the filing of such a complaint. Such a requirement will not be satisfied if the concerned authorities merely ask the police to investigate into the case and take appropriate action. An information laid before the police or even a sanction granted for a prosecution by the police would not meet the requirements of Section 72. If the legislature contemplated that a mere information to the police by the appropriate authority is sufficient then there was no need to enact Section 72. Further if all that was required was to obtain the sanction of the concerned authority then the legislature would have enacted a provision similar to Section 197 of the Cr. P. C. The fact that the legislature did not choose to adopt either of the two courses mentioned above is a clear indication of the fact that the mandate of Section 72 is that there should be a formal complaint as contemplated by Section 4(1)(*h*) of the Criminal Procedure Code which says :

> " 'Complaint' means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer."

6. If we understand the word "complaint" in Section 72 of the Act as defined under Section 4(1)(*h*) of the Cr.P.C., as we think we should, then (there was admittedly no "complaint" against the appellant which means that the learned magistrate was incompetent to take cognizance of the case. From that it follows that the trial of the case was an invalid one and that the appellant was convicted without the authority of law).

7. The meaning of the word "complaint" in Section 72 of the Act had come up for consideration before several High Courts. The conclusion reached by those High Courts accords with that reached by us. As far back as 1906 the meaning of the word "complaint" in Section 72 of the Act came up before a Division Bench of the Calcutta High Court in *Emperor* v. *Rohini Kumar Sen*[1]. The Court held that the prosecution therein was vitiated because of the failure to comply with the requirements of Section 72 of the Act. A similar view was taken by the Travancore Cochin High Court in *Chanaprakasam Baranabas* v. *State*[2]. Raju, J. himself took that view in *Narotamdas Bhikhabai* v. *State of Gujarat*[3]. That decision was rendered by the learned Judge on September 2, 1963. The same view was taken by another bench of the Gujarat High Court in *Alubhai Mujabhai* v. *State of Gujarat.*[4] No contrary decision was brought to our notice.

8. For the reasons mentioned above we allow this appeal, set aside the conviction of the appellant and acquit him. The fine levied if it had been recovered from the appellant will be refunded to him.

1970(2) Supreme Court Cases 417

(*From Kerala*)

[BEFORE M. HIDAYATULLAH C. J., K. C. SHAH, K. S. HEGDE, A. N. GROVER, A. N. RAY AND I. D. DUA, JJ.]

STATE OF KERALA, ETC. .. Appellants ;

Versus

VERY REV. MOTHER PROVINCIAL, ETC. .. Respondents.

Civil Appeals Nos. 2598-2600 of 1969, 21-53 of 1970, 155-190 of 1970, 199 of 1970, 200-203 of 1970, 273 of 1970 and 324 of 1970, decided on August 10, 1970

1. X CWN 1029.
2. ILR 1953 TC 600.
3. (1962) 2 Cr LJ 165.
4. 7 Guj LR 698.

Constitution of India—Article 30(1)—Article 19—The Kerala University Act, 1969 (9 of 1969)—Sections (2)(4) of 48 and 49 are ultra vires—Sections 56 and 58—Administration—Establishment.

These appeals by certificates granted by the High Court of Kerala under Articles 132(1) and 133(1)(*c*) of the Constitution are directed against a common judgment declaring certain provisions of the Kerala University Act, 1969 (Act 9 of 1969) to be ultra vires, the Constitution of India while upholding the remaining Act as valid. The Supreme Court upheld the judgment under appeal.

Held :

(*i*) Article 30(1) contemplates two rights which are separated in point of issue. The first right is the initial right to establish institutions of minority's choice. Establishment means the bringing into being of an institution and it must be by a minority community. Next is administration of such institution. Administration means 'management of the affairs.' Exception to this is the statement of education are not a part of management as such. The minority institutions cannot be allowed to fall below the standards of excellence of educational institutions or under the guise of conclusive right management to decline to follow the general pattern. (Para 7)

(*ii*) Sub-sections (2) and (4) of Sections 48 and 49 are ultra vires Article 30(1). Indeed sub-section (6) of these two sections are also ultra vires. These clearly vest the management and administration in the hands of the two bodies with mandates from the University. (Para 13)

(*iii*) Sub-sections (1), (2), (3) and (9) of Section 53 sub-sections (2) and (4) and Section 56 (Section 581 in so far as it removes disqualification which founders may not like to agree to) and Section 63 are ultra vires Article 30(1) in respect of minority institutions. (Para 15)

