

Court No. - 58

Case :- WRIT - C No. - 30363 of 2018

Petitioner :- C/M Of Ewing Christian College Society, Allahabad And Another

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Hritudhwaj Pratap Sahi, Sankalp Narain, Subedar Mishra

Counsel for Respondent :- A.S.G.I., Neeraj Tripathi, Sanjeev Kumar Tyagi, Vineet Pandey

Hon'ble Ashwani Kumar Mishra, J.

1. Petitioner before this Court is a minority constituent college of the University of Allahabad which is aggrieved by the action of the University in suspending its Governing Body and appointing an Authorized Controller to perform such functions. This action is subject matter of challenge in Writ Petition No.30363 of 2018. While this petition remained pending a subsequent cause arose for the petitioner for which a subsequent Writ Petition No.3266 of 2019 has been filed. An order of the Vice-Chancellor dated 21st February, 2019 appointing an Officiating Principal is challenged in this petition essentially on the ground that right of a minority institution to appoint its Officiating Principal cannot be taken away in view of Constitutional safeguard provided to minority institution by virtue of Article 30 of the Constitution of India. It was the writ petition no.3266 of 2019 which was placed before the Court, first. The Court was apprised that action of University in suspending the Governing Body and appointing Authorized Controller is already subjudice before this Court in writ petition no.30363 of 2018 on similar grounds. Having noticed such facts and after hearing the counsel for the petitioner as well as the Senior Counsel for the University, the Court proceeded to pass following orders on 28.2.2019 in Writ Petition 3266 of 2019:-

“Supplementary affidavit filed today is taken on record.

Attempt on part of the University to appoint a Principal in the petitioner minority institution has been subject matter of challenge in successive petitions. The ground of challenge primarily is that such right vests with the minority institution and that the University has no

jurisdiction to pass orders in that regard.

On behalf of the respondents, it is pointed out that the Committee of Management stands superseded with the appointment of Administrator to manage the affairs of the institution concerned. This action is also subjudice before this Court in Writ Petition No. 30363 of 2018. Court is informed that affidavits have been exchanged in that matter.

In the opinion of the Court, it would be appropriate that this petition be also heard alongwith records of Writ Petition No. 30363 of 2018.

Let this petition be placed before Hon'ble the Chief Justice for assigning both matters to be heard by one Court.

Let this matter be placed before appropriate Court in terms of the order passed by Hon'ble the Chief Justice, if possible, as fresh on 7.3.2019.”

2. Pursuant to the aforesaid orders passed, the office has placed records of both the connected writ petitions before this Court in terms of the directions of Hon'ble the Chief Justice. On 7.3.2019, following orders were passed in Writ Petition No.3266 of 2019:-

“Let this matter appear tomorrow i.e. on 8.3.2019 as a first case in the additional cause list.”

3. Pursuant to the aforesaid order, both the writ petitions have been taken up together and heard at length. Since affidavits were already exchanged in the writ petition no.30363 of 2018, it was taken to be the leading case. Arguments were also advanced from both sides on the premise that the writ petitions would be disposed of together. However, when the Court proceeded to dictate orders in open Court, learned Senior Counsel for the University, on the basis of instructions received, submitted that since counter affidavit has not been filed in the Writ Petition No.3266 of 2019, therefore, the writ petition no.3266 of 2019 be not decided finally, and that the University be granted time to file a counter affidavit. In such circumstances, while Writ Petition No.30363 of 2018 is being disposed of finally, at the admission stage itself with the consent of the learned counsel for the parties the consideration in other writ petition no.3266 of 2019 is being confined to the interim application alone, on which separate orders

are being passed today itself. Detailed facts since have been noticed in the present petition and the controversy in Writ Petition No.3266 of 2019 also arises out of same facts as such the recital of facts in this order would be read in the order of the date passed in Writ Petition No.30363 of 2018.

4. Before proceeding to examine rival contentions advanced by learned counsel for the parties in the writ petitions, it would be necessary to refer to the facts that are essential for adjudication of the cause brought before the Court.

5. Ewing Christian College Society, Allahabad is a constituent college of the University of Allahabad. It was granted autonomous status in 1990 for a period of 05 years which got extended, from time to time, upto 2013. Plea for extension of such status is pending examination before the University Grants Commission. This institution has already been granted minority status by the State Government vide Government Order dated 18.2.1996 which fact is not disputed by the University. The fact that the institution is entitled to the privileges conferred upon a minority institution by virtue of Article 30 of the Constitution of India are also not in dispute. The institution is being run by a society registered in the name of Ewing Christian College Society, Allahabad. Such society is registered under the provisions of the Societies Registration Act, 1860.

6. One Dr. M. Massey was appointed as Principal of the minority institution on 1.7.2001. He attained the age of superannuation on 15th July, 2018, upon attaining the age of 65 years. It appears that the retiring Principal made an endeavour to continue on his post beyond the age of 65 years relying upon an office memorandum issued by the Government of India, Ministry of Human Resource Development, dated 7th November, 2008. This circular permitted re-employment of Principal upto the age of 70 years. Such attempt on part of the outgoing Principal to seek extension

in service was also supported by the Committee of Management and papers were forwarded to the Vice Chancellor of the University on 2.11.2017 for grant of appropriate permission to allow him to continue uptill the age of 70 years. However, such a permission was not granted and instead the University passed an order on 31st July, 2018 informing the Chairman of the Governing Body of the institution that the Principal has attained the age of superannuation, and the vacancy caused in the office of Principal ought to be filled at the earliest, in accordance with law. The decision of the University contained in the order dated 31st July, 2018 was put to challenge before this Court in Writ Petition No.17114 of 2018. The writ petition remained pending and ultimately arguments were concluded in the matter on 21st August, 2018 and judgment was reserved. It is not in issue that the writ petition no.17114 of 2018 filed by the outgoing Principal has since been dismissed by a Division Bench of this Court on 13.9.2018.

