

1989 SCC OnLine Cal 240 : AIR 1990 Cal 193 : (1991) 1 Cal LT 94 : (1989) 2
Cal LJ 362

Calcutta High Court
BEFORE K.M. YUSUF, J.

Md. Joynal Abedin ... Petitioner;
Versus

State of West Bengal and others ... Respondents.

C.O. No. 13963(W) of 1985
Decided on September 15, 1989

ORDER

1. The writ petitioner, who is the Secretary to the Board of Trustees, Magrahat Muslim Anglo-Oriental Institution and Madrasah, has challenged the Memo dated 27th March, 1984 issued by the Deputy Secretary (General), West Bengal Board of Secondary Education and a Memo dated 16th Aug., 1985 issued by the Secretary, West Bengal Board of Secondary Education. The fact of the case, in short, is that the Magrahat Muslim Anglo-Oriental Institution and Madrasah was created in 1850 and was fortified with a set of Special Rules and Regulations duly registered under the Societies Registration Act, 1860. The Board of Trustees acquired funds and landed properties around 6 lakhs of rupees and established the school on a plot of land of 45 bighas with more than one building big and small. It was established and developed by the subscription of Muslims for promoting secular and religious education of the Muslim community and/or training the character of the students to meet the special education requirements of the Muslims. The School was recognised as a High School by the University of Calcutta with effect from 2nd Feb., 1914. As stated earlier the Special Rules and Regulations were registered with the Articles of Association and the Calcutta University accepted and allowed the Board of Trust to run the Institution as per the Special Rules. The properties, movable and immovable, as well as the management of the Institution were vested in the Board of Trust fortified by a Deed of Declaration of Trust registered on 29th Nov., 1926. It is stated that the West Bengal Board of Secondary Education also extended recognition to this School upto the year 1953.

2. Thereafter difference crept in between the Board of Trust and the Management of the School and somehow the word "Muslim" was dropped from the name of the Institution



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resulting in the institution of Title Suit No. 515 of 1960. The learned Munsif, Diamond Harbour, by his judgment and decree dated 13th Dec., 1968 decreed the suit on contest against the defendants including the West Bengal Board of Secondary Education holding that the properties are trust properties vested in the Board of Trust and those properties are governed by the Special Rules and Regulations in the Articles of Association and the Deed of Declaration of Trust. Two appeals being T.A. No. 326 of 1969 and T.A. No. 87 of 1969 respectively were preferred by defendant No. 1, Bankim Chandra Roy and the defendant No. 2, the Administrator, Board of Secondary Education, West Bengal, and both the appeals on contest were dismissed by the learned Additional District Judge, 4th Court, Alipore on 20th April, 1973. The second

appeal being S.A. No. 1709 of 1973 preferred in the High Court was also dismissed on 6th April, 1979 by M.M. Dutt and R.K. Sharma JJ. It may be mentioned that S.A. No. 1709 of 1973 was heard along with S.A. No. 953 of 1962 and was disposed of by one judgment as aforesaid.

3. Immediately after the aforesaid verdict of the High Court the petitioner applied to the West Bengal Board of Secondary Education and to other authorities including the Education Secretary, Government of West Bengal, for restoration of possession of the School buildings, the Management of the School in its original name under the Board of Trust in accordance with the Rules and Regulations as embodied in the Articles of Association and the Deed of Declaration of Trust as enjoyed by the School since 1914 and also for recognition of the School with retrospective effect. The Assistant Secretary to the Government of West Bengal, Education Department (Secondary Branch) by its Memo dated 19th April, 1982 while forwarding a copy of the Inspection Report on the Magrahat Muslim Anglo-Oriental Institution by the Assistant Inspector of Schools stated that this Institution was recognised by the Calcutta University before the establishment of the West Board of Secondary Education. The Memo further stated that as the Institution was recognised by the University before the establishment of the Board it should be deemed to have been recognised by the Board and accordingly requested affirmation and three queries were also asked as appeared from Annexure 'G' to the writ application. In response to the aforesaid communication the Secretary of the Board by its Memo dated 24th May, 1982 replied in detail. Thereafter it was admitted that the Board granted recognition to the Institution from 1st Jan., 1951 but also mentioned that somehow the word "Muslim" was dropped from the name of the Institution under Memo dated 21st Feb., 1953. It was also mentioned by the Secretary that in the light of the High Court's judgment the Institution, i.e., Magrahat Muslim Anglo-Oriental Institution deserves to be resuscitated with fresh recognition with effect from 1st Jan., 1982 and in fact by Memo dated 1st Oct., 1982 addressed to the Magrahat Muslim Anglo-Oriental Institution the Board granted provisional recognition of this Institution as a High School for three years with effect from 1st Jan., 1982 subject to the fulfilment, of the conditions enclosed with the said Memo. The petitioner made a representation dated 11th Oct., 1982 to the Secretary of the Board to accept the Special Constitution for the Management of the Institution but it was not replied, reminders were also submitted to the Secretary on 31st Jan., 1983 and 21st Feb., 1983. On 15th June, 1983 the Board wrote to the Headmaster of the Institution to move the Trustee for executing registered deed with the declaration that so long as the School will exist, the School shall enjoy the right of free use of the entire properties and other concomitant facilities, to which the Secretary replied on 1st Aug., 1983 drawing the Board's attention to Chapter VII of the Rules and Regulations of the Institution and pointed out that according to the Rules and Regulations and the Deed of Declaration the School shall enjoy the right of free use of the entire property and other concomitant facilities. But the Board again by its Memo dated 7th Nov., 1983 insisted that its executive Committee at its 30th meeting held on 12th Aug., 1983 after considering the representation for a Special Constitution of the Managing Committee of the School decided that the School should be