(*iv*) The provisions (except Section 63) are also offensive to Article 19 (1)(*f*) in so far as the petitioners are citizens of India both in respect of majority as well as minority institutions. (Para 19)

Cases *referred* :

State of Bombay v. *Bombay Education Society*, (1955) 1 SCR 568 ; *The State of Madras* v. *S. G. Dorairajan*, (1951) SCR 525 ; *In re the Kerala Education Bill, 1957*, 1959 SCR 995 ; *Sidharajbhai* v. *State of Gujarat*, (1963) 3 SCR 837 ; *Katra Educational Society* v. *State of U. P. and Others*, (1966) 3 SCR 828 ; *Gujarat University, Ahmedabad* v. *Krishna Rangnath Mudholkar and Others*, (1963) Suppl 1 SCR 112 ; *Rev. Father W. Proost and Others* v. *State of Bihar*, (1969) 2 SCR 73.

The Judgment of the Court was delivered by

HIDAYATULLAH, C. J.—These appeals by certificates granted by the High Court of Kerala under Articles 132(1) and 133 (1)(*c*) of the Constitution are directed against a common judgment, September 19, 1969, declaring certain provisions of the Kerala University Act, 1969 (Act 9 of 1969) to be ultra vires the Constitution of India while upholding the remaining Act as valid. They were heard together. This judgment will dispose of all of them. The validity of the Act was challenged in the High Court by diverse petitioners in 36 petitions under Article 226 of the Constitution. Some parts of the Act were declared ultra vires the Constitution. As a result there are cross appeals. 36 appeals have been filed against the several petitioners by the State of Kerala. Another 36 appeals have been filed by the University of Kerala which made common cause with the Government of Kerala. 7 appeals have been preferred by seven original petitioners, who seek a declaration that some other provisions of the Act, upheld by the High Court as valid, are also void.

2. The Kerala University Act, 1969 which repealed and replaced the Kerala University Act, 1957 (Act 14 of 1957) was passed to reorganise the University of Kerala with a view to establishing a teaching, residential and affiliating University for the southern districts of the State of Kerala. Some of its provisions affected private colleges, particularly those founded by minority communities in the State. They were consequently challenged on various grounds. The petitions were consolidated in the High Court and were decided by the judgment and order under appeal.

3. Before we begin to discuss these appeals we may say a few words about them. 33 petitioners belong to different denominations of the Christian community ; 8 are Superiors of different Catholic Religious Congregations ; 8 are Catholic Bishops representing their dioceses ; 3 are Vicars of Catholic parishes ; 5 are Boards of Associations constituted by different Catholic denominations for establishing colleges and other educational institutions and 3 are Bishops of the Malankara Orthodox Church. 4 petitions have been filed by the Metropolitan of the Marthoma Syrian Church and 2 by the Madhya Kerala Diocese of the Church of South India. The remaining 3 petitions are respectively by private colleges founded and administered by Sri Sankara College Association Kalady, Shree Narayana Trusts Quilon and the Nair Service Society Changannacherry. The petitioners in the 33 petitions specially invoke the provisions of Article 30 of the Constitution which protects the right of the minorities to establish and administer educational institutions of their choice. All the 36 petitions invoke Articles 19(1)(*f*), 31 and 14 of the Constitution.

4. The impugned Act consists of 78 sections divided into 9 chapters. The main attack in the petitions is against Chapter VIII headed 'private colleges' consisting of Sections 47 to 61 and some provisions of Chapter IX particularly Section 63. The High Court has declared that sub-sections (2) and (4) of Section 48, sub-sections (2) and (4) of Section 49, sub-sections (1), (2), (3) and (9) of Section 53, sub-sections (2) and (4) of Section 56, Section 58 (except to some extent) are offensive of Article 19(1)(*f*) in so far as citizen petitioners are concerned and additionally, in so far as the minority institutions are concerned, offensive to Article 30(1), and therefore void. The petitions were, therefore, allowed except the petitions (O. P. S. Nos. 2339 and 2796 of 1969) filed by Sree Sankara College Association and the Nair Service Society since the petitioners were companies and were not entitled to the benefit of Article 30(1) not being minority institutions and not entitled to Article 19(1)(*f*) not being citizens. Section 63 was, however, held to offend Article 31(2) and not saved by Article 31-A(1)(*b*) and this declaration was in favour of all the petitioners. It was also declared void as offending Article 30 (1) in so far as the minority institutions were concerned. The rest of the Act was declared to be valid and the challenge to it was rejected. There was no order about costs.