7. Interesting events appear to have unfolded in the institution after the hearing was concluded in Writ Petition No.17114 of 2018 on 21.8.2018. It would be worth noticing, at this stage, that the minority institution had proceeded to appoint Dr. (Mrs.) P.S. Massey as the Vice Principal in the institution concerned on 5.8.2018. She was hitherto Head of the English Department and incidentally happened to be the wife of the outgoing Principal Dr. M. Massey. The Registrar of the University wrote a letter to the Chairman of the Board of Directors of the institution concerned on 23rd August, 2018 objecting to the communication of the institution regarding appointment made on the post of Vice Principal. The University apparently found some objection in the resolution dated 5.8.2018 appointing the Vice Principal and the same was intimated to the Chairman of the Governing Body of petitioner minority institution vide letter dated 23rd August, 2018, which is extracted hereinafter:-

“Please refer to your letters dated 16.08.2018 and 22.08.2018 read with letter of Dr. (Mrs) P.S. Massey dated 21.08.2018. The contents of the letter are contradictory in nature. The letters suggest that in the same meeting of the Governing Body of the College dated 05.08.2018, you have appointed someone as the Vice-Principal as well as the Officiating Principal of the College, which is indicative of four-playing and an act of afterthought on part of the College Governing Body. I am also in the receipt of a letter dated 23.08.2018 from Alec. D.M. David, a faculty member of the Ewing Christian College (ECC), wherein he has claimed to be the senior most teacher of the College.

As such you and Dr. P.S. Massey are hereby informed to withdraw all your previous letters and issue a clear-cut letter with the permission of the Governing Body of your College about the appointment of an Officiating Principal of the College as an interim measure as per the extant rules of the Ordinance of the University of Allahabad so that the salary of the ECC staff could be released at the earliest.”

8. On the eventful day i.e. 23rd August, 2018, the Vice Chancellor of the University apart from sending one communication after another proceeded to constitute a high power enquiry committee also on the same day, which inspected the institution on the same day, examined the records, conducted the enquiry and also submitted its report on that very day. This enquiry report dated 23rd August, 2018 appears to be the basis of whatever action that has been taken by the University against the petitioner institution. The enquiry report, therefore, is reproduced in its entirety:-

“As per your instructions, the undersigned along with the members of duly constituted High-Power Enquiry Committee inspected Ewing Christian College, University of Allahabad today on 23.08.2018. The Committee members are of the view that prima-facie there are a lot of administrative, academic and financial anomalies existing in the college. The academic/administrative functioning of the college is in complete mess with students being the worst sufferers since their classes are not running. The teachers are demonstrating against the college society and have boycotted the teaching due to non-payment of their salaries. In a nutshell the situation in the college has become totally chaotic and needs immediate administrative intervention from your good office.

The above stated anomalies including financial functioning of the college prima-facie appear to be grave in nature and demands for a thorough enquiry. Until then, in order to streamline the college functioning, you may like to kindly appoint someone from the University as Special Officer on Duty pending the enquiry. It will also be in good interest of the College if the powers of the governing body

are suspended pending the enquiry so that the enquiry committee may function in an impartial and fearless manner.”

9. On the same eventful day i.e. 23rd August, 2018, the Finance Officer of the University also wrote a letter to the Principal demanding large number of documents for its examination by the University. This communication was also marked to the Vice Chancellor of the University and is reproduced hereinafter:-

“Please provide the following documents to the High-Power Inquiry Committee to investigate academic, administrative and financial malpractices and wrongdoings of ECC. Photocopy of documents be provided as desired by Chairman of the Committee.

1. Details of All bank Accounts in the name of College, Society or Principal, Ewing Christian College, Allahabad or any other account operated by the college authority for exp. of fund available with college.
2. Passbooks of all Current/Saving bank Accounts of the college
3. All Cash Books/subsidiary cash books of Current/Saving bank Account of the college
4. Bank reconciliation statement for the year F.Y. 2017-18
5. Loans and Advance Register
6. Ledger of all Current/Saving bank Account of the college
7. Fixed Asset Register
8. Register of Advances to staff and Contractors
9. Register of Land Building
10. Store/Stock Register and Purchase files
11. Repair and maintenance files
12. Liability Register
13. Grant Register (Grants received from other than University)
14. All Bills and Vouchers for the F.Y. 2017-18 onwards
15. Register of Internal Receipts
16. Annual Accounts F.Y. 2017-18
17. All records with regard to being a Minority Institution as recognized by Competent Body i.e. Central Government/Stat Government/ MHRD/UGC or University of Allahabad.”

10. The letter of the Finance Officer dated 23rd August, 2018 apparently was delivered to the Vice Principal appointed on 5.8.2018 and some of the documents which were readily available were furnished to the Team of

officials, who had been sent by the Vice Chancellor to inspect the petitioner minority institution on the same day i.e. 23.8.2018. However, considering the fact that documents desired were voluminous, a request was also made for allowing five working days further time for furnishing remaining documents/information. Petitioner has brought on record by way of Annexure-3, a document, as per which following documents were handed over to the Finance Officer through the Inspecting Team on 23.8.2018 itself:-

- “1. Details of all bank Accounts in the Syndicate Bank
2. Passbook of all Current & Saving Bank A/c
3. UGC Grant Cash Book Original
4. Ecc Online Collection Cash Book & BRS 2017-2018
5. Annual Accounts (Balance Sheet 2016-2017)
6. Self-financed Courses details”

11. The Registrar of the University sent yet another letter on 24th August, 2018 to the Chairman of Board of Directors of the minority institution requiring the details of qualification for the post of Officiating Principal, including API score, in accordance with Clause 7(f) of Ordinance XXXV of the First Ordinances of University of Allahabad as well as the U.G.C. Regulations. This letter of the University was responded by the institution by furnishing details with regard to appointment of the Vice Principal. While submitting such details, the Chairman requested for grant of further opportunity in case any irregularity/ flaw was noticed in the decision of the Governing Body dated 5.8.2018 in appointing the Vice Principal. A clarification was also sought as to which of the regulations would be applicable for appointment to the post of Vice Principal i.e. U.G.C. Regulations of 2010 or the U.G.C. Regulations of 2018. The operative part of the communication sent by the institution is reproduced hereinafter:-

“Therefore this is to request you regarding your letter dated 24/25-08-2018 that if there is any flaw in the procedures followed and decisions

taken by the Board of Directors then kindly direct the undersigned to proceed as per law. Kindly also clarify as to which U.G.C. Regulation 2010 or 2018 is being followed by the university of Allahabad. Please further instinet us if there is any objection to any of our previous actions so that the undersigned will be able to rectify the same. Whatever actions have been adopted by the Board of Directors till date is in accordance with amended ordinance XXXV-2016 under the clause for minority institutions. If however there is any objection please let us know so that we can rectify it at our earliest. I hereby reassure you that the Governing Body is committed to serve as per the laws & guidelines given to us by you and we have never ignored any instructions or letters from the University and have always tried to follow the instructions from your esteemed office.”

