



सत्यमेव जयते



# Annual Report 2011-2012

**NATIONAL COMMISSION FOR MINORITY EDUCATIONAL INSTITUTIONS**

Gate No. 4, 1st Floor, Jeevan Tara Building  
5, Sansad Marg, Patel Chowk, New Delhi - 110 001



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# ANNUAL REPORT 2011-12

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## CHAPTER 1 – INTRODUCTION

Section 16 of the National Commission for Minority Educational Institutions (NCMEI) Act, 2004 mandates the Commission to prepare the Annual Report for each financial year giving a comprehensive account of its activities during previous financial year and forward a copy of the same to Central Government. In compliance whereof this is the 7<sup>th</sup> Annual Report of the Commission for the year 2011-2012.

To begin with National Commission for Minority Educational Institutions (NCMEI) was established through the promulgation of an Ordinance dated 11<sup>th</sup> November 2004 which was replaced by NCMEI Act passed by the Parliament in December 2004. The Ministry of HRD constituted the Commission on 16<sup>th</sup> November 2004 with its Headquarters in New Delhi. On 26<sup>th</sup> November 2004 Government issued notification appointing Justice M.S.A. Siddiqui as its first Chairman and 2 other members of the Commission.

**NCMEI Act, 2004:** The National Commission for Minority Educational Institutions Act, 2004 (2 of 2005) was notified on 6th January 2005. The National Commission for Minority Educational Institutions has been constituted under the Act. The main functions and powers of the Commission are:

- (a) to advise the Central Government or a State Government on any question relating to the education of minorities that may be referred to it;
- (b) to enquire into specific cases of deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its findings to the appropriate Government for its implementation; and
- (c) to do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

**NCMEI (Amendment) Act, 2006:** On the basis of the suggestions received from various quarters for making the Commission more proactive and its functioning more specific, recommendations were made by the Commission to the Government for carrying out amendments to the Act. Government introduced the National Commission for Minority Educational Institutions (Amendment) Bill 2005 in Parliament. However, in the wake of 93rd constitutional amendment passed by the Parliament incorporating Article 15 (5) to the Constitution making specific provision for educational advancement of the Scheduled Castes, Scheduled Tribes and socially and educationally backward classes of the citizens, it became expedient to bring out the amendments to the NCMEI Act through an Ordinance. Accordingly, an Ordinance was notified by the Government on 23rd January, 2006 which was later on replaced by the National Commission for Minority Educational Institutions (Amendment) Act, 2006 passed by the Parliament and notified on 29th March, 2006.

The amendment under the National Commission for Minority Educational Institutions Amendment Act, 2006 brought all affiliating universities within the ambit of the Act to afford

a wider choice to the minority educational institutions with regard to affiliation. New Sections were incorporated to maintain the sanctity of the proceedings of the Commission and to amplify the powers of the Commission to enquire into matters relating to deprivation of educational rights of the minorities by drafting the services of any officer of the Central or State Governments. The Commission was empowered to decide on questions relating to Minority Status of educational institutions and to cancel the Minority Status of those institutions which had failed to adhere to the approved norms. A deeming provision with reference to obtaining 'No Objection Certificate(NOC)' by the minority educational institutions from the State Governments was also incorporated, whereunder, a Minority Educational Institution could proceed with the establishment of the same if the State Government did not communicate its decision on granting NOC within 90 days. The Commission was also granted appellate jurisdiction in matters of refusal by the State Governments to grant NOC for establishing a minority educational institution.

The said amendment inserted, among others, Section 12F under which the jurisdiction of all courts, except the Supreme Court and High Courts exercising writ jurisdiction, was barred to entertain any direct applications or other proceeding in respect of any order of the Commission. Section 12F of NCMEI Act, 2004 reads as under:

**12F. "Bar of jurisdiction** – No court (except the Supreme Court and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) shall entertain any suit, application or other proceedings in respect of any order made under this Chapter."

Subsequently, various suggestions were received about the provision in Section 12B (4) of the NCMEI Act suggesting deletion of the provision of consultation with the State Government. Many suggestions were received about the need to make amendment in Section 2(g) regarding the definition of minority educational institutions where universities were excluded. Suggestions were also made relating to the need to remove the ambiguity in the provision of Section 10 concerning grant of 'No Objection Certificate' for establishment of a minority educational institution. The suggestions were examined in the Commission. It was felt that the requirement of consultation with the State Government for deciding an appeal by the Commission as per Section 12B of the Act is against the principles of natural justice. It was viewed that the consultation with the State Government took away the substantive right of appeal created in favour of an aggrieved party. Mere reading of the provision in Section 10(1) of the Act gave an impression that 'No Objection Certificate' was required for establishment of a minority educational institution in all cases. However, as per the provisions of various laws regulating the establishment of such institutions especially relating to technical and professional colleges, it was not mandatory to get the 'No Objection Certificate' from the competent authority under the State Government. Therefore, necessary amendment of Section 10(1) was felt necessary. Considering the steady increase in the workload of the Commission and to make the Commission more representative a provision for an additional Member over and above existing two Members was also felt necessary. Accordingly, on the recommendations of the Commission, the NCMEI Act, 2004 was amended to provide for the same.

## **NCMEI Amendment Act 2010**

To make the Commission more representative the Government amended National Commission for Minority Educational Institutions Act by Act 20 of 2010 w.e.f. 1.9.2010 increasing the number of members in the Commission from two to three.

The Commission is a quasi-judicial body and has been endowed with the powers of a Civil Court. This is the first time that a Commission has been established by the Central Government for protecting and safeguarding the rights of the minorities to establish and administer educational institutions of their choice. According to the provisions of the Act, Commission has adjudicatory functions and recommendatory powers. The mandate of the Commission is very wide. Its functions include, inter-alia, resolving the disputes regarding affiliation of minority educational institutions to a university, addressing the complaints regarding deprivation and violation of rights of minorities, to establish and administer educational institutions of their choice and to advise the Central Government and the State Governments on any question relating to the educational rights of the minorities referred to it.

The Commission which started functioning from Shastri Bhavan moved to its own premises at Jeevan Tara Building located at Sansad Marg, New Delhi in August 2005. Presently, the Commission is functioning from its office at 1st Floor (Gate No. 4), Jeevan Tara Building, 5, Sansad Marg, New Delhi. Initially Government sanctioned 22 posts for the Commission for providing necessary administrative and office support. Later, 11 additional posts were sanctioned by the Government. At present, Commission has the following 33 posts:-

<b>S. No.</b>	<b>Name of Post</b>	<b>Number</b>
1.	Secretary	1
2.	Deputy Secretary	1
3.	Sr. PPS	1
4.	Under Secretary	1
5.	Section Officer	1
6.	Private Secretary	5
7.	Assistant	1
8.	Personal Assistant	5
9.	Librarian	1
10.	Accountant	1
11.	Urdu Translator	1
12.	Stenographer Gr. 'D'	3
13.	Reader/ UDC	1
14.	LDC	2
15.	Staff Car Driver	1
16.	Daftry	1
17.	Peon	6
	<b>Total</b>	<b>33</b>



Some of the posts have been filled up by the Commission on deputation basis and some others have been filled through direct recruitment. Services of some officials have been engaged on contract basis as consultants pending finalization of recruitment rules for various posts in the Commission which are under consideration of the Government. With the influx of large number of petitions/ applications Commission has found it difficult to cope up with the workload with the existing staff and has approached the Government for creation of additional posts especially to take care of the judicial matters, which is core function of the Commission and also for taking care of computerization of all records. The third member joined the Commission w.e.f. 26.3.2012.

## CHAPTER 2 – COMPOSITION AND FUNCTIONS OF THE COMMISSION

The Commission was established through an Ordinance (No. 6 of 2004) notified on 11<sup>th</sup> November 2004. This was followed by the introduction of a Bill to replace the Ordinance and passing of the National Commission for Minority Educational Institutions Act, 2004 (2 of 2005) which was notified on 6<sup>th</sup> January 2005. The Parliament passed the NCMEI (Amendment) Act 2006 which was notified on 29<sup>th</sup> March 2006. The Act was further amended by the National Commission for Minority Educational Institutions (Amendment) Act, 2010.

The Government issued notification on 26<sup>th</sup> November 2004 appointing Justice M.S.A. Siddiqui as the first Chairperson and Shri B.S. Ramoowalia and Shri Valson Thampu as the first Members of the Commission. Shri Valson Thampu resigned as Member of the Commission w.e.f. 11<sup>th</sup> September 2007. Thereafter, Smt. Vasanthi Stanley was appointed as the Member and on her resignation on 5<sup>th</sup> March, 2008, Sr. Jessy Kurian was appointed as Member on 27<sup>th</sup>, March 2008. Shri B.S. Ramoowalia resigned as Member on 31.3.2009. On completion of the tenure of 5 years, Justice M.S.A. Siddiqui, Chairman relinquished the charge on 28.11.2009 and Sr. Jessy Kurian completed her tenure on 5.12.2009. The Government appointed Justice M.S.A. Siddiqui as the Chairperson of the Commission for a further term of 5 years and he assumed charge on 18.12.2009. Dr. Mohinder Singh and Dr. Cyriac Thomas are presently two Members of the Commission who assumed charge on 8<sup>th</sup> April 2010 and 12<sup>th</sup> April 2010 respectively for a term of five years each. Shri Zafar Agha assumed the charge of 3<sup>rd</sup> Member of the Commission on 26.3.2012.

The Functions of the Commission as per Section 11 of the Act are as follows:-

- (a) Government or any State Government on any question relating to the education of minorities that may be referred to it;
- (b) enquire, *suo motu*, or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;
- (c) intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court;
- (d) review the safeguards provided by or under the Constitution, or any law for the time being in force, for the protection of educational rights of the minorities and recommend measures for their effective implementation;
- (e) specify measures to promote and preserve the minority status and character of institutions of their choice established by minorities;
- (f) decide all questions relating to the status of any institution as a Minority Educational Institution and declare its status as such;

- (g) to the appropriate Government for the effective implementation of programmes and schemes relating to the Minority Educational Institutions; and
- (h) do such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Commission.

The Commission is a quasi judicial body and has been endowed with the powers of a Civil Court for the purpose of discharging its functions under the Act. The powers of the Commission includes:-

- (1) If any dispute arises between a minority educational institution and a University relating to its affiliation to such University, the decision of the Commission thereon shall be final.
- (2) The Commission shall, for the purposes of discharging its functions under the Act, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:-
  - (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
  - (b) requiring the discovery and production of any document;
  - (c) receiving evidence on affidavits;
  - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872,(1 of 1872) requisitioning any public record or document or copy of such record or document from any office;
  - (e) issuing commissions for the examination of witnesses or documents; and
  - (f) any other matter which may be prescribed.
- (3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Powers of the Commission include deciding all questions relating to the status of any institution as a minority educational institution. It also serves as an appellate authority in respect of disputes pertaining to minority status. Educational institutions aggrieved with the refusal of a competent authority to grant minority status can appeal to the Commission against such orders. The Commission has also power to cancel the minority status of an educational institution on grounds laid down in the Act.

The Commission has also powers to call for information while enquiring into the complaints of violation or deprivation of the educational rights of the minorities. Where

an enquiry establishes violation or deprivation of educational rights of the minorities by a public servant, Commission may recommend to the concerned Government or authority to initiate disciplinary proceedings or such other action against the concerned person or persons as it may deem fit.

Only Supreme Court exercising writ jurisdiction under Article 32 and High Courts under Articles 226 and 227 of the Constitution of India can entertain any suit, application or proceedings in respect of any order made by the Commission.

The Commission receives grant from the Central Government after due appropriation made by the Parliament. The grant is utilized for meeting the expenses of the Commission. The Commission prepares the Annual Statement of Accounts in the form prescribed by the Central Government and the accounts are audited by the Comptroller and Auditor General of India.

The Chairperson, Members, Secretary, Officers and other employees of the Commission are deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

## CHAPTER 3 – SITTINGS OF THE COMMISSION

In terms of Section 12 (3) of NCMEI Act every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of Indian Penal Code and the Commission shall be deemed to be a Civil Court for the purpose of Section 195 Chapter XXVI of the Code of Criminal Procedure, 1973. Being a quasi judicial body, Commission conducts formal court sittings. A formal court room is available in the Commission's premises for the purpose.

During the year 2011-12 the Commission conducted a total number of 162 sittings as a court and heard 5022 cases as per details given below:

### **Details of Court Sitting from 01.04.2011 to 31.03.2012**

SI No.	Date of Meeting	No. of Cases
1	05.04.2011	26
2	06.04.2011	22
3	07.04.2011	40
4	13.04.2011	23
5	19.04.2011	34
6	20.04.2011	49
7	25.04.2011	25
8	26.04.2011	154
9	27.04.2011	24
10	28.04.2011	24
11	02.05.2011	34
12	03.05.2011	23
13	04.05.2011	20
14	05.05.2011	23
15	09.05.2011	49
16	10.05.2011	20
17	11.05.2011	32
18	12.05.2011	25
19	16.05.2011	25
20	18.05.2011	26
21	19.05.2011	29
22	24.05.2011	27
23	25.05.2011	26
24	26.05.2011	23

<b>SI No.</b>	<b>Date of Meeting</b>	<b>No. of Cases</b>
25	31.05.2011	23
26	01.06.2011	22
27	02.06.2011	22
28	07.06.2011	24
29	08.06.2011	25
30	09.06.2011	25
31	14.06.2011	01
32	05.07.2011	31
33	06.07.2011	24
34	07.07.2011	23
35	12.07.2011	15
36	13.07.2011	24
37	14.07.2011	48
38	19.07.2011	30
39	20.07.2011	21
40	21.07.2011	28
41	26.07.2011	31
42	27.07.2011	21
43	28.07.2011	27
44	02.08.2011	35
45	03.08.2011	26
46	04.08.2011	81
47	08.08.2011	03
48	09.08.2011	01
49	10.08.2011	23
50	11.08.2011	28
51	16.08.2011	26
52	17.08.2011	55
53	18.08.2011	28
54	23.08.2011	27
55	24.08.2011	27
56	25.08.2011	24
57	29.08.2011	06
58	05.09.2011	19
59	06.09.2011	26

<b>SI No.</b>	<b>Date of Meeting</b>	<b>No. of Cases</b>
60	07.09.2011	25
61	08.09.2011	30
62	12.09.2011	24
63	13.09.2011	93
64	14.09.2011	27
65	15.09.2011	24
66	19.09.2011	34
67	20.09.2011	23
68	21.09.2011	30
69	22.09.2011	34
70	26.09.2011	51
71	27.09.2011	29
72	28.09.2011	34
73	29.09.2011	31
74	03.10.2011	17
75	04.10.2011	31
76	05.10.2011	26
77	10.10.2011	34
78	11.10.2011	24
79	12.10.2011	27
80	13.10.2011	31
81	17.10.2011	98
82	18.10.2011	64
83	19.10.2011	24
84	20.10.2011	25
85	24.10.2011	23
86	25.10.2011	29
87	27.10.2011	24
88	01.11.2011	19
89	02.11.2011	74
90	03.11.2011	36
91	08.11.2011	25

<b>SI No.</b>	<b>Date of Meeting</b>	<b>No. of Cases</b>
92	09.11.2011	24
93	14.11.2011	22
94	15.11.2011	32
95	16.11.2011	34
96	17.11.2011	28
97	21.11.2011	02
98	22.11.2011	30
99	23.11.2011	22
100	24.11.2011	25
101	28.11.2011	22
102	29.11.2011	22
103	30.11.2011	22
104	01.12.2011	40
105	05.12.2011	47
106	07.12.2011	47
107	08.12.2011	21
108	12.12.2011	54
109	13.12.2011	23
110	14.12.2011	27
111	15.12.2011	27
112	19.12.2011	24
113	20.12.2011	18
114	21.12.2011	18
115	22.12.2011	26
116	02.01.2012	77
117	03.01.2012	23
118	04.01.2012	23
119	05.01.2012	35
120	09.01.2012	58
121	10.01.2012	23
122	11.01.2012	21



<b>SI No.</b>	<b>Date of Meeting</b>	<b>No. of Cases</b>
123	12.01.2012	161
124	16.01.2012	21
125	17.01.2012	26
126	18.01.2012	25
127	19.01.2012	24
128	24.01.2012	09
129	25.01.2012	78
130	31.01.2012	50
131	01.02.2012	24
132	02.02.2012	28
133	06.02.2012	25
134	07.02.2012	45
135	08.02.2012	30
136	09.02.2012	34
137	13.02.2012	01
138	14.02.2012	27
139	15.02.2012	32
140	16.02.2012	02
141	21.02.2012	28
142	22.02.2012	19
143	23.02.2012	23
144	27.02.2012	32
145	28.02.2012	36
146	29.02.2012	32
147	01.03.2012	24
148	05.03.2012	27
149	06.03.2012	33
150	07.03.2012	34
151	13.03.2012	19
152	14.03.2012	22
153	15.03.2012	27
154	16.03.2012	01
155	19.03.2012	26
156	20.03.2012	24
157	21.03.2012	29

Sl No.	Date of Meeting	No. of Cases
158	22.03.2012	21
159	26.03.2012	22
160	27.03.2012	59
161	28.03.2012	28
162	29.03.2012	74
	<b>TOTAL</b>	<b>5022</b>

The Commission conducted almost 25% more sittings as compared to the previous year 2010-2011 and also the number of cases heard were 6% more than the previous year.

The details of Court sittings conducted and number of cases heard during the last seven years are as under:-

Year	Sittings	Cases
2005-06	45	1404
2006-07	80	3932
2007-08	73	2916
2008-09	93	3506
2009-10	121	4377
2010-11	130	4774
2011-12	162	5022

During the formal court sittings, cases where notices have been issued were taken up. In addition to the formal number of sittings mentioned above, Commission has taken up fresh petitions on a daily basis and has passed orders. For fresh petitions the presence of petitioner or respondent is not necessary. The Commission has also listed more number of cases in each sitting to ensure expeditious disposal and also to ensure that backlog of cases of previous years were given priority. Even though there were constraints of shortage of staff, disposal rate of cases during the year has been on higher side as compared to the previous years.

Maximum number of 16 sittings was held in the month of September and November, 2011 and February and March 2012. This was followed by 15 sittings in the month of May 2011 and January 2012. Every endeavor has been made to conduct as many number of sittings on as many number of days as possible and also to list maximum number of cases in each of its sittings.

With a view to expedite disposal of cases no quorum has been fixed by the Commission for the court sittings. Even if only Chairman or one of the Members is present, the court proceedings could be conducted and cases taken up for decision.

All cases which are listed on a particular day are taken up and heard on that day itself and appropriate orders are passed by the Chairman/Members present. Adequate notice period is given to the respondents. In case of pleading of urgency by petitioners, Commission gives early date of hearing. Commission also takes into consideration the inconvenience expressed by the parties to appear on a particular date and accordingly adjournments are granted to enable the parties to put up their cases effectively in consonance with the principle of natural justice. Commission has never insisted on engagement of a counsel to represent the petitioner. In other words, any petitioner who wants to argue his case personally is given the liberty to do so.

The Commission's endeavor has been to provide a cost-free forum to the members of the minority communities for redressal of their grievances relating to their educational rights enshrined in the Constitution. Therefore, the Commission has not prescribed any Court fee. Since a large number of petitioners are not conversant with the formalities and procedures of a Court, the Commission has even accepted petitions which are not in conformity with the law of pleadings.

## CHAPTER 4 – RIGHT TO INFORMATION (RTI)

As stated earlier, every proceeding before the Commission shall be deemed to be a judicial proceeding. The Commission being a quasi judicial organisation interacts with a number of petitioners, advocates and other stakeholders. As a result, the number of RTI applications received by the Commission is increasing every year.

With a view to promote transparency and accountability in the functioning of the Commission by securing to the citizens the right to access, the information under the control of public authority, the Commission has placed all obligatory information under Section 4 (i) of the RTI Act, 2005 on the Website of NCMEI viz *www.ncmei.gov.in* under the Right to Information Act, 2005. During 2011-12, Shri D.R. Bhalla, Deputy Secretary, NCMEI functioned as 'Public Information Officer' and Hon'ble Chairman, NCMEI was the 'Appellate Authority'.

During the year under report the Commission received 59 RTI application and 12 appeals. All the applications/appeals were disposed off within the prescribed time limit.

## CHAPTER 5 – HIGHLIGHTS OF THE YEAR

While disposal of the petition has been the core function of the Commission, the Commission felt that the education of minorities in general and minority girls in particular needs focused attention. Educational backwardness particularly in the Muslim community is one of the main causes for the real and perceived alienation of Muslims. With a view to create awareness among the minorities and to give fillip to minority education a Memorandum of Understanding (MOU) was signed by the Commission with the National Institute of Open Schooling (NIOS), specifying a broad framework of cooperation and collaboration between National Institute of Open Schooling and National Commission for Minority Educational Institutions for bringing synergy in their efforts to provide benefits to the underprivileged school drop outs, youths, adult neo-literates, their socio-economic development in general and literacy and livelihood improvement in particular. The aims and objectives of the MOU were:-

- Assist in imparting education/literacy programme for the target groups.
- Expand the reach and impact of NIOS programmes and policies amongst minority communities.
- Undertake active advocacy programmes by establishing linkages with existing Minority Educational Institutions.
- To create a wider network of study centres and develop mechanism for sharing of resources by the NIOS so as to provide increased access to education, especially in the remote rural, tribal and disadvantaged areas in the country.