informed to move the Trustees for having a registered declaration as desired and on receipt of such declaration the prayer for Special Constitution will be taken into consideration. The petitioner obtained resolution from the Board of Trustees to the

effect that the School would enjoy the right of free use of the entire property and other concomitant facilities and submitted the same to the Board.

4. By a Memo dated 27th March, 1984 the Deputy Secretary (General) of the Board of Secondary Education intimated the Headmaster of the Magrahat Muslim Anglo-Oriental Institution that the Executive Committee of the Board at the 35th meeting held on 24th Feb., 1984 considered the claim of a Special Constitution for the Managing Committee of the School and approved only three representatives from the Board of Trustees. The other members of the Managing Committee would be four representatives of teaching and non-teaching staff and one person interested in education, one Head of the Institution (ex-officio) and one departmental nominee, totalled fourteen. It was further notified in the said Memo that the Managing Committee thus reconstituted would be guided by the existing Rules for the Management of Recognised Non-Government Institution and was further asked to complete the reconstitution by 30th Sept., 1984. Having received the Memo dated 27th March, 1984 the petitioner made representations dated 17th May, 1984 and 16th July, 1984 to the Secretary to the Government of West Bengal, Education Department (School Education) and also to the Deputy Secretary of the Board for reconsideration of the approval of the pattern of Special Constitution of the Managing Committee as well as representations were made to the Director of Public Instruction and the Director of Secondary Education and the President of the West Bengal Secondary Education Board. The Secretary of the Secondary Education Board by Memo dated 19th July, 1984 asked for the list of properties of the Trust Body with documents relating to (a) the list of properties of the Trust Body with documentary evidence; and (b) the statement of accounts of the Trust Body and also showing the annual grant, if any, to the School and the same was duly answered by the petitioner by his letter dated 14th Aug., 1984. Thereafter there was a lull and the petitioner had to make again a representation on 18th March, 1985. The Secretary of the Board by his Memo dated 16th Aug., 1985 intimated that the Executive Committee of the Board at its meeting held on 14th June, 1985 after due consideration decided that the review of the pattern of a Special Constitution already approved by Board's letter dated 27th March, 1984 could not be approved and the Secretary was asked to constitute/reconstitute the Managing Committee in accordance with Special Constitution already granted within 31st Dec., 1985. On 7th Oct., 1985 the petitioner moved this writ application to this Hon'ble Court and obtained the order of status quo as of date which was extended from time to time and ultimately on 13th Jan., 1987 this Hon'ble Court's ordered that the Board is to continue with the provisional recognition as was granted earlier on the 1st Oct., 1982 until the disposal of the writ petition.

