highlights commercial motive.

22. In the context of the subject-controversy, I will have to examine as to whether educational institutions of the Petitioners could be treated to be private, having regard to the fact that the Petitioners are a religious minority who have been conferred special status under the Constitution. The Petitioners have special status, first as a religious denomination having right to establish and maintain their own institutions for religious and charitable purpose under Article 26 of the Constitution. In terms of Article 30(1) of the Constitution, their educational institutions have been conferred special status as institutions of a religious minority.

23. Such special status has been recognised in all the authorities, starting from In re: Kerala Education Bill (supra), Ahmedabad St. Xavier's College Society (supra), T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , Islamic Academy of Education and Another Vs. State of Karnataka and Others, and P.A. Inamdar and Others Vs. State of Maharashtra and Others, . The disputes in all these cases related to the degree to which the general laws covering educational institutions could be applied to such institutions of a religious minority.

24. In the case of Bal Patil and Another Vs. Union of India (UOI) and Others, it has been observed:

11. The expression "minority" has been used in Articles 29 and 30 of the Constitution but it has nowhere been defined. The Preamble to the Constitution proclaims to guarantee to every citizen "liberty of thought, expression, belief, faith and worship". Group of Articles 25 to 30 guarantee protection of religious, cultural and educational rights to both majority and minority communities. It appears that keeping in view

the constitutional guarantees for protection of cultural, educational and religious rights of all citizens, it was not felt necessary to define "minority". Minority as understood from the constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation of their religious, cultural and educational rights by other communities who happen to be in majority and likely to gain political power in a democratic form of government based on election.

25. The case of the Petitioners is that the educational authorities of the State also recognise special status of the educational institutions established and administered by religious minority. Special Rules have been formulated for management of Secondary Schools established and run by a Christian Church/Missionary society/Board/Religious society/Subsidiary Trust under Notification No. 641. Edn(S)/8B-3/69 dated 23 May 1974, to which reference has been made by learned Counsel for the Petitioners.

26. As educational institutions established and administered by a religious minority form a distinct category having special constitutional status, can they be treated as private educational institutions as per the said notification? If I accept this argument of the Respondents, then I will have to treat the Petitioners'' institutions as residual institutions, not being administered by the State. I do not think, having regard to the special Constitutional status of the Petitioners as educational institutions of a religious minority, they can be clubbed together with the general category of non-state private educational institutions.

27. There is implicit restriction on the State and its agencies in treating persons and agencies having distinct characters as part of the same class, for being meted out similar treatment under Article 14 of the Constitution. In the case of Prem Chand Somchand Shah and Another Vs. Union of India (UOI) and Another, the Hon''ble Supreme Court held:

8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question.

28. The distinction made in the field of national economy between private and public sectors cannot be applied in the field of educational establishments and the

Petitioners'' institutions cannot be treated as private educational institutions for the sole reason of not being controlled by the State. In my view, in the field of economy also entire economic activities may not be categorised into private and public sectors only, clubbing all organisations pursuing economic activities not sponsored by the State as part of the private sector. For instance, I have my doubt if the cooperative sector could be categorised as private sector. In the present case, my opinion is that having regard to the special constitutional status of educational institutions of a religious minority, they cannot be held to be private educational institutions. On behalf of the Respondents, reliance was placed on the judgment of the High Court of Allahabad in the case of Maharishi Shiksha Sansthan and Anr. (supra). In particular, reliance was placed on paragraph 10 of this judgment, in which it has been observed:

10. ...The purpose of the Act is to confer certain benefits upon the employees and employees of any establishment may deserve such benefits. This question has also been considered in the Supreme Court authority in Hindu Jea Band Jaipur v. Regional Director, Employees'' State Insurance Corporation, and Ors. 1987 (1) L.L.N. 778, Learned Counsel has in the end, argued that in the judgment of St. Joseph''s College case (vide supra), notification was not challenged. However, in the said authority, it was argued that the said provision could not be applied on minority educational institutions. In the said judgment, it was held that educational institution including minority educational Institutions could be brought under the Act.

29. The said judgment however is an authority on the point that educational institutions can be brought under the umbrella of the Act. This is the ratio of that judgment. The question as to whether minority institutions can be covered by the notification which is impugned in this writ petition was not in lis in that case. As I have already observed, I am of the view that the Act can be applied to minority educational institutions. But for that purpose appropriate notification would have to be issued. The notification which extends the provisions of the Act to private educational institutions in my opinion cannot cover educational institutions established and administered by a religious minority.

30. In view of this finding I do not think there is any necessity to go into the question as to whether teachers can come within the ambit of expression "employees or workmen" to be covered under the provisions of the said Act.

31. I accordingly hold that on the strength of the impugned notification the Respondent Corporation cannot seek coverage of educational institutions established and administered by the Petitioners. The steps taken against Petitioners in individual cases requiring them to comply with the provisions of this Act are declared void. I accordingly restrain the Respondents from taking any step against the Petitioners under the said Act on the basis of the notification dated 6 August 2006. Any step already taken in that regard shall stand revoked. The writ petitions

are allowed in the above terms.

32. There shall, however, be no order as to costs.

33. Urgent Photostat certified copy of this judgment be given to the learned Advocates for the parties, if applied for, with all necessary formalities.