In furtherance to this Memorandum of Understanding, National Commission for Minority Educational Institutions has helped National Institute of Open Schooling to identify the Madaras for recognition by NIOS, with ultimate aim of imparting education to target groups.

The Committee on Girls' Education under the aegis of National Commission for Minority Educational Institutions has conducted the Northern zonal conference on "Empowerment of Minority Girls Through Education" on 28.12.2011 at India Islamic Cultural Centre, New Delhi, including the representatives from States of Delhi, Rajasthan, Haryana, Punjab, Jammu & Kashmir, Himachal Pradesh, Odisha, Assam and Maharashtra with more than 400 participants. The main objectives of the Conference were, taking stock of present scenario, challenges and bottlenecks and way forward etc. The Conference also intended to provide a platform to serve the interest of Minority Educational Institutions to enhance their knowledge, exchange of information and explore strategies for national harmony and welfare of minorities in India. Eminent speakers, academicians and philanthropists deliberated on Minority Girls' Education.

The Commission also held One Day Symposium in Collaboration with the National Institute of Open Schooling on Introduction of Modern Education in Madaras at India Islamic Cultural

Centre on 18<sup>th</sup> January, 2012. During the course of the discussion it was felt that there is a need to sensitize the managers of Madarsas about the role of education in resolving conflicts and evolving a peaceful and inclusive society. There is also a need to inculcate a spirit of inquiry among the students, going beyond theoretical education that enables them to understand the issues of peace and justice in the proper perspective. In this context, it was emphasized that the Madarsa education must promote an awareness and celebration of variety, diversity and plurality. It must reflect the reality of an emerging subaltern ferment in the national context and promote a positive attitude towards it and allocate due curricular space for it.

## CHAPTER 6 – TOURS AND VISITS

The basic purpose of undertaking visits by Hon'ble Chairman/Members is to interact with the stakeholders and members of the minority community with a view to understand problems/difficulties faced by the various stakeholders and to provide them with a forum for discussion of their problems. This also affords an opportunity to the Commission to apprise the members of the minority community about their Constitutional rights as well as the role and responsibilities of the Commission. This opportunity is also made use of for interacting with some of the political functionaries and the bureaucracies in various State Govts. The tours and visits of the Hon'ble Chairman and Members of the Commission have helped in sensitizing the officials of the State Governments about the rights of minorities enshrined in Article 30(1) of the Constitution of India.

### **Details of the tours undertaken by the Commission to various places during the year 2011-12 are as under:-**

S. No.	Dates of Tour	Stations visited
1.	15.4.2011 to 16.4.2011	Indore
2.	18.4.2011 to 21.4.2011	Chandigarh, Patiala
3.	20.4.11 to 23.4.2011	Bangalore, Mysore
4.	30.4.2011 to 3.5.2011	Shillong
5.	6.5.2011 to 8.5.2011	Hyderabad
6.	17.5.2011 to 19.5.2011	Lucknow
7.	19.5.2011 to 30.5.2011	Kochi
8.	23.5.2011 to 29.5.2011	Trivandrum, Kochi
9.	4.7.2011 to 5.7.2011	Lucknow
10.	23.7.2011 to 25.7.2011	Allahabad
11.	19.8.2011 to 21.8.2011	Chandigarh, Yamuna Nagar, Patiala
12.	6.9.2011 to 21.8.2011	Jodhpur
13.	11.9.2011	Muzaffar Nagar
14.	22.9.2011	Patiala, Mohali, Chandigarh
15.	23.9.2011 to 27.9.2011	Jabalpur
16.	8.10.2011 to 9.10.2011	Narora, Badaun
17.	19.10.2011 to 25.10.2011	Kochi
18.	21.10.2011	Shahrenpur
19.	27.10.2011	Ludhiana
20.	29.10.2011	Ludhiana

<b>S. No.</b>	<b>Dates of Tour</b>	<b>Stations visited</b>
21.	4.11.2011 to 12.11.2011	Jabalpur
22.	10.11.2011 to 14.11.2011	Guwahati, Shillong
23.	14.11.2011	Aligarh
24.	19.11.2011 to 21.11.2011	Bagdogra
25.	24.11.2011 to 26.11.2011	Ajmer, Jaipur
26.	3.12.2011	Nuh (Haryana)
27.	4.12.2011 to 5.12.2011	Bhopal
28.	6.1.2012 to 8.1.2012	Nagpur
29.	20.1.2012 to 22.1.2012	Bhopal
30.	27.1.2012 to 29.1.2012	Kolkata
31.	8.2.2012 to 9.2.2012	Hyderabad
32.	7.3.2012 to 9.3.2012	Kolkata
33.	10.3.2012 to 12.3.2012	Barabanki
34.	1.3.2012 to 4.3.2012	Kochi
35.	22.3.2012 to 24.3.2012	Kurukshetra

While some of the places were visited by the Hon'ble Chairman and Members together, other places were visited separately depending upon the exigency of official work and convenience of Hon'ble Chairman/Members. The Commission, being a quasi-judicial body, has to function as a Court and many of the stakeholders were not aware of drafting the petitions. During the tours, the meetings were held with representatives of the minority educational institutions, they were apprised about the functions of the Commission and the procedure and modalities involved in approaching the Commission. The Commission has devised a specific format for applying for grant of minority status certificate by educational institutions. In many cases, Commission had been receiving petitions/complaints in letter format without giving full details and supporting documents. The interactions held at various places helped in addressing these problems.

Hon'ble Chairman visited Indore from 15.4.2011 to 16.4.2011 in connection with the "National Seminar on National Policies and Schemes for Educational Upliftment of Muslims and their implementation and empowerment of Muslim women and Central Schemes" organized by the Moulana Azad Educational, Technical & Vocational Society. In his address, the Hon'ble Chairman apprised the audience of their right as minority community as enshrined in Article 30(1) of the Constitution and role and scope of NCMEI.

Hon'ble Chairman visited Bangalore and Mysore from 20.4.2011 to 23.4.2011 in connection with the Seminar on problems of Muslim Minority girls organized by Rifa-hul Muslimeen Educational Trust. Delivering the keynote address Hon'ble Chairman apprised



the audience about the scope and object of the NCMEI Act. Hon'ble Chairman expressed concern about the literacy rate of Muslim Girls. Special mention was also made about the dropout rate of Muslim girls in higher education. The Chairman exhorted the audience to educate the girl child.

In April 2011, Hon'ble Member Dr. Mohinder Singh was invited by Guru Gobind Singh College for Women, Chandigarh to discuss the benefits available to minority educational institutions under various schemes of the Government of India. During this visit, he also met members of other backward communities of the Sikhs specially Vanjaras and Sikligar Sikhs. He also visited Baba Makhna Shah Lubana Bhawan and met the leaders of the Banjara community and discussed various schemes for the benefit of educationally backward communities.

Hon'ble Chairman visited Guwahati and Shillong from 30.04.2011 to 3.5.2011. On 30.4.2011, Hon'ble Chairman had an interaction with the stakeholders of minority educational institutions and other educationalists at Guwahati organized by the Educational Research and Development Foundation (ERDF). Addressing the meeting Hon'ble Chairman mentioned about the details of various Supreme Court judgments on Article 30, He also explained about the powers of the Commission under the NCMEI Act and asked the members of the minority communities to avail of the facilities. The assembled members raised various issues including the delay in filling up of posts in educational institutions, delay in issue of MSC, refusal to give grant-in-aid, problems relating to NOC for CBSE affiliation, Non-Approval of AICTE, University affiliation etc. The Hon'ble Chairman gave clarification on all point raised and requested the members to send proper petitions to the Commission for following up the issues with State Government and other competent authorities. On 1.5.2011, the Hon'ble Chairman inaugurated a Seminar on Educational Rights of Minorities at Shillong organized by the Umshyrpi College. In his inaugural address Hon'ble Chairman highlighted on the scope and ambit of Article 29 and 30 of the Constitution. While appreciating the tremendous contribution made by the Christian community in the field of education, Chairman cautioned them about commercialization of education. Even though a large number of educational institutions are run by the members of the minority community, equal number of children from minority community are not getting admissions to the schools. He emphasized the management to give quality education. He also pointed out the lack of educational opportunity for large number of children from the Muslim community and expressed concern about the high rate of drop out of Muslim students, particularly the Muslim girls.

Hon'ble Chairman visited Hyderabad from 6.5.2011 to 8.5.2011 in connection with the 3 Days Conference on Changes and Challenges in Education organized by the MESCO. Hon'ble Chairman in his address appreciated the efforts made by minority communities in Hyderabad in the field of education. In his address the scope and objects of the National Commission for Minority Educational Institutions were explained and the Chairman advised the minority community that their upliftment lay in acquiring knowledge and education. They must also galvanize their efforts to promote internationalism in higher education

In May 2011, Hon'ble Member, Dr. Mohinder Singh was invited to Guru Nanak Khalsa College, Yamuna Nagar as a Chief Guest and spoke on Role of Minorities in Development of Education and made power point presentation on Glimpses of Rare Guru Granth Sahib Birs. During the same visit, he also attended a function at Paonta Sahib Gurdwara, in Himachal Pradesh and spoke on Educational Heritage of the Sikhs.

Hon'ble Chairman visited Lucknow from 17.5.2011 to 19.5.2011 in connection with the Seminar on Educational Rights of Minorities organized by the Minority Educational Institutions' Association. Hon'ble Chairman apprised the audience of their right as minority community as enshrined in Article 30(1) of the Constitution and role and scope of NCMEI. During the Seminar, the problems relating to the education of children from the Muslim community were discussed. It was pointed out that members of Muslim community are unable to establish educational institutions due to stringent rules and financial constraints. Education is a right and Article 21A obligates the State to provide appropriate educational facilities.

Hon'ble Member, Dr. Cyriac Thomas visited Kannur, Kerala on 20.5.2011 and delivered a commemorative lecture in honour of the veteran freedom fighter of Kerala Shri K. Kelappan, who was popularly known as Kerala Gandhi during the days of the freedom struggle on the topic Democracy, Secularism and Politics-Contemporary deviations in value concepts.

On 21.5.2011, Hon'ble Member Dr. Cyriac Thomas addressed a Seminar organized by the Catholic diocese of Mananthavadi (Wayanad Dt.), Kerala attended by the Managers and Principals of the diocese enlightening them on the powers and functions of the NCMEI and how the Commission is pro-active in ensuring the rights of the minorities as envisaged by the Constitution.

On 24.5.2011, Hon'ble Member, Dr. Cyriac Thomas along with the Hon'ble Chairman addressed a conference of the heads of the minority educational institutions organized by Major Archbishop of Trivandrum at the Catholic Archbishop's House of the Syro-Malankara Church.

Hon'ble Chairman visited Trivandrum, Kochi & Calicut from 23.5.2011 to 29.5.2011. On 24.5.2011, Hon'ble Chairman had meeting and discussion with Moron Mor Baselios Cleemis Catholicos, one of the religious head of the Christian Community in Kerala. Hon'ble Chairman mentioned about the rights enshrined under Article 30 of the Constitution of India and also mentioned about the provisions of NCMEI Act and the functions of the Commission. The problems faced by the Christian minority educational institutions were also discussed. The issues discussed included the difficulties being faced relating to delay in getting NOC for affiliation to Central institutions like, CBSE, ICSE; Non-approval of teaching and non-teaching staffs in aided institutions by the State Govt.etc.

On 25.5.2011, Hon'ble Chairman, inaugurated a seminar on Empowerment of Girls through Education, organized by the M.E.S. College, Marampally at Aluva, Kerala. In his address he laid emphasis on the importance of girls' education, which is an intrinsic part of the State

policy designed to ensure the reach of education to the population in general and Muslims in particular. Emphasis was laid on the need to spread girls' education amongst Muslims, who were victims of poverty, underdevelopment, and social disparity. It was emphasized that the community has to ensure that the dropout rates of girl students especially from Muslim community are reduced. Parents should be motivated and encouraged to send their daughter to higher education. The government must formulate innovative schemes for empowering Muslim women through education.

On 25.5.2011, Hon'ble Member, Dr. Cyriac Thomas along with the Hon'ble Chairman, NCMEI addressed a Seminar on Girls' Education organized by the MES at MES College, Marampally (Alwaye), Kerala.

On 26.5.2011, Hon'ble Chairman attended a function organized by Ma'dinu Ssaquafathi Ssunniyya at Malappuram attended by members of the Muslim minority community. In his address, the Hon'ble Chairman laid emphasis on acquiring quality education and educational rights of Minorities enshrined in Article 30(1) of Constitution besides the role and functions of the Commission set up under NCMEI Act.

On 26.5.2011, Hon'ble Member, Dr. Cyriac Thomas addressed a Seminar on teachers of minority Christian institutions at Sulthan Batheri organized by the Catholic Diocese of Batheri.

On 28.5.2011, the Hon'ble Chairman attended as Chief Guest, a Seminar on Educational Rights and Challenges of Minority Educational Institutions at Calicut. Hon'ble Chairman apprised the audience of their right as minority community as enshrined in Article 30(1) of the Constitution and role and scope of NCMEI. Hon'ble Chairman discussed about the pressing need to improve the health of higher education and research. Everyone should strive to develop the concept of global university of excellence and make the existing educational institutions to promote internationalism in higher education.

On 2.6.2011, Hon'ble Member, Dr. Cyriac Thomas delivered the Annual Convocation Address of the Ruhalya Catholic Major Seminari, Indore.

Hon'ble Chairman visited Lucknow from 4.7.2011 to 5.7.2011. He had a meeting with the stakeholders of the minority educational institutions at Lucknow and in the interaction problems relating to grant of NOC, grant of recognition to educational institutions, grant of affiliation to educational institutions, issues relating to Minority Status Certificate, appointment of teaching and non-teaching staff, fee structure and admission policies were discussed.

Hon'ble Chairman visited Allahabad from 23.7.2011 to 25.7.2011, in connection with the Conference on Minority Educational Institutions organized by Minority Educational Institutions' Association. The conference deliberated about the general problems faced by the minority communities. The main stumbling block for establishing an educational institution is the requirement of two acres of land which is impossible for minority communities to purchase.

Without recognition, the institutions are not able to avail any benefit. The issues raised in the conference related to low percentage of educational institutions established by Muslim community, inordinate delay in recognition of schools etc.

On 25.7.2011, Hon'ble Member, Dr. Cyriac Thomas inaugurated the academic year of the Viswajyothi College of Engineering and Technology, Muvattupuzha and addressed the faculty and the students on "Quality Education and Levels of Excellence".

On 29.7.2011, Hon'ble Member, Dr. Cyriac Thomas delivered the Bishop Speechly Commemorative Lecture at Bishop Speechly College, Kottayam at the invitation of the Church of South India.

Hon'ble Chairman visited Jodhpur from 5.9.2011 to 8.9.2011, in connection with the inauguration of the Orientation Programme for Urdu Teachers organized by Marwar Muslim Educational and Welfare Society. Hon'ble Chairman while addressing the audience, elaborated on the provisions of NCMEI Act. The law prohibits grant of temporary minority status certificate. Article 15(5) exempts the minority educational institutions from the reservation policy. TMA Pai Foundation judgment of Supreme Court of India has explained the specific rights under Article 30(1) which includes freedom to constitute the managing committee. The rules and regulations formulated by State Government have to be reasonable and should be meant to ensure academic excellence. They cannot negate or dilute the rights guaranteed under Article 30(1).

On September 2011, Hon'ble Member Dr. Mohinder Singh visited Punjab School Educational Board, Mohali during the trip to Chandigarh on the invitation of the Chairman of the Board.

On 11.9.2011, Hon'ble Chairman attended a function in Muzaffar Nagar. In his address, the Chairman laid emphasis on acquiring quality education and educational rights of Minorities enshrined in Article 30(1) of Constitution besides the role and functions of the Commission set up under NCMEI Act.

In September 2011, Hon'ble Member Dr. Mohinder Singh was invited to deliver Second Dr. Ganda Singh Memorial Lecture at the Punjab University, Patiala which is an annual feature of the University. This lecture was instituted in the memory of Dr. Ganda Singh, eminent historian of Punjab.

On 6.10.2011, Hon'ble Member, Dr. Cyriac Thomas attended the Vidyarambam Ceremony organized by the foremost Malayalam daily 'The Malayala Manorama', Kottayam and on 7.10.2011 addressed a conference organized by the New Vision Magazine on the Rights of the Minorities held at Mandiram Hospital Auditorium, Puthupally, Kottayam, Kerala.

Hon'ble Chairman visited Narora, Badaun from 8.10.2011 to 9.10.2011 in connection with the Inauguration of Asim Siddique Memorial Degree College run by Asim Siddique Educational Trust, where he apprised the audience about the importance of knowledge economy in a developing country like India.

On 19.10.2011, Hon'ble Member, Dr. Cyriac Thomas delivered the Keynote Address at the Conference of the Canon Law Experts at Mumbai, presided over by His Eminence Cardinal Oswald Gracias, President Catholic Bishop's Conference of India.

On 21.10.2011, Hon'ble Chairman interacted with the representatives of the minority educational institutions at Saharnpur. The main issues included problems relating to non-affiliation, the reluctance of the State Government to sanction new schools for minorities, simplification of procedure etc. The Hon'ble Chairman gave clarification on all point raised and requested the members to send proper petitions to the Commission for following up the issues with State Government and other competent authorities

On 21.10.2011, Hon'ble Member, Dr. Cyriac Thomas held discussions with His Grace Archbishop Mar Joseph Powathil, Chairman, Inter-Church Council for Education, Kerala on issues pertaining to the Christian professional institutions in Kerala and their functional disputes with the State Govt.

On 29.10.2011, Hon'ble Chairman attended a function at Ludhiana in connection with the Annual Prize distributing function organized by Sohrab Public School. During the function, the Hon'ble Chairman elaborated on Article 30 of the Constitution. It was discussed that the minority educational institutions are facing problems mainly because the State Government officials dealing with the matters are not properly informed and sensitized. Explaining the duties and functions of the Commission, Chairman asked them to send properly drafted petitions to the Commission for redressal of their grievances. He also mentioned about the guidelines formulated by the Commission regarding recognition, affiliation, grant of minority status certificate etc.

On 29.10.2011, Hon'ble Member Dr. Mohinder Singh was Chief Guest at a Seminar at Guru Nanak Gujrawalan Khalsa College, Ludhiana. Later during the same visit he was the guest of honour at Sohrab Public School, Malerkotla at Annual Prize distribution function, Hon'ble Chairman presided over the function.

On 30.10.2011, Hon'ble Member Dr. Mohinder Singh was invited by the Punjab Central University, Bhatinda, as a Chief Guest at a function organized to discuss the Educational heritage of the Sikh community. Prof. Jai Rup Singh, Vice Chancellor presided over the function.

On 07.11.2011, Hon'ble Member, Dr. Cyriac Thomas inaugurated the Decennial Celebrations of the Viswajyoti College, Muvattupuzha (Kerala), presided over by Hon'ble Minister Shri P.J. Joseph.

Hon'ble Chairman visited Aligarh on 14.11.2011 and interacted with the members of the minority communities. Hon'ble Chairman explained the details of the NCMEI Act and also mentioned about Apex Court's judgments in T.M.A. Pai Foundation and other cases. It was explained to them that the minority educational institutions are exempt from the purview of reservation.

Hon'ble Chairman visited Bagdogra, Kishanganj from 19.11.2011 to 21.11.2011 in connection with the inauguration of the Anniversary function organized by INSAN Foundation. The Hon'ble Chairman in his address explained in details the powers and functions and role of the Commission.

Hon'ble Chairman visited Ajmer and Jaipur, from 24.11.2011 to 26.11.2011 and interacted with the representatives of the minority educational institutions. The issues discussed included delay in approval of appointment of teaching and non-teaching staff, delay in the grant of minority status certificate, problems relating to Urdu teachers and availability of Urdu books, grant-in-aid, approval for new educational institutions, need for more schools in rural areas etc. Commission provided clarifications on all the issues raised.

On 3.12.2011, Hon'ble Chairman visited Nuh (Haryana) in connection with the Educational Awareness Programme organized by the Indian Council of Education. Hon'ble Chairman addressed the gathering of minority educational institutions and Muslim religious scholars. They were apprised of the powers and function for the Commission and the procedure which is being followed by the Commission in expeditious disposal of the cases.

Hon'ble Chairman visited Bhopal from 4.12.2011 to 5.12.2011 in connection with the function organized by the members of the minority communities.

On 05.12.2011, Hon'ble Member, Dr. Cyriac Thomas visited Bhopal and delivered the Annual Convocation Address at the Bhopal Institute of Social Sciences.

Hon'ble Chairman visited Nagpur from 6.1.2012 to 8.1.2012 in connection with the minority educational seminar organized by the Christian community. In his address he appreciated the contribution of Christian community towards education of the community. He said that the educational institutions established by them should transform student community into a knowledge society. While apprising the audience about the powers and functions of the Commission, they were also told about the educational rights under Article 30(1) of the Constitution.

On 20.12.2011, Hon'ble Member, Dr. Cyriac Thomas delivered the Keynote Address at the St. Berchans College, Changanacherry on the occasion of presenting the Bechmans Award for the Best College Teacher.