5. Mr. Bhattacharyya, the learned Advocate appearing for the petitioner, submitted that the Trust was created in 1850 by one Haji Md. Ramjan Laskar and he maintained the School for 30 years and after his death Maulvi Fazlur Rahman took over the maintenance and in this way one after another prominent Muslims managed as Trustees. Thereafter under the guidance of one Mr. G.H.C. Ariff, a philanthropic gentleman and millionaire of Calcutta, and some of his friends a Committee was formed in 1912 to establish Anglo-Arabic Higher English Madrasah for secular and religious education for the Muslims and the Committee adopted Rules and Regulations of the Aligarh Muslim Anglo-Oriental College and organised the Board of Trustees from among themselves with Mr. Ariff as President. The entire properties of the Institution vested with the Board of Trustees and this news was published in the then "Mahammadi" and the "Musalman". The Board of Trustees with their funds opened the residential High School and Madrasah in the



name of the Anglo-Oriental Institution and Madrasah in 1914 with a set of special Rules and Regulations and registered it as Public Educational Society under Societies Registration Act, 1860 on 17th Dec., 1915. Soon thereafter amendment was made in the Article of Association and the Institutions were named the Muslim Anglo-Oriental Institution and Madrasah, Magrahat, and was recognised by the Calcutta University and subsequently by the West Bengal Board of Secondary Education but now the Board wants to amend the Special Constitution by putting its conditions which go against the Special Constitution so long enjoyed by the Institution.

6. Neither the State of West Bengal or any of the State respondents nor the West Bengal Board of Secondary Education or any office-bearer of the Board who were made parties appeared in the writ application save and except the respondent No. 4, the Registrar of Calcutta University. It appears that on 13th Jan., 1987 Mr. D.K. Banerjee once appeared for the State but not on 22nd Aug., 1988 and 1st September, 1988 when the matter was heard but no power was filed on behalf of the State by Mr. Banerjee. Affidavit of Service to add the Respondents has been filed. In an affidavit-in -Opposition the respondent No. 4 took the plea that as the Calcutta University has not been impleaded so no cause of action arises against the University and it is not maintainable so far as the University is concerned (the Calcutta University was thereafter made party-respondent No. 12 vide order dated 5th Feb., 1986). The Affidavit further stated that it is not known to the Registrar of the Calcutta University as to when Magrahat Muslim Anglo-Oriental Institution was recognised as a High School by the Calcutta University from 1914 and also that it enjoyed Special Constitution since that year. The Affidavit further stated that it is not known to the Registrar, how the respondent No. 2, the Assistant Secretary, Education Department (Secondary Branch), intimated by his letter dated 19th April, 1982 to the Secretary of the Board that the Institution was recognised by the Calcutta University before the establishment of the Board. By a Supplementary Affidavit the respondent No. 4 accepted that from the records of the Calcutta University it appears that the Syndicate of the University provisionally recognised the School in 1915 and the School was permitted to present candidates for Matriculation Examination in 1916 and 1917 on the basis of recommendations of the then Inspector of Schools, Presidency Division. I do not place much importance on the Affidavits of the respondent No. 4 as those are self-contradictory.

7. It appears to me that the Rules and Regulations of the Institution, which is Annexure 'B' to the writ application, are quite exhaustive, Chapter IX of the said Rules and Regulations contained a Board of Management the Constitution of which was made secular in character by stating that the Board of Management shall be subordinate to the Trustees but Hindus, Muslims and Christians are eligible to be members of the Board and the Board of Management consist of two Managing Committees, one for the School and another for the Madrasah. Further the District Magistrate of 24 Parganas shall be the ex-officio Managing Director of the two, Committees and Institution. The powers of the Trustees are also defined in Chapter X and under Chapter XII extensive powers were given to the Government of Bengal and the Director of Public Instruction, Bengal, as regards examination of Accounts, enquiry, budget as well as the authority to the Government to call upon the Trustees from time to time for information with a view of satisfying himself that the Institution staff is sufficient and to require the Trustees to remove any member of the Institution staff who, on receipt of such information appears to the Government to be incompetent. The Schedule I of the Rules and Regulations named the first Board of

Trustees consisting of such eminent Muslims as Mr. G.H.C. Ariff, Maulvi A.K. Fazlul Huq., who afterwards became the first Premier of United Bengal, and Nawab A.F.M. Abdur Rahman as well as nine Hindu Members of eminence out of the total strength of the Board at thirty-five. Schedule III contains a number of Patrons headed by an Englishman of I.C.S. rank, the District Magistrate and Collector of