5. The State of Kerala and the University challenge the judgment in so far as it declares the provisions of the Act to be void and the petitioners in the 7 counter-appeals challenge the judgment in so far as it has rejected the attack on some other provisions. We shall deal first with the contentions urged on behalf of the State of Kerala and the University of Kerala and then deal with the contentions of the majority institutions and the challenge to the surviving portions of the impugned Act by the appealing original petitioners.

6. In the matter of the minorities the main attack comes from Article 30 (1) of the Constitution. This clause reads :

"30. Right of minorities to establish and administer educational institutions—

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

× × × ×".

It declares it to be a fundamental right of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice. It is conceded by the petitioners representing minority communities before us (and indeed they could not gainsay this in the face of authorities of this Court) that the State or the University to which these institutions are affiliated may prescribe standards of teaching and the scholastic efficiency expected from colleges. They concede also that to a certain extent conditions of employment of teachers, hygiene and physical training of students can be regulated. What they contended here is that there is an attempt to interfere with the administration of these institutions and this is an invasion of the fundamental right. The minority communities further claim protection for their property rights in institutions under Articles 31 and 19(1)(*f*) and the right to practise any profession or to carry on any occupation, trade or business guaranteed by sub-clause (*g*) of the latter Article. The majority community which is also the founder of private colleges (of which three instances are before us) do not claim the right stemming from Article 30(1) but they claim the other rights mentioned above and further seek protection of equality in law with the minority institutions and thus freedom in the establishment and administration of their institutions.

7. The claim of the majority community institutions to equality with minority communities in the matter of the establishment and administration of their institutions leads to the consideration whether the equality clause can at all give protection, when the Constitution itself classifies the minority communities into a separate entity for special protection which is denied to the majority community. This is not a case of giving some benefits to minority communities which in reason must also go to the majority community institutions but a special kind of protection for which the Constitution singles out the minority communities. This question, however, does not fall within our purview as the State, at the hearing announced that it was not intended to enforce the provisions of the law relating to administration against the majority institutions only, if they could not be enforced against the minority institutions. Therefore, we have to consider the disputed provisions primarily under Article 30(1) and secondarily under Articles 31 and 19 where applicable.

8. Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.

9. The next part of the right relates to the administration of such institutions. Administration 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 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 best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

10. There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish the syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others. These propositions have been firmly established in the *State of Bombay* v. *Bombay Education Society*[1], *The State of Madras* v. *S. C. Dorairajan*[2], *In re the Kerala Education Bill, 1957*[3], *Sidharajbhai* v. *State of Gujarat*[4], *Katra Education Society* v. *State of U. P. and Others*[5], *Gujarat University, Ahmedabad* v. *Krishna Ranganath Mudholkar and Others*[6] and *Rev. Father W. Proost and Others* v. *State of Bihar.*[7] In the last case it was said that the right need not be enlarged nor whittled down. The Constitution speaks of administration and that must fairly be left to the minority institutions and no more. Applying these principles we now consider the provisions of the Act.

11. The Act as stated already consists of 78 sections arranged under 9 Chapters. Chapter VIII is headed 'Private Colleges' and Chapter IX 'Miscellaneous'. Chapter I contains the short title and commencement (Section 1) and definitions (Section 2). We are concerned with some definitions in Section 2 and Chapters VIII and IX. The other chapters lay down the constitution of University and contain matters relating thereto. They are not in dispute. The High Court in its judgment has carefully summarised the impugned provisions and it is not necessary for us to cover the same ground. We shall content ourselves by mentioning the important aspects briefly. "College" in the Act means an institution maintained by, or affiliated to, the University, in which instruction is provided in accordance with the provisions of the Statutes, Ordinances and Regulations. These are framed by the University. 'Educational Agency' means any person or body of persons who or which establishes and maintains a private college. 'Private College' means a college maintained by an agency other than the Government or the University and affiliated to the University. 'Principal' means the head of a college. By 'teacher' as used in the Act is meant a Principal, Professor, Assistant-Professor, Reader, Lecturer, Instructor or such other person imparting instruction or