In January, 2012, Hon'ble Member Dr. Mohinder Singh visited Bangkok to deliver a lecture on Educational Heritage of the Sikhs at Thai International Sikh School. During the same visit, he also attended a Colloquium organized by Assumption University, Bangkok. The Colloquium was on search for cultural and ethical values in all Asian Traditions. His travel and board and lodging were taken care by the organizers.

Hon'ble Chairman visited Kolkata from 27.1.2012 to 29.1.2012 in connection with a function organized by the members of the minority communities. During the interaction with the stakeholders of minority educational institutions, the Hon'ble Chairman admitted that



improving the standard of education in Muslim educational institutions was a big challenge. Citing the lack of modernization and inadequate infrastructure in these institutions, he appealed to the richer sections of the community to generously donate for the betterment of these educational institutions. He expressed concern over the high rate of drop out of Muslim students. He cited the results of the survey conducted by the Government where it was revealed that Muslim students are leaving school at a much faster rate than students from Scheduled Castes, Scheduled Tribes, Backward classes and other communities. He noted that Muslim educational institutions in the southern part of the country are being run better than their counterparts in northern India. It is necessary that the managements should give emphasis on quality education. Only good education can raise the standard of living of Muslim community. He cited that Article 51A of the Constitution obligates parents to give quality education to their children.

On 3.2.2012, Hon'ble Member, Dr. Cyriac Thomas, delivered the Keynote Address at the Seminar organized by the Dept. of Law, University of Kerala, on 'Reforms in Land Laws: The Human Rights Dimensions'.

Hon'ble Chairman visited Hyderabad from 8.2.2012 to 9.2.2012 in connection with the meetings with the representatives of minority educational institutions. The issues raised in the meeting included appointment of Principals and teaching staff by the minority educational institutions, unnecessary harassment from State Government officials, issue of minority status certificate on a permanent basis, the percentage of students to be admitted from the minority communities to be fixed by the State Government, grant-in-aid, etc. Chairman gave clarifications on the various points raised by the representatives and told them to send petitions to the Commission for taking remedial measures.

On 9.2.2012, Hon'ble Member, Dr. Cyriac Thomas inaugurated the Seminar of the Heads of Monfort Edl.Insts. at Hyderabad speaking on "The Role of Minorities in Education and the Constitutional Safeguards for Minority Rights".

In February, 2012, Hon'ble Member Dr. Mohinder Singh delivered Inaugural Address at the Punjab History Conference organized by the Punjab University, Patiala, Dr. Jaspal Singh, the Vice-Chancellor presided over the function.

On 3.3.2012, Hon'ble Member Dr. Mohinder Singh was the keynote speaker at a Regional Conference on Minority Educational Institutions at Trichur, Kerala, where another Hon'ble Member Dr. Cyriac Thomas delivered special address.

On 3.3.2012, Hon'ble Member, Dr. Cyriac Thomas addressed the Educational Seminar organized by the St. Thomas College, Trichur, Kerala, in connection with the Platinum Jubilee of the College.

Hon'ble Chairman visited Kolkata from 7.3.2012 to 9.3.2012 and addressed members of the minority communities. Problems faced by the minority educational institutions were discussed. It was pointed out that even though the State Government has notified guidelines for grant of minority status certificate, there has been inordinate delay in the processing of

applications. The issues raised in the meeting included insistence of the state authorities in the implementation of reservation rosters in minority educational institutions, inordinate delay in the issue of minority status certificate, problems relating to Urdu language teachers, lack of girls schools for Muslim students, discrimination in grant of scholarships, non recognition of madarasas, non clearance of post of teachers, problems in getting grant-in-aid etc.

Hon'ble Chairman visited Barabanki from 10.3.2012 to 12.3.2012 in connection with the Discourse on Minority's Education, its Prospects and Problems organized by the Eram Educational Society. The Chairman informed the audience about the functions and powers of the Commission and the format for drafting of petitions to be submitted to the Commission. The issues raised included delay in grant of minority status certificate, delay in permission for upgradation of schools, need to enhance the pay-scales of teaching staff, delay in the release of grant-in-aid, corruption in Government organizations which acts as a stumbling block, neglect of Urdu, requirement of additional courses in Urdu language, enhancing the salary of Madrasa teachers etc. Clarifications were provided on the issues raised and the managers were asked to prefer appropriate petitions to the Commission.

On 22.3.2012, Hon'ble Member Dr. Mohinder Singh was invited by the Kurukshetra University to inaugurate an International Conference on Role of Minority Educational Entrepreneurs. Delegates from different parts of India and abroad attended this function. Lt.Gen.(Rtd.) Dr. DDS Sandhu, the Vice-Chancellor presided over the function.

On 26.3.2012, Hon'ble Member, Dr. Cyriac Thomas along with Ambassador (Retd.) Shri T.P. Sreenivasan, Chairman, Kerala State Higher Edn. Council attended the Annual Convocation of the Sharjah Emirates National School and Junior College, Sharjah (UAE) and also addressed a special conference of Indian teachers on 27.3.2012.



## CHAPTER 7 – ANALYSIS OF PETITIONS AND COMPLAINTS RECEIVED DURING THE YEAR

Right from its inception the Commission has been registering cases calendar year wise. During the year under report the Commission has registered 2338 cases and disposed of 2746 cases. Some of the cases disposed of pertain to earlier years. Out of this 2746 cases disposed of 1845 related to issue of Minority status certificate. The Commission registered cases on various issues such as; non-issue of NOC by the State Governments, delay in the issue of NOC, refusal and delay in the issue of minority status, refusal to allow opening of new colleges/schools/ institutions by minorities, refusal to allow additional courses in minority educational institutions, refusal/ delay in the release of grant-in-aid, refusal to give financial assistance, denial of permission to create new posts of teachers in minority educational institutions even though there was increase in number of students, approval of appointment of teachers being denied, inequality in pay scales of minority school teachers vis-à-vis government school teachers, denial of teaching aids/other facilities like computer, library, laboratory, etc. to minority educational institutions on par with government institutions, non-availability of books in Urdu on all subjects for students of Urdu schools, non-appointment of Urdu knowing teachers, madarsa teachers to be paid at par with minority school teachers, madarsa employees to be paid adequately, non-release of grants to madaras, non-payment of retirement benefits to teachers and non-teaching staff of minority schools, extension of Sarva Shiksha Abhiyan facilities to minority educational institutions especially in far flung and remote rural areas, etc.

During the year, Commission also received some petitions/applications pertaining to issues and reliefs which were outside the purview of the Commission. They were forwarded to the concerned authorities for appropriate action under due intimation to the concerned petitioners. Some of such applications were for financial assistance, which were forwarded to the Maulana Azad Educational Foundation and Central Wakf Board for such actions as may be deemed appropriate. Since linguistic minorities are not covered under the NCMEI Act, petitions sent by them were returned for their presentation before the Linguistic Minority Commission.

Some of the orders passed by the Commission are given below:-

### **Case No. 795 of 2010**

**Petition to seek direction to State for grant of permission for Establishment of an Urdu Medium Junior College by Minority Community.**

- Petitioner :**
1. Rashtriya Junior College (Urdu), Bamanwada, Post Chunala, Taluka Rajura, Distt. Chandrapur, Maharashtra
  2. Samanta Bahuuddeshiya Education Society, Jawahar Nagar Ward, Near Masjid, Taluka Rajura, Distt. Chandrapur, Maharashtra, Through its President Shri Mohammad Mehmud Mohammad Musa

- Respondent:**
1. The Director of Education, Middle & Higher Education' Ministry of Education, Pune, Maharashtra
  2. The Principal Secretary, Mantralaya, Government of Maharashtra, Mumbai – 32, Maharashtra
  3. Education Officer (Secondary), Zila Parishad, Chandrapur, Maharashtra

By this petition, the petitioner, Samanta Bahuuddeshiya Education Society, Jawahar Nagar Ward, Taluka Rajura, Distt. Chandrapur, Maharashtra seeks a direction to the State Government to grant permission for the establishment of an Urdu Medium Junior College at Bamanwada, Post Chunalala, Taluka Rajura Dist. Chandrapur, Maharashtra. It is alleged that the petitioner society has been granted minority status certificate by the State Government. Since there is no Urdu medium school and higher secondary school in the vicinity, the petitioner submitted a proposal to the respondents for grant of permission for establishment of the proposed college at Bamanwada. The proposed college has all the infrastructural and instructional facilities. It is further alleged that the petitioner wants to run the said college on non- grant basis and it will never demand any financial grant from the respondents. According to the petitioner, it received the letter dated 26.6.2009 from the respondents informing that the District Level Committee has rejected the proposal on the ground that the balance sheet submitted in support of the application is not up to date and three years audit reports were also not submitted along with the application. It is further alleged that the respondents wrongfully rejected the proposal submitted by petitioner and the respondent's impugned action in rejecting the petitioner's proposal is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The respondent has resisted the petition on the ground that the petitioner's proposal was not recommended by the District Level Committee as the balance sheet submitted alongwith the application was not up to date and the application was also not accompanied by the three years audit reports. It is further alleged that the distance between Bamanwada and Rajura is only 2 kms. where there is already an Urdu Medium Secondary School of Zila Parishad, Chandrapur. The District Level Committee had not recommended the proposal on the basis of the rule that another school of the same nature should not be located within the radius of 10 kms.

In the rejoinder, the petitioner has reiterated that it has submitted three years audit reports and the up to date balance sheet and a copy of the schedule immediately after this was pointed out by the respondent. It is also alleged that the respondents have given recommendation to other junior colleges in Chandrapur District namely Jai Hind Kanishta Maha Vidyalaya, Chandrapur, J.P. Kanishta Maha Vidyalaya, Chandrapur, Mohsin Bhai Zaveri Kanishta Maha Vidyalaya, Tukum, Chandrapur, Indra Kanishta Maha Vidyalaya, Maheshnagar, Chandrapur, Icon International Public Junior college, Warora and Shivaji Kanishta Maha Vidyalaya, Warora. The impugned action of the respondents in rejecting the petitioner's proposal is also violative of Article 14 and 16 of the Constitution. The Urdu Medium Higher Secondary School of Rajura

is 2 kms. away and in that school in Class X, 33 of 41 students are from Ballarpur which is at a distance of 10 kms. Since there is no junior college in the area students are compelled to take admission there and, therefore, the proposed junior college is necessary to cater to the educational needs of the area.

The question for consideration is: whether the impugned action of the State Government in not granting permission to the petitioner college is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of the fundamental rights guaranteed under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

"The key to the understanding of the true meaning and implication of the article under consideration are the words 'of their choice'. It is said that the dominant word is 'choice' and the content of that article is as wide as the choice of the particular minority community may make it."

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that "the words 'of their' 'choice' in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes."

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

i) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

It is significant to mention here that the petitioner’s proposal in question was rejected on the following grounds:-

- (i) That the balance sheet submitted by the petitioner in support of the proposal was not up to date;
- (ii) Audit reports of past three years were not submitted.

As regards to the deficiency No. (i), the petitioner has relied on the affidavit of Shri Mohammad Mehmud Mohammad Musa, the President of the society who has stated on oath that the society has a balance of Rs. 1,00,000 which is in accordance with the norms prescribed by the Education Directorate, Government of Maharashtra for submission of proposal for new permanent non grant primary school, secondary and higher secondary schools to the Directorate vide order No. O.W.No. Shisa/NaPraSha/Pri/Sec/H.Sec/15K(05-62777) dated 9.5.2008.

As regards non submission of audit reports of past three years, the petitioner has stated that these audit reports had already been submitted to the Directorate Education, Government of Maharashtra.

In view of the said evidence adduced by the petitioner, we are constrained to observe that in order to deprive the petitioner of the educational rights of the minorities enshrined in Article 30(1) of the Constitution, the competent authority of the State Government had deliberately ignored the said vital evidence produced by the petitioner. We, therefore, find and hold that the impugned order of the respondent in rejecting the petitioner's proposal in question is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, we recommend to the State Government to reconsider the petitioner's proposal for grant of permission for establishment of an Urdu Medium Junior College at Bamanwada, Post Chunala, Taluka Rajura Dist. Chandrapur, Maharashtra to be run on permanent non-grant basis as the impugned action of the State Government in not-granting permission as sought by the petitioner society is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

### **Case No. 194 of 2009**

#### **Petition to seek direction to the NCTE to grant permission and recognition for establishment of D.Ed. College by Minority Community**

**Petitioner** : Halima Education Society, Manora, Distt. Washim, Maharashtra

**Respondent** : The Secretary, Western Regional Committee, National Council for Teacher Education, Manas Bhavan, Shymala Hills, Bhopal, Madhya Pradesh

By this petition, the President Halima Education Society, Manora, District Washim, Maharashtra seeks direction to the NCTE, Bhopal to grant permission and recognition to establish D.Ed. college at Tendoli Dist. Yavatmal. The petitioner society has been granted minority status certificate by the Government of Maharashtra on 3.1.2007. The petitioner society had applied to the respondent council for starting a D.Ed. college from the academic year 2007-08. The respondent council directed the petitioner to rectify certain deficiencies within a period of 90 days. The petitioner rectified the deficiencies within 111 days and sent the communication to the respondent on 27.9.2007. It is alleged that the respondent council remained silent for almost one year. Thereafter, on 3.7.2008, the petitioner received a letter from the respondent council mentioning that the inspection of the building will be carried on by the council. However on 17.10.2008, the building was inspected by the respondent council. On 21.4.2009, the respondent council finally passed order rejecting the proposal of the petitioner on the ground of negative recommendation received from the State Government. According to the petitioner, the State Government does not have any role to play and the respondent council has to base its decision on the basis of the inspection carried on by it. It is alleged that the impugned action of the respondent council in rejecting the petitioner's proposal is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The respondent council resisted the petition on the ground that the petitioner had failed to rectify the deficiencies within the time allowed by it. It is alleged that the petitioner's proposal was rejected on the basis of the negative recommendations received from the State Government.

The point for determination is : whether the impugned action of the respondent council in rejecting the petitioner's proposal for establishment of proposed college amounts to violation of the educational rights of the minorities enshrined in Article 30(1) of the constitution?

It needs to be highlighted that during the pendency of the case the petitioner's proposal was reconsidered by the respondent council and the same was rejected on the ground that the petitioner institution did not have the required land under the registered instrument on the date of submission of the application. It needs to be stated that earlier the petitioner applied to the respondent council for grant of recognition of D.Ed. College proposed to be established at Tandoli District Yavatmal, Maharashtra on 3.1.2007. The petitioner has annexed a xerox copy of the said application filed before the respondent council. There is column No. 3.1 under column No. 3 relating to availability of infrastructural facilities. The said column is reproduced as under:-

"Please indicate if land is available in the name of the institution, either on ownership or on long term lease basis."

This column has been left blank by the petitioner.

By the letter dated 2.2.2007, the respondent council directed the petitioner to file documents establishing its lawful possession of the required land and building for conducting the course applied for. It has also directed the petitioner to file documents establishing its eligibility under Section 4 of the Regulations ( Recognition, Norms and Procedure) Regulations 2006, Original FDRs of Rs. 5 lacs and 3 lacs each per course, original affidavit on Rs. 100/- stamp paper duly attested by Oath Commissioner stating the precise location of the land, the total area of land and building in actual possession etc. and documents establishing the launching of institution's own website. The petitioner was directed to rectify the said deficiencies within the period of 90 days. Admittedly, the petitioner could not rectify the said deficiencies and further period of 21 days was granted to the petitioner for rectifying the deficiencies vide letter dated 10.8.2007. By the letter dated 31.8.2007, the petitioner wrote a letter to the Regional Director of the respondent council intimating that the petitioner does not have sufficient building as per the NCTE norms at Tandoli District Yavatmal. Therefore, they changed the address of proposed college from Tandoli District Yavatmal to Manora, District Washim. By the letter dated 3.7.2008, the respondent council informed the petitioner that the proposal is not accompanied by fee towards the application form i.e. Rs. 1000/- . The petitioner was directed to submit the building completion certificate duly approved by the competent authority for inspection of the building by the inspection team. After inspection of the building, the petitioner's proposal was rejected on the basis of the negative recommendation received from the Government of Maharashtra and the order of rejection was intimated to the petitioner vide letter dated

21.4.2009. The petitioner had filed the present petition before this Commission on 16.3.2009. However, admittedly, the petitioner's proposal was reconsidered by the respondent council and by the order dated 26.8.2010, it was rejected on the ground that the petitioner institution did not have the required land under the registered instrument on the date of submission of the application.

As stated earlier, the petitioner had intimated the respondent council that it did not have sufficient building as per the NCTE norms for establishment of the D.Ed. college at Tandoli District Yavatmal vide letter dated 31.8.2007. The petitioner, therefore, changed the address of the proposed college and submitted the requisite documents to the respondent council for establishment of D.Ed. college at Manora District Washim. By the order dated 21.4.2009, the petitioner's proposal was rejected on the basis of negative recommendation received from the State Government. Learned counsel for the petitioner wants to jettison the order dated 21.4.2009 on the ground that the State Government has no role to play in the matter and the petitioner's proposal has to be examined on the basis of the inspection carried on by the inspection team of the respondent council. It is relevant to mention that No Objection Certificate of the State Government is required to assess the requirement of trained teachers in that State. The teacher training institutions are established keeping in view of the requirement of trained teachers in the particular State. Consequently, recommendations of the State Government are relevant for grant in recognition of a teachers' training institution in a particular State or Union Territory. In this view of the matter we are fortified by the recent decision rendered by the Supreme Court in National Council for Teacher Education & Ors. vs. Shri Shyam Shiksha Prashikshan Sansthan & Ors. 2011 AIR SCW 1075. We, therefore, find and hold that the order dated 21.4.2009 does not suffer from any legal infirmity.

However, during the pendency of this case, the petitioner's proposal was reconsidered by the respondent council and on 26.8.2010, it was rejected on the ground that the institution did not have required land under registered instrument in accordance with the norms of the NCTE. The petitioner has not submitted any document to prove that the requisite land is available in the name of the institution either on ownership or on long term lease basis. The petitioner has stated in his affidavit dated 1.9.2010, that the institution has a lease deed for 50 years. Surprisingly, no such lease deed has been produced in support of the said statement made in the affidavit. Subsequently, in the absence of clear and cogent evidence we cannot hold that the petitioner institution has sufficient land in accordance with the norms prescribed by the council. That being so, the order dated 26.8.2010 cannot be faulted on any legal ground.

For the foregoing reasons, the petition is dismissed.

### **Case No. 1209 of 2010**

**Petition to seek direction to State for grant of permission for Establishment of a new Urdu Medium Secondary School by Minority Community.**



**Petitioner :** Tanzeem E-Waledain Urdu Madaris, (Palak Sangh Urdu Shala Pune), Pune, 35, Ghorpadi Peth, Pune – 411 042, Through its Secretary, Shri Ishaque Sharfuddin Shaikh

- Respondents :**
1. The Principal Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai-32, Maharashtra
  2. The Principal Secretary, Minority Development Department, Government of Maharashtra, Mantralaya, Mumbai – 32 , Maharashtra
  3. The Director, Secondary & Higher Secondary Education, Maharashtra State, Pune, Maharashtra
  4. The Divisional Regional Deputy Director of Education, Pune Region, Pune
  5. The Education Officer, Secondary Zila Parishad, Pune

By this petition, the petitioner, Secretary, Tanzeem-E-Waledain Urdu Madaris, Pune Maharashtra seeks a direction to the State Government to grant permission for establishment of a new Urdu medium secondary school from Standard Vth to Xth at Village Katraj, Pune City. The petitioner society is a public charitable trust registered under the Bombay Public Trust Act 1950 and also a society registered under the Societies Registration Act 1860. The petitioner society has been granted minority status certificate by the State Government vide certificate dated 12.5.2009. The petitioner society has established an Urdu medium primary school at Village Katraj, Pune in the year 1991 which has been duly recognized by the State Government. Pursuant to the notification issued by the State Government calling proposal from interested parties for starting new secondary schools for the academic year 2008-2009, the petitioner submitted a proposal for establishment of the proposed new Urdu medium secondary school at Village Katraj, Pune City. The proposal was submitted in the prescribed format on 8.5.2008 to the Education Officer (Secondary Education) Zila Parishad, Pune with all the requisite documents and processing fee of Rs. 5000/-. On evaluation of the said proposal by the Director of Secondary and Higher Secondary Education, Government of Maharashtra, Pune, it was rejected on the ground that there exists another secondary school around the area of Ghorpade Peth. It is alleged that the petitioner's proposal was for establishment of an Urdu secondary school at Village Katraj and not at Ghorpade Peth and as such the Director of Secondary and Higher Secondary Education, the Government of Maharashtra has illegally rejected the petitioner's proposal vide order dated 11.2.2010. It is also alleged that there is no Urdu medium school existing in and around area up to 10 kms. from Village Katraj. On these premise, it is alleged that the impugned order dated 11.2.2010 of the Director, Secondary and Higher Secondary Education, Maharashtra, Pune rejecting the petitioner's proposal for establishment of a new Urdu medium secondary school at Village Katraj is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.



