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Judgment  
2, 1966

IN THE PRIVY COUNCIL

No. 15 of 1965

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

THE BOARD OF TRUSTEES OF THE MARADANA MOSQUE  
Appellant

- and -

- 1. THE HONOURABLE BADI-UD-DIN MAHMUD  
Minister of Education
  - 10 2. S.F. DE SILVA, Director of Education
- Respondents

C A S E FOR THE <sup>RESPONDENTS.</sup> ~~APPELLANT~~

Record

1. This is an appeal from the Judgment and Decree of the Supreme Court of Ceylon, dated the 3rd September, 1963, dismissing, with costs, the Appellant's application for the issue of a Mandate in the nature of a Writ of Certiorari to quash an Order, dated the 19th August, 1961, made by the Minister of Education (hereinafter also called "the 1st Respondent") under Section 11 of the Assisted Schools and Training Colleges (Special Provisions) Act No. 5 of 1960 (hereinafter also called "the 1960 Act") and published in the Ceylon Government Gazette, Extraordinary, dated the 21st August, 1961. By the said Order (Ex.P7) it was declared that, "with effect from the 21st August, 1961, C/Zahira College, Colombo 10, shall cease to be an Un-aided School and shall be deemed for all purposes to be an Assisted School and that the Director of Education "the 2nd Respondent" shall be its Manager."

pp.17,21.

Ex.P7,p.70.

Record

Ex.P9,p.76.

pp.76,77.

2. The Appellant, in these proceedings, questioned also the validity of the consequential Vesting Order (for relief against which it did not, in its petition, specifically pray) made by the 1st Respondent under Section 4 of the Assisted Schools and Training Colleges (Special Provisions) Act No. 8 of 1961 (hereinafter also referred to as "the 1961 Act") and published in the said Gazette, dated the 2nd December, 1961. By this Order (Ex.P9) it was declared that, with effect from the 20th December, 1961, all property specified in the Schedule appended thereto, being property liable to vesting, shall vest in the Crown. The said Schedule contained details of the Premises in which C/Zahira College, Maradana, was conducted and maintained on July 21, 1960, and included Movable property used for the conduct and maintenance of the School, Moneys lying to the credit of the School, etc.

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3. Assuming the competency of these proceedings, the main question for determination on this appeal is whether or not, in the circumstances of this case, the said Orders made by the 1st Respondent can properly be held to be invalid as being made -

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- (i) in excess or by an erroneous or improper exercise of the powers conferred on the 1st Respondent by the 1960 Act and the 1961 Act; or, alternatively,
- (ii) under statutory provisions which are, or which empower the 1st Respondent to make Orders which are, in contravention of Section 29(2) of the Constitution of Ceylon.

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4. Relevant portions of the 1960 Act, the 1961 Act, and the Constitution of Ceylon (the Ceylon (Constitution) Orders in Council, 1946 and 1947) are included in an Annexure hereto.

Annexure

5. It is convenient here to state that by Section 6 (i) of the 1960 Act a duty is imposed upon every proprietor of an unaided School to pay members of the School staff the salaries and allowances due to them for any month not later than the tenth day of the subsequent month; and that by

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10 Section 11 of the same Act the Minister of Education, after consultation with the Director of Education, if satisfied that an unaided School is being administered in contravention of any of the provisions of the Act, may, by Order published in the Gazette, declare that, with effect from a specified date, the School in question shall cease to be an unaided School, and shall be deemed to be an Assisted School, of which the Director of Education shall be the manager.

It is the Respondents' case that the said Orders made by the 1st Respondent which the Appellant now seeks to quash were made after the Appellant had clearly failed to comply with the provisions of the said Section 6(i) of the 1960 Act and upon the 1st Respondent's being satisfied (after consulting the 2nd Respondent) that the School was being administered in contravention of the said Act.