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24-Parganas, Justice Syed Amir Ali, H.H. Aga Khan, Nawab Sir Raja Mohammad Ali Khan of Mahmudabad, Justice Syed Hasan Imam, Maharaja Bahadur Manindra Chandra Nandi of Kasimbazar, Nawab of Rampur, Nawab Sir Osman Ali Khan, Nizam of Hyderabad, and Begum Sultan Jahan of Bhopal. The Visitors included the Education Member of Bengal Executive Council, Nawab Shamsul Huda, the Assistant Director of Public instruction for Mohamedan Education, Government of Bengal, the Inspector of Schools, Presidency Division, as well as twelve eminent Hindu Visitors out of the total of twenty-two. The Schedule IV consists of (A) Directors of various languages. At that time the Directors included Mr. Zahid Suhrawandy (afterwards Knighted, made a Judge of this Hon'ble Court and also Vice-Chancellor of the Calcutta University), Syed Nasim Ali (afterwards elevated to the Bench of this Hon'ble Court and Knighted) and the now forgotten Maulvi Mujibur Rahman. Apart from the above, the Schedules (B) relates to the Directors of Mohamedan Theology, (C) the Directors of Hindu Theology and (D) the Directors of Christian Theology. The Board of Management for the School included ten eminent persons and the Board of Management for Madrasah eleven eminent persons including officials of the Government of Bengal.

8. The Deed of Declaration of the Trust was made on 29th Nov., 1926. In 1960 one Nurul Rahman Baidya, Secretary of the Board of Trustees, instituted a suit being T.S. NO. 515 of 1960 and the learned Munsif, 1st Court, Diamond Harbour, by his judgment dated 13th Dec., 1968 on the ground that a Committee subordinate to the Board of Trustees was formed by one Subodh Chandra. Basu obtained a decree for money against the Committee in M.S. No. 34 of 1949 in the Fourth sub-ordinate Judge, Alipore, and put the decree into execution to attach properties of this Institution mentioned in Schedule A of the plaint. Subodh Chandra Basu also filed a suit being T.S. No. 3 of 1954, and in a detailed judgment the learned Munsif came to the finding that the properties mentioned in the Schedule A to the plaint are trust properties vested in the Board of Trustees of Magrahat Muslim Anglo-Oriental Institution and Madrasah and those properties are governed by the Rules and Regulations as mentioned in the Articles of Association and the Deed of Declaration of Trust as mentioned in the plaint. Two appeals were preferred against the said decrees being T.A. No. 326 of 1969 and T.A. No. 87 of 1969 and the learned Additional District Judge, Fourth Court, 24-Parganas, by his judgment dated 30th April, 1973 while dismissing both the appeals observed that the Institution is in existence for a long time and documentary evidence since 1915 had been submitted to prove the existence of the Institution. It is too late in the day for the defendant to claim any title to the disputed lands. The two second appeals being S.A. Nos. 953 of 1962 and 1709 of 1973 were preferred in the Hon'ble High Court and was heard by a Division Bench consisting of Mr. Justice M.M. Dutt and Mr. Justice R.K. Sharma (as Their Lordships then were). Both the appeals were at the instance of the defendants relating to a dispute as to whether the properties described in Schedule A to the plaint of T.S. No. 558 of 1960 are trust properties vested in the Board of Trustees of Magrahat Muslim Anglo-Oriental Institution and Madrasah. In the finding the Division Bench held that from the documentary evidence both the Courts below have come to the findings as to

the existence of the Board of Trustees and the exercise by the Board of Trustees their right of ownership over the disputed properties all along. In the view of the Division Bench the creation of such a Trust cannot be called in view of the evidence adduced on behalf of the plaintiffs. A declaration had been made showing that the properties vested in the Board of Trustees for the purpose of promoting the secular and religious education of the Muslim Community. Recently the name of the School has been changed as Anglo-Oriental School but the Court was not concerned with the change of the name of the School but with the real point. Their Lordships further held that the defendants-appellants contended that in view of S. 5 of the Trust Act, 1882 as the Trust was not created by any testamentary instrument in writing signed by the Author of the



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Trust or the Trustees and registered, or by the will of the Author of the Trust or of the Trustees it was not a valid trust at all. Their Lordships observed. "We are unable to accept this contention. In the first place, there is some evidence that the Trust was created in 1850, that is long before the Trust Act, 1882 came into force. In the second place, even assuming that there is no satisfactory evidence as to the creation of a Trust by testamentary or non-testamentary instrument, in view of the evidence on record, it can be lawfully presumed that such a Trust was created in accordance with law that prevail at that time. Moreover, it may be said that the declaration of Trust that was made in 1926 by the Trustees, satisfies the requirement of S. 5". As such the Division Bench affirmed the findings of the Courts below and dismissed both the appeals.