The District Education Officer, Secondary, Zila Parishad, Pune has resisted the petition on the ground that on 16.6.2009, the State Government had taken a policy decision for rejection of proposals for establishment of new Marathi medium secondary schools. It is alleged that acting upon the said decision of the State Government the petitioner's proposal for establishment of the proposed Urdu medium secondary school was rejected. It is also alleged that there is facility of Urdu medium secondary education nearby the proposed location of the petitioner's school and the State Government, therefore, has rejected the petitioner's proposal for establishment of the proposed new Urdu medium secondary school.

In rejoinder, the petitioner has submitted that the proposed school has all the infrastructural facilities and as such the petitioner is entitled to establish the proposed school at Village Katraj, Pune City.

The question for consideration is : whether the impugned order dated 11.2.2010 of the Director of Secondary and Higher Secondary Education, Government of Maharashtra in rejecting the petitioner's proposal for establishment of a new Urdu medium secondary school at Village Katraj is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of the fundamental rights guaranteed under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

"The key to the understanding of the true meaning and implication of the article under consideration are the words 'of their choice'. It is said that the

dominant word is 'choice' and the content of that article is as wide as the choice of the particular minority community may make it."

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that "the words 'of their' 'choice' in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes."

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

".....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- ii) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution."

The right to establish educational institutions "of their choice" must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life."

As stated above, the petitioner's proposal for establishment of the proposed Urdu medium secondary school was rejected on the following grounds:-

1. That as per the decision of Cabinet Meeting held on 16.6.2009, the petitioner's proposal for starting a new Urdu medium secondary school cannot be accepted.
2. That there is facility of Urdu medium secondary school education nearby the proposed location of the petitioner institution and as such the petitioner is not entitled to establish the proposed Urdu medium secondary school.

As per the policy decision dated 16.6.2009 taken by the Government of Maharashtra, proposals for starting new Marathi medium secondary schools were rejected. Admittedly, the petitioner's proposal was for establishment of new Urdu medium secondary school at Village Katraj, Pune City. Obviously, the petitioner's proposal for starting the proposed Urdu medium secondary school is not covered by the said decision of the State Government. That being so, the competent authority of the State Government has committed a patent illegality in rejecting the petitioner's proposal for establishment of the proposed Urdu medium secondary school on the basis of the said policy decision of the State Government.

As regards the ground No. 2, it is alleged by the respondent that there exists another secondary school around the area of Ghorpade Peth and therefore, the petitioner's proposal for establishment of the proposed new Urdu medium secondary school was rejected. It needs to be stated that the petitioner had submitted proposal for establishment of a new Urdu medium secondary school at Village Katraj and not at Ghorpade Peth. That being so, the said ground of rejection of the petitioner's proposal by the respondent has knocked the bottom out of its case. The petitioner has stated that there is no Urdu medium school existing in and around the area up to 10 kms. from the Village Katraj.

For the foregoing reasons, we are constrained to observe that the impugned order dated 11.2.2010 of the Director of Secondary and Higher Education, Maharashtra State, Pune rejecting the petitioner's proposal for establishment of a new Urdu medium secondary school at Village Katraj, Pune City is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

We, therefore, recommend to the State Government to reconsider the petitioner's proposal for grant of permission for the establishment of an Urdu Medium secondary school at Village Katraj, Pune City, Maharashtra as the impugned order dated 11.2.2010 of the Director of Secondary and Higher Secondary Education, Government of Maharashtra, Pune rejecting the petitioner's proposal for establishment of a new Urdu medium secondary school at Village Katraj is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

### **Case No. 981 of 2010**

**Petition to seek direction to AICTE for grant of recognition for starting of an MBA College by a minority institution.**

**Petitioner :** Dr. D. Y. Patil Institute of Management and Research Centre, Munshi Vidyadham Dahej Bypass Road, Bharuch, Gujarat

**Respondents :** 1. The Central Regional Officer, All India Council for Technical Education, Tagore Hostel – 2, Shamlu Hills, Bhopal  
2. The Secretary, All India Council of Technical Education, 7<sup>th</sup> Floor, Chandernagore Building, Janpath, New Delhi

By this petition, the petitioner, Coordinator, Munshi Manubarwala Memorial Charitable Trust seeks a direction to the respondent to grant recognition for starting an MBA college from the academic year 2010-11. According to the petitioner, the petition was submitted through web portal as per AICTE guidelines for the said purpose. The said application was supported by a No Objection Certificate issued by Dr. D.Y. Patil Educational Enterprises Pvt. Ltd, Belapur, New Mumbai. By the letter dated 11.2.2010, the respondent returned the application alongwith documents and the demand draft No. 887613 dated 6.2.2010 for Rs. 80,000/- drawn on Dena Bank with the remarks that the same may be resubmitted as per new norms to be notified by the respondent council. It is alleged that the impugned action of the respondent council is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notice no reply has been filed from the respondent. Hence the case proceeded ex-parte.

The point for consideration is: whether the impugned action of the respondent council in returning the application filed by the petitioner for establishment of a new MBA institution in the name of Dr. D. Y Patil Institute of Management and Research Centre, Munshi Vidyadham is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

The petitioner has filed 3 affidavits of Mr. Patel Suleman Adam to prove that Dr. D.Y. Patil Institution of Management and Research Centre, Dahej Bypass Road, Bharuch has been established and is being administered by members of the Muslim community. The affidavits further proves that the beneficiaries of the said institution are members of the Muslim Community, it needs to be stated that the petitioner has not filed any affidavit to prove that the proposed college has all the infrastructural and instructional facilities as per the norms prescribed therefor by the respondent council. By the letter dated 11.2.2010, the respondent council has returned the application alongwith the documents and the demand draft of Rs. 80,000 to the petitioner directing it to re-submit the same in accordance with the new norms to be notified by the respondent council. There is nothing on record to show or suggest that pursuant to the said letter the petitioner has submitted any fresh application to the respondent council seeking recognition for establishment of new MBA institution in the name of Dr. D.Y. Patil Institute of Management and Research Centre. In this view of the matter it would not be appropriate to intervene in the matter at this stage.

For the foregoing reasons the petition is dismissed.

### **Case No. 438 of 2009**

**Petition to seek direction to State against the order of declining permission to admit 50% students of minority community by a minority institution**

**Petitioner** : Holy Cross Basic Training Institute, Pathalgaon, Dist. Jashpur, Chhattisgarh

**Respondent** : The Director, State Council for Educational Research and Training, Shankar Nagar, Raipur, Chhattisgarh

The challenge in this petition is to the order dated 28.4.2009 of the Director, State Council for Educational Research and Training, Raipur, Chhattisgarh declining permission to the petitioner institution to admit 50 % students of the minority community. The petitioner institution has been granted minority status certificate by the State Government vide order No. A.S./151/08/7990 dated 4.10.2008. It is alleged that the management of the petitioner institution has a fundamental right under Article 30(1) of the Constitution to admit 50% students of the minority group. On 4.12.2008 and 22.4.2009, the petitioner had applied to the respondent, the Director, State Council for Educational Research and Training, Chhattisgarh seeking permission to admit 50% students from minority group. By the letter dated 28.4.2009, the petitioner's request was rejected on the ground that the petitioner institution, being an aided minority educational institution, is not entitled to admit students from minority group as sought by it. It is alleged that the impugned order dated 28.4.2009 is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The respondent, the Director, State Council for Educational Research and Training, Raipur resisted the petition on the ground that the petitioner being a minority aided institution is not entitled to admit students of the minorities group as sought by it. Reliance has been placed on Section 2(Ch) Chhattisgarh D.Ed. Admission Rules 2007 (for short, the Rules) and the decisions of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537. Section 5 of the Rules provides both vertical and horizontal reservation in the seats available for D.Ed. course. Admittedly, the petitioner institution is an aided minority educational institution. It has been held by the Supreme Court in P.A. Inamdar vs. State of Maharashtra (2005) (supra) that mere receipt of State aid does not annihilate the right guaranteed under Article 30(1) of the Constitution. Their Lordships have held that "a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens' rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. **The State Government concerned has to notify the percentage of the minority students to be admitted in the light of the above observations.**"

Their Lordships have further observed that "the object underlying Article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular" education. Thus the twin objects sought to be achieved by Article 30(1) in the interest of minorities are: (i) to enable such to conserve its religion and language, and (ii) to give a thorough good general education to the children belonging to such minority."

It needs to be stated that in his reply the respondent has relied upon the decisions of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 and P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 in support of the contentions that the petitioner institution being a minority aided institution is not entitled to have the right of admission of students belonging to the minority group. It appears that the respondent has misconstrued law declared by the Supreme Court. Their Lordships of the Supreme Court has unequivocally stated in the decisions that neither the policy of reservation can be enforced by the State nor any quota or percentage of admission can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. In fact, the decisions relied upon by the respondent supports the plea taken by the petitioner that the impugned order dated 28.4.2009 is hit by Article 30(1) of the Constitution. At this juncture we may also usefully excerpt the Sub Article (5) of Article 15 of the Constitution which exempts a minority educational institution from the policy of reservation in admission. The Sub Article (5) of Article 15 is as under :-

Amendment of article 15.-In Article 15 of the Constitution, after clause (4), the following clause shall be inserted, namely:-

“(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.”

(Emphasis supplied)

Admittedly, the petitioner institution is an aided minority institution, Article 29(2) of the Constitution obligates the petitioner institution to admit students of the non-minority group to a reasonable extent. Their Lordships have held that the moment a minority educational institution is granted aid, the institution will have to admit students of the non-minority group to a reasonable extent, whereby the character of the institution is not annihilated, and at the same time the rights of the citizens engrafted in Article 29(2) of the Constitution are not subverted.

**The State Government can prescribe percentage of the minority community to be admitted in a minority educational institution taking into account the population and educational needs of the area in which the institution is located. There cannot be a common rule or regulation or order in respect of types of educational institutions from primary to college level and for the entire State fixing the uniform ceiling in the matter of admission of students in minority educational institutions.** Thus a balance has to be kept between two objectives – preserving the right of the minorities to admit students of their own community

and that of admitting “sprinkling of outsiders” in their institutions subject to the condition that the manner and number of such admissions should not be violative of the minority character of the institution.

For the foregoing reasons, we find and hold that the impugned order dated 28.4.2009 of the respondent, Director, State Council for Educational Research and Training, Raipur, Chhattisgarh is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Article 13 of the Constitution injuncts the State Government from enacting any law, rules or regulations which is inconsistent with or in derogation of the fundamental rights. Clause (1) of Article 13 provides that the existing laws, rules and regulations which clash with the exercise of the fundamental rights conferred by Part III of the Constitution shall, to that extent be void.

For the foregoing reasons, we find and hold that the impugned order dated 28.4.2009 of the respondent, Director, State Council for Educational Research and Training, Raipur, Chhattisgarh is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. The management of the petitioner institution has a right of admission of students belonging to the minority group and at the same time it would be required to admit a reasonable extent of non minority students also.

### **Case No. 163 of 2009**

#### **Petition to seek direction to State for grant of permission for Establishment of a new Marathi Primary School by a Minority Institution.**

**Petitioner :** President, Adhunik Shikshan Prasark Mandal, Office no. 1, 1st Floor, Amodi complex, Juna Bazar, Aurangabad, Maharashtra, For R. M. Shaikh Marathi Primary School, At Post : Upali Tq. Wadwani, Dist. Beed (MS)

- Respondents:**
1. The Chief Secretary, Government of Maharashtra, 5<sup>th</sup> Floor, Room No, 518 (Main), Mantralaya, Mumbai – 32
  2. The Secretary, Department of School Education and Sports and Youth Affairs, Government of Maharashtra, 4<sup>th</sup> Floor, Room No. 424, Mantralaya, Mumbai – 32
  3. The Education Officer (Primary School Department), Beed Zila Parishad, Near Shivaji Putla, Shivaji Chowk, Beed – 431 122 (Maharashtra)

By this petition, the President Adhunik Shikshan Prasark Mandal, Juna Bazar, Aurangabad, Maharashtra seeks a direction to the State Government to grant permission for establishment of a new Marathi Primary School at Post Upali, Tq. Wadwani, District Beed, Maharashtra. The petitioner society has been granted minority status by the Maharashtra Government vide letter dated 17.7.2008. On 12.5.2008, the petitioner society submitted proposal to the State Government, seeking permission for establishment of a new Marathi Primary School at Upali,



Tq. Wadwani, District Beed. The proposal was submitted before the Zila Parishad, Beed along with all the requisite documents. It is alleged that the petitioner society has a bank balance of Rs. 3,81,000 as against the respondent's requirement of Rs. 1,00,000/- and it has all the infrastructural facilities for establishment of the proposed School. It is also alleged that the State Government has not granted permission for establishment of the proposed School and thus the impugned action of the State Government in not granting permission as sought by the petitioner society is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notices, the respondents did not file any reply.

The question for consideration is : whether the impugned action of the State Government in not granting permission for establishment of new Marathi Primary School at Post Upali, Tq. Wadwani., District Beed, is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of the fundamental rights guaranteed under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

"The key to the understanding of the true meaning and implication of the article under consideration are the words 'of their choice'. It is said that the dominant word is 'choice' and the content of that article is as wide as the choice of the particular minority community may make it."



In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that “the words ‘of their’ ‘choice’ in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- (i) To enable such minority to conserve its religion and language, and
- ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

Thus, the petitioner society has a fundamental right to establish the proposed new Marathi Primary School at Post Upali, Tq. Wadwani, District Beed on permanent non-grant basis in terms of Article 30(1) of the Constitution. Mr. Shaikh Farukh has filed his affidavit to prove the following facts:-

- (i) That the petitioner has requisite infrastructural and instructional facilities for the proposed school;
- (ii) That the establishment of the proposed school will not create an unhealthy competition among similar educational institutions;

- (iii) That there is one existing Marathi primary School but according to population and radius of the place there is need for two Marathi Primary Schools. Student strength per class in existing school is around 80 students. Per class 30 students strength is needed and existing school is over burdened. To reduce the burden of existing school a new Marathi school is needed.
- (iv) That the institution owns land of 41600 sq. ft. and building of 30000 sq. ft.
- (v) That the library and computer rooms are separately available;
- (vi) That the separate toilets are available for girls and boys students. There is facility of playground adjacent to the school building.

It needs to be highlighted that the respondent has not even filed reply to controvert the factual matrix of the petitioner's case. Relying on the unrebutted affidavit of Mr. Shaikh Farukh, we find and hold that the impugned action of the State Government in not granting permission to the petitioner society to establish proposed Marathi Primary School is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, we recommend to the State Government to reconsider the petitioner's proposal for grant of permission for establishment of Marathi Primary School at Upali, Tq. Wadwani, District Beed, Maharashtra to be run on permanent non-grant basis as the impugned action of the State Government in not-granting permission as sought by the petitioner society is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

### **Case No. 162 of 2009**

#### **Petition to seek direction to State for grant of permission for Establishment of a new Urdu High School by a Minority Institution**

**Petitioner:** President, Adhunik Shikshan Prasark Mandal, Office no. 1, 1st Floor, Amodi complex, Juna Bazar, Aurangabad, Maharashtra, For R. M. sheikh Urdu High School, At Post : Upali Tq. Wadwani, Dist. Beed (MS)

- Respondents :**
1. The Chief Secretary, Government of Maharashtra, 5<sup>th</sup> Floor, Room No, 518 (Main) Mantralaya, Mumbai – 32
  2. The Secretary, Department of School Education and Sports and Youth Affairs, Government of Maharashtra, 4<sup>th</sup> Floor, Room No. 424, Mantralaya, Mumbai – 32
  3. The Education Officer (High School Department), Beed Zila Parishad, Near Shivaji Putla, Shivaji chowk, Beed – 431 122, (Maharashtra)

By this petition, the President Adhunik Shikshan Prasark Mandal, Juna Bazar, Aurangabad, Maharashtra seeks a direction to the State Government to grant permission

for establishment of a new Urdu High School at Wadwani, District Beed. The petitioner society has been granted minority status by the Maharashtra Government vide letter dated 17.7.2008. On 12.5.2008, the petitioner society submitted proposal to the State Government, seeking permission for establishment of a new Urdu High School at Wadwani, District Beed. The proposal was submitted before the Zila Parishad, Beed along with all the requisite documents. It is alleged that the petitioner society has a bank balance of Rs. 3,81,000 as against the respondent's requirement of Rs. 1,00,000/- and it has all the infrastructural facilities for establishment of the proposed School. It is also alleged that the State Government has not granted permission for establishment of the proposed School and thus the impugned action of the State Government in not granting permission as sought by the petitioner society is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notices, the respondents did not file any reply.

The question for consideration is : whether the impugned action of the State Government in not granting permission for establishment of Urdu High School at Wadwani., District Beed, is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of the fundamental rights guaranteed under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

“The key to the understanding of the true meaning and implication of the article under consideration are the words ‘of their choice’. It is said that the dominant word is ‘choice’ and the content of that article is as wide as the choice of the particular minority community may make it.”

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that “the words ‘of their’ ‘choice’ in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

Thus, the petitioner society has a fundamental right to establish the proposed new Urdu High School at Upali, Tq. Wadwani, District Beed on permanent non-grant basis in terms of Article 30(1) of the Constitution. Mr. Sheikh Farukh has filed his affidavit to prove the following facts:-

- (vii) That the petitioner has the requisite infrastructural and instructional facilities for the proposed school;
- (viii) That the establishment of the proposed school will not create an unhealthy competition among similar educational institutions;
- (ix) That there is no other Urdu High School within the radius of 20kms. From the proposed Urdu High School and there is an urgent need for establishment of the new Urdu High School;
- (x) That the institution owns a land of 41600 sq. ft. and building of 30000 sq. ft.
- (xi) That the library and computer rooms are separately available;
- (xii) That the separate toilets are available for girls and boys students. There is facility of playground adjacent to the school building.

It needs to be highlighted that the respondent has not even filed reply to controvert the factual matrix of the petitioner's case. Relying on the unrebutted affidavit of Mr. Shaikh Farukh, we find and hold that the impugned action of the State Government in not granting permission to the petitioner society to establish proposed Urdu High School is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, we recommend to the State Government to reconsider the petitioner's proposal for grant of permission for establishment of an Urdu High School at Upali, Tq. Wadwani, District Beed, Maharashtra to be run on permanent non-grant basis as the impugned action of the State Government in not-granting permission as sought by the petitioner society is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

### **Case No. 161 of 2009**

#### **Petition to seek direction to State for grant of permission for Establishment of a new Urdu Primary School by a Minority Institution**

**Petitioner :** Urdu Primary School, At Post : Upali Tq. Wadwani, Dist. Beed (MS) Through its President, Adhunik Shikshan Prasark Mandal, Office no. 1, 1st Floor, Amodi complex, Juna Bazar Aurangabad, Maharashtra

- Respondents :**
1. The Chief Secretary, Government of Maharashtra, 5<sup>th</sup> Floor, Room No, 518 (Main), Mantralaya, Mumbai – 32
  2. The Secretary, Department of School Education and Sports And Youth Affairs, Government of Maharashtra, 4<sup>th</sup> Floor, Room No. 424, Mantralaya, Mumbai – 32
  3. The Education Officer (Primary Department), Beed Zila Parishad, Near Shivaji Putla, Shivaji chowk, Beed – 431 122 (Maharashtra)

By this petition, the President Adhunik Shikshan Prasark Mandal, Juna Bazar, Aurangabad, Maharashtra seeks a direction to the State Government to grant permission for establishment of a new Urdu Primary School at Wadwani, District Beed. The petitioner society has been granted minority status by the Maharashtra Government vide letter dated 17.7.2008. On 12.5.2008, the petitioner society submitted proposal to the State Government, seeking permission for establishment of a new Urdu Primary School at Wadwani, District Beed. The proposal was submitted before the Zila Parishad, Beed along with all the requisite documents. It is alleged that the petitioner society has a bank balance of Rs. 3,81,000 as against the respondent's requirement of Rs. 1,00,000/- and it has all the infrastructural facilities for establishment of the proposed School. It is also alleged that the State Government has not granted permission for establishment of the proposed School and thus the impugned action of the State Government in not granting permission as sought by the petitioner society is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

Despite service of notices, the respondents did not even file any reply.

The question for consideration is : whether the impugned action of the State Government in not granting permission for establishment of Urdu Primary School at Wadwani., District Beed, is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of the fundamental rights guaranteed under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

“The key to the understanding of the true meaning and implication of the article under consideration are the words ‘of their choice’. It is said that the dominant word is ‘choice’ and the content of that article is as wide as the choice of the particular minority community may make it.”

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that “the words ‘of their’ ‘choice’ in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- iii) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

Thus, the petitioner society has fundamental right to establish the proposed new Urdu Primary School at Wadwani, District Beed on permanent non-grant basis in terms of Article 30(1) of the Constitution. Mr. Sheikh Farukh has filed his affidavit stating that there is a need for one more Urdu Primary School at Wadwani, District Beed and the petitioner society has all



the infrastructural facilities for the proposed school. His aforesaid statement on oath has not been controverted by the respondents. Consequently, we have no hesitation in relying on the said unrebutted statement of Mr. Shaikh Farukh.