20 6. The facts are as follows:-

In its Petition, dated the 14th December, 1961, filed in the Supreme Court, praying for a Mandate in the nature of a Writ of Certiorari to quash the said Order made by the 1st Respondent under Section 11 of the 1960 Act (see paragraph 1 ante and paragraph 10 post), the Appellant Board, a Corporation constituted by the Maradana Mosque Ordinance (C.347) and, as such, the proprietor of Zahira College, Colombo (herein also referred to as "the School") in whom was vested the general government and direction of the School, stated inter alia, that it had, under Section 3 of the 1960 Act, elected to administer the School (which was an "Assisted School") as an unaided School and had, in accordance with Section 5 of that Act, duly notified the 2nd Respondent of that fact and that thus, as from the 30th November, 1960, the School had been administered as an unaided School the responsibility for the management of which was, as from that date, in the Appellant and not in the 2nd Respondent.

pp.1-5.

p.1,11.23-27.

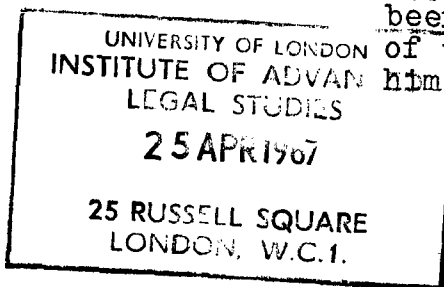
p.1,1.28 to p.2,1.5.

40 7. The Appellant's case, as set out in its Petition, continued as follows:-

Up to the end of June, 1961, the Principal of the School (hereinafter called "the Principal"),

p.2,11.6-13.

- Record acting on the Appellant's behalf, had paid the salaries and allowances due to the Staff from funds available to him. Later, when the said funds were "getting insufficient", the Appellant asked the Principal to "continue the collections from the donors of the Zahira Benefactors Fund and also to utilize the profits from the Zahira College Hostel" and in the event of a deficiency to apply to the Appellant's Executive Committee (hereinafter also called "the Executive Committee"). 10
- p.2,1114-22. On or about the 8th August, 1961, at the instance of the Manager of the School, who was also President of the Executive Committee (hereinafter also, called "the President"), the Principal "undertook to pay the salaries of the Staff for the month of July and the President trusted the Principal to pay the said salaries in due time. The Principal paid some of the members of the Staff their salaries before 10th August, 1961, but failed to pay their salaries to the rest of the Staff and also neglected to inform in time the said Mr. Ismail" /the President/ "of his failure to make the said payment." 20
8. Continuing, the Appellant said that, in reply to the 2nd Respondent's letter to the President, dated the 11th August, 1961, (Ex.Pl), asking the President "to show cause why steps should not be taken under Section 11 of Act No.5 of 1960 for failure to pay the July salaries in time", the President, by his letter, dated the 15th August, 1961, replied to the effect that the failure to pay the July salaries to "some members" of the Staff - the failure in fact extended to fifty-two out of sixty-four members of the Staff - was due to "some misunderstanding", that the said salaries would be paid by the 18th August, 1961, and that salaries for subsequent months would be paid on the due dates. The said "misunderstanding" was explained as follows: "the President bona fide assumed that when the Principal undertook on the 8th August, 1961, to pay the salaries of the Staff, the funds available to the Principal from the aforesaid collections" /i.e. from the donors of the Zahira benefactors Fund/ "made by him would be adequate for the purpose". The Appellant stated, further, that had the President been advised by the Principal of the insufficiency of the funds the President would have furnished him with the money required for the payment of 30
- p.2,11.23-32  
Ex.Pl,p.61.
- p.2,11.33-39 40



salaries to the rest of the Staff. The Principal's denials as to the undertaking alleged to have been given by him, on the 8th August, 1961, and other connected matters, appear in his Affidavit hereinafter referred to.

Record

9. Continuing its narrative in the said Petition, the Appellant referred to a Telegram (Ex.P3), dated the 15th August, 1961, which the President had received from the teachers to the effect that they would not accept salaries from the President (who was also the Manager) on principle, and that they expected redress from the 2nd Respondent. According to the Appellant, the President had, on the 17th August, 1961, provided the funds necessary for the payment of the salaries but the teachers refused to accept payment, saying, in their letter, (Ex.P4), dated the 18th August, 1961, that they would not accept an offer which was made for the purpose, inter alia, of prejudicing their claims against the management which had flagrantly violated the said Section 6(i) of the 1960 Act, as amended. By his letter, (Ex.P5) dated the 21st August, 1961, the President informed the 2nd Respondent of the refusal of the offer of payment of salaries and enclosed the said letter which he had received from the teachers.
10. The Appellant then referred to the fact that, the President had received from the 2nd Respondent, a letter (Ex.P6) dated the 21st August, 1961, in which, with reference to the President's letter of the 15th August, 1961, (see paragraph 8 hereof) the 2nd Respondent had stated that "the 1st Respondent has ordered that Zahira College, Colombo" [i.e. the School] "should be taken over for Director Management, as Section 6(i) of Act No.5 of 1960 was violated". The Gazette Notification (Ex.P7) of the event was as follows:-