9. Let it be stated that the Board of Trustees were always described by the High Court as the Trustees of the Magrahat Muslim, Anglo-Oriental Institution and Madrasah and not as Magrahat Anglo-Oriental Institution. The Assistant Secretary to the Government of West Bengal, Education Department (Secondary Branch) by a Memo dated 19th April, 1982 wrote to the Secretary of the West Bengal Board of Secondary Education that from the inspection report of Magrahat Muslim Anglo-Oriental Institution drawn up by the Assistant Inspector of Schools and the proposal for granting recognition to Magrahat Muslim Anglo-Oriental Institution has been received by this department. From the report it appears that the Institution was recognised by the Calcutta University before the establishment of the West Bengal Board of Secondary Education and as such it is presumed that the Institution was so recognised by the Board. The Memo asked for certain information from the Board including how the Magrahat Anglo-Oriental Institution can enjoy recognition instead of Magrahat Muslim Anglo-Oriental Institution in the face of the reported order of the Calcutta High Court and whether there is any necessary for granting recognition to Magrahat Muslim Anglo-Oriental Institution when the order of the High Court regarding the name of the Institution went in its favour. In reply to the above Memo the Secretary of the Board by Memo dated 24th May, 1882 wrote to the Assistant Secretary that the Institution established in 1914 enjoyed Calcutta University's recognition as a High School under the name of Magrahat Anglo-Oriental Institution and the Board granted recognition for two years upto December 1952. The Magrahat Muslim Anglo-Oriental Institution referred to the Board's communication dated 16th Aug., 1951 and claimed further extension of recognition. On receipt of this letter the Board extended the recognition till 1st Jan., 1953 with permission to the then candidates to appear for the School Final Examination, 1954. Thereafter in this Memo written by the Secretary of the Board occurs a peculiar sentence which I quote as under: "But, knowingly or unknowingly,

tendentiously or inadvertently, the word "Muslim" was dropped from the name of the School in the letter of the Board under No. 4207/C dated 21-2-53. From now on Magrahat Muslim Anglo-Oriental Institution came to be completely over-shadowed by Magrahat Anglo-Oriental Institution, a mutilated name suffered by the Board, equally unknowingly, since 1953". This Memo further states that no first recognition was ever granted by the Board to the School under the name of Magrahat Anglo-Oriental Institution. It is further stated by the Secretary of the Board in the said Memo that in the light of the judgment hereinbefore referred to it may be noted that Magrahat Muslim Anglo-Oriental Institution could not function from 1953 to 1980, and it deserves to be resuscitated with fresh recognition with effect from 1st Jan., 1982. The said Memo further mentioned that Magrahat Anglo-Oriental Institution was not granted recognition separately by the Board of Secondary Education after the dropping of the word 'Muslim' from its name in 1953. But in fact it continued to exist since 1953 and the candidates successful in the examinations were given certificates by the Board. But finally the said Memo concludes that as the School has come to stay over the years and thereby developed de facto claim to continue recognition, considering the de facto existence of Magrahat Anglo-Oriental Institution



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it would be expedient to accord recognition to it with effect from 1st Jan., 1953.

10. By a Memo dated 1st Oct., 1982 the Secretary of the Board conveyed to the Secretary of the Institution granting of provisional recognition to the School as a High School for 3 years with effect from 1st Jan., 1982 with permission to send up candidates for the M.P. (S.E.) 1984 and onwards subject to the fulfilment of some conditions in default the Board reserved the right to cancel or withdraw the recognition. At the same time this Memo stated that the School has been recorded in the Board as Magrahat Muslim Anglo-Oriental Institution. The Secretary asked to return form No. 83 duly filled in. In reply to the above Memo the petitioner who is the Secretary of the Institution wrote to the Secretary of the Board on 11th Oct., 1982 that in Keeping with the judgment of the High Court, it is necessary to accept the Special Constitution of the Institution as set forth by the Trust Deed and the Deed of Declaration of the Trust registered under Societies Registration Act, 1860 which this School enjoyed for years together and he prayed for the Special Constitution for the management of the Institution. By a reminder dated 21st Feb., 1983 the petitioner drew the attention of the Board that as the School enjoyed Special Constitution since 1914 to 1953, it should be granted Special Constitution as enjoyed earlier in terms of the High Court's direction. In the meantime by a letter dated 15th June, 1983, the Secretary of the Institution informed the Headmaster to move the Trustees for executing a registered deed with a declaration to the effect that as long as the School will exist, the School shall enjoy the right of free use of the entire property and other concomitant facilities. Again a reminder dated 1st Aug., 1983 was sent by the petitioner to the Secretary of the Board. The West Bengal Board of Secondary Education wrote to the Headmaster on 7th Nov., 1983 that the Executive Committee of the Board at its 30th meeting held on 12th Aug., 1983 carefully considered the letter under reference and decided the School to move the Trustees to have the declaration registered and submit the same to the Board and thereafter the prayer for a Special Constitution would be taken for consideration.

