A

MRS. Y. THECLAMMA

v.

UNION OF INDIA & ORS.

APRIL 15, 1987

B [A.P. SEN AND K.N. SINGH, JJ.]

Delhi School Education Act, 1973: S. 8(4)—Minority educational institution—Suspension of teacher—Order whether vitiated for want of approval by Director of Education, Sub-section whether ultra vires the Constitution.

C

Constitution of India, Article 30: Minority educational institution—Regulations can be made for ensuring fair procedure in matters of disciplinary action.

Sub-section (4) of s. 8 of the Delhi School Education Act, 1973
D **interdicts the management of a recognised private school from suspending any of its employees except with the prior approval of the Director of Education. However, in cases of gross misconduct the first proviso to that sub-section provides for suspension of the employee with immediate effect, while the second proviso limits the period of such suspension to fifteen days, unless it has been communicated to the Director**
E **and approved of by him before the expiry of the said period.**

The petitioner, a teacher in a recognised private school run by a linguistic minority educational society, was placed under suspension by the management by its order dated April 23, 1986 on charges of diversion of funds, pending departmental inquiry and the fact intimated to
F **the Director of Education, without formally seeking his approval under s. 8(4) of the Act. She filed a suit assailing the order as violative of s. 8(4) of the Act and also an application for the grant of a temporary injunction which was dismissed by the trial court following the decision of the High Court in *S.S. Jain Sabha* v. *Union of India*, [ILR (1976) 2 Del. 61] taking the view that the educational institution having been**
G **established and administered by a linguistic minority, it was protected under Art. 30(1) of the Constitution, and therefore, the provisions of the Act and in particular, s. 8(4) were not applicable.**

Her special leave petition having been dismissed as withdrawn by this Court, she filed the present writ petition in this Court and there-
H **after withdrew the suit.**

Relying upon the decision in *Frank Anthony Public School Employees Association* v. *Union of India*, [1986] 4 SCC 707 it was contended for the petitioner that the impugned order of suspension being without prior approval of the Director, as required under s. 8(4) of the Act, was vitiated. For the respondents it was contended that the decision of the Court in *Frank Anthony Public School's* case being contrary to the decision of the Constitution Bench in *Lilly Kurian* v. *Sr. Lewina & Ors.*, [1979] 1 SCR 820 required reconsideration and that s. 8(4) of the Act was violative of Article 30(1). A B

Disposing of the writ petition, the Court,

HELD: 1. The exercise of the power of management of the aided schools run by the linguistic minority educational institutions in Delhi to suspend a teacher is subject to the requirement of prior approval of the Director of Education under sub-s. (4) of s. 8 of the Delhi School Education Act, 1973. [979EF] C

2.1 While the right of the minorities, religious or linguistic, to establish and administer educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purpose of ensuring educational standards and maintaining excellence thereof can validly be prescribed. [987B] D

2.2 Sub-section (4) of s. 8 of the Act requiring the prior approval of the Director of Education for the suspension of a teacher was regulatory in character and did not, therefore, offend against the fundamental right of the minorities under Art. 30(1) of the Constitution to administer educational institutions established by them. [986H-987A] E

Frank Anthony Public School Employees' Association v. *Union of India & Ors.*, [1986] 4 SCC 707; *All Saints High School* v. *Government of Andhra Pradesh*, [1980] 2 SCC 478; *In re. the Kerala Education Bill, 1957*, [1959] SCR 995; *Ahmedabad St. Xavier's College Society* v. *State of Gujarat*, [1975] 1 SCR 173 and *Lilly Kurian* v. *Sr. Lewina & Ors.*, [1979] 1 SCR 820; applied. F G

State of Kerala v. *Very Rev. Mother Provincial*, [1971] 1 SCR 734 and *D.A.V. College* v. *State of Punjab*, [1971] Suppl. SCR 688, referred to.