p.2,11.40-42.  
Ex.P3, p.64.

p.3,11.1-5.

Ex.P4,p.67.

p.3,11.6-8.  
Ex.P5,p.68.

p.3,11.9-17.  
Ex.P6,p.69.

Ex.P7,p.70.

"By virtue of the powers vested in me by Section 11 of the Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960, I Badiudin Mahmud, Minister of Education and Broadcasting, declare that, with effect from the 21st day of August, 1961, C/Zahira College, Colombo 10, shall cease to be an Un-aided School and shall be deemed for all purposes to be an Assisted School and that the Director of Education shall be its Manager."

Record  
p.3,11.18-19. In accordance with this Order the Respondents have, as from the 21st August, 1961, taken over the management and administration of the School.

11. The main grounds upon which the Appellant's Petition was founded appear to have been as follows:-

- p.3,11.20-22. (A) In purporting to make the said Order under Section 11 of the 1960 Act, the 1st Respondent had "exceeded his powers and acted ultra vires." 10
- p.3,11.23-24. (B) The conditions and/or facts necessary for the invocation and/or exercise of the 1st Respondent's powers under the said Section 11 were not present.
- p.3,11.25-27. (C) The Respondents have misdirected themselves in concluding that circumstances existed which justified the making of an Order under Section 11.
- p.3,11.28-30. (D) The Respondents have misconceived the extent and nature of their powers under the 1960 Act and have not addressed their minds to essential issues. 20
- p.3,11.31-43. (E) "The Respondents have misdirected themselves in taking the view that on any breach of the letter of Section 6 of Act No. 5 of 1960 read with Act No. 8 of 1961, however trivial and unintentional it be, they have no alternative but to make an Order under Section 11 of No. 5 of 1960 taking over the school." This is shown by the views expressed by the 1st Respondent in a statement (Ex.P8) which he broadcast over Radio Ceylon subsequent to his making the said Orders. 30
- Ex.P.8,p.71.
- p.4, 11.1-7. (F) Administration of an unaided School in contravention of the provisions of the 1960 and 1961 Acts cannot be established by proof of an "isolated default".
12. Further grounds upon which the Appellant appears to have relied were as follows:- 40
- p.4,11.11-16. (G) In making the said Orders the

Respondents did not cause a proper enquiry to be made and did not act judicially nor with due regard to the principles of natural justice.

Record

10 (H) In his said broadcast statement (Ex.P8) the 1st Respondent had stressed that, in addition to its failure to observe the law as to the payment of salaries and allowances of the Staff, the Executive Committee had also failed to comply with Section 6(k) of the 1960 Act (as amended) which imposes upon the proprietor of an unaided School, a mandatory duty to satisfy the Director of Education as to the availability of funds to conduct and maintain the School and a similar duty to conduct the School to the Director's satisfaction. The Appellant was not notified of this failure of its Executive Committee and was not given an opportunity of disproving the charge. The Respondents therefore had been influenced by "irrelevant considerations."

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p.4,11.17-33.  
Ex.P.8,p.71.

Annexure.

30 (I) The Order under Section 11 of the 1960 Act seeks to divest the Appellant of the management of the School and to that extent alters its constitution against its will. Neither the 1960 Act nor the 1961 Act can empower the Respondents to make an Order under Section 11 of the 1960 Act which would have this effect; for to do so would be to contravene Section 29(2) of the Constitution of Ceylon which, inter alia, prohibits the alteration, by any law, of the constitution of any religious body except with the consent of the governing authority of that body or, if the body be incorporated, at its request.

p.4,1.34 to  
p.5,1.6.