11. Now starts the real controversy between the Magrahat Muslim Anglo-Oriental Institution and the West Bengal Board of Secondary Education. The Deputy Secretary (General) of the Board wrote to the Headmaster by Memo dated 27th March, 1984 that

the Executive Committee of the Board at its 35th meeting held on 24th Feb., 1984 after carefully considering the claim to a Special Constitution of the Managing Committee of the School decided to approve the following pattern of the Special Constitution (a) 3 Members of the Trust Body; (b) 4 guardians representatives (to be elected); (c) 4 Members of the Teaching and non-Teaching Staff (to be jointly elected); (d) 1 P.I.E. (as per provision of the described Rules); (e) Head of the Institution (ex-Officio); and (f) 1 departmental nominee. It was further stated in the said Memo that the Managing Committee thus reconstituted would be guided by the existing Rules for the Management of Recognised/Non-Government Institutions. It was further directed that the election of office bearers according to the Special Constitution now approved must be completed within 30th Sept., 1984. The petitioner protested against the so-called Special Constitution and made a representation to the Deputy Secretary (General) of the Board by a letter dated 17th May, 1984. The writ petitioner also submitted a memorandum dated 16th July, 1984 to the Director of Public Instruction, West Bengal, the Director of Secondary Education, West Bengal and the President of the Board of Secondary Education, West Bengal, wherein he stressed the full history of the rise and development of the Institution and the Special Constitution enjoyed by it since 1914 which was also accepted by the University of Calcutta. On 19th July, 1984, the Board wrote to the Secretary for certain documentary evidence as regards the properties of the Trust Body and Statements of Accounts showing Annual Grant. In reply to the said Memo the Secretary wrote in detail to the Secretary of the Board by letter dated 14th Aug., 1984 stating that the Institution was created in 1850



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under the Board of Trust and was duly-fortified with the Special Rules and Regulation which was registered under the Societies Registration Act, 1860 and as a juristic body it acquired funds and landed properties of 6 lakhs of rupees and established the School on a plot of 15 acres of land with building at a cost of Rs. 5 lakhs and 7 acres of land at Rs. 95,000/- and constructed some new portion of the Institution at a cost of Rs. 79880.63 paise. All the documents were annexed with this letter and laid claim for the Special Constitution on the aforesaid facts. Almost a similar letter dated 18th March, 1985 was written to the Secretary, Education Department (School Education), Government of West Bengal. The drama concluded when the Secretary, West Bengal Board of Secondary Education, by Memo dated 16th Aug., 1985 informed the Headmaster of the Magrahat Muslim Anglo-Oriental Institution that "the Executive Committee of the Board at its meeting held on 14-6-85, after due consideration has decided that your prayer for review of the pattern of the Special Constitution, already granted vide Board's letter No. 2327/C dt. 27-3-84 be not approved" and the writ petitioners had no alternative but to rush to this Court and got a status quo order on 7th Oct., 1985.

12. It is strange that by Memo dated 27th March, 1984, the Deputy Secretary (General) of the Board of Secondary Education wrote to the Headmaster approving a pattern of Special Constitution which is quite contrary to the Special Constitution which was and is enjoyed by the Institution before and after the establishment of the Board. The High Court finally confirmed the Rules and Regulations of the Magrahat Muslim Anglo-Oriental Institution and that the Rules and Regulations are quite exhaustive and contained the Constitution of the Board of Management of the School Department in Schedule V thereof if for over 70 years an Institution can run on a Special Constitution as contained in its Rules and Regulations then what is the reason that at this stage the Board should impose a Special constitution of its own choice.