3.1 The decision in *Frank Anthony Public School's case* holding that sub-s. (4) of s. 8 of the Act was applicable to the unaided minority H

A **educational institutions proceeds upon the view taken by the majority in *All Saints High School's* case that the right guaranteed to religious and linguistic minorities by Art. 30(1) to establish and to administer educational institutions of their choice was subject to the regulatory power of the State, which in its turn was based on several decisions right from *In re. the Kerala Education Bill, 1957* down to *St. Xavier's* case including**
B **that in *Lilly Kurian's* case. It could not, therefore, be said to be in conflict with the decision of the Constitution Bench in *Lilly Kurian's* case and required reconsideration. [983BC-986FG]**

3.2 The endeavour of the Court in all the above cases has been to strike a balance between the constitutional obligation to protect what is
C **secured to the minorities under Art. 30(1) with the social necessity to protect the members of the staff against arbitrariness and victimisation. The provision contained in sub-s.(4) of s. 8 of the Act is designed to afford some measure of protection to the teachers of such institutions without interfering with the managements' right to take disciplinary action. [987E, D]**

D

4.1 In a case like the present one where the management of an educational institution governed by sub-s. (4) of s. 8 of the Act charged the petitioner with diversion of funds and communicated the impugned order of suspension pending departmental inquiry to the Director, a duty was cast on him to come to a decision whether such immediate
E **suspension was necessary by reason of the gross misconduct of the petitioner as required by sub-s. (5) of s. 8 of the Act. [987F, 988A]**

4.2 Since there was no response from the Director within the period of 15 days, as envisaged by the second proviso to s. 8(4), the impugned order of suspension had lapsed. However, the management
F **could yet move the Director for his prior approval under sub-s. (4) of s. 8 of the Act, who would then deal with such an application, if made, in accordance with the principle laid down in the *Frank Anthony Public School's* case. [988BC]**

ORIGINAL JURISDICTION: Writ Petition No. 1232 of 1986.

G (Under Article 32 of the Constitution of India).

C.S. Vaidayanathan and S.R. Sethia for the Petitioner.

A. Subba Rao for the Respondents.

H The Judgment of the Court was delivered by

SEN, J. The short point involved in this petition under Art. 32 of the Constitution is whether linguistic minority educational institutions like the Andhra Education Society are governed by sub-s. (4) of s. 8 of the Delhi School Education Act, 1973. The petitioner Smt. Y. Theclamma, Vice-Principal, Andhra Education Society Secondary School, Prasad Nagar, New Delhi challenges the legality of an order passed by the managing committee of the Andhra Education Society, New Delhi dated April 23, 1986 placing her under suspension pending a departmental inquiry against her.

The facts lie within a narrow compass. The Andhra Education Society is a society formed under the Societies Registration Act, 1860 with a view to imparting education to the children belonging to the Andhra community and others in Delhi. It runs as many as four schools—a senior secondary school at Deen Dayal Upadhyaya Marg, a secondary school at Prasad Nagar, a middle school at Janak Puri and another at East of Kailash. The first three of these are recognised by the Director of Education, Delhi Administration and are aided by the Government to the extent of 95%. The petitioner is thus employed in a government aided school. By the impugned order dated April 23, 1986, the management instituted a departmental inquiry against the petitioner on certain charges and placed her under suspension in exercise of r. 115 of the Delhi School Education Rules, 1973 pending the inquiry. A copy of the impugned order of suspension was forwarded on the same day to the Director of Education. On the next day i.e. on April 24, 1986, the management addressed a letter to Deputy Director of Education, District West, New Delhi formally intimating that the petitioner had been placed under suspension pending inquiry on a charge of misconduct as specified for the reasons mentioned in the statements of charges and of allegations forwarded. On that day, the petitioner brought a suit for perpetual injunction against the management being Civil Suit No. 213/86 in the Court of the Subordinate Judge, First Class, Delhi. She also made an application for grant of temporary injunction under Order XXXIX, r. 1 of the Civil Procedure Code, 1908 for restraining the managing committee from proceeding with the departmental inquiry. The temporary injunction was sought on the ground that the managing committee was not duly constituted and besides, the impugned order of suspension was violative of sub-s. (4) of s. 8 of the Act. On the same day, the learned Subordinate Judge passed an order for maintaining the status quo. However, the management entered appearance and applied for vacating the injunction on the ground that the petitioner had already been suspended on April 23, 1986. It also pleaded that the school was being established and