12. There is nothing on record to show that the letter sent by the institution on 27.8.2018 was bestowed any consideration, or that any reply was given to the petitioner institution of the queries raised by it from the University concerned. Instead, the Registrar informed the petitioner institution that the Executive Council of the University vide its resolution no.5/52 dated 25.8.2018 has suspended the powers of the Governing Body of the institution, pending the ongoing enquiry, and Prof. R.K. Singh of the English Department of the University of Allahabad was appointed as 'Special Officer on Duty'. The resolution of the Executive Council dated 25.5.2018 on Item No.5/52 dated 25.8.2018 is reproduced hereinafter:-

“Resolution No.05/52

The matters of academic, administrative and financial anomalies in the Ewing Christian College (ECC), a Constituent College of the University ... per the Resolution No. 04/32 of the Academic Council in its meeting held on 21.08.2018 were considered by the Executive Council. It was brought to the notice of the Hon'ble Members that ECC that its Governing Body had been flouting provisions of the University Statutes and Ordinances. The Governing Body did not appoint anyone as Officiating Principal on the superannuation of Dr. M. Massey on July 15th 2018.

This led to crises in the College and the teachers and the staff of the College could not get their salaries since then as there was no authorized signatory in the College. The University wrote may letters to the College but it did not respond properly. Instead, the Governing Body appointed one teacher (who happens to be wife of Dr. M. Massey) as the Vice-Principal, whereas, there is no provision for the appointment of the Vice-Principal in the University Ordinances.

This had further complicated the entire situation leading to unrest in the College community. Further, Hon'ble Members were also informed

that the Chairman of the Governing Body had been charge-sheeted in some cases, which had brought bad name to the institution. The Hon'ble Vice-Chancellor had constituted a High-Power Committee headed by Prof. Jagdamba Singh. The Enquiry Committee inspected the ECC on 23.08.2018 and submitted its preliminary report on the same day. The preliminary report mentioned, "prima-facie administrative, academic and financial anomalies are existing in the College." The Committee recommended, "it will also be in good interest of the College if the power of the Governing Body are suspended pending the enquiry so that the Enquiry Committee may function in an impartial and fearless manner." (The Preliminary Report is appended here as Appendix – E).

All the members urged that such situation demanded an urgent action in the interest of the students, teachers and employees of the College. In view of the serious nature of the violation of rules and regulations wrongdoings and academic, administrative and financial lapses on the part of the Governing Body of the Ewing Christian College, the Executive Council unanimously resolved to seize immediately all powers of the Governing Body of the College and to appoint Prof. R.K. Singh, Dept. English & Modern European Languages as "Special Officer on Duty" the College, pending enquiry in the matter by the High-Power Committee Prof. R.K. Singh would coordinate and supervise the routine academic administrative and financial affairs of the College as an interim arrangement and would appoint the Officiating Principal as per rule streamline the functioning of the college."

13. The decision of the Executive Council was communicated by the Registrar vide notification dated 27th August, 2018, which is also reproduced hereinafter:-

"In pursuance of the Executive Resolution No. 05/52 dated 25.8.2018 and in exercise of powers vested in him under Section 14(2) of the University of Allahabad Act 2005 read with Ordinance XXXV of the University of Allahabad, the Hon'ble Vice-Chancellor hereby suspends the powers of the Governing Body of the Ewing Christian College, University of Allahabad with immediate effect, pending the ongoing enquiry, Prof. R.K. Singh of the English Department, University of Allahabad, is hereby appointed as "Special Officer on Duty" to coordinate and supervise the routine academic, administrative and financial affairs of the college as an interim arrangement."

14. The resolution of the Executive Council dated 25.8.2018 alongwith the communication of the Registrar is also assailed in this petition.
15. The institution appear to have questioned the right of the Finance Officer to call for various records including financial documents, by relying upon proviso to Clause 20(b) of the Ordinances of the University

on the ground that such powers are not available to the University in case of a minority institution. Apparently there has been no consideration at the level of the University to this aspect of the matter either.

16. The records further reveal that after having superseded the Committee of Management of the minority institution, the University proceeded to appoint a special officer and attempt was made to fill up the post of Principal by the Special Officer appointed by the University. The action of the University in proposing to fill up the post of Principal has been challenged before this Court by filing Writ Petition No.25036 of 2018, in which following interim orders were passed on 28th November, 2018:-

“This petition is filed by the Committee of Management of Ewing Christian College challenging an advertisement issued on 02nd November, 2018 by respondent no. 4 for appointing a regular Principal in the institution itself. It is contended on behalf of the petitioners that, being a minority institution, the right to appoint a Principal vest exclusively in the Committee of Management and such power cannot be exercised by a Special Officer appointed by the University.

The Court is informed that the appointment of Special Officer is otherwise challenged and is engaging attention of this Court in Writ Petition No. 30363 of 2018. Submission is that the Special Officer cannot be transferred the power to make appointment in a minority institution, as it would offend Article 30 of the Constitution of India. Reliance is placed upon the judgment of the Apex Court in *Manager Corporate Educational Agency vs. James Mathew*; (2017) 15 SCC 595.

The matter requires consideration.

Notice on behalf of respondent no. 1 is accepted by the Assistant Solicitor General of India. Notice on behalf of respondent nos. 2, 3 and 5 was served upon the office of Sri Neeraj Tripathi, Advocate.

Sri Neeraj Tripathi, who is present in the Court, states that this matter has been marked to Sri Chandan Sharma, Advocate. Sri Chandan Sharma is also present in the Court and states that he has already informed the University that he is not appearing in this matter.

In such circumstances, notices would be issued to respondent nos. 2 to 5. Steps be taken by registered/ speed post within a week.

All the respondents may file a counter affidavit within a period of six

weeks from today. Rejoinder affidavit, if any, may be filed two weeks thereafter.

List thereafter.

Till further orders of this Court, proceedings pursuant to the impugned notification dated 02nd November, 2018 issued by the Special Officer on Duty shall be kept in abeyance.”

17. The Vice Chancellor then proceeded to pass yet another order on 21st December, 2018, requiring the charge of the office of Principal to be handed over to the teacher appointed by the University of Allahabad. This action was put to challenge in Writ Petition No.38 of 2019. On the date when the matter was taken up, learned Senior Counsel for the University made a statement that University intends to withdraw the order, and in that view of the matter, the writ petition was consigned to records, vide following orders passed on 8.1.2019:-

“This petition has been filed by the committee of management of Ewing Christian College, Allahabad challenging an order dated 21.12.2018, whereby a direction has been issued to hand over charge of the office of Principal of the college to respondent no. 6, notwithstanding the fact that the minority institution has otherwise proposed charge to be handed over to the Vice Principal. It is contended that the rights of the minority institution have been infringed.