Also there is no reason why the Board by its Memo dated 16th August, 1985 declined the prayer for review of the imposed pattern of the Special Constitution. It appears that this Institution was established with the help of Muslims and some non-Muslims gentlemen for imparting secular and religious education to the boys of the Muslim Minority Community. Art. 30(1) of the Constitution of India guarantees, whether based on religion or language, that they shall have the right to establish and administer educational institutions of their choice and Cl. (2) of Art. 30 further provides that the State shall not, in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. This Art. 30 confers two rights: (a) the right to establish an institution; and (b) the right to administer it. The former means the right to create the institution, while the right to administer means that the management of the affairs of the institution must be free of external control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be served. It also empowers the Court's competency to determine whether an institution has been established by the minority and whether for real purpose is to serve interest of the minority or merely to make money in the name of the minority. In this connection reference may be made to four Supreme Court cases, namely, (1) *I.S. Azeez Basha v. Union of India*, reported in AIR 1968 SC 662; (2) *In Re: The Kerala Education Bill, 1957*, Special Ref. No. 1 of 1958 reported in AIR 1958 SC 956; (3) *Rev. Father W. Proost v. State of Bihar* reported in, AIR 1969 SC 465; and (4) *The State of Kerala v. Very Rev. Mother Provincial* reported in, AIR 1970 SC 2089. In the case of *Azeez Basha* (supra) the 5 Judge Bench held that the words "established and administer" in Art. 30(1) must be read conjunctively and so read it clearly shows that the minority will have the right to administer educational institution of their choice provided they established them. For the purpose of Art. 30(1) the word 'establish' means "to bring into existence", and so the right given by the Article to the minority is to bring into



existence an educational institution, and if they do so, to administer it. In the *Kerala Education Bill, 1957* (supra) a 7 Judge Bench of the Supreme Court held that a minority community can effectively conserve its language its script or culture by and through educational institutions and, therefore, the right to establish and maintain educational institution of its choice is a necessary concomitant to the right to conserve its distinct language, script or culture and that it is what is conferred on all minorities by Art. 30(1). In the case of *Rev. Father W. Proost v. The State of Bihar* (supra) a Bench consisting of 5 Judge headed by Chief Justice M. Hidayatullah (as His Lordship then was) specifically held that the width of Art. 30(1) cannot be cut down by introducing in its consideration on which Art. 29(1) is based. Latter Article is a general protection which is given to minorities to conserve their language, script or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. In the *State of Kerala v. Very Rev. Mother Provincial* (supra) again a Bench of the Supreme Court presided over by the Chief Justice Hidayatullah (as His Lordship then was) held that Article 30(1) contemplates two rights which are separated in point of time. The first right is the initial right to establish institution of the minorities choice. It is irrelevant that in addition to the minority community other from other minority

community or even from the majority community can taken advantage of these institutions. The next part of the right relates to the administration which means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees can mould the institutions as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. Their Lordship further observed that there is, however, an exception that the standards of education are not part of management as such. The minority institutions cannot be allowed to fall below the standards of excellency expected of educational institutions, or under the guises of exclusive right of management, to decline to follow the general pattern. Chief Justice Chandrachud (as His Lordship then was) presiding over a Supreme Court Bench in the case of the *All Saints High School v. Government of Andhra Pradesh* reported in AIR 1980 SC 1042 held that Art. 30(1) enshrines a fundamental right of the minority institutions to manage and administer their educational institutions which is completely in consonance with the secular nature of democracy and the Directives in the Constitution itself. Their Lordships further held that the introduction of an outside authority however high it may be either directly or through its nominees in the Government Body or the Managing Committee of the minority institution to conduct the affairs of the institution would be completely destructive of Art. 30(1) and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Art. 30 of the Constitution.....Where educational institutions have set up a particular Governing Body or the Managing Committee in which all the powers vest, such powers should not be curbed or taken away unless the Government is satisfied that the powers are grossly abused and if allowed to continue may reduce efficiency or the usefulness of the institution. In the case of *Rev. Sidhraj Bhai Sabbi v. State of Gujarat* reported in AIR 1963 SC 540 it was held by a 6 Judge Bench presided over by Chief Justice B.P. Sinha (as his Lordship then was) that all minorities, linguistic or religious by Art. 30(1) have absolute right to establish and administer educational institutions of their choice, and any law of the executive direction which seeks to infringe the substance of that right under Art. 30(1) would to that extent be void..... Regulations made in the true interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such Regulations are not restrictions on the sub-stance



of the right which is guaranteed: they secure a proper functioning of the institution, in matters educational. The Supreme Court further held that the right established by Art. 30(1) is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not public whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or nation as a whole. The Supreme Court further went on to say that if every order which while maintaining the formal character of a minority, institution destroys the power of administration is held Justiciable, because it is in the public or national interests, though not in its interests as an educational institution. The right guaranteed by Art. 30 (1) will be but a "teasing illusion", a promise of unreality.