Annexure.

40 (J) The Order under Section 11 of the 1960 Act (taking over the School) and the Vesting Order under Section 4 of the 1961 Act (vesting the property of the School in the Crown) have the effect of restricting the free exercise of the Muslim religion so far as the School is concerned and, therefore, offend against the said Section 29(2) of the Constitution.

p.5,11.13-26.

The Appellant's Petition was supported by an Affidavit of the President, dated the 14th December, 1961.

pp6-11.

Record  
pp.11-13.

13. In this Affidavit, dated the 16th February, 1962, the 2nd Respondent said that on the 11th August, 1961, he was informed by certain teachers on the Staff of the School that their salaries for July, 1961, had not been paid. In support of this statement, he produced a copy of a letter (Ex.2RI) signed by eighteen of such teachers. Continuing, he said:-

Ex.2RI,p.58

p.12  
Ex.P1,p.61

"3. On the 11th August, 1961, I wrote the letter 'P1' which has been produced by the Petitioner /In this he asked the President of the Executive Committee to show cause, on or before the 18th August, 1961, why the School should not be taken over for Director Management in terms of Section 11 of the 1960 Act; see paragraph 8 ante7.

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p.12.

"4. Representations were made to me by some of the teachers aforesaid that the delay in payment of the salaries had brought about grave hardship to their families and dependents. I produce copies of letters, dated 11th August, 1961, and 14th August, 1961 marked 2R2 and 2R3 respectively.

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Ex.2R2,p.59  
Ex.2R3,p.62.

p.12.

"5. Of the sixty-four teachers on the Staff of the said School fifty-two teachers had not been paid their salaries for July, 1961.

p.12.

"6. Among the said unpaid teachers an Action Committee had been formed to fight for their rights. The said teachers as a body had refused to accept the late offer for payment of salary and had requested me to redress their grievances.

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p.12,11.21-  
23.

"I had credible information that the said teachers contemplated strike action and I considered that such action would cause serious damage to the educational interest of 1,846 students of the School."

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p.12,11.26-  
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14. Further, the 2nd Respondent said, in his affidavit, that the 1st Respondent's Order, dated the 19th August, 1961, taking over the School,



was made after consulting him and after the 1st Respondent was satisfied that the School was being administered as an unaided School in contravention of Section 6(i) of the 1960 Act (as amended by the 1961 Act). He said, also, that the Appellant had not protested or made representations to either the 1st Respondent or himself against the said Order. He then specified the several steps he had taken to re-organise the School in accordance with the Government's established policy.

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p.13.

15. In his affidavit, dated the 16th February, 1962, the Principal of the School said, inter alia, that in his letter to the Manager of the School (who was also the President of the Executive Committee) (Ex.X-I.), dated the 5th June, 1961 he had said that the anticipated support for the Benefactors of Zahira Fund (from which the payment of the teachers' salaries, from December, 1960, was to be made) was not forthcoming; that, on the 19th July, 1961, he wrote (Ex.P5) to the said Manager drawing attention to the Appellant's legal obligation to pay the teachers' salaries on or before the due date; and that at a meeting of the Executive Committee, held on the 26th July, 1961, he was "requested to utilise the profits of the Zahira College Hostel that would accrue thereafter for the payment of the teachers' salaries until the financial position improved".

pp,14-17.

p.15,11.1-4.  
Ex,X-I,p.37.

p.15,11.26-30.  
Ex.P5,p.46.

p.15,11.34-37.

16. Paragraphs 18 and 19 of the Principal's affidavit, contradicting several statements made by the Appellant in its Petition hereinbefore referred to (see paragraphs 7 and 8 ante) were as follows:-

"18. I have read the affidavit affirmed to by the President of the said Executive Committee which has been filed in these proceedings and specifically deny that on or about 8th August, 1961, I undertook to pay the salaries of the Staff for the month of July. The President of the said Executive Committee was at all material times and particularly on 8th August, 1961, and thereafter, fully aware of the fact that the money in my hands was insufficient to pay the salaries of

p.16,11.23-34.