Sri Ravi Kant, learned Senior Counsel, assisted by Sri Tejashwi Mishra, appearing for the University, fairly states that the University be permitted to withdraw this order with liberty to pass orders afresh, in accordance with law.

In view of the fair stand taken by the University, this petition stands disposed of, permitting the University to withdraw the order the order impugned dated 21.12.2018 and to pass a fresh, in accordance with law.”

18. It is in this background that the Vice Chancellor of the University has passed an order on 21.2.2019, issuing following directions:-

“I, being the Principal Executive and academic officer of the University who is to exercise general supervision and control over the affairs of the University is hereby directed in exercise of powers under Section 14 of the University of Allahabad Act as under:

(a) Dr. A.D.M. David, Associate Professor, Department of Chemistry, Ewing Christian College, Allahabad, the Senior most

faculty member of the College shall in addition to his original duties also look after the duties and the responsibilities to be performed by the Principal of the College. For this additional discharge of the duties he will not be paid any additional honorarium or salary;

(b) Prof. Jagdamba Singh, Dean, Faculty of Science, University of Allahabad will assist in functioning of the ECC as Special Officer on Duty and he shall not be paid any honorarium.

(c) The University will make a recommendation to the UGC, to reject the application for extension of the autonomy status made by ECC pending before it.

The Registrar of the University shall do the needful to carry out the directions issued above.”

Aforesaid order dated 21.2.2019 is the subject matter of challenge in Writ Petition No.3266 of 2019.

19. The Vice Chancellor of the University has asserted its authority for taking action against the minority institution by referring to and relying upon the powers of the Vice Chancellor conferred upon him under Section 14 of the University of Allahabad Act, 2005. Section 14 of the Act of 2005 is reproduced hereinafter:-

“14. The Vice- Chancellor.-

(1) The Vice- Chancellor shall be appointed by the Visitor in such manner and on such terms and conditions of service as may be prescribed by the Statutes.

(2) The Vice- Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.

(3) The Vice- Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority at its next meeting the action taken by him on such matter:

Provided that such exercise of power shall be made only in emergent situations and in no case in respect of creation, and upgradation of posts and appointments thereto:

Provided further that if the authority concerned is of the opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final:

Provided also that any person in the service of the University who is aggrieved by the action taken by the Vice- Chancellor under this subsection shall have the right to appeal against such action to the Executive Council within three months from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice- Chancellor.

(4) The Vice- Chancellor, if he is of the opinion that any decision of any authority of the University is beyond the powers of the authority conferred by the provisions of this Act, the Statutes or the Ordinances or that any decision taken is not in the interest of the University, may ask the authority concerned to review its decision within sixty days of such decision and if the authority refuses to review the decision either in whole or in part or no decision is taken by it within the said period of sixty days, the matter shall be referred to the Visitor whose decision thereon shall be final.

(5) The Vice- Chancellor shall exercise such other powers and perform such other duties as may be prescribed by the Statutes or the Ordinances.”

20. The impugned action of the University is challenged by terming it to be wholly arbitrary and unreasonable, apart from being in gross violation of principles of natural justice. It is also submitted that impugned action of Vice Chancellor and decision of the Executive Council are not referable to exercise of any power under the Act of 2005 or the statutes or ordinances framed thereunder. It is also submitted that the impugned action has the effect of taking away important rights of a minority to establish and administer educational institution of its choice, based upon religion or language. Submission is that impugned action is wholly unconstitutional.

21. A counter affidavit is filed on behalf of the University in writ petition No.30363 of 2018 on 14th November, 2018, duly sworn by the Registrar of the University. According to the averments made in the counter affidavit, various complaints were received regarding financial, administrative and academic irregularities committed by the minority institution upto 19th August, 2018. In support of such stand an undated complaint sent by one Raj Kumar has been brought on record alongwith the counter affidavit. This complaint letter does not bear any date nor it is

shown as to how and when this document was received in the University. This complaint letter neither bears any receiving nor it contains endorsement in the dispatch and receiving register of the University. No document is apparently annexed in support of the allegations made in this complaint letter. The only other material annexed is a newspaper report filed alongwith the counter affidavit, which is of a date later to taking of impugned action. The counter affidavit thereafter refers to a letter of the Director of Education dated 5th March, 2012, and a letter of the Chief Revenue Officer of the month of December, 2014. Certain other newspaper reports have also been annexed which apparently do not have any bearing upon the matter in issue. Attempt is made to suggest that all was not well in the minority institution. It is suggested with the help of such materials that University had generated bona fide apprehension with regard to fair working by the Governing Body of the minority institution, and therefore, it proceeded to act in the manner as has been done. The averments made in the writ petition, on other factual aspects pleaded in the writ petition, however, do not appear to have been seriously disputed.

22. Sri Ashok Mehta, learned Senior Counsel appearing for the University, assisted by Sri Chandan Kumar, vehemently submits that the authorities of the University have acted strictly in accordance with law, and that their action to dislodge temporarily, the Governing Body of the minority institution was with an object to facilitate holding of fair enquiry in the matter, so that complaints regarding administrative, academic and financial irregularities could be thoroughly probed.

23. I have heard learned counsel for the parties and have perused the materials brought on record.

24. Petitioner minority institution is a constituent college of the University of Allahabad, which is a Central University. The Central

University and its constituent colleges are governed by the provisions of the University of Allahabad Act, 2005, as well as the statutes and the ordinances framed thereunder. Exercise of power by the Vice Chancellor, as also by other officers of the University, are specifically provided for thereunder. The grievance raised in the present writ petition would have to be broadly examined from two distinct aspects i.e. firstly, relating to the jurisdiction of the University Authorities in superseding the minority institution and appointing Authorized Controller, while the second aspect would relate to the manner of exercise of power by the University Authorities. Another related aspect that would require examination would be the existence of materials on record to justify taking of action against the petitioner institution. An additional issue regarding autonomous status of the petitioner minority institution also crops up in this case.