A administered by the Andhra Education Society which being a linguistic minority educational institution was protected under Art. 30(1) of the Constitution and therefore the provisions of the Act and in particular of sub-s. (4) of s. 8 were not applicable. The learned Subordinate Judge by his order dated August 20, 1986 following the decision of the Delhi High Court in *S.S. Jain Sabha (of Rawalpindi) Delhi* v. *Union of* B *India & Ors.*, ILR (1976) 2 Del. 61 held that the Andhra Education Society was protected under Art. 30(1) and was therefore not governed by sub-s. (4) of s. 8 of the Act and accordingly dismissed the application for grant of temporary injunction. Instead of moving the High Court, the petitioner straightaway filed a Special Leave Petition under Art. 136 of the Constitution in this Court which was obviously C not maintainable. On September 10, 1986 learned counsel for the petitioner finding that it was difficult to support the petition for grant of special leave, sought an adjournment to take further instructions, and the matter was accordingly adjourned to September 22, 1986. In the meanwhile, the petitioner moved this petition under Art. 32 of the Constitution and thereafter withdrew the suit. On the adjourned date, D the learned counsel also withdrew the Special Leave Petition. The Special Leave Petition was accordingly dismissed as withdrawn.

Ordinarily, the Court would have directed the petitioner to avail of her alternative remedy under Art. 226 of the Constitution before E the High Court but we were constrained to issue notice inasmuch as the High Court had in the year 1979 by its judgment in *Andhra Education Society* v. *Union of India & Anr.*, followed its earlier decision in *S.S. Jain Sabha's* case, (supra), and allowed a batch of Writ Petitions filed by the Andhra Education Society and other linguistic minority educational institutions holding that in view of the protection of Art. F 30(1) these linguistic minority educational institutions were not governed by ss. 3, 5, sub-s. (4) of s. 8, ss. 16 and 25 of the Act and the relevant rules framed thereunder and therefore no prior approval of the Director of Education was necessary before passing an order of suspension against a teacher pending a departmental inquiry. We were also constrained to entertain the petition because a similar question G was raised by the Frank Anthony Public School Employees' Association by a petition under Art. 32 of the Constitution. Since then the Court has in *Frank Anthony Public School Employees' Association* v. *Union of India & Ors.*, [1986] 4 SCC 707 struck down s. 12 of the Act as being violative of Art. 14 of the Constitution insofar as it excludes the teachers and other employees of unaided minority schools from the H beneficial provisions of ss. 8 to 11 [except s. 8 (2)]i.e. except to the

extent that it makes s. 8(2) inapplicable to unaided minority educational institutions. A

The Court following the long line of decisions starting from *In re. the Kerala Education Bill, 1957,* [1959] SCR 995 down to *All Saints High School* v. *Government of Andhra Pradesh*, [1980] 2 SCC 478 held that the provisions contained in Chapter IV of the Act (except s. 8(2)) B were regulatory measures and did not offend against Art. 30(1) of the Constitution, enacted with the purpose of ensuring proper conditions of service of the teachers and other employees of unaided minority educational institutions and for securing a fair procedure in the matter of disciplinary action as against them. These provisions, according to the Court, were permissible restrictions and were intended and meant C to prevent maladministration. The view proceeds upon the basis that the right to administer cannot obviously include the right to maladminister. A regulation which is designed to prevent maladministration of an educational institution cannot be said to infringe Art. 30(1). The Court accordingly granted a declaration to the effect that s. 12 of the Act was void and unconstitutional except to the extent that it D makes s. 8(2) inapplicable to unaided minority educational institutions, and directed the Union of India, Delhi Administration and its officers to enforce the provisions of Chapter IV [except s. 8(2)] against the Frank Anthony Public School, an unaided minority school. It has further directed the management of the school not to give effect to the impugned orders of suspension passed against the members of the E staff. Such being the law declared by the Court in *Frank Anthony Public School's* case with regard to unaided minority educational institutions, it stands to reason that the aided minority schools run by the Andhra Education Society and other linguistic minority educational institutions in Delhi will also be governed by the provisions of Chapter IV [except s. 8(2)], that is to say, the exercise of the power of F the mangement of such schools to suspend a teacher would necessarily be subject to the requirement of prior approval of the Director of Education under sub-s. (4) of s. 8 of the Act.