Record

all the unpaid teachers by the 19th August, 1961. Consequently I deny that, after representations were made by me that the funds to pay the teachers were insufficient I was asked to apply to the said Executive Committee 'in the event of any deficiency' after collecting from donors of the Zahira Benefactors Fund and utilising profits from the Zahira College Hostel.

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p.16,11.34-  
36.

"I specifically deny that there was any misunderstanding in consequence of any undertaking given by me to pay the teachers' salaries.

pp.16-17.

"19. At no time after the 10th August, 1961, till a letter to the Editor of the Ceylon 'Daily News' appeared in an issue of that paper on the 9th December, 1961, did the Manager, either by letter or orally, accuse me of a breach of an undertaking to pay the teachers' salaries for July by the 10th August. I produce a copy of the said letter marked 'X-10'. I replied to the said letter by my letter to the Editor of the Ceylon 'Daily News' which appeared in the issue of that paper on the 15th December, 1961, a copy of which I produce, marked 'X-11'."

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Ex.X-10, p.77.

Ex.X-11, p.80.

pp.17-18.

17. The Appellant's Petition came up for hearing in the Supreme Court, on the 9th March, 1962, before Herat J. On behalf of the Respondents a preliminary objection to the Petition was raised on three grounds viz: (a) the Appellant's acquiescence in the acts of the Minister of Education; (b) laches; and (c) the complete reorganization of the School which had followed the takeover and which it would be against public policy to disturb. It is sufficient to state here that the objection was overruled and the Petition was subsequently heard on its merits.

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18. Following a hearing on its merits in the Supreme Court, Herat J., by his Judgment, dated the 3rd September, 1963, dismissed the Petition with costs.

The learned Supreme Court Judge was of opinion that a writ of Certiorari did not lie in the circumstances of this case in which there had been no judicial act but only administrative or executive action which, if illegal, could be remedied by a different procedure. On this topic he said:-

Record  
pp.18-21.  
p.19,l.43.to  
p.20,l.24.

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"The essence of the judicial process is inquiry, the taking and consideration of evidence and the hearing of both sides interested in the matter. Very often even where purely ministerial or executive acts are concerned the value of the judicial process is such that the person called upon to decide adopts the judicial process by holding some sort of inquiry and hearing both sides, but the act still remains a ministerial act. In the case of the statute under consideration there is no requirement of any inquiry. The Minister can consult the Director and can satisfy himself by perusing the file forwarded by the Director. If the Minister is then personally satisfied that there has been a contravention of a provision of the Act, it is for him to act under Section 11. It may be that the act of the Minister is unjustified but as his act is a purely ministerial one it cannot be questioned by way of certiorari but has to be tested in our Courts in other ways."

p.20,11.24-  
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19. The learned Supreme Court Judge's second reason for dismissing the Petition was thus stated by him:-

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"The act of the Minister was intra vires and not ultra vires. The words of Section 11 are 'being administered in contravention of the provisions.' In my view one flagrant act of contravention satisfies the condition of 'being administered in contravention.' As stated earlier 52 teachers out of a total of 64 were not paid their salaries for July, 1961,

p.20,11.42-51.

Record

by the 10th August, 1961, and they had brought their grievances to the notice of the Director. The Director and the Minister acted in consultation with each other and the Order under Section 11 was legally valid. I uphold the validity of the Minister's act and I hold that in the circumstances of the case it was a perfectly honourable and legal action for the Minister to do.

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p.21,11.1-5.

"I also hold that the Vesting Order under Section 4 of the Act 8 of 1961 was a ministerial act and cannot be questioned by way of Certiorari. In fact it is a purely consequential Order flowing from the Order made under Section 11. I also hold that this Order was intra vires."

pp.21-22.

20. A Decree in accordance with the Judgment of the Supreme Court was drawn up on the 3rd September, 20 1963, and against the said Judgment and Decree this appeal is now preferred to Her Majesty in Council, the Appellant having obtained leave to appeal by Orders of the Supreme Court, dated the 19th February, 1964, and the 8th May, 1964.

pp.24,26.