25. The purported exercise of power by the Vice Chancellor, impugned in the writ petition, is with reference to Section 14 of the Act of 2005. Section 14 has already been extracted above. Sub-section (1) of Section 14 provides that the Vice Chancellor shall be appointed by the Visitor in such manner and on such terms and conditions of service as may be prescribed by the Statutes. Sub-section (2) of Section 14 provides that the Vice Chancellor be the Principal Executive and Academic Officer of the University and shall exercise general power of supervision and control over the affairs of the University and to give effect to the decisions of all the authorities of the University. Sub-section (3) of Section 14 provides that Vice- Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any other authority of the University, by or under this Act, and shall report to such authority at its next meeting the action taken by him on such matter. The first proviso to Sub-section (3) contemplates that exercise of such power can be made only in emergent situations and in not in a case relating to

creation and upgradation of posts etc. The second proviso contemplates that if the authority concerned, whose jurisdiction is invoked by the Vice-Chancellor, is of the opinion that such action ought not to have been taken then the matter would be referred to the Visitor whose decision thereon shall be final. A right of appeal is also conferred to the aggrieved person. The Vice Chancellor is further conferred jurisdiction by virtue of Sub-section (4) to take action against any of the authority of the University for having exceeded its jurisdiction conferred under the Act, Statutes or Ordinances, or that if such decision is not in the interest of the University, and require such authority to review its decision, either, or else the matter can be referred to the Visitor whose decision has to be final. Sub-section (5) of Section 14 further provides that Vice-Chancellor shall exercise such other powers and perform such other duties as may be prescribed by the Statutes or the Ordinances. A perusal of the aforesaid provision would clearly evidence that the Vice Chancellor is conferred with wide powers to ensure that the University functions in accordance with the Act, Statutes and the Ordinances. His power to take emergent action on behalf of the other authorities is also with the object of ensuring that the provisions of the Act, Statutes or the Ordinances are complied with. The source of power for any specific act on part of the Vice Chancellor, therefore, would have to be traced from the provisions contained in the Act, Statutes or the Ordinances.

26. The Act, Statutes and Ordinances relevant for the present controversy have been placed. Ordinance XXXV regulates the exercise of power relating to the constituent colleges of the University of Allahabad. These Ordinances are Annexure-14 to the writ petition and have been extensively placed before the Court. Ordinance 1(i) defines College to mean a Constituent College. Clause (ix) defines a Minority College to mean a College established and administered by Minority referred to in

Clause (1) of Article 30 of the Constitution of India. Clause 3(a) of the Ordinance contemplates that provisions of the Memorandum of Association and Rules of the Society, as set forth in the Forms for the same in the Schedule, shall apply to all Colleges and shall be integral to this Ordinance. However, the Minority College is expressly excluded to that extent. Ordinance 3(a) with its proviso is reproduced hereinafter:-

“3.(a) The provisions of the Memorandum of Association and the Rules of the Society, as set forth in the Forms for the same in the SCHEDULE, shall apply to all Colleges and shall be integral to this Ordinance:

Provided that the said provisions shall not apply to a College maintained by Government or a Minority College, except to the extent specified in this Ordinance.”

27. Clause 3(f) relates to the right of the Governing Body of the society and is relevant for the present purposes. It is, therefore, reproduced hereinafter:-

“3(f) All the rights of the Society, and the authority to exercise all the powers thereof, shall be vested in the Governing Body, which shall be constituted in accordance with the provisions of sub-clause (a) of clause 5, and shall administer, direct and control the affairs of the Society and the College, and perform other functions and duties, in accordance with, and subject to, the provisions of this Ordinance, the Memorandum and the Rules and the other instruments.”

28. The proviso added to Rule 3, however, contemplates that provisions of sub-clauses (b) to (h) of Clause 3 shall not apply to a Minority College, and the Governing Body of such minority college, constituted as per the memorandum of association, shall prevail in respect of affairs of the Minority Institution. The proviso to Clause 3 is also extracted hereinafter:-

“Provided further that the sub-clauses (b) to (h) shall not apply to the minority college, but the Governing Body of such College, constituted as per the memorandum of association of the Society administering such college, shall administer, direct and control the affairs of the College, in accordance with the provisions of their memorandum of association.”

29. Attention of the Court has been invited to Ordinance 4(b) which relates to the management, supervision and administration of the affairs of

the Institution. The proviso added to Clause 4(b) again exempts a minority institution from such condition. Specific provision in Clause 5 has been placed before the Court to demonstrate that except for Clause 5(e) none of the other conditions are applicable to the minority institution. Clause 7(a) of the Ordinance provides that the Principal shall be the Chief Executive Functionary of the College and shall, subject to powers assigned to the Governing Body, exercise general supervision and control over the affairs of the University College. Clause 7(f) deals with the exigency when the office of Principal becomes vacant; and is reproduced hereinafter:-

“7(f). If the office of the Principal becomes vacant, due to death, resignation or otherwise, or the Principal is absent on leave or for any other cause for a period exceeding two months, the Governing Body may appoint any teacher, who fulfills the qualifications for the post, to officiate as Principal for a period of six months or until (as the case may be) a new Principal, appointed regularly, enters office or the Principal resumes the duties of his office, whichever is earlier:

Provided that in case the new Principal does not enter office, or the Principal does not resume his duties, by the expiry of such period of six months, the senior-most teacher of the College, who fulfills the qualifications for the post, shall officiate as the Principal:

Provided further that any officiating arrangement shall be reported by the Principal forthwith to the Registrar, and shall be subject to the concurrence of the Vice-Chancellor:

Provided also that if the Principal is absent on leave, or for any other cause, for a period not exceeding two months, the senior-most teacher of the College, who fulfills the qualifications for the post of Principal, shall look after the duties of the post in addition to his own duties.”

30. The proviso, however, added to Clause 7, contemplates that Clause 7(f) shall not apply to minority institutions/Colleges and they would have the right to make officiating arrangement in the absence of the regular Principal. This proviso is extremely relevant for the present purposes and is reproduced hereinafter:-

“Provided that this clause shall not apply to minority institutions/colleges and they have right to make officiating arrangement in the absence of the regular Principal from amongst the staff belonging to their community who fulfills the qualifications for the post of the Principal.”

31. The right of a minority to appoint as Principal from its staff is subject only to fulfillment of the qualification prescribed for the post. The ordinances clearly exempts authority of University in the matter relating to a minority institution as any contrary stipulation would expose itself to a possible challenge on the ground of violation of Article 30(1) of the Constitution of India.