We, therefore, find and hold that the impugned action of the State Government in not granting permission to the petitioner society to establish the proposed Urdu Primary School at Wadwani, District Beed is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, we recommend to the State Government to reconsider the petitioner's proposal for grant of permission for establishment of an Urdu Primary School at Wadwani, District Beed, Maharashtra to be run on permanent non-grant basis as the impugned action of the State Government in not-granting permission as sought by the petitioner society is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

### **Case No. 2700 of 2010**

#### **Petition for grant of Minority Status Certificate**

**Petitioner** : Sardar Kewal Singh Institute of Management and Technology, Vill/PO Kirmach, Kurukshetra, Haryana

**Respondent** : The Finance Commissioner & Principal Secretary Education Department, Government of Haryana, Chandigarh

### **Case No. 2701 of 2010**

**Petitioner** : Sardar Kewal Singh Polytechnic, Kirmach, Kurukshetra Haryana

**Respondent** : The Finance Commissioner & Principal Secretary, Education Department, Government of Haryana, Chandigarh

By the order dated 28.4.2011, this batch of cases was ordered to be disposed of by a common order. Hence they are being disposed of by this common order.

The petitioner institutions have applied for grant of minority status certificate. It is stated in the petitions that on 19.10.2010, the petitioner institutions had applied to the competent authority of the State Government for grant of minority status certificate and the same are still pending. Despite service of notice the competent authority of the State Government has failed to apprise the Commission about the status of the said applications. Pendency of the said application for such a disproportionately long period clearly indicates Government's disinclination to grant minority status certificate to the petitioner. Petitioner's right to get a minority status certificate can not be kept under suspended animation. In this view of the matter we find it just and expedient in the interest of justice to intervene in the matter.



The petitioner institutions have applied for grant of minority status certificate on the ground that the same have been established and are being administered by the Sardar Kewal Singh Memorial Educational Trust, which is a registered trust, constituted by members of the Sikh community. All the trustees of the said trust are from Sikh community. The aforesaid averments made in the petitions find ample corroboration from the documentary evidence produced on behalf of the petitioners and the affidavits of Mr. Gurmeet Singh. The affidavits of Mr. Gurmeet Singh further prove that the beneficiaries of the petitioner institutions are members of the Sikh community. There is no document on record to rebut the evidence produced by the petitioner institutions.

We have already held in the Case No. 1320 of 2009 (Buckley Primary School vs. The Principal Secretary to Government, School & Mass Education Department, Government of Orissa) decided on 6.7.2010 that the identifying criteria of fixation of the percentage by the State Government governing admission of a minority community in a minority education institution cannot be included in the indicia for determining the minority status of such an institution.

Relying on the said unrebutted evidence produced by the petitioner institution\ we find and hold that Sardar Kewal Singh Institute of Management and Technology, Vill/PO Kirmach, Kurukshetra, Haryana and Sardar Kewal Singh Polytechnic, Kirmach, Kurukshetra, Haryana run by the Sardar kewal Singh Memorial Educational Trust is eligible for grant of minority status on religious basis. Consequently, Sardar Kewal Singh Institute of Management and Technology and Sardar Kewal Singh Polytechnic are declared as minority educational institutions within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.

Copy of the order be placed on the record of case No. 2701/2010.

### **Case No. 1790 of 2010**

#### **Petition for grant of Minority Status Certificate**

**Petitioner** : Noorul Islam Higher Secondary School, Nellikunnu, Run by Jalaliyya Juma Masjid Committee, Valayappuram, Vengoor(Post), Malappuram, Kerala

**Respondent** : The Secretary, General Education Department, Government of Kerala, Secretariat, Thiruvananthapuram, Kerala

The petitioner institution has applied for grant of minority status certificate. It is stated in the petition that on 12.4.2010, the petitioner had applied to the competent authority of the State Government for grant of minority status certificate and the same is still pending. Despite service of notice the competent authority of the State Government has failed to apprise the Commission about the status of the said application. Pendency of the said application for such a disproportionately long period clearly indicates Government's disinclination to grant minority status certificate to the petitioner. Petitioner's right to get a minority status certificate can not

be kept under suspended animation. In this view of the matter we find it just and expedient in the interest of justice to intervene in the matter.

The petitioner institution has applied for grant of minority status certificate on the ground that the same has been established and is being administered by the Jalaliyya Juma Masjid Committee, which is a registered society, constituted by members of the Muslim community. All the members of the said society are from the Muslim community. The aforesaid averments made in the petition find ample corroboration from the documentary evidence produced on behalf of the petitioner and the affidavits of Mr. Kunjimuhammed Haji and Mr. Shaikh Mohammed. The affidavit of Mr. Kunjimuhammed Haji further proves that the beneficiaries of the petitioner institution are members of the Muslim community. There is no document on record to rebut the evidence produced by the petitioner institutions.

We have already held in the Case No. 1320 of 2009 (Buckley Primary School vs. The Principal Secretary to Government, School & Mass Education Department, Government of Orissa) decided on 6.7.2010 that the identifying criteria of fixation of the percentage by the State Government governing admission of a minority community in a minority education institution cannot be included in the indicia for determining the minority status of such an institution.

Relying on the said unrebutted evidence produced by the petitioner institution, we find and hold that Noorul Islam Higher Secondary School, Nellikunnu, Valayappuram, Vengoor(Post), Malappuram, Kerala run by the Jalaliyya Juma Masjid Committee is eligible for grant of minority status on religious basis. Consequently, Noorul Islam Higher Secondary School is declared as minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.

### **Case No. 253 of 2010**

#### **Petition for grant of Minority Status Certificate**

**Petitioner** : St. Ann's A.U.P. School, Pallikkara, Nileshwar, Kerala

**Respondent** : The Secretary, General Education Department, Government of Kerala, Secretariat, Thiruvananthapuram, Kerala

The petitioner institution has applied for grant of minority status certificate. It is stated in the petition that on 12.7.2008, the petitioner institution had applied to the State Government for grant of minority status certificate and the same was returned for its retransmission through proper channel vide order dated 26.8.2008. We fail to understand as to why the application for grant of minority status certificate filed by the petitioner was returned by the State Government for its retransmission through proper channel. The tenor of the said order clearly indicates government's disinclination to grant minority status certificate as sought by the petitioner. Hence this is the fit case for intervention by this Commission.

The petitioner institution has applied for grant of minority status certificate on the ground that the same has been established and is being administered by St. Ann's Convent which is a registered society constituted by the members of the Christian community. All the members of the society are Christians. The aforesaid averments made in the petition find ample corroboration from the documentary evidence produced on behalf of the petitioner and the affidavit of St. Angelica. The affidavit of Sr. Angelica further proves that the beneficiaries of the petitioner institution are members of the Christian community. There is no document on record to rebut the evidence produced by the petitioner.

We have already held in the Case No. 1320 of 2009 (Buckley Primary School vs. The Principal Secretary to Government, School & Mass Education Department, Government of Orissa) decided on 6.7.2010 that the identifying criteria of fixation of the percentage by the State Government governing admission of a minority community in a minority education institution cannot be included in the indicia for determining the minority status of such an institution.

Relying on the said unrebutted evidence produced by the petitioner institution we find and hold that St. Ann's A.U.P. School, Pallikkara, Nileshtar, Kerala run by the St Ann's Convent is eligible for grant of minority status on religious basis. Consequently, St. Ann's A.U.P. School is declared as minority educational institution within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.

### **Case No. 873 of 2010**

#### **Petition seeking direction to the University for affiliation of a minority institution**

Petitioner : Muslima Girls Degree College, Sir Syed Nagar, Moradabad, Uttar Pradesh,  
Through its President, Mr. Mohd Aslam Shamsi

Respondents : 1. The Vice Chancellor, M.J.P. Rohilkhand University, Bareilly, Uttar Pradesh  
2. The Secretary, Higher Education Department, Government of Uttar Pradesh, Secretariat, Lucknow, Uttar Pradesh

By this petition, the President of the Muslima Girls Degree College, Moradabad, which is a minority educational institution has challenged the recommendations of the respondent university regarding de-affiliation of B.Ed. course run by the petitioner college. It transpires from the record that the issues raised herein were agitated in writ petitions filed before the Allahabad High Court and some directions have also been issued by the Allahabad High Court in this regard. In this view of the matter, it would not be appropriate for the commission to intervene at this stage. The petition is disposed of accordingly.

### **Case No. 2068 of 2010**

**Petition to seek direction to State for grant of NOC for a Polytechnic College by Minority Community.**

- Petitioner :**
1. Janta Polytechnic
  2. G.B.S. Education Society, Both at: Thana Chhapper Road V.P.O. Mustafabad, Tehsil Jagadhri, Distt. Yamunanagar, Haryana

- Respondents :**
1. The Principal Secretary/Secretary, Technical Education Dept. Haryana Civil Mini Secretariat, Sector 17, Near Bust Stand, Chandigarh
  2. Director General, Dept. of Technical Education, Bays 7- 12, Sector 4, Panchkula, Haryana
  3. The Member Secretary, All India Council for Technical Education (AICTE), 7<sup>th</sup> Floor, Chanderlok Building, Janpath, New Delhi

The petitioner No. 2, GBS Education Society Mustafabad, District Yamunanagar is a registered society constituted by members of the Sikh community. On 8.12.2008, the petitioner No. 2 was accorded minority status by the Higher Education Commissioner, Government of Haryana. On 28.12.2009, the petitioner submitted a proposal to the respondent No. 1 and 2 for grant of NOC for the establishment of the Janta Polytechnic at Mustafabad, District Yamunanagar (Haryana) to impart instruction in diploma engineering courses. The petitioner No. 1 has all the infrastructural and instructional facilities in accordance with the norms prescribed by the respondent council namely AICTE. The State Level Committee constituted by the Government of Haryana in its meeting dated 28.1.2010 returned the proposal. The petitioner submitted fresh proposal vide letter dated 20.3.2010 giving all the details as per the revised norms prescribed by the respondent council for the academic session 2010-11. It is alleged that pursuant to the reminder sent by the petitioner, a letter dated 26.8.2010 was received from respondent No. 2 requiring the petitioner to attend the scrutiny committee meeting scheduled to be held on 31.8.2010 and produce all the relevant documents. Accordingly, the representative of the petitioner attended the meeting and some minor deficiencies were pointed out by the said committee, which were subsequently rectified by the petitioner on 13.9.2010. Thereafter, the petitioner received another letter No. 6649 dated 24.9.2010 detailing the deficiencies pointed out by the respondent No. 2. Thereafter, the petitioner intimated to the respondent No. 2 that all the deficiencies have been rectified vide letter dated 27.9.2010. It is alleged that since the NOC as sought by the petitioner has not been issued by the respondent No. 1 and 2 within a period of 90 days from the date of filing of the application, the petitioners are entitled to invoke the provisions of sub Section (3) of Section 10 of the NCMEI Act for declaring that the competent authority has deemed to have granted NOC to the petitioner institution.

Respondent No. 2 has resisted the petition on the ground that the respondent council had delegated its approval powers for diploma courses to the State Level committee with specific guidelines to be followed. Accordingly, for the session 2010-11 some proposals including that of the petitioner were received by the respondent No. 2 and were processed as per the norms prescribed therefor by the respondent council. The petitioner's proposal was found deficient by the Scrutiny Committee and the same were communicated to the petitioner for rectification.

After rectification of the deficiencies by the petitioner, proposal was placed before the scrutiny committee meeting held on 26.11.2010 and the final decision of the scrutiny committee would be considered by the State Level Committee for issue of Letter of Intent (LOI).

The respondent AICTE has stated in its reply that it had decentralized the system of approval for diploma level courses and the State Governments were delegated the powers subject to fulfillment of certain conditions. However, the respondent council in its meeting held on 20.9.2010, decided to review the said decision and the council in its meeting held on 24.11.2010 resolved to withdraw the powers delegated to the State Governments. Accordingly, the respondent AICTE has intimated the State Governments about the withdrawal of the said powers delegated to the State Governments for processing of applications pertaining to diploma level institutions in Engineering and Technology, Pharmacy, Hotel Management & Catering Technology, Architecture, Applied Arts & Crafts and Medical Lab Technology vide letter dated 23.1.2011. The respondent council has fairly conceded that a letter was received from the Haryana Government wherein the proposal of Janta Polytechnic was recommended for issue of LOI as per the scrutiny conducted on 23.8.2010 and 26.11.2010. However the Regional Office had not issued LOI as the respondent council had withdrawn the delegation of powers to the State Government for processing of applications pertaining to diploma level institutions.

On the basis of the rival contentions of the parties the point which arises for consideration is: whether the impugned action of the respondent council in not acting upon the recommendations of the State Government for issue of LOI to the petitioner is violative of the fundamental rights guaranteed under Article 30(1) of the Constitution?

Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of the fundamental rights guaranteed under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If

religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.”

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

“The key to the understanding of the true meaning and implication of the article under consideration are the words ‘of their choice’. It is said that the dominant word is ‘choice’ and the content of that article is as wide as the choice of the particular minority community may make it.”

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that “the words ‘of their’ ‘choice’ in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- iv) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

It is beyond the pale of controversy that by the letter dated 26.2.2002, the respondent council had sent the following communication to the Secretaries of all the State Governments:

“This is in continuation of our earlier communication No. 711-005/GDIP/ET/2001 dated 27<sup>th</sup> March 2001 and dated 18.4.2001 on the above referred subject, the All India Council for Technical Education has decided to decentralize further the process of approval pertaining to Diploma Level institutions in Engineering and Technology, Pharmacy, Hotel Management and Catering Technology, Architecture, Applied Arts and Crafts and Medical Lab technology for the following purposes:

1. Establishment of new institutions;
2. Variation in intake capacity of existing institutions;
3. Introduction of additional courses in existing institutions;
4. Re-adjustment of courses/intake capacity in existing institutions;
5. Extension of approval of existing institutions for the academic year 2002-2003

In pursuance of the said decision, the guidelines have been framed by the All India Council for Technical Education and a copy of which is enclosed herewith. It is requested that based on these guidelines, calendar and schedule for the processing of applications, norms and standards of the Council the recommendations of the State Level Committee shall be sent to the concerned AICTE Regional Office for issuing of letters of approval/withdrawal/no-admission/variation in intake capacity/ re-adjustment of courses/ intake capacity etc. under intimation to the Council.

You may send your consent with regard to the above arrangement within 15 days from the date of issue of this letter in the absence of which the council will proceed with the processing of the new applications/extension of approval.

Notwithstanding anything stated in these guidelines, the Council's norms and guidelines, as amended from time to time, shall be applicable. This procedure will be reviewed after to years.”

It is also undisputed that the respondent council in its meeting held on 24.11.2010 resolved to withdraw the said powers delegated to the State Governments vide letter No. 711-005/GDIP/ET/2002 dated 26.2.2002. It is also undisputed that the said decision of the respondent council was communicated to the State Governments vide letter dated 23.1.2011. It is also an admitted position that before the communication of the order dated 23.1.2011 relating to withdrawal of powers delegated to the State Governments by the



respondent council, recommendations of the State Governments were received for issue of LOI to the petitioner for establishment of the proposed polytechnic under the name and style of Janta Polytechnic. It is contended on behalf of the respondent council that since the respondent council had resolved in its meeting held on 24.11.2010 for withdrawal of the powers delegated to the State Governments, the State Government had no power to recommend the proposal to issue LOI to the petitioner. In our opinion the said submission of the learned counsel of the respondent council does not hold much water. It is beyond the pale of controversy that the order relating to withdrawal of powers delegated to the State Governments was communicated vide letter dated 23.1.2011. That being so, the recommendations of the State Government on the proposal submitted by the petitioner were received in the office of the respondent council much before of the communication of the order dated 23.1.2011. It has been held by the Supreme Court in AIR 1951 SC 467 that “Natural justice requires that before any law can become operative, it must be promulgated or published. It must be broadcasted in some recognizable way so that all men may know what it is, or at the very least there must be some special rule or regulation or customary channel by or through which much knowledge can be acquired with the exercise of due and reasonable diligence.”

It is now well settled that the order dated 24.11.2010 of the respondent council relating to withdrawal of delegated powers will take effect from the date of its publication. The said order relating to withdrawal of powers delegated to the State Government did not receive any prior publication and no order can come into operation until it is made known. It has been held by the Supreme Court in the State of WB vs. M R Mandal AIR 2001 SC 347 that an order passed but retained on file without being communicated to the person concerned has no force or authority and no valid existence in law. (see also State of Maharashtra vs. Mayer Hans George AIR 1965 SC 722). Relying upon the aforesaid judgments of the Supreme Court we find and hold that the order dated 24.11.2010 of the respondent council relating to withdrawal of powers delegated to the State Government cannot come into operation prior to its communication to the State Government vide order dated 23.1.2011. Since the respondent council had received recommendations of the State Government for issue of LOI to the petitioner much before communication of the order dated 23.1.2011, the respondent council was bound to act upon the said recommendations. In effect, the State Government had granted NOC to the petitioner for establishment of the proposed polytechnic. Consequently, the respondent council was under legal obligation to act upon the NOC granted by the State Government. The impugned action of the respondent council in not acting upon the recommendations of the State Government on the petitioner’s proposal is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

For the foregoing reasons, we recommend to the respondent council to act upon the NOC granted by the State Government for establishment of the proposed Janta Polytechnic at Mustafabad, District Yamunanagar, Haryana in accordance with law.



## **Case No. 1356 of 2010**

### **Petition seeking direction to State for posting of Urdu knowing Headmasters/Teachers in Govt. Urdu Medium School**

**Petitioner :** Anjuman-E-Taraqui-E-Urdu (A.P.), IV 258, Avenue Road Madanpalle, Chittoor Dist., Andhra Pradesh- 517 325

- Respondents :**
1. The Secretary, School Education Department, Government of Andhra Pradesh, Room No. 312, J Block, Secretariat Building, Hyderabad – 500 022
  2. The Secretary, Ministry of Minority Affairs, 11<sup>th</sup> Floor, Paryavaran Bhawan, C.G.O. complex, New Delhi – 110 003
  3. The Regional Joint Director, School Education, Kadapa, Andhra Pradesh
  4. The Chairperson, Madanpalle Municipality, Madanapalle, Chittoor District, Andhra Pradesh
  5. The Director of School Education, Government of Andhra Pradesh, Beside Telephone Bhawan, Saifabad, Hyderabad

By this petition, the President, Anjuman-E-Taraqui-E-Urdu seeks a direction to the competent authority of the State Government to ensure posting of Urdu knowing Headmasters/Teachers in Government Urdu medium schools. The petitioner has quoted various orders issued by the competent authorities of the State Government relating to posting of Urdu Headmasters/Teachers in Urdu medium schools. According to him the G.O.M.S 1800 Edn. 2.12.1971 commands that for recruitment of teachers including Headmasters and Principals in Urdu medium institutions, one must be proficient in Urdu language. The order No. 654/Estt.Ix/80-1 dated 19.3.1980 also reiterates the said comment. Proceedings of the Commissioner and the Director, School Education vide their R.C. No. 173/UC-2/2000 dated 19.2.2001 also contains similar directions. In addition, proceedings of the Director, School Education vide R.C. No. 173C/UC-2/2000 of 19.1.2009 and letter No. 54-C/UAAP/2008-09 dated 28.1.2009 from Urdu Academy, Hyderabad and GOMS No. 12 dated 23.1.2009 read under G.O.M.S. 183, Education/Services-II Department and have been cited in support of the aforesaid contentions.

It is alleged that despite aforesaid orders no Urdu knowing headmaster/teacher has been posted in Urdu medium schools which is violative of the aforementioned orders issued by the competent authorities of the State Government.

In reply, the Commissioner of Madanapalle Municipality has cited case of one Shahjahan who is one of the aspirants for the promotion to the post of Headmaster and who has filed petition before the Andhra Pradesh Administrative Tribunal. She has also filed a Writ Petition before the High Court of Andhra Pradesh challenging the GO circulars and the proceedings of the Madanpalle Municipality, which has posted a Telugu knowing Headmistress in an Urdu medium school.

The Secretary, School Education Department, Government of Andhra Pradesh has cited procedure for promotion of a teacher as Headmaster. He has stated in his reply that in view of the certain orders issued by the Andhra Pradesh Tribunal, Hyderabad, the contentions raised by the petitioner do not merit acceptance.

The post of headmaster is of pivotal importance in the life of a school. Around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, maintenance of discipline and the efficiency of its teaching. Having regard to the key role played by the Headmaster in the management and administration of the educational institution it is necessary that the Headmaster of Urdu medium school should have proficiency in Urdu language. The petitioner has quoted specific instances of some Headmasters who have been posted in Urdu medium schools but they have no knowledge of Urdu language.

For the foregoing reasons, the Commission recommends to the State Government that having regard to the key role played by the headmaster in the management and administration of the educational institution the Headmaster to be posted in an Urdu medium school must be proficient in Urdu language as required by the G.O.M.S.1800 Edn. 2.12.1971, read alongwith the Andhra Pradesh Govt. Panchayat Raj Department memo 654/Estt.Ix.80-1 dated 19.3.1980, G.O.M.S. No. 12 dated 23.1.2009, the proceedings of the Commissioner and Director, School Education vide R.C. No. 173/UC-2/2000 dated 19.2.2001 and the proceedings of the Director, School Education R.C. No. 173C/UC-2/2000 dated 19.1.2009.