In support of the petition Sri Vaidyanathan, learned counsel for the petitioner naturally contends that the matter is concluded by the G recent decision of this Court in *Frank Anthony Public School's* case and according to the view expressed by the Court in that case the impugned order of suspension passed by the management being without the prior approval of the Director as required by sub-s. (4) of s. 8 of the Act was vitiated. On the other hand Sri Subba Rao, learned counsel appearing for respondents Nos. 3, 4 and 5 submits that the H

A view expressed by this Court in the recent decision in *Frank Anthony Public School's* case based upon the earlier decision in *All Saints High School's* case runs counter to the decision of the Constitution Bench in *Lilly Kurian* v. *Sr. Lewina & Ors.*, [1979] 1 SCR 820 and therefore requires reconsideration. Alternatively, he contends that the Court failed to appreciate that sub-s. (4) of s. 8 of the Act requiring the prior B approval of the Director for the suspension of a teacher was a flagrant encroachment upon the right of the minorities under Art. 30(1) of the Constitution to administer educational institutions established by them. It is argued that if no prior approval of the Director is needed under s. 8(2) for the dismissal, removal or reduction in rank of a teacher as held by this Court in *Frank Anthony Public School's* case, C there is no reason why the exercise of power of suspension being an integral part of the power to take disciplinary action could not be made subject to any such restriction as imposed by sub-s. (4) of s. 8 of the Act.

In order to appreciate the rival contentions, it is necessary to set D out the relevant provisions. Sub-s. (2) of s. 8 interdicts that subject to any rule that may be made, no employee of a recognised private school shall be dismissed, removed or reduced in rank, nor shall his service be otherwise terminated except with the prior approval of the Director. S. 8(3) confers upon such an employee the right of an appeal to the Tribunal constituted under s. 11 against his dismissal, removal or re- E duction in rank. Sub-s. (4) relates to the power of suspension and it is in these terms:

> "(4). Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no F such suspension shall be made except with the prior approval of the Director:
>
> Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such G immediate suspension is necessary by reason of the gross misconduct, within the meaning of the Code of Conduct prescribed under section 9, of the employee:
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> Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days H from the date of suspension unless it has been communi-

cated to the Director and approved by him before the expiry of the said period." A

Sub-s.(5) of s. 8 provides that where intention to suspend, or the immediate suspension of an employee is communicated to the Director, he may, if he is satisfied that there are adequate and reasonable grounds for such suspension, accord his approval to such suspension. B

In *Frank Anthony Public School's* case, Chinnappa Reddy, J. speaking for himself and G.L. Oza, J. while repelling the contention that sub-s. (4) of s. 8 of the Act was an encroachment upon the fundamental right of the minorities enshrined in Art. 30(1) to administer the C educational institutions established by them inasmuch as it conferred a blanket power on the Director to grant or withhold his prior approval where the management intended to place an employee under suspension pending a departmental inquiry, observed that the question was directly covered by the majority decision in *All Saints High School's* D case and that, in his view, the provision was eminently reasonable and just designed to afford some measure of protection to the employees, without interfering with the management's right to take disciplinary action. He then stated:

"Section 8(4) would be inapplicable to minority institutions E if it had conferred blanket power on the Director to grant or withhold prior approval in every case where a management proposed to suspend an employee but we see that it is not so. The management has the right to order immediate suspension of an employee in case of gross misconduct but in order to prevent an abuse of power by the management a F safeguard is provided to the employee that approval should be obtained within 15 days. *The Director is also bound to accord his approval if there are adequate and reasonable grounds for such suspension.* The provision appears to be eminently reasonable and sound and the answer to the question in regard to this provision is directly covered by G the decision in *All Saints High School,* where Chandrachud, CJ, and Kailasam, J. upheld Section 3(3)(a) of the Act impugned therein." (Emphasis supplied)

It is not necessary to go through all the cases relied upon by the H

A Court in *Frank Anthony Public School's* case for the view taken that the provisions of Chapter IV of the Act were of a regulatory nature and therefore did not have the effect of abridging the fundamental right guaranteed to the minorities under Art. 30(1). It is enough to say that although there is no reference in the judgment to *Lilly Kurian's* case, the observations made by the Court with regard to the applicabi-
B lity of sub-s.(4) of s. 8 of the Act which relates to the exercise of the power of suspension by the management, fall in line with the view expressed by the majority in *All Saints High School's* case where such power was held to be on consideration of all the decisions starting from *In re. the Kerala Education Bill, 1957,* permissible restriction being regulatory in character. Presumably the Court in *Frank Anthony*
C *Public School's* case felt that it was not necessary to refer to *Lilly Kurian's* case as the extent of the regulatory power of the State had been dealt with by the Court *In re. the Kerala Education Bill, 1957* and reaffirmed in the subsequent decisions, including that in *All Saints High School's* case. In *Lilly Kurian's* case, one of us (Sen, J.) speaking for a Constitution Bench had occasion to observe:

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> "Protection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minority's choice enshrined in Article 30(1) means 'management of the affairs' of the institution. *This right is, however, subject to the regulatory power of the*
E *State. Article 30(1) is not a charter for mal-administration; however regulation, so that the right to administer may be better exercised for the benefit of the institution, is permissible;"*
>
> (Emphasis supplied)

In that case, the question was whether the conferment of a right of
F appeal to an external authority like the Vice-Chancellor of the University under Ordinance 33(4) framed by the Syndicate of the University of Kerala under s. 19(j) of the Kerala University Act, 1957 against any order passed by the management of a minority educational institution in respect of penalties including that of suspension was an abridgement of the right of administration conferred on the minorities
G under Art. 30(1). The question was answered in the affirmative and it was held that the conferral of the power of appeal to the Vice-Chancellor under Ordinance 33(4) was not only a grave encroachment on such institution's right to enforce and ensure discipline in its administrative affairs but it was uncanalised and unguided in the sense that no restrictions were placed on the exercise of the power. It was
H further said that in the absence of any guidelines it could not be held

that the power entrusted to the Vice-Chancellor under Ordinance 33(4) was merely a check on maladministration. A

In *Frank Anthony Public School's* case, the Court held that subss. (1), (3) and (4) of s. 8, and ss. 9, 10 and 11 of the Act do not encroach upon the right of administration conferred on the minorities under Art. 30(1) to administer educational institutions of their choice, but B that s. 8(2), in view of the authorities referred to, must be held to interfere with such right and therefore inapplicable to minority institutions. It would therefore appear that the decision in *Frank Anthony Public School's* case proceeds upon the view that the right guaranteed to religious and linguistic minorities by Art. 30(1) which is two-fold i.e. to establish and to administer educational institutions of their choice, C is subject to the regulatory power of the State. The Court has referred to the three decisions in *Ahmedabad St. Xavier's College Society* v. *State of Gujarat,* [1975] 1 SCR 173; State of Kerala v. *Very Rev. Mother Provincial*, [1971] 1 SCR 734 and *All Saints High School* v. *Govt. of A.P.* (supra) in coming to the conclusion that s. 12 of the Act insofar as it made inapplicable the beneficent provisions of Chapter IV D to unaided minority institution was discriminatory and offended against Art. 14, i.e. except to the extent that it made s. 8(2) inapplicable to such institutions. The view taken in *Frank Anthony Public School's* case is in consonance with the decision of the majority in *All Saints High School's* case. In that case, the applicability of several sections of the A.P. Recognised Private Educational Institutions E (Control) Act, 1975 was questioned as being violative of Art. 30(1). Chandrachud, CJ. while delivering the majority judgment held after referring to all the earlier decisions, that it must be regarded as well-settled especially after the 9-Judge Bench decision in *St. Xavier's* case and the subsequent decision in *Lilly Kurian* that the State was competent to enact regulatory measures for the purpose of ensuring educational standards and maintaining the excellence thereof and such regulations which were permissible did not impinge upon the minorities' fundamental right to administer educational institutions of their choice under Art. 30(1). The reason for this conclusion can best be stated in the words of Chandrachud, CJ.: F

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> "These decisions show that while the right of the religious and linguistic minorities to establish and administer educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purpose of ensuring educational standards and maintaining the excellence thereof can be validly prescribed. For maintaining educa- H

A tional standards of an institution, it is necessary to ensure that it is competently staffed. Conditions of service which prescribe minimum qualifications for the staff, their pay scales, their entitlement to other benefits of service and the laying down of safeguards which must be observed before they are removed or dismissed from service or their B services are terminated are all permissible measures of a regulatory character."