32. Clause 14 of the Ordinance is also relevant, inasmuch as it confers jurisdiction upon the University to ascertain whether the conditions governing the admission of College to the privileges of the University, referred to in sub-clause (b) of clause 2, are being fulfilled and for such purposes authorize the competent authority to undertake inspection by panel of Inspectors etc. Clause 14 would be relevant for examining the extent and conditions of exercise of power by the University over the affairs of a constituent college. The same is, therefore, reproduced:-

“14(a) The University shall, for the purpose of ascertaining whether the conditions governing the admission of the College to the privileges of the University, referred to in sub-clause (b) of clause 2, are being fulfilled, cause the College to be inspected from time to time, at intervals not exceeding three years, by a Panel of Inspectors, which shall constituted by the Vice-Chancellor as follows:

(i) two serving members of the Academic Council (not being members associated with the University or any institution maintained by it or admitted to its privileges), from a panel drawn up by the Academic Council, one of whom shall be designated by the Vice-Chancellor as the Chairperson of the Panel;

(ii) two serving or former Professors of a Central University other than this University (not being serving members of the Executive Council or the Academic Council), from a panel drawn up by the Academic Council;

(iii) two persons (not being serving members of the Executive Council or the Academic Council or persons associated with the University or any institution maintained by it or admitted to its privileges), from a panel drawn up by the University Grants Commission, which has been reported to the Academic Council;

(iv) the Deans of the Faculties to which the courses of study in the College are assigned; and

(v) the Dean of College Development:

Provided that the Registrar shall be the Secretary to the Panel of Inspectors, and shall provide it with all necessary facilities:

Provided further that the panels referred to in serial numbers (ii) and (iii) shall ordinarily be renewed at intervals of three years;

Provided also that the format for providing requisite information, in respect of the College, for the consideration of the Panel of Inspectors prior to the inspection, and the schedule of the inspection, shall be communicated by the Registrar to the Principal.

(b) The Vice-Chancellor may, whenever he so deems necessary or expedient, authorise any person or persons to visit the College, or one or more academic or other units thereof, for any general or special purpose, and submit a report thereon.

(c) The College may be visited or inspected, for any general or special purpose, under the provisions of the Ordinances and the Regulations, by the Dean of College Development or by a team constituted by him.

(d) The Principal shall have the duty to place before the person or persons inspecting or visiting the College, under the provisions of sub-clause (a), (b) or (c), on demand, all relevant documents and records maintained by or in the custody of the College, including, where so required, the original documents pertaining to the properties, assets, investments, income and expenditure of the College and the Society.

(e) The report of the Panel of Inspectors, under sub-clause (a), shall be placed before the Executive Council and the views of the Executive Council in respect of such report, and its advice upon the action required to be taken by the College in that regard, shall be communicated by the Registrar to the Principal for further action by the Governing Body:

Provided that where the Governing Body does not take such action to the satisfaction of the Executive Council, the Executive Council may, after considering any explanation furnished by the Governing Body, issue such directions as it may deem fit and the Governing Body shall comply with the same:

Provided further that the failure of the College to comply with any such direction shall constitute a breach of the conditions referred to in sub-clause (b) of clause 1.

(f) The report of any visitation under sub-clause (b), along with the views of the Vice-Chancellor and his advice upon the action required to be taken by the Governing Body in regard to such report, shall be communicated by the Registrar to the Principal for further action by Principal or the Governing Body.

(g) Where the Principal or the Governing Body, as the case may be, does not take to the satisfaction of the Vice-Chancellor, action on the advice referred to in sub-clause (f), or on any direction issued by him on any other matter in exercise of the powers conferred on him by the Act, the Statutes, the Ordinances and the Regulations, including a direction to fulfil the requirement of the proviso to clause (2) of

Statute 31, the matter shall be reported to the Executive Council and shall be further dealt with in accordance with the provisions of sub-clause (e).

(h) The recommendations of the Dean of College Development, or the team constituted by him, under sub-clause (c), shall be placed before the relevant authorities, bodies or officers of the University for consideration, and the directions of the same thereon shall be communicated by the Registrar to the Principal for further action by the College under the provisions of the Ordinances and Regulations.”

33. Clause 14 authorizes the University to have the colleges inspected in the manner prescribed therein. Such report of inspection, however, can be used by the competent authority to extend advice to the college concerned for taking necessary corrective steps and only upon failure to do so the competent authority can proceed any further in the manner specified. In the facts of the present case, however, no advice is given to the Governing Body of the minority college and there would thus be no question of failure on its part to comply with any advice. As a matter of fact even the inspection report is based only on apprehension expressed in view of alleged complaint received. There is no specific illegality pointed out in the inspection report. Issuance of advisory on such vague report appears impermissible, otherwise. It may well be clarified that powers of inspection etc. is for the purposes of admission to the privilege of the University. The minority character of the institution and the rights conferred upon it by virtue of Article 30 of the Constitution of India to administer the institution cannot possibly be conceded to the University only because of admission to privileges of University.

34. Clause 20 (a) and (b) provides that constituent College shall maintain such registers, and furnish to the Registrar returns in such forms, as may be prescribed by the University Grants Commission or the Executive Council. The Registrar also has powers to ask for return or the information from the College on any matter relating to its property, funds or assets. The proviso to Clause 20, however, clearly exempts applicability of Clause 20, in so far as it relates to affairs of a minority institution. The

provisions contained in the Act of 2005, as well as Statutes and the Ordinances clearly acknowledge the rights of minority institution to administer the institution and that is why clauses which might infringe the rights of minority have been clearly made inapplicable upon the minority institution. Clause 20 alongwith its proviso is also extracted hereinafter:-

“ 20(a) The College shall maintain such registers, and shall furnish to the Registrar returns in such forms, as may be prescribed by the University Grants Commission or the Executive Council.

(b) The Registrar, on the direction of Vice-Chancellor for good and sufficient cause, and the Finance Officer or the Dean of College Development, in pursuance of his powers and duties, may call for any return or other information from the College on any matter relating to its property, assets, funds or affairs and it shall be the duty of the Principal to furnish the same within the time specified in this behalf.

Provided that the minority Colleges are exempted from the requirements of Sub-Clauses (a) & (b) of clause 20.”

35. Clause 21 relates to continuance of privileges to the constituent colleges and would be relevant in the facts of the present case and are accordingly reproduced hereinafter:-

“ 21(a) The continuance of the privileges of the College shall depend on continued fulfilment of the conditions of admission to the privileges of the University, referred to in sub-clause (b) of clause 1, and such privileges may be suspended or withdraw, wholly or in part, by the Executive Council, after consulting the Academic Council, if it is satisfied, after considering any explanation furnished by the Governing Body, that such College has ceased to fulfil the said conditions or that it persists in making default in the performance of its duties under the provisions of this Ordinance (including the SCHEDULE) and the other instruments, or in the removal of such defect or defects in its working as may have been pointed out under the said provisions.