In the Respondents' respectful submission the appeal ought to be dismissed, with costs, for the following among other -

R E A S O N S

1. BECAUSE, on a true interpretation of the statutory provisions under which the 1st Respondent acted, it is clear that, in making the said Order taking over the School under Section 11 of the 1960 Act and the said Vesting Order under Section 4 of the 1961 Act, the 1st Respondent was acting within, and not in excess of, the powers which are conferred upon him. 30
2. BECAUSE the 1st Respondent's assessment of, and conclusions on, questions of fact or law which preceded his decision that the School was being administered in contravention of the provisions of the 1960 Act, as amended, being, or related to, matters exclusively within the statutory powers conferred upon 40

him, cannot be enquired into in these proceedings.

3. BECAUSE in any event it is common ground that the Appellant failed to pay the salaries and allowances of fifty-two teachers (out of a total of sixty-four) for the month of July, 1961, before the 10th August, 1961, and this was clearly a contravention of Section 6(i) of the 1960 Act.
10. 4. BECAUSE the said admitted failure to pay the salaries and allowances due in no less than fifty-two cases cannot reasonably be regarded as a single contravention or an "isolated default" which does not come within the words "is being so administered in contravention of any of the provisions of this Act" as enacted in Section 11(4)(b) of the 1960 Act.
- 20 5. BECAUSE, in any event, the said words in Section 11(4)(b), on a true interpretation thereof, include administration in contravention of the Act - whether the contravention be an isolated default or otherwise.
- 30 6. BECAUSE an interpretation which has the effect of excluding a single contravention or an isolated default from the said words in Section 11(4)(b) would, contrary to law, fetter the powers of the Minister in dealing with maladministration at the earliest possible stage.
7. BECAUSE neither the 1960 Act nor the 1961 Act contravenes Section 29(2) or any other Section of the Constitution of Ceylon.
8. BECAUSE the Appellant is not a "religious body" within the meaning of those words as used in Section 29(2)(d) of the Constitution of Ceylon.
- 40 9. BECAUSE it is contrary to reason to suppose that the effect of either of the Orders made by the 1st Respondent was to restrict the free exercise by Muslims of their religion.
10. BECAUSE the Vesting Order made by the 1st

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Respondent under Section 4 of the 1961 Act is, by virtue of Section 9 thereof, final and conclusive and, not being in contravention of the Constitution of Ceylon, its validity cannot be questioned in these proceedings, which fact renders the quashing of the earlier Order taking over the School a remedy of doubtful value.

11. BECAUSE the decision of the learned Judge of the Supreme Court was correct.

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ANNEXURE

The Constitution of Ceylon

(Ceylon (Constitution) Orders in Council, 1946 and 1947)

Legislative Powers and Procedure

29. (1)	Subject to the provisions of this Order, Parliament shall have power to make laws for the peace, order and good government of the Island.	Power of Parliament to make laws.
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(2) No such law shall -

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- (a) prohibit or restrict the free exercise of any religion; or
- (b) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not liable; or .....

(c) .....

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- (d) alter the constitution of any religious body except with the consent of the governing authority of that body:

Provided that, in any case where a religious body is incorporated by law, no such alteration shall be made except at the request of the governing authority of that body.

(3) Any law made in contravention of subsection (2) of this Section shall, to the extent of such contravention, be void.

The Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960

(As amended by No. 8 of 1961)

- Short title. "1. This Act may be cited as the Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960.
- Schools to which this Act applies. 2. This Act shall apply to every Assisted school, other than any such school as is specified in the Schedule to this Act, and the expression "Assisted school to which this Act applies", wherever it occurs in this Act, shall be construed accordingly. 10
- Power of Minister to appoint the Director as the manager of certain Assisted Schools. 3. (1) The Minister may, by Order published in the Gazette, declare that, with effect from such date as shall be specified in the Order, the Director shall be the manager of every Assisted school to which this Act applies:
- Provided that, where the proprietor of any Assisted school to which this Act applies (not being an Assisted training college) has, at any time before the date specified in such Order, served under section 5 a written notice on the Director under this Act to the effect that he has from the date specified in the notice elected to carry on the administration of such school as an unaided school, such Order shall, with effect from the date so specified in the notice, cease to apply to such school. 20
- (2) The date specified in the Order made and published under sub-section (1) may, before that date, be altered by the Minister, after consultation with the Director, by Order published in the Gazette. 30
- Effect of the making and publication of an Order under Section 3. 4. On the date specified by the Minister in the Order made and published under section 3, the following provisions shall have effect in relation to every Assisted school to which that Order applies on that date:-
- (a) the manager of such school on the day immediately prior to that date shall cease to hold office as such manager; 40
- (b) the Director shall be manager of such school.