1. (1955) 1 SCR 568.
2. (1951) SCR 525.
3. (1959) SCR 995.
4. (1963) 3 SCR 837.
5. (1966) 3 SCR 328.
6. (1963) Supp 1 SCR 112.
7. (1969) 2 SCR 73.

supervising research and whose appointment has been approved by the University in any of the colleges or recognised institutions. 'Recognised teacher' means a person employed as a teacher in an affiliated institution and whose appointment has been approved by the University. There is such overlap between 'college', 'teacher' and 'recognised teacher' but there is no antinomical confusion which might have otherwise resulted. These definitions by themselves are not questionable but in the context of the provisions of Chapters VIII and IX, about to be referred to, the insistence on the recognition by the University is claimed to be interference with the freedom of management. Chapter VIII embraces Sections 47 to 61. It begins with the definition of 'corporate management' which means a person or body of persons who or which manages more than one private college. Sections 48 and 49 deal respectively with (*a*) the governing body for private college not under corporate management and (*b*) with managing council for private colleges under corporate management. In either case the education agency (by which term we denote the educational agency of a private college as also corporate management, that is to say, the person or body of persons who or which manages more than one private college) is required to set up a governing body for private college or a managing council for private colleges under one corporate management. The two sections embody the same principles and differ only because in one case there is one institution and in the other more than one. Both consists of 7 sub-sections. Under these provisions the educational agency or the corporate management has to establish a governing body or a managing council respectively. The sections give the compositions of the two bodies. The governing body set up by the educational agency is to consist of 11 members and the managing council of 21 members. The 11 members of the governing body are (*i*) the principal of the private college (*ii*) the manager of the private college (*iii*) a person nominated by the University in accordance with the provisions in that behalf contained in the Statutes (*iv*) a person nominated by the Government (*v*) a person elected in accordance with such procedure as may be prescribed by the Statutes of the University from among themselves by the permanent teachers of the private college and (*vi-xi*) not more than six persons nominated by the educational agency. The composition of the managing council consists of a principal in rotation from the private colleges, manager of the private colleges, the nominees of the University and the Government as above described, two elected representatives of the teachers and not more than 15 members nominated by the educational agency. The Act ought to have used the expression 'corporate management' instead of 'educational agency' but the meaning is clear.

12. It will thus be seen that a body quite apart from the educational agency or the corporate management is set up. Sub-section (2) in either section make these bodies into bodies corporate having perpetual succession and a common seal. The manager of the college or colleges, as the case may be, is the Chairman in either case [sub-section (3)]. Sub-section (4) then says that the members shall hold office for a period of 4 years from the date of the constitution. Sub-section (5) then says as follows :

> "It shall be the duty of the *Governing body*/(Managing Council) to administer *the private college* (all the private colleges under the corporate management) in accordance with the provisions of this Act and the Statutes, Ordinances, Regulations, Bye-Laws and Orders made thereunder."

(We have attempted to combine the two provisions here. In the case of governing body the sub-section is to be read omitting the words in brackets

and in the case of managing council the *italised* words are to be omitted and the sub-section read with the words in brackets.)

13. Sub-section (6) then lays down that the powers and functions of the governing body (the managing council), the removal of members thereof and the procedure to be followed by it, including the delegation of its powers, shall be prescribed by the Statutes. Sub-section (7) lays down that decisions in either of the two bodies shall be taken at meetings on the basis of simple majority of the members present and voting.

14. These sections were partly declared ultra vires of Article 30(1) by the High Court as they took away from the founders the right to administer their own institution. It is obvious that after the erection of the governing body or the managing council the founders or even the community has no hand in the administration. The two bodies are vested with the complete administration of the institutions. These bodies have a legal personality distinct from the educational agency or the corporate management. They are not answerable to the founders in the matter of administration. Their powers and functions are determined by the University laws and even the removal of the members is to be governed by the Statutes of the University. Sub-sections (2), (4), (5) and (6) clearly vest the management and administration in the hands of the two bodies with mandates from the University.