13. In the light of the aforesaid Supreme Court decisions I do not think that the case, of the petitioner requires any more elucidation when the Supreme Court itself has come to his rescue. It is surprising that the Board, of Secondary Education, West

Bengal; is Unnecessarily standing in the way of granting Special Constitution the Magrahat Muslim Anglo-Oriental Institution, and impose by Memo dated 27th March, 1984 a pattern of Special Constitution contrary to what the School enjoyed so long and by Memo dated 16th Aug. 1985 the Board again disapproved the prayer for the reconsideration of their pattern of Special Constitution. In my opinion the Board of Secondary Education traversed beyond its limit with a vengeance on this Institution not to recognise the established Constitution which was duly registered over 70 years back on 29th Nov. 1926 and which was implemented all these years having got the approval of the Calcutta University as well as of the Board of Secondary Education till the dispute arose in 1984. The Articles of Association and the Rules and Regulations of the Magrahat Muslim Anglo-Oriental Institution and Madrasah which I have perused carefully are quite exhaustive and in Schedule V as referred to above the Board of Management regarding the. School Department has been set out. Of course, of the first constituted Board of Management most of the members of the Board were not alive. But as the first constitution of the Board shows that it consisted of eminent Muslims as well as non-Muslim including the Headmaster who was one Babu S.N. Gupta. The Deed of Declaration of the Trust was also registered almost 72 years back. The other facts do not require a reprobe or cannot be questioned in the light of their legal position and status. It is a confirmed fact that this Institution enjoyed a Special Constitution since 1914 and was managed in accordance to Schedule consisting of a Board of Management of the School Department. I do not find any reason why this Court should not interfere and direct the respondents particularly the West Bengal Board of Secondary Education restraining them from Enforcing the two Memos dated 27th March, 1984 and 16th August, 1985 and allowing the School to continue with their own registered Rules and Regulations containing, the Special Constitution governing the School Department.

14. In that view of the matter I set aside and quash the Memo No. 2327/G dated 27th March; 1984 issued by the Deputy Secretary (General), West Bengal Board of Secondary Education, to the Headmaster of the Magrahat Muslim Anglo-Oriental Institution and also the Memo No. 5245/G dated 16th August, 1985 issued by the Secretary, West Bengal Board of Secondary Education, to the Headmaster of the said Institution. Further the respondents including the West Bengal Board of Secondary Education are directed to accept the. Special Constitution as embodied in the Articles of Association and the Deed of Declaration of the Trust of the Magrahat Muslim Anglo-Oriental Institution without any interference in its nature whatsoever and extend recognition without break. But at the same time I make it clear that the standard of education of the School shall be subject to the scrutiny of the West Bengal Board of Secondary Education and the said Board



shall have power to give direction to the Board of Management of the said School whenever it is found necessary as the standard of education is not part of management. The said Board shall also be entitled to make inspection of the School periodically if it so desires. The curriculum prescribed by the Board of Secondary Education shall be strictly followed in the School Department in addition to any other subject or subject which the Board of Management thinks desirable to teach to the students as optional subjects. If the Board of Secondary Education issues any instruction regarding the standard, discipline or curriculum as prescribed by the Board the same must be adhered to by the Institution otherwise suitable action may be taken by the W.B. Secondary Board against the School. But the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided 1969 shall not be

applicable to this Institution. Under Chapter XII of the Rules and Regulations of the Institution enough power has been given to the State Government to have a check upon the School.

15. It is further directed that the Magrahat Muslim Anglo-Oriental Institution should reconstitute its Board of Management of the School Department within 4 (four) months from date in accordance to its own Special Constitution and shall forward a copy of the said reconstituted Managing Committee to the Board of Secondary Education, West Bengal, forthwith as well to the District Inspector of Schools concerned. Liberty is also given to the petitioner to amend the Rules and Regulations of the Institution if the Board of Trustees think necessary in keeping with the modern set-up.

16. The writ application is accordingly allowed with the above directions. There will be no order as to costs.

17. If the urgent certified copy is applied for, the same should be expeditiously given.

Petition allowed.

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