Chandrachud, CJ. and Fazal Ali, J. held that ss. 3(1) and 3(2) which made the prior approval of the competent authority a prerequisite for the dismissal, removal or reduction in rank of a teacher, conferred on C the competent authority an appellate power of great magnitude and therefore ss. 3(1) and 3(2) read together were, in their opinion, unconstitutional insofar as they were made applicable to minority institutions inasmuch as they were found to interfere substantially with their right to administer institutions of their choice. In coming to that conclusion, the learned Chief Justice relied upon the decisions in *State of* D *Kerala* v. *Very Rev. Mother Provincial,* [1971] 1 SCR 734; *D.A.V. College* v. *State of Punjab*, [1971] Suppl. SCR 688 and *Lilly Kurian* and accordingly agreed with Fazal Ali, J. that ss. 3(1) and 3(2) of the impugned Act could not be applied to minority institutions since to do so would offend against Art. 30(1). We may extract the relevant portion of the judgment:

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"Any doubt as to the width of the area in which Section 3(1) operates and is intended to operate, is removed by the provision contained in Section 3(2), by virtue of which the competent authority "shall" approve the proposal, "if it is satisfied that there are adequate and reasonable grounds" F for the proposal. This provision, under the guise of conferring the power of approval, confers upon the competent authority an appellate power of great magnitude. The competent authority is made by that provision the sole judge of the propriety of the proposed order since it is for that authority to see whether there are reasonable grounds for G the proposal. The authority is indeed made a judge both of facts and law by the conferment upon it of a power to test the validity of the proposal on the vastly subjective touchstone of adequacy and reasonableness. Section 3(2), in my opinion, leaves no scope for reading down the provisions of Section 3(1). The two sub-sections together confer upon H the competent authority, in the absence of proper rules, a

wide and untrammelled discretion to interfere with the proposed order, whenever, in its opinion, the order is based on grounds which do not appear to it either adequate or reasonable." A

"The form in which Section 3(2) is couched is apt to mislead by creating an impression that its real object is to cast an obligation on the competent authority to approve a proposal under certain conditions. Though the section provides that the competent authority "shall" approve the proposed order if it is satisfied that it is based on adequate and reasonable grounds, its plain and necessary implication is that it shall not approve the proposal unless it is so satisfied. The conferment of such a power on an outside authority, the exercise of which is made to depend on purely subjective considerations arising out of the twin formula of adequacy and reasonableness, cannot but constitute an infringement of the right guaranteed by Article 30(1)." B C D

It is also necessary to mention that all the three Judges (Chandrachud, CJ. Fazal Ali & Kailasam, JJ.) agreed that s. 4 of the Act which provided for an appeal, and s. 5 which was consequential to s. 4, were invalid as violative of Art. 30(1). E

However, there was a difference of opinion as to the applicability of ss. 3(3)(a), 3(3)(b), 6 and 7. We need only notice ss. 3(3)(a) and 3(3)(b) which pertained to the power of suspension. S. 3(3)(a) provided that no teacher employed in any private educational institution shall be placed under suspension except when an inquiry into the gross misconduct of such teacher is contemplated. S. 3(3)(b) provided that no such suspension shall remain in force for more than a period of two months and if the inquiry was not completed within that period, the teacher shall be deemed to be reinstated. Proviso thereto however conferred power on the competent authority, for reasons to be recorded in writing, to extend the period for a further period not exceeding two months. Chandrachud, CJ. found it difficult to agree with Fazal Ali, J. that these provisions were violative of Art. 30(1), thereby agreeing with Kailasam, J. that they were indeed regulatory. S. 3(3)(a), in his own words, contained but an elementary guarantee of freedom from arbitrariness to the teachers. The provision was regulatory in character since it neither denied to the management the right to proceed against an erring teacher nor indeed did it place an unreason- F G H

A able restraint on its power to do so. It assumed the right of the management to suspend a teacher but regulated that right by directing that a teacher should not be suspended for more than a period of two months unless the inquiry was in respect of a charge of gross misconduct. In dealing with s. 3(3)(a), the learned Chief Justice observed:

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> "Fortunately, suspension of teachers is not the order of the day, for which reason I do not think that these restraints which bear a reasonable nexus with the attainment of educational excellence can be considered to be violative of the right given by Art. 30(1)."