15. In attempting to save these provisions Mr. Mohan Kumarmangalam drew attention to two facts only. The first is that the nominees of the educational agencies or the corporate management have the controlling voice and that the defect, if any, must be found in the Statutes, Ordinances, Regulations, Bye-laws and Orders of the University and not in the provisions of the Act. Both these arguments are not acceptable to us. The Constitution contemplates the administration to be in the hands of the particular community. However desirable it might be to associate nominated members of the kind mentioned in Sections 48 and 49 with other members of the governing body or the managing council nominees, it is obvious that their voice must play a considerable part in management. Situations might be conceived when they may have a preponderating voice. In any event, the administration goes to a distinct corporate body which is in no way answerable to the educational agency or the corporate management. The founders have no say in the selection of the members nominated or selected except those to be nominated by them. It is, therefore, clear that by the force of sub-sections (2), (4) and (6) of Sections 48 and 49 the minority community loses the right to administer the institution it has founded. Sub-section (5) also compels the governing body or the managing council to follow the mandates of the University in the administration of the institution. No doubt the Statutes, Ordinances, Regulations, Rules, Bye-laws and Orders can also be examined in the light of Article 30(1) but the blanket power so given to the University bears adversely upon the right of administration. This position is further heightened by the other provisions of the Act to which a reference is now needed.

16. Section 53, sub-sections (1), (2) and (3) confer on the Syndicate of the University the power to veto even the action of the governing body or the managing council in the selection of the principal. Similarly, sub-section (4) takes away from the educational agency or the corporate management the right to select the teachers. The insistence on merit in sub-section (4) or on seniority-cum-fitness in sub-section (7) does not save the situation. The power is exercised not by the educational agency or the corporate management but by a distinct and autonomous body under the control of the Syndicate of the

University. Indeed sub-section (9) gives a right of appeal to the Syndicate to any person aggrieved by the action of governing body or the managing council thus making the Syndicate the final and absolute authority in these matters. Coupled with this is the power of Vice-Chancellor and the Syndicate in sub-sections (2) and (4) of Section 56. These sub-sections read :

> "56. Conditions of service of teachers of private colleges.
>
> (1) × × × ×
>
> (2) No teacher of a private college shall be dismissed, removed, or reduced in rank by the governing body or managing council without the previous sanction of the Vice-Chancellor or placed under suspension by the governing body or managing council for a continuous period exceeding fifteen days without such previous sanction.
>
> (3) × × × ×
>
> (4) A teacher against whom disciplinary action is taken shall have a right of appeal to the Syndicate, and the Syndicate shall have power to order reinstatement of the teacher in cases of wrongful removal or dismissal and to order such other remedial measures as it deems fit, and the governing body or managing council, as the case may be, shall comply with the order."

These provisions clearly take away the disciplinary action from the governing body and the managing council and confer it upon the University. Then comes Section 58 which reads :

> "58. Membership of Legislative Assembly, etc., not to disqualify teachers.—
>
> A teacher of a private college shall not be disqualified for continuing as such teacher merely on the ground that he has been elected as a member of the Legislative Assembly of the State or of Parliament or of a local authority :
>
> Provided that a teacher who is a member of the Legislative Assembly of the State or of Parliament shall be on leave during the period in which the Legislative Assembly or Parliament, as the case may be, is in session."

This enables political parties to come into the picture of the administration of minority institutions which may not like this interference. When this is coupled with the choice of nominated members left to Government and the University by sub-section (1)(*d*) of Sections 48 and 49, it is clear that there is much room for interference by persons other than those in whom the founding community would have confidence.

17. To crown all there is the provision of Section 63(1) which reads :

> "63. Power to regulate the management of private colleges.
>
> (1) Whenever Government are satisfied on receipt of a report from the University or upon other information that a grave situation has arisen in which the working of a private college cannot be carried on for all or any of the following reasons, namely :—
>
> (*a*) default in the payment of the salary of the members of the staff of the college for a period of not less than three months ;

(*b*) wilful closing down of the college for a period of not less than one month except in the case of the closure of the college during a vacation ;

(*c*) persistent default or refusal to carry out all or any of the duties imposed on any of the authorities of the college by this Act or the Statutes or Ordinances or Regulations or Rules or Bye-laws or lawful orders passed thereunder ;

and that in the interest of private college it is necessary so to do, the Government may, after giving the governing body or managing council, as the case may be, the manager appointed under sub-section (1) of Section 50 and the education agency, if any, of the college a reasonable opportunity of showing cause against the proposed action and after considering the cause, if any, shown, by order, appoint the University to manage the affairs of such private temporarily for a period not exceeding two years :

Provided that in cases where action is taken under this sub-section otherwise than on report from the University, it shall be consulted before taking such action.