### **Case No. 727, 728, 729, 730 of 2008**

#### **Petition for grant of Minority Status Certificate**

### **Case No. 727 of 2008**

**Petitioner :** Sri Guru Tegh Bahadur Khalsa College, North Campus Delhi University

**Respondents :** 1. Assistant Director of Education (Act), Directorate of Education, Government of NCT of Delhi , Room No. 214 – A, Old Secretariat Delhi

2. University of Delhi, Through Registrar

**Interveners :** 1. Mr. N.S. Kapoor, Ku-6, Pitampura, Delhi – 110 088

2. Mr. Saikat Ghosh, 2<sup>nd</sup> Floor Annexe, 18, Banarsi Dass Estate, Timarpur, Delhi – 54

3. Dr. Veena Agarwal, Reader, Department of Hindi, SGTB Khalsa College

### **Case No. 728 of 2008**

**Petitioner :** Sri Guru Gobind Singh College of Commerce, University of Delhi, Pitampura, Delhi – 110 034

**Respondents :** 1. Assistant Director of Education (Act), Directorate of Education, Government of NCT of Delhi , Room No. 214 – A, Old Secretariat Delhi

2. University of Delhi, Through Registrar

**Interveners :** 1. Mr. N.S. Kapoor, Ku-6, Pitampura, Delhi – 110 088

2. Mr. Saikat Ghosh, 2<sup>nd</sup> Floor Annexe, 18, Banarsi Dass Estate, Timarpur, Delhi – 54

3. Dr. Veena Agarwal, Reader, Department of Hindi, SGTB Khalsa College

### **Case No. 729 of 2008**

**Petitioner :** Sri Guru Nanak Dev Khalsa College, Dev Nagar, Delhi

**Respondents :** 1. Assistant Director of Education (Act), Directorate of Education, Government of NCT of Delhi , Room No. 214 – A, Old Secretariat Delhi

2. University of Delhi, Through Registrar

**Interveners :** 1. Mr. N.S. Kapoor, Ku-6, Pitampura, Delhi – 110 088

2. Mr. Saikat Ghosh, 2<sup>nd</sup> Floor Annexe, 18, Banarsi Dass Estate, Timarpur, Delhi – 54

3. Dr. Veena Agarwal, Reader, Department of Hindi, SGTB Khalsa College

### **Case No. 730 of 2008**

**Petitioner :** Mata Sundari College for Women, Mata Sundari Lane New Delhi – 110 002

**Respondents :** 1. Assistant Director of Education (Act), Directorate of Education, Government of NCT of Delhi , Room No. 214 – A, Old Secretariat Delhi

2. University of Delhi, Through Registrar

**Interveners :** 1. Mr. N.S. Kapoor, Ku-6, Pitampura, Delhi – 110 088

2. Mr. Saikat Ghosh, 2<sup>nd</sup> Floor Annexe, 18, Banarsi Dass Estate, Timarpur, Delhi – 54

3. Dr. Veena Agarwal, Reader, Department of Hindi, SGTB Khalsa College

The Delhi Sikh Gurudwara Management Committee (for short DSGMC) alongwith the Sri Guru Tegh Bahadur Khalsa College, Sri Guru Nanak Dev P.G. College, Sri Guru Gobind Singh College of Commerce and Mata Sundari College for Women had jointly filed the Writ Petition (C ) No. 4584 of 2008 (DSGMC and Ors vs. Union of India & Ors.) in the High Court of Delhi seeking a declaration that the aforesaid four colleges are minority educational institutions within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions

Act (for short the Act) and Section 2(f) of the Central Education Institution (Reservation in Admission) Act, 2006 and as such the reservation policy of the Central Government for reservation in admission cannot be extended to these institutions. A direction was also sought that the respondents, namely, the Union of India, the University of Delhi and the University Grants Commission should not hinder the process of recruitment and/or admission in the aforesaid educational institution. Alongwith the Writ Petition, an application was also filed seeking stay of the operation of the letter dated 18.6.2008 issued by the University of Delhi directing the aforesaid colleges to enforce the policy of reservation in admissions.

By the order dated 25.7.2008, the learned Single Judge dismissed the Stay Application filed by the said colleges on the ground that they had failed to make out a prima facie case relating to their status as minority educational institutions and as such they are bound to implement the policy of reservation in admissions in accordance with the provisions of the Central Educational Institutions (Reservation in Admission) Act, 2006. However, liberty was granted to these colleges to move the appropriate forum for declaration of their status as minority educational institutions. Consequently, the petitioners filed petitions for declaration of their status as minority educational institutions. In the meantime, the petitioners also filed the LPA No. 472/2008 before the High Court of Delhi. By the order dated 1.12.2008, the LPA was disposed of by the following order:

**ORDER**  
**01.12.2008**

Learned counsel appearing for the parties inform us that appellants No. 2 to 5 have already filed petitions before the National Commission for Minority Educational Institutions (hereinafter referred to as NCMEI) seeking declaration of minority status. In the light of the decision of the Supreme Court in *Manager, St. Thomas U.P. School, Kerala & Anr. V. Commissioner & Secretary to General Education Department (2002) 2 SCC 497*, the NCMEI is the competent forum to make that determination in terms of Section 11(f) of the National Commission for Minority Educational Institutions Act, 2004. The NCMEI is directed to decide the applications made by appellant Nos. 2 to 5 as expeditiously as possible and preferably within a period of three months from today. It is made clear that in deciding the applications, the NCMEI shall not be influenced by the observations made by the learned Single Judge in his order while deciding an application for interim relief which are tentative and prima facie observations. The interim relief granted by this court on 19<sup>th</sup> August 2008 to continue during the pendency of the writ petition. Liberty granted to the parties to apply for vacation/modification of the interim relief before the learned Single Judge after the decision of the NCMEI.

In view of the above order, the learned counsel for the appellants states that he does not wish to press the appeal.

With the above directions, the appeal is disposed of as not pressed.

**CHIEF JUSTICE**  
**S. MURALIDHAR, J**

**DECEMBER 01, 2008**

The petitioner colleges have applied for grant of minority status on the ground that they have been established by the Sikh Community and are being administered by the DSGPC, which is the statutory body created under the Delhi Sikh Gurudwaras Act 1971 for the proper management of the Sikh Gurudwaras and Gurudwara property in Delhi. Since a common question of law and facts was involved in all these cases they were taken up for hearing together and are being disposed of by this common order.

Despite service of notice, the Government of NCT Delhi did not contest the proceedings. The Delhi University resisted the petitions on the ground that these colleges cannot be declared as minority educational institutions in as much as they were not established for the benefit of the Sikh Community. These colleges never provided any special benefit or reservation to the students belonging to the Sikh Community. It is alleged that these colleges have been following the provisions of the Delhi University Act 1922 and all matters relating to admissions are required to be approved by the Academic Council of the University. The Academic Council had not approved any relaxation to be given to the students of the Sikh Community. In the prospectus 2009-10, the Sri Guru Tegh Bahadur Khalsa College had brought out certain relaxation to the students belonging to the Sikh Community with a malafide intention to create evidence in support of its claim for grant of minority status. Reliance has been placed on the information dated 12/24 Oct, 2008 supplied by the College under RTI stating that every admission has been done by the College Admission Council in accordance with the cut off lists announced by the college without any discrimination of caste and creed and according to the rules and regulations of the University of Delhi.

During pendency of the cases, Interveners Sarva Shri N. S. Kapoor, Shri Saikat Ghosh and Dr. Veena Agrawal were allowed to intervene in the proceedings of the Case No. 727/2008 (Sri Guru Tegh Bahadur Khalsa College vs. Delhi University and Ors.), Shri N.S. Kapoor is a retired professor of SGTBK College. Shri Saikat Ghosh and Dr. Veena Agrawal are teachers of the said College. It is alleged that Shri N.S. Kapoor is a member of the Sikh Community and he was also a member of the Governing Body of the SGTBK College during 1976-77. Shri N.S. Kapoor and Shri Saikat Ghosh had filed Writ Petition (C) Nos. 15788/2006 and 8568/2008 respectively and they were disposed of by the High Court of Delhi vide orders dated 27.11.2008 and 3.12.2008 holding that the question of the intention of founder (s) of an institution as a minority educational institution is to be gone into before declaration of its status as a minority institution. According to the interveners, the SGTB Khalsa College was not even conceived as a minority educational institution under Article 30(1) of the Constitution as it was established to cater to the needs of the refugees from Pakistan. It is alleged that the Gurudwara Prabhandak Committee, which had established the said college, had not passed any resolution relating to its minority status or to hand over the college to the DSGMC and as such the DSGMC has no locus standi to claim minority status of the said college. It is also alleged that the management of the college had abandoned their right to claim its minority status as evidenced by events in relation to C.W.P. No. 1493/73 and CWP 491/75 filed in the High Court of Delhi and this

clearly shows their end desire to retain the non-minority status of the college. It is also alleged that there is no cogent and clear evidence on record to prove that beneficiaries of the college are members of the Sikh Community. Dr. Veena Agrawal, Reader, Department of Hindi, SGTB Khalsa College is the third intervener. She resisted the petitioner on the ground that the Gurudwara Prabhandak Committee had given an unconditional undertaking to abide by the Delhi University Act, Statutes, Ordinances, Rules and Regulations of the University. By obtaining minority status certificates for these colleges, the DSGMC seeks exemption from the provisions of the Delhi University Act, its statutes and ordinances which are otherwise binding to the petitioner colleges. She has also alleged that the SGTB Khalsa College was established by a society registered under the Societies Registration Act 1860. The society included persons who were not Sikhs and this fact alone indicates of its secular character. It is also alleged that conferral of minority status on the petitioner colleges would adversely affect the appointments and service conditions of the teaching staff which are covered by the ordinances of the University.

Following issues were framed and our findings are recorded against each one of them for the reasons given hereunder:

1. Whether the petitioner colleges have been established by the Sikh Community?
2. Whether the petitioner colleges are being administered by the Sikh Community?
3. Whether the beneficiaries of the petitioner colleges are members of the Sikh Community?

### **Issue No. 1 & 2 :**

Since both the issues are interlinked, they can be taken up together for proper evaluation of the factual matrix of the case. At the outset, we must make it clear that it is an admitted position that the DSGMC has been established under Section 3 of the Delhi Sikh Gurudwaras Act (for short the DSG Act). The DSGMC is the supreme religious body of the Sikh Community established for the proper management of the Sikh Gurudwaras and properties thereof situated in Delhi. Section 24 of the DSG Act, which prescribes powers and functions of the DSGMC, is as under :-

### **POWERS AND FUNCTIONS OF THE COMMITTEE**

**24. Subject to the provisions of this Act and the rules made thereunder, the control, direction and general superintendence over all the Gurdwaras, and Gurdwaras property in Delhi shall vest in the Committee, and it shall be the duty of the committee-**

- (i) to arrange for the proper performance of the religious rites and ceremonies in the Gurdwaras,
- (ii) to provide facilities for worship by the devotees at the Gurdwaras,

- (iii) to ensure safe custody of its funds, movable and immovable properties, deposits, offerings in cash or kind,
- (iv) to do all such things, as may be incidental and conducive to the efficient management of the affairs of Gurdwaras, educational and other institutions under the Committee and their properties or to the convenience of devotees,
- (v) to provide suitable accommodation and facilities for pilgrims.
- (vi) to maintain free langars,
- (vii) to manage the historic and other Gurdwaras, educational and other institutions and their properties in such a way as to make them inspiring centres of the Sikh tradition, culture and religion,
- (viii) to ensure maintenance of order discipline and proper hygienic conditions in Gurdwaras, educational and other institutions under its management.
- (ix) to open free dispensaries,
- (x) to spread education, especially the knowledge of Punjabi, in Gurmukhi script,
- (xi) to establish educational institutions, research centres and libraries.
- (xii) to render financial assistance to religious and educational institutions, society and needy persons,
- (xiii) to give stipends to needy and deserving students,
- (xiv) to render help in the case of the uplift of the Sikh community and propagation of Sikh religion,
- (xv) to perform such other function and to do such religious or charitable acts, as may be prescribed by regulations for carrying out the purpose of this Act.”

A bare reading of Section 24 makes it clear that the powers vested in the DSGMC also include a power to do all such things as may be incidental and conducive to the efficient management of the affairs of the Gurudwaras, educational and other institutions under its management and control and their properties. It also enables the DSGMC to establish educational institutions etc. and to render financial assistance to religious and educational institutions, societies and needy persons.

### **Sri Guru Tegh Bahadur Khalsa College, Delhi**

It is undisputed that the petitioner college was established in 1951. Sardar Jaswinder Singh, Principal of the petitioner college has stated in his affidavit that prior to 1945, Gurudwaras in Delhi were being managed through the nominees of Shiromani Gurudwara Prabhandak



Committee, Amritsar, constituted under the Sikh Gurudwara Act, 1925. The said Committee launched a movement for taking over the management and control of all Gurudwaras in Punjab and Delhi. Eventually, in 1945, a separate Gurudwara Committee for Delhi State was constituted and registered under the Societies Registration Act. One of the objects of the said society was to spread education among the Sikh Community of Delhi. Sardar Jaswinder Singh has also stated in his affidavit that with a view for promotion of educational profile of those Sikhs who were uprooted from West Punjab (Pakistan) and settled in Delhi, the petitioner college was established by the Gurudwara Committee Delhi in 1951. There is not iota of evidence on record to rebut the evidence of Sardar Jaswinder Singh. It needs to be highlighted that there is not even a whisper on record to show or suggest that the petitioner colleges were not established by the Sikh community.

Mr. Deepak Vats, Dy. Registrar of the respondent University has filed his affidavit in rebuttal. He has stated in his affidavit that the petitioner college was established by a Society namely, Sri Guru Tegh Bahadur Khalsa College, New Delhi'. A xerox copy of the Memorandum of Association of the said society has been filed in support of the affidavit of Mr. Deepak Vats. The Memorandum of Association of the said society clearly shows that it was constituted by members of the Sikh Community. In the instant case, it is not going to make any difference whether the petitioner college was established by the Gurudwara Committee Delhi or by the Sri Guru Tegh Bahadur Khalsa College Society. In any event it leads to only one conclusion that the petitioner college was established by the members of the Sikh Community. It is beyond the pale of controversy that the petitioner college has a Gurudwara inside its campus and it is being administered by the DSGMC, a committee constituted under Section 3 of the DSG Act. Needless to add here that all the members of the said Committee are from the Sikh Community. Thus, the affidavit of Sardar Jaswinder Singh gets ample corroboration from the circumstantial evidence also. Relying upon the affidavit of Sardar Jaswinder Singh, we find and hold that the petitioner college was established by the Sikh community and it is also being administered by the same community.

### **Sri Guru Gobind Singh College of Commerce, Pitampura**

Sardar J.B. Singh, Principal of the college has stated in his affidavit that the college was established by the DSGMC in 1984 and it is also being administered by the said committee. It is an admitted position that this college has also a Gurudwara in its campus. Sardar J.B. Singh has also stated in his affidavit that the objective of the petitioner college under the control and supervision of the DSGMC has all along been to propagate the teachings of the Sikh Gurus in accordance with Sri Guru Granth Saheb. According to him, Gurudwara has been constructed in the college where religious instruction is given to students to protect, promote and preserve the religion, culture and language of the Sikh community. As against this, Mr. Deepak Vats, Dy. Registrar of the respondent university, has stated in his affidavit that the petitioner college was established by the Sri Guru Gobind Singh College of Commerce Society. A xerox copy of the Memorandum of Association of the said society has been produced in support of the said contention. It is undisputed that all the members of the said society are from Sikh Community.



Even assuming for the sake of argument that the petitioner college was established by the said society which was constituted by members of the Sikh Community, that is sufficient to prove that the petitioner college was established by the Sikh Community.

It needs to be highlighted that Sardar J.B. Singh has stated in his affidavit that the land on which the college was constructed belonged to the DSGMC and the entire project was also funded by the said committee. He has also stated in his affidavit that the petitioner college is being administered by the said committee. Mr. Deepak Vats has not controverted these facts in his affidavit. In our considered opinion, the affidavit of Mr. Deepak Vats is insufficient to wipe out the positive evidence of Sardar J.B. Singh, which also finds ample corroboration from the circumstantial evidence on record. Consequently, we find and hold that the petitioner college has been established and is being administered by the Sikh Community.

### **Sri Guru Nanak Dev Khalsa College, Dev Nagar, Delhi**

Smt. Manmohan Kaur, Principal of the college has stated in her affidavit that the petitioner college was established in 1973 and it is being administered by the DSGMC. She has also stated that objective of the college under the control and supervision of the DSGMC has all along been to propagate, promote and preserve the religion, culture and language of the Sikh Community. A Gurudwara has also been constructed in the college campus for imparting religious instructions to the students. As against this, Mr. Deepak Vats, Dy. Registrar of the respondent university has stated in his affidavit that the petitioner college never provided for any special benefit or reservation for the Sikh Community. It needs to be highlighted that Mr. Deepak Vats has nowhere stated in his affidavit that the said college was not established by the Sikh Community and it is not being administered by the DSGMC. That being so, the affidavit of Mr. Deepak Vats is wholly insufficient to wipe out the positive evidence of Smt. Manmohan Kaur, which finds ample corroboration from circumstantial evidence also. Consequently, we find and hold that the petitioner college was established and is being administered by the Sikh Community.

### **Mata Sundari College for Women, Delhi**

Dr. Kavar Jit Kaur, Principal of the college has stated in her affidavit that the petitioner college was established by Gurudwara Prabhandak Committee, Delhi in the year 1967 and it is now being administered by the DSGMC. She has also stated that the objective of the establishment of the college has all along been to propagate the teachings of the Sikh Gurus in accordance with the Sri Guru Granth Saheb. A Gurudwara has been constructed in the college for imparting religious instruction to the students and also to promote and preserve the religion, culture and language of the Sikh community. As against this, Mr. Deepak Vats, Dy. Registrar of the Respondent University has stated in his affidavit that the college was established by Mata Sundari College for Women Society. It is undisputed that the said society was constituted by members of the Sikh Community. Even assuming for the sake of arguments that the petitioner college was established by the said society, that is sufficient to prove that the said college has

been established by the Sikh Community. Anyhow, the affidavit of Mr. Deepak Vats is not sufficient to wipe out the positive evidence of Dr. Kaur Jit Kaur, which finds ample corroboration from circumstantial evidence also. In St. Stephen's College vs. University of Delhi (1992) SCC 558, the Supreme Court has declared the St. Stephen's College as a minority educational institution on the ground that it was established and administered by members of the Christian Community. Thus, these were the indicia laid down by the Supreme Court for determining the status of a minority educational institution and they have also been incorporated in Section 2(g) of the Act. It is beyond the pale of controversy that Sikh Community has been notified as a minority community. Article 30(1) of the Constitution postulates that members of a religious or linguistic minority have the right to establish and administer educational institutions of their choice. It is a matter of proof through production of satisfactory evidence that the institution in question was established by the minority community claiming to administer it. The proof of the fact of the establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on one who asserts that an institution is a minority institution. It has been held by a Division Bench of the Madras High Court in T.K.V.T.S.S. Medical Educational and Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 that "once it is established that the institution has been established by the minority, and is administered by that minority, that would be sufficient for claiming the fundamental right guaranteed under Article 30(1) of the Constitution." In Andhra Pradesh Christian Medical Association vs. Government of Andhra Pradesh, AIR 1986 SC 1490, the Supreme Court has held that the Government, the University and ultimately the Court can go behind the claim that the institution in question is a minority institution and "to investigate and satisfy itself whether the claim is well founded or ill founded." A minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration (N. Ammad vs. Emjay High School (1998) 6 SCC 674).

A Society or Trust consisting of members of a minority community, or even a single member of a minority community, may establish an institution. The position has been clarified by the Supreme Court in State of Kerala vs. Mother Provincial AIR 1970 SC 2079, the Supreme Court has observed:

"Establishment means 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, institution or the community at large 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 to this right that in addition to the minority community, others from other minority communities or even from the majority community can take advantage of these institutions."

(emphasis supplied)

In Christian Medical Association (supra) the Supreme Court has also held that “what is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities.” Needless to add here that the right enshrined in Article 30(1) of the Constitution is meant to benefit the minority by protecting and promoting its interests. There should be a nexus between the institution and the particular minority to which it claims to belong. The right claimed by a minority community to administer the educational institutions depends upon the proof of establishment of the institution.

It is contended on behalf of the interveners that management of the Sri Guru Tegh Bahadur Khalsa College have abandoned their right to claim minority status of the college as evidenced by events in relation to C.W.P. 1493/73 and CWP 491/75 filed in the High Court of Delhi and this clearly indicates their end desire to retain the minority status of the college. We are unable to subscribe to the said submission of the learned counsel for the interveners. It is relevant to mention that in Ahmedabad St. Xaviers’ College Society vs. State of Gujarat (1974) 1 SCC 717, the Supreme Court has held that “It is doubtful whether the fundamental right under Article 30(1) can be bartered away or surrendered by any voluntary act or that it can be waived. The reason is that the fundamental right is vested in a plurality of persons as a unit or if we may say so, in a community of persons necessarily fluctuating. Can the present members of a minority community barter away or surrender the right under the article so as to bind its future members as a unit? The fundamental right is for the living generation. By a voluntary act of affiliation of an educational institution established and administered by a religious minority the past members of the community cannot surrender the right of the future members of that community. The future members of the community do not derive the right under Article 30(1) by succession or inheritance”.