C He then stated:

> "The limitation of the period of suspension initially to two months, which can in appropriate cases be extended by another two months, partakes of the same character as the provision contained in s. 3(3)(a). In the generality of cases,
D a domestic inquiry against a teacher ought to be completed within a period of two months or say, within another two months. A provision founded so patently on plain reason is difficult to construe as an invasion of the right to administer an institution, unless that right carried with it the right to maladminister."

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He accordingly agreed with Kailasam, J. that ss. 3(3)(a) and 3(3)(b) which put restraints on the arbitrary power of suspension of teachers were regulatory in character and did not offend against the fundamental right of minorities under Art. 30(1).

F It would be seen that the decision of the Court in *Frank Anthony Public School's* case with regard to the applicability of sub-s. (4) of s. 8 of the Act to the unaided minority educational institutions is based on the view taken by the majority in *All Saints High School's* case which, on its turn, was based on several decisions right from *In re. the Kerala Education Bill, 1957* down to *St. Xavier,* including that in *Lilly Kurian.*
G It is therefore difficult to sustain the argument of learned counsel for the respondents that the decision in *Frank Anthony Public School's* case holding that sub-s. (4) of s. 8 of the Act was applicable to such institutions was in conflict with the decision of the Constitution Bench in *Lilly Kurian's* case and therefore required reconsideration. The contention of learned counsel for the respondents that sub-s. (4) of s. 8
H of the Act requiring the prior approval of the Director for the suspen-

sion of a teacher was a flagrant encroachment upon the right of the minorities under Art. 30(1) of the Constitution to administer educational institutions established by them is answered in all the earlier decisions of this Court right from *In re. the Kerala Education Bill, 1957* down to that in *All Saints High School's* case which have been referred to by the Court in *Frank Anthony Public School's* case. These decisions unequivocally lay down that while the right of the minorities, religious or linguistic, to establish and administer educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purpose of ensuring educational standards and maintaining excellence thereof can validly be prescribed.

It cannot be doubted that although disciplinary control over the teachers of a minority educational institution is with the management, regulations can be made for ensuring proper conditions of service for the teachers and also for ensuring a fair procedure in the matter of disciplinary action. As the Court laid down in *Frank Anthony Public School's* case, the provision contained in sub-s. (4) of s. 8 of the Act is designed to afford some measure of protection to the teachers of such institutions without interfering with the managements' right to take disciplinary action. Although the Court in that case had no occasion to deal with the different ramifications arising out of sub-s. (4) of s. 8 of the Act, it struck a note of caution that in a case where the management charged the employee with gross misconduct, the Director is bound to accord his approval to the suspension. It would be seen that the endeavour of the Court in all the cases has been to strike a balance between the constitutional obligation to protect what is secured to the minorities under Art. 30(1) with the social necessity to protect the members of the staff against arbitrariness and victimisation.

One should have thought that in a case like the present where the management charged the petitioner with diversion of funds and communicated the impugned order of suspension pending departmental inquiry to the Director, there would be some response from him. The management did not formally apply for his prior approval in terms of sub-s. (4) of s. 8 of the Act in view of the declaration by the High Court that it being a linguistic minority educational institution, it was protected under Art. 30(1) and no prior approval of the Director was required. Nevertheless, it took the precaution of communicating the impugned order of suspension to the Director. Presumably, the Director refrained from passing any order according or refusing approval having regard to the judgment of the High Court. In view of the recent decision in *Frank Anthony Public School's* case, it must be

held that the institution was governed by sub-s. (4) of s. 8 of the Act and therefore there was a duty cast on the Director to come to a decision whether such immediate suspension was necessary by reason of the gross misconduct of the petitioner as required by sub-s. (5) of s. 8. We refrain from expressing any opinion as to the seriousness or otherwise of the charge as that is a matter to be enquired into by a departmental proceeding. The fact however remains that there was no response from the Director within the period of 15 days as envisaged by the second proviso to s. 8(4). As a result of this, the impugned order of suspension has lapsed and it is so declared. Although the impugned order of suspension has lapsed, the management may yet move the Director for his prior approval under sub-s. (4) of s. 8 of the Delhi School Education Act, 1973, and the Director shall deal with such application, if made, in accordance with the principles laid down in *Frank Anthony Public School's* case.

Subject to this observation, the writ petition fails and is dismissed. There shall be no order as to costs.

P.S.S. Petition dismissed.