5. (1) The proprietor of any Assisted School (not being an Assisted training college) which is a Grade I or Grade II school may, at any time before the date specified in the Order made and published under section 3, elect to administer such school as an unaided school and if, before that date, he serves a written notice on the Director to the effect that he has made such an election and specifying the date of such election (such date being a date earlier than the date specified in the Order) the provisions of the Proviso to the said section 3 shall apply in the case of such school with effect from the date of such election.

Proprietor of any Assisted Grade I or Grade II School may elect to administer such School as an unaided school.

(2) Where notice of an election under sub-section (1) has been served on the Director as required by that sub-section in respect of any Assisted school, then, with effect from the date of such election, such school shall cease to be an Assisted school and shall be administered as an unaided school.

(3) A proprietor of an Assisted school who has elected in terms of sub-section (1) of this section to administer his school as an unaided school may at any time serve notice on the Director that he has revoked such election and from the date on which such notice is received by the Director such school shall be administered in the same manner as if the Director had become the manager of such school in terms of Section 4 of this Act.

6. The proprietor of any school which, by virtue of an election made under section 5, is an unaided school -

Special provisions applicable to the proprietor of a School which, by virtue of an election, made under Section 5, is an Unaided School.

(a) shall educate and train the pupils in such school in accordance with the general educational policy of the Government;

(b) shall continue to maintain all such facilities and services as were maintained by such school on the day immediately preceding the twenty-first day of July, 1960;

(c) shall not, after the date of such election, admit a pupil whose parent does not profess the religion of such proprietor unless prior permission is obtained from the Director;

- (d) shall not levy fees other than any fees for facilities and services which are permitted by regulations made in that behalf under the Education Ordinance, No. 31 of 1939;
- (e) shall make no reduction in the accommodation provided in such school for pupils;
- (f) shall not dismiss or discontinue any pupil who was in that school on the day prior to the date of such election, except upon disciplinary grounds and with the approval of the Director; 10
- (g) shall comply with the provisions of any written law applicable to such school and matters relating to education;
- (h) shall not, except with the prior approval of the Director, terminate the services of any teacher or employee who is on the staff of such school on or after the twenty-first day of July, 1960; 20
- (i) shall pay to every teacher and employee who is on the staff of such school the salary and allowances due to such teacher or employee in respect of any month not later than the tenth day of the subsequent month;
- (j) shall not, except with the prior approval of the Director, alter the terms and conditions (including terms relating to salary, allowances and leave) of service of any teacher or employee who is on the staff of such school on or after the twenty-first day of July, 1960; 30
- (k) shall satisfy the Director that necessary funds to conduct and maintain the school will be available and shall conduct such school to the satisfaction of the Director; and
- (l) shall not directly or indirectly by himself or any other person cause or permit any other person to have any strike or lock out within or about the school premises which would 40

have the effect of preventing such school being conducted to the satisfaction of the Director.

11. Where the Minister is satisfied -

Power of Minister to make an Order appointing the Director as Manager of an Unaided School.

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(a) after examination of any representations made to him by any person or persons entitled under sub-section (b) of section 8 to vote at any poll held by the Director under sub-section (2) of section 7, that the decision in favour of such school being administered by the proprietor as an unaided school with the right to levy fees was obtained by fraudulent or improper means; or

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(b) after consultation with the Director, that any school which, by virtue of the provisions of this Act, is being administered as an unaided school, is being so administered in contravention of any of the provisions of this Act or any regulations or Orders made thereunder or of any other written law applicable in the case of such school,

the Minister may by Order published in the Gazette, declare that, with effect from such date as shall be specified in the Order, -

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- (i) such school shall cease to be an unaided school,
- (ii) such school shall be deemed for all purposes to be an Assisted school, and
- (iii) the Director shall be the manager of such school.