It has also been held by the Supreme Court in Olga Tellis vs. Bombay Municipal Corporation AIR 1986 SC 180, that “it is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defense. There can be no estoppel against the Constitution. If a person makes a representation to another on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. He must make it good. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. But the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. No individual can barter away the freedom conferred upon him by the Constitution. Consequently, we find and hold that the petitioner college was established and is being administered by the Sikh Community.

### **Issue No. 3**

We have already held that the petitioner colleges have been established and are being administered by members of the Sikh Community. Learned counsel for the respondent University and interveners have strenuously urged that only those institutions which are not

only established and administered by the notified minority community, but are established with the objective of providing education to the particular minority community could claim the constitutional protection of Article 30(1) of the Constitution. It is contended that the memorandum of association and bye laws of none of these educational institutions show that any of them had been established primarily for the benefit of the students of the Sikh Community. Copies of memorandum of association and bye laws of the petitioner colleges (except Sri Guru Nanak Dev Khalsa College, Delhi) have been filed by the respondent university alongwith the affidavit of Mr. Deepak Vats, Dy. Registrar. Learned counsel for the respondent university further submitted that the petitioner institutions have been established to develop and maintain educational institutions, recognized by the university, and to manage, supervise and administer their affairs. He also submitted that the petitioner colleges are all receiving grant-in-aid from the Government and they have been following all norms and regulations of the respondent university pertaining to reservations in the grant of admissions. On these premise, it is contended that the petitioner colleges cannot be declared as minority educational institutions within the meaning of Section 2(g) of the Act .

Admittedly, the petitioner colleges are aided institutions. It is well settled that a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, is entitled to claim the constitutional protection of Article 30(1) of the Constitution. (T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481) and P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537). It is also undisputed that the petitioner colleges are affiliated to the respondent university. The mere fact that certain statutes of the respondent university were adopted by the managing committee of the colleges and they were as a matter of convention bound to follow them would not clothe them with a statutory status or character. The fact alone cannot destroy the minority status of the petitioner colleges. It has been held by the Supreme Court in Vaish Degree College vs. Lakshmi Narain AIR 1976 SC 888 that before an institution can be a statutory body it must be created by or under a statute and owe its existence to a Statute. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of institution. At this juncture we, may usefully excerpt the following observations of their Lordships of the Supreme Court in Vaish Degree college (supra):

“There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character. In Sukhdev Singh vs. Bhagatram Sardar Singh Raghuvanshi AIR 1975 SC 1331 at p. 1339 this Court clearly pointed out as to what constitutes a statutory body. In this connection my Lord A.N. Ray, C.J., observed as follows:

“A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.”

It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body”.

It has to be borne in mind that affiliation is a facility which a university grants to an educational institution. Mere affiliation to a university does not destroy the minority status of such educational institution.

As regards the beneficiaries of the petitioner colleges, learned counsel for the respondents have invited our attention to the Memorandum of Associations of the Sri Guru Tegh Bahadur Khalsa College Society, Sri Guru Gobind Singh College of Commerce Society and Mata Sundari College of Women Society in support of their contention that they do not reflect that the beneficiaries of the petitioner colleges are members of the Sikh Community. It is relevant to mention that memorandum of associations of the said societies do not provide for any reservation in admission or any special benefit for the students belonging to the Sikh Community. Sarva Sri Sardar Jaswinder Singh, Sardar J.B. Singh, Smt. Manmohan Kaur and Dr. Kaur Jit Kaur, Principals of the petitioner colleges have stated in their affidavits that the petitioner colleges have all along provided concessions to the students of Sikh Community in the matter of admission and gurudwaras have been constructed in the campus of colleges for imparting religious instructions to the students to protect, promote and preserve the religion, culture and language of Sikhs.

It is relevant to mention that an educational institution is established to subserve or advance the purpose of its establishment. Whereas the minorities have the right to establish and administer educational institutions of their choice with the desire that their children should be brought up properly and be eligible for higher education and go all over the world fully equipped with such intellectual attainments as it will make them fit for entering the public service, surely then it must be implicit in such a fundamental right the corresponding duty to cater to the needs of the children of their own community. Therefore, the educational institutions of their choice will necessarily cater to the needs of the minority community which had established the institution.

In Chikkala Samuel vs. District Education Officer, Hyderabad AIR 1982 AP 64, the Andhra Pradesh High Court has held that a minority institution imparting general secular education in order to claim the benefit of Article 30(1) must show that it serves or promotes in some manner, the interest of the minority community or a considerable section thereof. Without

such proof, it was observed, that there would be no nexus between the institution and the minority as such. This decision has been quoted with approval in St. Stephen's case (supra).

In Ahmedabad St. Xavier's College Society vs. State of Gujarat (1974) 1 SCC 717, the Supreme Court has observed;

“That the ultimate goal of a minority institution to imparting general secular education is advancement of learning. This Court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.”

At this juncture, we may usefully excerpt the following observations of the Supreme Court in St. Stephen's case (supra):

“..... In the nation building with secular character, sectarian schools or colleges, segregated faculties or universities for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality, embedded in the Constitution. Every educational institution irrespective of the community to which it belongs is a 'melting pot' in our national life. The students and teachers are the critical ingredients. It is there, they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions.”

It has been held by the Supreme Court in T.M.A. Pai's case (supra) that “the essence of secularism in India is the recognition and preservation of different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time unite the people to form one strong nation.

It is relevant to mention that the whole object of conferring the right on minorities under Article 30(1) is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality. It is therefore, not at all possible to exclude secular education from the ambit of Article 30(1). A liberal, generous and sympathetic approach is reflected in the Constitution in the matter of the preservation of the rights of the minorities so far as their educational institutions are concerned. Article 30(1) was intended to have a real significance and it is not permissible to construe it in such a manner as would rob it of that significance. The meaningful exercise of the right under Article 30(1) would and must necessarily involve recognition of the secular education imparted by the minority institutions without which the right will be a mere husk.

In our considered opinion, the affidavits of Principals of the petitioner institutions, namely Sardar Jaswinder Singh, Sardar J.B. Singh, Smt. Manmohan Kaur and Dr. Kaur Jit Kaur read



along with the circumstantial evidence on record are sufficient to prove that the petitioner institutions have been established by the Sikh Community and are being administered by the Delhi Sikh Gurudwara Managing Committee. Consequently, we declare them as minority educational institutions within the meaning of Section 2(g) of the Act. It is, therefore, ordered that minority status certificates be issued to the petitioner colleges.

### **Case No. 216 of 2011**

#### **Petition to seek direction to University for grant of permission to admit students of Muslim community in B.Ed and BTC Courses of a Minority institution**

Petitioner : Abdul Aziz Ansari Degree College, Majdeeha, Shahganj Jaunpur, U.P.

Respondent : Veer Bahadur Singh Purvanchal University, Through its Registrar, Jaunpur, Uttar Pradesh

By this petition, the petitioner college seeks permission to admit students of Muslim community in B.Ed and BTC courses. The petitioner college has been declared by the State Government as a minority educational institution covered under Article 30(1) of the constitution vide order No. 1425/Sattar-6/98/3(2)/93 dated 27.8.1998. The college is affiliated to Veer Bahadur Singh Purvanchal University, Jaunpur, Uttar Pradesh. It is alleged that according to GO No.1310/15-11-95-3(101)/92 of Uttar Pradesh Government 50 per cent of quota of seats can be reserved for the minorities in B.Ed course run by minority educational institutions. However, for the B.Ed. and BTC course of the petitioner college, the respondent university has been insisting on admission of students through single window counseling of the university. It is alleged that in 2006-07, only 4 Muslim students were made available to the college, in 2007-08 it was only 3 students of Muslim community and in 2008-09 only 5 students of Muslim community were allotted to the petitioner college for admission. It is also alleged that in 2010-11, only 6 students of Muslim community have got admission in B.Ed. course through counseling by the respondent university. It is also alleged that the impugned action of the respondent university in depriving the college of its right to admit students from minority community is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The respondent university has resisted the petition on the ground that single window system of admission of students has been introduced in B.Ed. course to avoid malpractices in admission and the respondent university has also been directed to allocate students to the affiliated B.Ed. colleges through the single window system on the basis of the merit list. It is alleged that the respondent university has been allocating students through single window system.

The Issue which arises for consideration is as to whether the impugned action of the respondent university is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. It has been held by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that it is not permissible for the State to impose a quota or

its own reservation policy on minority educational institutions. It has been held by the Supreme Court in P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 “that a minority educational institution has a right to admit students of its own choice, it can, as a matter of its own free will admit students of non-minority community. However non minority students cannot be forced upon it. Only restriction on the free will of the minority educational institution admitting students belonging to a non-minority community is, as spelt out by Article 30 itself ‘that the manner and number of such admissions should not be violative of the minority character of the institution.’” It is alleged by the respondent university that single window system regulating admissions in B.Ed. courses has been introduced to avoid malpractices in admissions. It has been held by the Supreme Court in case of P.A. Inamdar (supra) that single window system regulating admissions does not cause any dent in the right of minority educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the merit inter-se of the students so chosen.

In view of the decisions rendered by the Supreme Court in P.A. Inamdar (supra) the petitioner college is allowed to select students of Muslim community from out of the list of successful candidates prepared at CET without altering the order of merit inter-se of the students so chosen. If the petitioner college is an unaided institution it can admit cent per cent students of Muslim community. If it is an aided institution then Article 29 (2) of the Constitution obligates the petitioner college to admit students of non minority community to a reasonable extent. The respondent university is directed to implement the law declared by the Supreme Court in T.M.A. Pai Foundation and P.A. Inamdar case (supra).

### **Case No. 1083 of 2011**

#### **Petition to seek declaration that the competent authority of the State has deemed to have granted NOC for establishment of a Medical College by Minority Community.**

**Petitioner :** Roquiya Educational Trust, Through its Chairman, Mr. Irshad Hussain, R/o Indralok Apartment, Opp. Allahabad Bank, (.U. Branch), P.O. Mahendru, P.S. PirabhoreTown and Dist, Patna

**Respondent :** The Secretary, Health and Family Welfare Education, Government of Bihar, Patna, Bihar

By this petition, the petitioner seeks a declaration that the competent authority of the State Government has deemed to have granted No Objection Certificate for establishment of the proposed Bettiah Medical College at Bettiah, West Champaran, Bihar in terms of Sub Section (3) of Section 10 of the National Commission for Minority Educational Institutions Act, 2004 (for short the Act).

It is alleged that the Roquiya Educational Trust, Patna has been constituted as the registered trust by members of the Muslim Community with the primary object to establish and administer educational institutions for the benefit of the Muslim community. The said trust has established a hospital at Bettiah, West Champaran, Bihar. It has also constructed



a building for establishment of the proposed medical college at Bettiah. On 25.6.2002, the petitioner had applied to the competent authority of the State Government for grant of NOC for establishment of the proposed medical college. On 18.9.2006, when the petitioner sent a reminder to the competent authority of the State Government, he was told that such proposals have to be routed through the State Investment Promotion Board, Government of Bihar. Accordingly, on 10.11.2006, the petitioner had sent an application to the said board, which forwarded it to the Health Department and HRD Ministry, Government of Bihar on 24.11.2006. Despite repeated reminders the competent authority of the State Government did not pass any order on the said application. It is also alleged that the petitioner had applied to the Babasaheb Bhimrao Ambedkar Bihar University, Muzzafarpur for NOC to grant affiliation for the medical college. Pursuant to the said application, the university constituted an inspection team and informed the petitioner vide letter dated 1.2.2007. The inspection team of the said university had given favorable report and in consequent of which, the university granted NOC and consent for affiliation to the proposed medical vide letter dated 27.3.2010. Thereafter, the petitioner submitted all the requisite documents to the Medical Council of India. By the letter dated 14.3.2011, the Medical Council of India informed the petitioner that the application for establishment of the proposed medical college cannot be considered in the absence of Essentiality Certificate of the State Government. Hence this petition.

Despite service of notice, none entered appearance on behalf of the respondent. Hence the case is proceeded ex-parte.

The question which arises for consideration is as to whether the petitioner is entitled to invoke the deeming provision of Sub Section (3) of Section 10 of the Act for a declaration to the effect that the competent authority of the State Government has deemed to have granted No Objection Certificate for establishment of the proposed medical college.

Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of “their choice”. The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of the fundamental rights guaranteed under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution “to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general

secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.”

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

“The key to the understanding of the true meaning and implication of the article under consideration are the words ‘of their choice’. It is said that the dominant word is ‘choice’ and the content of that article is as wide as the choice of the particular minority community may make it.”

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that “the words ‘of their’ ‘choice’ in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- v) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

A bare reading of Articles 30(1) and 26 makes it clear that a religious minority is entitled to establish and maintain a medical college, provided the community or denomination is able to raise the requisite sums of money to construct and maintain such medical college. No restrictions can be put on the right conferred by Article 30(1) except in the interest of academic excellence or in the interest of public order, morality and health. So far as Article 30(1) is concerned, neither the Government nor the University cannot by a policy decision prevent a minority community from establishing a medical college in accordance with law.

While considering an application for grant of NOC the competent authority has to confine itself to the guidelines or matters enumerated in the relevant statute /ordinance/regulations. Parliament has enacted various Acts with a view, among others, to plan and coordinate the development of medical , dental and technical education system through out the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standard thereof.

In State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors. (2006) 9 SCC (1), the Supreme Court has held that Essentiality Certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new college rested essentially with the Central Government.

The petitioner has stated in the petition that on 25.6.2002, it had applied to the competent authority of the State Government for grant of NOC for establishment of the proposed medical college at Bettiah. Despite reminder dated 18.10.2003, the competent authority did not pass any order thereon. It is alleged that on 18.9.2006, when the petitioner again sent a reminder then he was told to submit the proposal to the State Investment Promotion Board, Government of Bihar. Accordingly, on 11.11.2006, the petitioner sent application to the said Board for grant of NOC. The said Board considered the proposal of the petitioner and forwarded it to the Health Department of Ministry of HRD, Government of Bihar on 24.11.2006. Despite repeated reminders, the competent authority of the State Government did not pass any order thereon.

The mere fact that the competent authority chose to sit over the recommendations of the university and did not pass any order on the petitioner's application for grant of NOC could not rob the petitioner of his fundamental right to establish the medical college for the benefit of the Muslim community.

Obviously, the competent authority did not pass any order on the applications submitted by the petitioner in exercise of its statutory power within 90 days.

A notice was issued to the competent authority of the State Government to show cause as to why a declaration should not be made to the effect that the competent authority has deemed to have granted NOC for establishment of the proposed medical college in terms of Sub Section (3) of Section 10 of the Act. For the reasons best known to the competent authority, the said show cause notice was not responded by it. The sphinx silence of the

competent authority on the request of the petitioner for grant of NOC is virtual negation of the Constitution guarantee enshrined in Article 30(1).

Obviously, the competent authority did not pass any order on the application in exercise of its statutory duty within 90 days from the date of its presentation. Keeping in view the sweep of Article 13, we are of the opinion that any law or policy of the Government in breach of the fundamental rights would be void to the extent of such violation. The fundamental right is intended to be effective and should not be whittled down by any administrative exigency. No inconvenience of difficulty administrative and financial, can justify infringement of the fundamental rights. In this view of the matter, the petitioner is entitled to invoke the provision of Sub Section (3) of Section 10 of the Act.

For the foregoing reasons, we are of the opinion that since the competent authority of the State Government had not passed any order on the application filed by the petitioner for grant of NOC for establishment of the proposed college at Bettiah within 90 days from the receipt of the said application, it shall be deemed to have granted NOC in terms of Sub Section (3) of Section 10 of the Act. Sub Section (4) of Section 10 of the Act provides that where there the competent authority has deemed to have granted NOC, the applicant shall be entitled to commence and proceed with the establishment of a minority educational institution in accordance with the rules and regulations laid down by or under any law for the time being in force. The certificate of declaration be issued accordingly.

### **Case No. 678 of 2010**

#### **Petition to seek direction to State for grant of permission for Establishment of an Urdu Medium High School by a Minority Institution**

**Petitioner :** Razzaque Welfare Society, Bhandegaon, Tq. Darwha, Dist. Yavatmal, Maharashtra

- Respondents :**
1. The Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai-32, (Maharashtra)
  2. The Director of Education, Primary Education Department, Government of Maharashtra, Pune-1
  3. The Deputy Director of Education, Amravati Division, Amravati, Walgaon Road, Amravati, Tq & Distt. Amravati, Maharashtra
  4. The District Education Committee (Middle), Zila Parishad Yavatmal, Through Education Officer (Middle), Zila Parishad, Yavatmal, Tq. & Distt. Yavatmal, Maharashtra
  5. The Education Officer (Middle), Zila Parishad, Yavatmal, Tq. & Distt. Yavatmal, (Maharashtra).

By this petition, the President of the Razzaque Welfare Society, Bhandegaon, Tq. Darwha, Dist. Yavatmal, Maharashtra, seeks a direction to the Government of Maharashtra to grant

permission for establishment of an Urdu medium high school at Bhandegaon. It is alleged that the Village Bhandegaon has a sizable population of the Muslim community. It is also alleged that there is no Urdu medium high school at Bhandegaon or in the adjoining villages up to a distance of 12 kms. The petitioner society had all the infrastructural and instructional facilities for establishment of the proposed Urdu medium high school. Since the Urdu medium high school is available at a very far distance parada nashin girls of the Muslim community are not sent to the schools which are situated at a far away distance. The petitioner society had submitted a proposal to the Education Officer, Zila Parishad, Yavatmal, which was recommended by the Block Development Officer, Yavatmal but the State Government, did not accord permission as sought by the petitioner. Hence this petition.

The respondent Education Officer (Secondary), Zila Parishad, Yavatmal has resisted the petition on the ground that the petitioner's proposal was submitted to the District Level Committee which did not recommend the proposal on the basis that local level Urdu medium standard VIII does not have sufficient number of Muslim students. It is alleged that since District Level Committee did not recommend the petitioner's proposal. The State Level Committee had also not recommended the said proposal.

In the rejoinder, the petitioner has submitted that since there is no Urdu medium high school within a radius of 10-12 kms the students of Muslim community are compelled to opt Marathi medium of instruction and that fact alone is responsible for increasing the dropout rate of pardanashin Muslim girls.

In view of the rival contentions of the parties, the issue which arises for consideration is : whether the impugned action of the State Government in not granting the permission as sought by the petitioner society is violative of the educational rights of the minorities enshrined under the Article 30(1) of the Constitution?

A stream of Supreme Court rulings commencing with the Kerala Education Bill, 1957 (AIR 1958 SC 959) and climaxed by P.A. Inamdar & Ors Vs. State of Maharashtra & Ors (2005) 6 SCC 537 has settled the law for the present. The whole edifice of case law on Article 30(1) of the Constitution has been bedrocked in Kerala Educational Bill's case (supra). Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of these provisions under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice

for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.”

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

“The key to the understanding of the true meaning and implication of the article under consideration are the words ‘of their choice’. It is said that the dominant word is ‘choice’ and the content of that article is as wide as the choice of the particular minority community may make it.”

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that “the words ‘of their’ ‘choice’ in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- (i) To enable such minority to conserve its religion and language, and
- ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university.



Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

It needs to be highlighted that the petitioner’s proposal for establishment of Urdu medium high school was not rejected on the ground of non-availability of infrastructural and instructional facilities prescribed by the State Government but it was rejected on the sole ground of non- availability of sufficient Muslim students. It needs to be highlighted that the President of Razzaque Welfare Society had filed his affidavit supported by a copy of the School Mapping Master Plan for Urdu high school 2010-2011 prepared by the Block Development Officer, Darwha, District Yavatmal, which shows that Bhandegaon has a Urdu speaking population of 4000 and there is no Urdu high school within the radius of 10 kms. In this view of the matter there appears to be genuine need for establishment of a Urdu High school to cater to the needs of the local Muslim students. Consequently, we find and hold that the impugned action of the State Government in not granting permission to the petitioner for establishment of the proposed Urdu medium high school is eclipsed by the fundamental rights enshrined in Article 30 (1) of the Constitution and remains, as it were in a moribund condition as long as the shadow of fundamental right falls upon it.

In the wake of globalization, the new orientation of outlook on the part of our leaders is therefore called for and they are expected to conduct themselves with an eye on the expanding glorious future and not in the inward looking insular past. With a view to consolidating the inclusive democracy, they are supposed to develop an inclusive vision also. The visionary architects of our Constitution adopted a liberal and farsighted attitude towards the minorities by engrafting Article 30(1) of the Constitution. The functionaries of the State who swear and owe allegiance to the Constitution are, therefore, required to adopt and exercise the same proactive and empowering attitude in redressing the grievances of the minorities as well as upholding their educational rights. The Supreme Court has also observed that “sworn allegiance to the Constitution of India implies a sacred duty to ensure that the constitutional ideals of equality and justice are upheld. The rights envisaged in the Constitution are given effect to, and all citizens are enabled to participate in our shared pursuit of realizing the “India of our dreams”.