× × × × × ×."

The remaining provisions of this section lay down an elaborate procedure for management in which even the governing body or the managing council have no say. Sub-section 63(1) involves the transfer of right to possession of the properties to the University. The High Court righly pointed out that this section provides for compulsory requisition of the properties within Article 31(2) and (2-A). To be effective the section required the assent of the President under sub-section (3) and it was not obtained. Therefore the saving in Article 31-A(1)(*b*) is not available.

18. Mr. Mohan Kumarmangalam brought to our notice passages from the Report of the Education Commission in which the Commission had made suggestions regarding the conditions of service of the teaching staff in the universities and the colleges and standards of teaching. He also referred to the Report of the Education Commission on the status of teachers, suggestions for improving the teaching methods and standards. He argued that what has been done by the Kerala University Act is to implement these suggestions in Chapters VIII and IX and particularly the impugned sections. We have no doubt that the provisions of the Act were made bona fide and in the interest of education but unfortunately they do affect the administration of these institutions and rob the founders of that right which the constitution desires should be theirs. The provisions, even if salutary cannot stand in the face of the constitutional guarantee. We do not, therefore, find it necessary to refer to the two reports.

19. The result of the above analysis of the provisions which have been successfully challenged discloses that the High Court was right in its appreciation of the true position in the light of the Constitution. We agree with the High Court that sub-sections (2) and (4) of Sections 48 and 49 are ultra vires Article 30(1). Indeed we think that sub-section (6) of these two sections are also ultra vires. They offend more than the other two of which they are a part and parcel. We also agree that sub-sections (1), (2), (3) and (9) of Section 53, sub-sections (2) and (4) of Section 56, Section 58 (in so far as it

removes disqualification which the founders may not like to agree to), and Section 63 are ultra vires Article 30(1) in respect of the minority institutions. The High Court has held that the provisions (except Section 63) are also offensive to Article 19(1)(*f*) in so far as the petitioners are citizens of India both in respect of majority as well as minority institutions. This was at first debated at least in so far as majority institutions were concerned. The majority institutions invoked Article 14 and complained of discrimination. However at a later stage of proceedings Mr. Mohan Kumarmangalam stated that he had instructions to say that any provision held inapplicable to minority institutions would not be enforced against the majority institutions also. Hence it relieves us of the task of considering the matter under Article 19(1)(*f*) not only in respect of minority institutions but in respect of majority institutions also. The provisions of Section 63 affect both kinds of institutions alike and must be declared ultra vires in respect of both.

20. The result is that the judgment under appeal is upheld. The appeals of the State Government of Kerala and of the University are dismissed with costs. One set of hearing fees. For the reasons given by the High Court we do not accept the contentions of the seven appellants who have challenged some of the other provisions of the Act except Sections 48(6) and 49(6) and do not consider it necessary to respect what is said by the High Court. These appeals are dismissed except as to those sections but without costs.

1970(2) Supreme Court Cases 426

(From Bombay)

[BEFORE K. S. HEGDE AND I. D. DUA, JJ.]

CHALLAPPA RAMASWAMI .. Appellant;

Versus

STATE OF MAHARASHTRA .. Respondent.

Criminal Appeal No. 195 of 1967, decided on 13th August, 1970

Criminal Procedure Code, 1898 (5 of 1898)—Section 421—Appeal—Conviction of accused by Trial Court relying on evidence of relation of deceased—Appeal to High Court—Summary dismissal by High Court—Propriety—Necessity of recording a speaking order.

Practice—Summary dismissal of Appeal by High Court under Section 421, Criminal Procedure Code—Appeal to Supreme Court by special leave—Interference by Supreme Court—Remand of Appeal to High Court—Proper remedy—Constitution of India, Article 136.

Held, that the Trial Court relied in support of its order on two eye-witnesses—one of whom is stated to be the uncle of the deceased. That Court also noticed that in the dying declaration by the deceased made to his uncle the name of the accused as his assailant was not mentioned. In a case like this, it was incumbent on the High Court to issue notice to the State and hear the appeal with the record before it and after evaluating the evidence record a speaking order so that this court could also have before it the reasoning of the High Court for upholding the appellant's conviction. The dismissal of appeal by the High Court with the one word "dismissed" has left the Supreme Court guessing about the line of reasoning which the High Court would have adopted after appropriate scrutiny of the material on the record.