17. In this Act, unless the context otherwise requires -

Interpretation.

"Assisted School" means any school or training college to which aid is contributed from State funds or was contributed from such funds on July 21, 1960;

"Director" means the Director of Education.

The Assisted Schools and Training Colleges  
(Supplementary Provisions) Act,

No. 8 of 1961

Short title.	"1. This Act may be cited as the Assisted Schools and Training Colleges (Supplementary Provisions) Act, No. 8 of 1961.	
Application of the Act.	2. (1) This Act shall apply to every assisted school of which the Director was on December 1, 1960, or is, or becomes, the manager by virtue of the operation of any Order made under the Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960, (hereafter in this Act referred to as the "principal Act"). Every such school is hereafter in this Act referred to as a "school to which this Act applies".	10
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Vesting Order in respect of property.	4.(1) Where the Minister, considers it desirable so to do, the Minister may by order publish in the Gazette (in this Act referred to as a "Vesting Order"), declare that, with effect from such date as shall be specified in the Order (not being a date earlier than fourteen days after the date of such publication), all property of the description specified in the Order, being property liable to vesting, shall vest in the Crown.	20
	(2) A Vesting Order shall take effect notwithstanding that any arbitration proceedings under this Act, or proceedings before any court in pursuance or supposed pursuance of any other law, are pending in respect of any property specified in that Order.	30
	(3) A Vesting Order may be made under sub-section (1) in respect of any property notwithstanding that no notice has been published under section 3 in relation to that property.	
Power to lodge objections in respect of any Vesting Order.	5. Any person interested in any property in respect of which a Vesting Order is made may, before the expiry of a period of fourteen days after the date of the publication of the Order in the <u>Gazette</u> , lodge with the Director a written objection to such Order on the ground that such	40

property is not property liable to vesting. Such objection shall be referred by the Director for determination by arbitration as hereinafter provided in this Act.

6. A Vesting Order shall have the effect of vesting the property in respect of which such Order is made absolutely in Her Majesty, free from all encumbrances, with effect from the date specified in such Order.

Effect of Vesting Order.

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8. No Vesting Order shall be deemed to be void or invalid by reason of any determination on a reference to arbitration under this Act that any part of the property in respect of which the Order was made was not property liable to vesting.

Vesting Order not to be void or invalid by reason of any Determination on a reference to arbitration.

9. Subject to any determination on arbitration under this Act, a Vesting Order shall be final and conclusive and shall not be called in question in any court whether by way of writ, order, mandate, or otherwise.

Vesting Orders to be final and conclusive.

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33. In this Act, unless the context otherwise requires, -

Interpretation.

"assisted school" has the same meaning as in the principal Act;

"Director" means the Director of Education  
.....

"person interested", in relation to -

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(a) any immovable property, means a person having an interest in such property as owner, co-owner, mortgagee, lessee or otherwise, whether absolutely for himself or in trust for any other person or for any charitable, religious, educational or other purpose; or

- (b) any movable property means a person having an interest in such property as owner, co-owner, pledgee or otherwise, whether absolutely for himself or in trust for any other person or for any charitable, religious, educational or other purpose;

"property liable to vesting" means any property belonging to any class or description of property for the time being specified in the First Schedule to this Act, but does not include - 10

- (a) any temple, mosque, kovil, church, chapel, or other place (by whatsoever name called) which was on July 21, 1960, and is on the date of commencement of this Act, used for the purpose of public religious worship; or

- (b) any movable property which is, on the date of such commencement, kept in such temple, mosque, kovil, church, chapel, or other place, for exclusive use for that purpose;" 20

No. 15 of 1965

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

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BETWEEN:

THE BOARD OF TRUSTEES OF THE  
MARADANA MOSQUE

Appellant

- and -

1. THE HONOURABLE BADI-UD-DIN MOHAMUD  
MINISTER OF EDUCATION
2. S.F. DE SILVA, DIRECTOR OF  
EDUCATION

Respondents

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C A S E

FOR THE RESPONDENTS

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T.L. WILSON & CO.,  
6, Westminster Palace Gardens,  
London, S.W.1.