(b) The Executive Council may, if it is satisfied, after such inquiry as it may think fit to make, that -

(i) the affairs of the College are being managed in a manner prejudicial to the interests of the College, the teachers or students thereof or the University, or to the public interest; or

(ii) teaching is being conducted in the College in a manner prejudicial to the standards of teaching in the University or,

appoint to the regularly constituted Governing Body of the College such number of additional members, not being more than one-half of the total number of members of the Governing Body, for such period as it may think fit but not exceeding two years on anyone occasion:

Provided that the person appointed as an additional member shall

hold office as such for the period specified in the order of his appointment, but the Executive Council may recall him at any time and appoint any other person to fill the vacancy caused by such recall.”

36. As per aforesaid clause the continuance of the privileges to constituent college would be dependent upon fulfillment of conditions of admission to the privileges of the University. Such privileges can be suspended or withdrawn, wholly or in part, by the Executive Council after consulting the Academic Council, after considering the explanation furnished by the Governing Body of the college if it is found that the college has ceased to fulfill the conditions of admission or has persisted in making of default in the performance of its duties. This clause is not shown to have been invoked nor even the safeguards provided therein have been followed. There is no specific allegation of violation of the conditions of admission either. Impugned action, therefore, cannot be sustained with reference to this clause also. Even otherwise, the rights and privileges granted to a minority institution under Article 30(1) of the Constitution of India would not be surrendered to the University merely because privileges of admission are granted to the minority institution by the University. It would be worth referring to the observations of the Apex Court in *T.M.A. Pai Foundation and others Vs. State of Karnataka and others* (2002) 8 SCC 451. An issue regarding rights of minority institution to administer educational institution of its choice fell for examination when the State proceeded to extend aid to such minority institution. The Constitution Bench clearly observed that while it would not be as a matter of right for the minority to claim aid but it would be impermissible to deny aid merely for the reason that institution is in the management of a religious minority. Conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantee even if they indirectly impinge upon some facet of administration. Abject surrender of right of management for the purposes

of grant of aid was, however, clearly held to be impermissible. Paragraph 141 of the judgment in T.M.A. Pai Foundation (supra) is reproduced hereinafter:-

“141. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30(1). The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then, is the meaning, scope and effect of Article 30(2)? Article 30(2) only means what it states, viz that a minority institution shall not be discriminated against when aid to educational institutions is granted. In other words the state cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an object surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some fact of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.”

37. A comprehensive examination of the various provisions of the Act, Statute and Ordinance do not indicate existence of any power either with the Vice Chancellor or any other authority to suspend the Governing Body of a minority institution in aid of an enquiry in connection with academic, administrative and financial anomalies alleged against it in a complaint or on the basis of an ex-parte report of fact finding committee constituted by the Vice Chancellor. The impugned action is thus found to be wholly without jurisdiction.

38. The argument advanced by Sri G.K. Singh, Senior Advocate, on behalf of the petitioner, with reference to the provisions of the Act, Statute and Ordinance that neither the Vice Chancellor nor any other authority of the University would have jurisdiction to suspend the management of a minority constituent college, is thus liable to be accepted since it is

consistent with the statutory scheme. The power conferred upon different authorities of the University are clearly defined in the Statute. Conferment of such powers upon authorities of the University specified under Section 20 of the Act of 2005 is with the specific object of ensuring compliance of the provisions of the Act, statutes and ordinances. The Vice Chancellor while exercising his jurisdiction under Section 14(3) of the Act of 2005 can perform only such functions on behalf of other authorities specified in Section 20, which are specifically conferred upon them. It would be impermissible for the Vice Chancellor to do something under Sub-section (3) of Section 14 which the other authority concerned is not empowered to do under the Act, Statute and the Ordinances.

39. Impugned action is otherwise not found to be fair and reasonable inasmuch as necessary safeguards provided to a constituent college under the Ordinances have otherwise not been extended to the petitioner. The petitioner institution has neither been apprised of the alleged acts of irregularities on its part. Most of the action against the petitioner appear to have been taken on the eventful day i.e. 23rd of August, 2018 in undue haste. Principles of fair play and natural justice do not seem to have been followed inasmuch as there exists denial of opportunity to the petitioner to put forth its version; no advisories were issued nor was there any failure to comply with such directions/advisories. Drastic measures in the form of suspending the Governing Body of minority institution could otherwise have not been taken merely on receiving of a complaint particularly when no such power otherwise existed with the Vice-Chancellor or the Executive Council. A knee jerk reaction on mere receipt of unsubstantiated complaint or newspaper report would not be countenanced. This would be more so in case of a minority. The constitutional right guaranteed by Article 30(i) cannot be usurped on mere allegations without following the law. The facts placed on record before the Court in this case would go to

show that statutory safeguards conferred upon a University constituent college under the Act, Statutes and Ordinances have been brazenly flouted by the University and their authorities while taking action against the petitioner.

40. It is not in issue that till the office of Principal fell vacant consequent upon superannuation of the earlier Principal, no occasion arose for the University to suspect the affairs of the Institution. No notice or letter of concern in respect of minority institution have been brought before the Court. It was only in the context of a plea for extension of the services of retiring Principal that the issue appears to have surfaced. The attempt on the part of the Institution to extend services of the outgoing Principal was resisted by the University and such stand of the University now stands affirmed by this Court. It was at this stage that a resolution came to be passed by the managing committee of petitioner minority institution on 5th August, 2018 appointing a Vice-Principal in the college. The Vice Principal was already working as the Head of the Department of English in the same Institution. The appointment of Vice-Principal was duly intimated to the University. Certain objections in that regard were raised by the Registrar in his letter dated 23rd August, 2018, which were duly replied by the Institution on 27th August, 2018. There does not appear to be any consideration relating to legality of the appointment of Vice-Principal. Under the statutory scheme it is the right of the minority institution to appoint an Officiating Principal and the scope of University's jurisdiction would be limited to ascertaining her qualification alone. The University, therefore, could question/enquire about the qualification of the Officiating Principal and in case it was not satisfied with the explanation submitted by the Institution concerned it could have proceeded to direct the minority institution to appoint someone else who may be possessing requisite qualification as the Officiating Principal.

41. There appears to be a veiled attempt to question appointment of Vice-Principal as the Officiating Principal on the ground of lack of qualification. The petitioner institution has clearly informed the University that the Officiating Principal is qualified and there is no adverse determination against the petitioner by the University. The right of minority institution to appoint a Principal or Officiating Principal is clearly recognized by proviso to ordinance 7(f). The law in that regard is otherwise clarified by the Supreme Court in *Corporate Educational Agency Vs. James Mathew*, (2017) 15 SCC 595. Para 5 and 6 of the judgment is reproduced hereinafter:-

“5. As far as the selection and appointment of the Headmaster or the Principal, as the case may be, is concerned, this Court in *Secy. Malankara Syrian Catholic College Vs. T. Jose and Others*, reported in (2007) 1 SCC 386, after referring to all the celebrated cases on minority rights, viz. *T M A Pai Foundation v. State of Karnataka* [(2002) 8 SCC 481], *P.A. Inamdar vs. State of Maharashtra* [(2005) 6 SCC 537], *State of Kerala v. Very Rev. Mother Provincial* [(1970) 2 SCC 417], *The Ahmedabad St. Xavier’s College Society v. State of Gujarat* [(1974) 1 SCC 717], *Frank Anthony Public School Employees’ Association v Union of India* [(1986) 4 SCC 707], *Rev.Sidhajibhai v. State of Bombay* [(1963) 3 SCR 837], *D.A.V. College v. State of Punjab* [(1971) 2 SCC 269], *All Saints High School v. Government of A.P.* [(1980) 2 SCC 478], *St. Stephen’s College v. University of Delhi* [(1992) 1 SCC 558], *N. Ammad v. Manager, Emjay High School* [(1998) 6 SCC 674], *Board of Secondary Education & Teachers Training v. Joint Director of Public Instructions* [(1998) 8 SCC 555], has held in Paras 27 to 29 that the Management of a minority aided educational institution is free to appoint the Headmaster or the Principal, as the case may be, of its own choice and has no obligation to appoint the available senior qualified member from the same community. Paras 27, 28 and 29 are quoted hereunder :-

“27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by TMA Pai. Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid, will make no difference.

28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers

belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited, to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

29. Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum-fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate, or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority run educational institutions even if they are aided." (Emphasis supplied) The emerging position is that, once the Management of a minority educational institution makes a conscious choice of a qualified person from the minority community to lead the institution, either as the Headmaster or Principal, the court cannot go into the merits of the choice or the rationality or propriety of the process of choice. In that regard, the right under Article 30(1) is absolute.

6. As far as the validity of the declaration of minority status is concerned, this Court in *N. Ammad Vs. Manager, Emjay High School and Others*, [(1998) 6 SCC 674], has held that the certificate of the declaration of minority status is only a declaration of an existing status. Therefore, there is no question of availability of the status only from the date of declaration. What is declared is a status which was already in existence. Paras 12 and 13 of the Judgment are quoted hereunder:-

12. Counsel for both sides conceded that there is no provision in the Act which enables the Government to declare a school as a minority school.

If so, a school which is otherwise a minority school would continue to be so whether the Government declared it as such or not. Declaration by the Government is at best only a recognition of an existing fact. Article 30(1) of the Constitution reads thus:

"30(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."

13. When the Government declared the school as a minority school it has recognised a factual position that the school was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Therefore, we are unable to agree with the contention that the school can claim protection only

after the Government declared it as a minority school on 2-8-1994.””

42. The assertion of fact by the minority institution that the officiating Principal possesses requisite qualification prescribed for appointment to the post of Principal has not been rejected or shown to be wrong under any order of the University. What appears on record is that University instead of addressing itself to the appointment of officiating Principal overreacted and lost limits of its own authority and jurisdiction. It is unfortunate to note that a premier educational institution was oblivious of its own limits prescribed by law. The letter of the Finance Officer, dated 23.8.2018, whereby all kind of possible documents relating to the financial affairs of the institution was demanded, clearly went beyond the limits of its own jurisdiction inasmuch as proviso to Ordinance 20(b) exempted applicability of Ordinance 20(a) and (b) upon a minority institution. It appears to the Court that a roving and fishing enquiry was attempted to be made by the University to find justification for its action already taken to temporarily dislodge the Committee of Management of the Minority Institution. No material is placed on record before the Court, which may otherwise go to show that the Vice-Chancellor had any basis to proceed with such haste in not only ordering enquiry but also dislodging the Governing Body of a minority institution. On facts also the decision is not liable to be sustained. The University, at best, could have regulated the affairs of the minority institution as per law with an attempt to ensure that the provisions of the Act, Statutes and Ordinances are duly complied, but it could not indulge in acts of retribution against the minority institution for a reason, which did not exist on record. The unilateral condemnation of the affairs of the institution and decision to dislodge the Governing Body of minority institution is clearly not shown to be backed by any authority of law. The specific rights conferred upon the minority institution, by virtue of Article 30(1) of the Constitution of India, are clearly shown to have been violated. The action impugned in the writ petition no.30363 of 2018

in superseding the management of the institution and appointing Special Officer is, therefore, wholly without jurisdiction and otherwise *per-se* arbitrary.

43. Before concluding, it would be appropriate to refer to the last limb of submission advanced by Sri Ashok Mehta, Senior Advocate, with regard to conferment of autonomous status upon the institution concerned. It is not in issue that conferment of autonomous status upon a constituent college is a matter which is now regulated by the statutory regulations framed by the U.G.C. in the year 2018. These regulations have been brought on record by way of a supplementary affidavit filed in Writ Petition No. 3266 of 2019. The power to confer autonomous status is vested in the University Grants Commission. The limited role of the parent University by virtue of Clause 4 is to facilitate such consideration by U.G.C., by providing relevant information. Ultimately the jurisdiction for conferment of such status vests with the University Grants Commission. It appears that though autonomous status was granted to the Institution in 1990 but the last extension was available only upto the year 2013. A plea for extension has already been made by the minority institution which is pending consideration before the University Grants Commission. It is always open for the University to assist the U.G.C. in determination of the autonomous status for the petitioner Institution in accordance with 2018 Regulations. The issue, in that regard, has ultimately to be resolved by the University Grants Commission. No decision has yet been taken by the University Grants Commission in that regard, so far. In such view of the matter, there is no occasion to observe anything further in that regard, at this stage.

44. In view of the aforesaid discussion on facts and upon examination of relevant provisions of the Act of 2005, Statutes and the Ordinances framed thereunder the orders impugned in the writ petition no. 30363 of

2018 cannot be sustained. The order passed by the Registrar of the University dated 27th August, 2018, as well as the resolution of the Executive Council, dated 25th August, 2018, stands quashed. A mandamus is issued restraining the University of Allahabad from interfering in the affairs of the minority institution except in accordance with law. No order is passed as to costs.

Order Date :- 8.3.2019
Anil/Ranjeet Sahu

(Ashwani Kumar Mishra, J.)