The issue herein can also be examined from another angle. In Unni Krishnan J.P. Vs. State of A.P. AIR 1993 SC 2178, the Supreme Court has observed that education is enlightenment. It is the one that lends dignity to a man. The fundamental purpose of education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of body, the enrichment of the mind, the sublimation of the emotion and the illumination of the spirit. Education is a preparation for a living and for life. In the context of a democratic form of Government which depends for its sustenance upon the enlightenment of the populace, education is at once a social and political necessity. The Supreme Court, therefore, held that the right to education flows from

the right to life guaranteed under Art. 21 of the Constitution. Similar view was also taken by the Supreme Court in Mohini Jain Vs. State of Karnataka AIR 1992 SC 1858. It was held by the Supreme Court that the State is under obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State owned or State recognized educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfill its obligation under the Constitution. Thus, the State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizen.

Needless to add here that the State Government is the custodian of fundamental rights of the citizens. Keeping in view the mandate of Article 30(1) of the Constitution, the State Government is under constitutional obligation to consider the choice and needs of a minority community for imparting higher education to its children. No inconvenience or difficulties, administrative and financial, justify infringement of the fundamental right. The State Government while granting permission to establish a new degree College acts as a sovereign and discharges its constitutional obligation. The State Government, however, having regard to its financial constraints is not always in a position to discharge its duties. The function of imparting education has been, to a large extent, taken over by the citizens themselves. Keeping in view the mandate of Article 30(1) of the Constitution, the State Government is under constitutional obligation to consider the choice and needs of a community for imparting higher/professional education of its children.

For the foregoing reasons, we find and hold that the impugned action of the State Government in not granting permission to the petitioner to establish Urdu medium high school as tested on the touchstone of the law declared by the Supreme Court is violative of the educational rights of the minorities of enshrined in Article 30 (1) of the Constitution. Consequently, it is recommended to the State Government to implement the finding of the Commission in terms of Section 11(b) of the NCMEI Act by reconsidering the proposal submitted by the petitioner society relating to the establishment of the Urdu medium high school, at Bhandegaon, Tq. Darwaha, Dist. Yavatmal, Maharashtra by the petitioner.



## **CHAPTER 8: CASES REGARDING DEPRIVATION OF RIGHTS OF MINORITY EDUCATIONAL INSTITUTIONS AND AFFILIATION TO UNIVERSITIES**

It is well settled that under Article 30 (1) of the Constitution, a religious or linguistic minority has a right to establish and administer educational institutions of its choice. The right, however, is subject to the regulatory powers of the State for maintaining and facilitating the excellence in educational standards. In the 11 Judges Bench decision of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481, the Apex Court has explained the right to establish and administer an educational institution. The phrase employed in Article 30 (1) of the Constitution comprises of the following rights:

- a) to admit students;
- b) to set up a reasonable fee structure;
- c) to constitute a governing body;
- d) to appoint staff (teaching and non teaching); and
- e) to take action if there is dereliction of duty on the part of any of the employees.

The Commission subscribes to the view that the minority educational institutions should not fall below the standards of excellence expected of educational institutions under the guise of exclusive right of management. Regulatory measures for ensuring educational standards and maintaining excellence thereof are no anathema to the protection conferred by Article 30 (1) of the Constitution. Some of the cases decided during the year are as follows:

### **Appeal No.04 of 2011**

#### **An appeal against the decision of State not to grant NOC to start a Course by a minority institution**

- Petitioner :**
1. Al-Falah School of Engineering & Technology, Vill. Dhauj, Dist. Faridabad, Haryana
  2. Al-Falah Charitable Trust, 274- Jamia Nagar, Okhla, New Delhi – 110 025

- Respondents:**
1. The State of Haryana, Through
    - A. The Financial Commissioner & Principal Secretary, (Technical Education Deptt.) New Secretariat, Sector 17, Chandigarh
    - B. The Director, Technical Education Department , Bays No. 7 to 12, Sector 4, Panchkula, Haryana
    - C. The Secretary, Ministry of Human Resource Development, Department of Education, Shastri Bhawan, New Delhi

2. Maharishi Dayanand University, Through The Registrar, Rohtak. Haryana
3. University Grants commission, Bahadurshah Zafar Marg, New Delhi – 110 002

Challenge in this appeal filed u/s 12-A of the National Commission for Minority Educational Institutions Act 2004 (for short the Act) is to the order dated 6.1.2010 rejecting the petitioner's application for grant of NOC. The petitioner institution has been granted minority status certificate by this Commission. The petitioner college has the approval of AICTE and is affiliated to Maharishi Dayanand University. Nine batches of B.Tech course have already been successfully passed out from the petitioner college and it is also running M.Tech and MBA courses. The programmes run by the petitioner college are accredited with the National Board of Accreditation (NBA of AICTE). By the notification dated 15.9.2009, the petitioner college has been declared as an autonomous institution by the State Government. On 21.11.2007, the petitioner applied to the University Grants Commission (UGC) for granting it the deemed to be university status. The UGC in turn asked the State Government to provide NOC for considering the said request of the petitioner. The Maharish Dayanand University had informed the petitioner on 29.4.2008, that it has no objection to continue courses of study to existing students if Deemed to be University status is granted to the petitioner. The petitioner college has also been pursuing with the State Government for grant of NOC. Despite repeated reminders NOC was not granted by the Government of Haryana. Aggrieved by the non- response of the State Government, the petitioner college approached the Commission with a request to direct the State Government to grant NOC as sought by the UGC.

During the pendency of the petition, the petitioner amended the petition for invoking the provision of Section 10(3) of the Act. Thereafter, the respondent No. 1(B) intimated the Secretary, UGC that the proposal of the petitioner college for grant of NOC will be considered by the State Government after review of cases relating to grant of deemed to be university status by the MHRD, Government of India vide letter dated 6.1.2010. A copy of the impugned order has been endorsed to the Chairman of the petitioner college. Aggrieved by the said order dated 6.1.2010, the petitioner college has filed appeal u/s 12A of the Act.

The Respondent No. 1(c) has stated in its reply that the Central Government would process the proposal of the petitioner only after receipt of the requisite recommendation/ advice of the UGC. It is also alleged that all the proposals received u/s 3 of the UGC Act and all recommendations made by the UGC on such matters have currently been put on hold till the completion of the review process.

The UGC in its reply has explained the procedure, rules and regulations in the matter for consideration of the applications for grant of deemed to be university status. The UGC has assured that the case of the petitioner college shall be considered on the receipt of NOC from the State Government.

The Joint Director (Engineering) Directorate of Technical Education in his reply referred to certain provisions of the UGC Act relating to grant of applications for deemed to be

university status. It is alleged that the petitioner institution had submitted proposal to the UGC for grant of deemed to be university status and the UGC in turn requested for the comments of the State Government and also NOC. The Directorate of Technical Education considered the request of the petitioner college and alongwith the comments on the potential, academic excellence, financial position to maintain and sustain itself as a deemed to be university and submitted the proposal to the State Government for consideration. The proposal was considered by the State Government and it was decided to file the proposal. On receiving the reminder from the petitioner the proposal was again sent to the State government and it was decided by the State Government that the proposal of the petitioner institution would be considered after the review of cases relating to grant of the deemed to be university status, by the Ministry of HRD. The Secretary of the UGC was informed accordingly vide letter dated 6.1.2010. It is also alleged that similar issue is sub-judice before the Supreme Court in WP (Civil) 142/2006 titled Viplav Sharma versus Union of India & Ors. Lastly, it is alleged that in view of the State Government NOC cannot be claimed as a matter of right and it is the prerogative of the State Government to give its views/ recommendations based on the merit of the proposal.

The issue which arises for consideration is as to whether the impugned order dated 6.1.2010 can be sustained in law?

The appellant has filed the appeal under Section 12A of the Act which is as under :-

12A. Appeal against orders of the Competent Authority:- (1) Any person aggrieved by the order of refusal to grant no objection certificate under sub-section (2) of Section 10 by the Competent Authority for establishing a minority educational institution, may prefer an appeal against such order to the Commission.

(2) An appeal under sub-section (1) shall be filed within thirty days from the date of the order referred to in sub-section (1) communicated to the applicant:

Provided that the Commission may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Commission shall be made in such form as may be prescribed and shall be accompanied by a copy of the order against which the appeal has been filed.

(4) The Commission, after hearing the parties, shall pass an order as soon as may be practicable, and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

(5) An order made by the commission under sub-section (4) shall be executable by the Commission as a decree of a civil court and the provisions of the Code of Civil procedure, 1908 (5 of 1908), so far as may be, shall apply as they apply in respect of a decree of a civil court.

(emphasis supplied)

It is beyond the pale of controversy that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. The petitioner college has also been declared by the State Government as an autonomous educational institution vide notification dated 15.9.2009. It needs to be highlighted that Article 30(1) of the Constitution does not speak of the conditions under which a minority educational institution can not be granted NOC for grant of deemed to be university status u/s 3 of the UGC Act but Article by its very nature implies that whenever an NOC is asked for, the State Government or the statutory authority cannot reject the same without sufficient reasons or try to impose such conditions as would completely destroy the autonomous administration of such educational institution. At this juncture it would be useful to excerpt the following note recorded by the financial Commissioner (Technical Education) on 18.3.2008 on the application filed by the petitioner institution for grant of NOC.

“We should restrict our comments to the following 3 issues as per PUC from UGC:

- (1) Potential
- (2) Academic Excellence
- (3) Financial viability”.

No NOC or specific recommendation is required from us”.

The following note dated 17.4.2008 of Joint Director(Engg.) has been highlighted by the petitioner during the arguments :

“NP 3 to 8 may please be perused. The comments on the potential, academic excellence and financial viability of the institute are as under :-

**POTENTIAL:**

1. The institute is having 19360 sqm. built up area, conducting 5 UG Courses and 2 M Tech. Courses with sanctioned Intake of 456. Two of its UG Courses have been accredited by NBA of AICTE for a period of 3 years w.e.f. 22/01/2008.
2. The institute has sufficient infrastructure including well equipped computer centre, laboratories and library.
3. The institute has 105 no. of competent & qualified faculty as per AICTE norms

### ACADEMIC EXCELLENCE:

1. The institute has good academic record as evident from the examination results for the past three years.
2. The placement of students through its placement cell is good.
3. The institute is conducting research programmes at PG Level only.

### FINANCIAL POSITION:

1. The financial position of the institute is sound and at present its current assets are worth Rs. 7 Crore & 64 Lacs approximately and Rs. 1 Crore & 64 Lacs, in the savings bank account & Rs. 17 Lacs in FD.

Submitted for kind perusal and consideration please.”

The petitioner has argued that the above notings of Joint Director (Engg.) clearly proves that the petitioner institution fulfills all the required conditions as an institution of academic excellence.

It is relevant to mention that the entire field is covered by the U.G.C. Act. one of the conditions for the qualifying criteria laid down for grant of deemed to be university status under Section 3 of UGC Act is the NOC of the State Government. The said condition about obtaining an NOC from the State Government cannot be equated with obtaining prior permission of the State Government for establishing a new college or university. For the purpose of granting the NOC as required under the qualifying criteria prescribed under the UGC Act/Regulations, the State Government is only required to consider the desirability and feasibility of having the college with the deemed to be university status. The said condition about obtaining NOC from the State government regarding desirability and feasibility of having the college with the deemed to be status cannot be equated with obtaining prior permission of the State Government for grant of such status.

It needs to be highlighted that by the order dated 15.9.2009 the State Government had declared the petitioner college as an autonomous institution. In this view of the matter, the State Government should not have any reservation for granting the NOC as sought by the U.G.C.. The only reason which has been given by the State Government for refusal of the NOC is that the petitioner’s proposal would be considered after review of cases relating to grant of the deemed to be university status by the Ministry, HRD, government of India. The State government could not refuse NOC on such a flimsy ground.

The aforesaid note of the Financial Commissioner (Technical Education ) clearly shows that prima facie the petitioner institution fulfills all the required conditions as an institution of academic excellence. In this view of the matter the petitioner college was lawfully entitled for grant of NOC for consideration of its application relating to grant of deemed to be university

status by the UGC. Consequently, the impugned order of the State Government rejecting the petitioner's application for grant of NOC cannot be sustained in law.

For the foregoing reasons, the appeal filed by the petitioner college is allowed u/s 12A of the Act and the impugned order dated 6.1.2010 is hereby set aside and the State Government is directed to consider the application submitted by the petitioner for grant of NOC for its presentation before the UGC. The application shall be decided within two months from the date of this order. The appeal is disposed of accordingly.

### **Case No. 2062 of 2010**

#### **Petition to seek direction to University for grant of affiliation to a minority institution.**

**Petitioner** : Mukkam Muslim Orphanage Committee, Mukkam, Kozhokode, Kerala,  
Through its General Secretary

**Respondent** : The Registrar, University of Calicut, Calicut University P.O., Kerala

By this petition, purported to have been filed u/s 10-A of the National Commission for Minority Educational Institutions Act (for short the Act), the petitioner society seeks direction to the respondent university to grant affiliation to the proposed college. The petitioner is a registered society formed by the members of the Muslim community. Indubitably, the community ranks as a minority in the country and the educational institution run by it has been found to be what may loosely be called a minority institution, within the constitutional compass of Article 30(1). On 26.10.2009, the petitioner filed an application under Chapter 23 of the Calicut University First Statutes, 1977 (hereinafter to be referred as the Statutes) before the respondent university for grant of affiliation to the new women college at Mukkam for the academic year 2010-11. All the requisite documents along with the sum of Rs. 25,000 were deposited in the University. On receipt of the application, the respondent university appointed a commission to inspect the proposed site of the said college. On 10.6.2010, the respondent university intimated the petitioner about rejection of the said application on the ground that the same was not recommended by the inspection commission vide memo No. GAI/G3/7700/2009 (ii) dated 10.6.2010. Being dissatisfied with the said non-speaking order, the petitioner on 23.7.2010 applied to the respondent university for ascertaining the reasons for its rejection. By the memo dated 30.7.2010, the respondent university intimated the petitioner that his application was rejected on the following grounds:-

- (a) Many educational institutions are working at Mukkam and surroundings;
- (b) Most colleges have more female students than male students and hence there is no need of an another women's college.

It is alleged that the reasons given by the respondent university for rejection of the said application are false as the respondent university had granted affiliation to two other

colleges namely, MAM College of Arts and Science, Manassery and SSM College of Arts & Science, Nellikkaparmba Karassery Panchayath which are situated within the radius of 6 to 7 kms. It is also alleged that there is no women college near the proposed college and the only women college in the surrounding area is Ansari College of Arts for Women, Dayapuram, Chathamangalam which is at the distance of 15 kms. Moreover, most Muslim girls would not like to travel the distance of 15 kms which is the nearest women college. The proposed college has within its vicinity, a higher secondary school run by the petitioner which would feed the proposed college and ensure less dropouts and it would not create any unhealthy competition. It is further alleged that the conduct of respondent university is not fair, reasonable and it is also not conducive for the growth of education within the Muslim minority community.

The petition has been resisted by the respondent university on the ground that the establishment of the proposed women college was not recommended by the inspection commission vide report dated 22.2.2010 and as such its application for grant of affiliation was validly rejected. It is alleged that while conducting inspection of the application for starting new college, the inspection commission is required to follow the directions of the Kerala Higher Education Council in respect of the new college/ new courses from 2008-09 vide letter No. No. 571/07/H.Edn. dated 18.12.2007. One of the directions relied upon by the respondent university is as under:-

“Areas with low density of colleges may be given priority in starting new institutions. Unaided colleges/courses may be sanctioned selectively. NOC may be given for starting new unaided colleges only in areas where there are not adequate number of institutions of the same category. Colleges need not be sanctioned if there are already colleges of the same category (Arts & Science, Engineering, Medical, Applied Science, Management Institutions, etc.) within a radius of 20 kms.”

It is alleged that according to Chapter 23<sup>rd</sup> of the Statutes an application for affiliation to colleges and courses received and found in order shall be valid for two academic years. In the instant case the petitioner’s application was not recommended by the inspection commission and as such the petitioner’s request to consider this application to the next academic year 2011-12 cannot be considered.

In view of the rival contention of the parties, the point which arises for consideration is as to whether the impugned order dated 10.6.2010 of the respondent university rejecting the petitioner’s application for grant of affiliation under Chapter 23 of the Statutes is violative of Articles 30(1) , 14, 15 and 16 of the Constitution.

At the outset we must make it clear that this Commission has been created under an Act of Parliament to facilitate exercise of the educational rights of the minorities enshrined in



Article 30 (1) of the Constitution. The statement of objects and reasons accompanying the Bill clearly shows the object for constitution of this Commission and it was specifically mentioned therein that the Commission shall have jurisdiction to decide the disputes relating to affiliation of colleges covered under Article 30(1) of the Constitution. At this juncture, we may usefully excerpt the Statement of Objects and Reasons of the Bill, which are as under :-

“In one of the Sections of the National Common Minimum Programme, there is a provision to establish a Commission for Minority Educational Institutions (hereinafter referred to as the National Commission) that will provide direct affiliation for minority professional institutions to Central Universities. This long felt demand of the Minority communities was also underscored in a series of meetings held by the Ministry of Human Resource Development with educationists, eminent citizens and community leaders associated with Minority education. Among the various issues raised by the representatives of the Minority communities was the difficulty faced by them in establishing and running their own educational institutions, despite the Constitutional guarantees accorded to them in this regard. The major problem was the issue of securing affiliation to a university of their choice. The territorial jurisdiction of the State Universities, and the concentration of minority populations in some specific areas invariably meant that the institutions could not avail the opportunity of affiliation with the universities of their choice.

2. Subsequently, in a meeting of the National Monitoring Committee for Minority Education held on August 27, 2004, similar views were voiced by many experts. Participants from the various minority communities affirmed the need to provide access to such affiliation in view of the often restrictive conditions imposed by the existing statutes of the Universities, relating to the affiliation of such institutions. They felt that these conditions affected the rights granted to them on account of their Minority status. The fact that there was no effective forum for appeal and quick redressal only aggravated the sense of deprivation of the minority communities.

3. in view of the commitment of the Government in the National common Minimum Programme, the issue of setting up of a National Commission was a matter of utmost urgency. As the Parliament was not in session and in view of the considerable preparatory work that would be involved to make the national commission's functioning effective on and from the next academic session, recourse was taken to create the national Commission through promulgation of the national commission for Minority Educational Institutions Ordinance, 2004 on 11<sup>th</sup> November, 2004.



4. The salient features of the aforesaid ordinance are as follows:-
  - (i) It enables the creation of a National Commission for Minority Educational Institutions;
  - (ii) It creates the right of a minority educational institution to seek recognition as an affiliated college to a Scheduled University, notwithstanding anything contained in any other law for the time being in force;
  - (iii) It allows for a forum of dispute resolution in the form of a Statutory Commission, regarding matters of affiliation between a minority educational institution and a Scheduled University and its decision shall be final and binding on the parties;
  - (iv) The Commission shall have the powers of a civil court while trying a suit for the purpose of discharging its functions under it, which would provide the decisions of the Commission the legal sanction necessary for such purpose; and
  - (v) it empowers the Central Government to amend the Schedule to add in, or omit from any University.
5. The Bill seeks to replace the above Ordinance.”

The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons accompanying a bill, when introduced in Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the Statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading upto the legislation and the evil which the statute was sought to remedy. However, judicial notice can be taken of the factors mentioned in the Statement of Objects and Reasons and of such other factors as must be assumed to have been within the contemplation of the Legislature when the Act was passed. If the provisions of the National Commission for Minority Educational Institutions Act, 2004 (for short the Act) are interpreted keeping in view the background and context in which the Act was enacted and the purpose sought to be achieved by this enactment, it becomes clear that the ‘Act’ is intended to create a new dispensation for expeditious disposal of cases relating to grant of affiliation by the affiliating universities, violation/ deprivation of educational rights of the minorities enshrined in Article 30(1) of the Constitution, determination of Minority Status of an educational institution and grant of NOC etc. This Commission is a quasi-judicial tribunal and it has been vested with the jurisdiction, powers, and authority to adjudicate upon the dispute relating to grant of affiliation to the colleges covered under Article 30(1) of the Constitution and the rights conferred upon the minorities under the Act without being bogged down by the technicalities of the Code of Civil Procedure.

Section 10A of the Act confers a legal right on a minority educational institution to seek affiliation to any university of its choice. Section 10A of the Act is as under: -

**“10A. Right of a Minority Educational Institution to seek affiliation - (1)**A Minority Educational Institution may seek affiliation to any University of its choice subject to such affiliation being permissible within the Act under which the said University is established.

(2) Any person who is authorized in this behalf by the Minority Educational Institution, may file an application for affiliation under sub-section (1) to a University in the manner prescribed by the Statute, Ordinance, rules or regulations, of the University.”

Section 12 of the Act confers power on this Commission to decide any dispute relating to affiliation to such university. Section 12 read as under: -

**“12. Powers of Commission . – (1)** If any dispute arises between a minority educational institution and a university relating to its affiliation to such University, the decision of the Commission thereon shall be final.

(2) The Commission shall, for the purposes of discharging its functions under this Act, have all the powers of a civil court trying a suit and in particular, in respect of the following matter, namely:-

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

[(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860 and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)]”

(emphasis supplied)

It needs to be highlighted that the Act provides that the Commission will be guided by the principles of natural justice and subject to the other provisions of the Act and has the power to regulate its own procedure. Sub Section (2) of Section 12 empowers the Commission to exercise the specified powers under the Code of Civil procedure like summoning of witnesses, discovery, issue of requisition of any public record, issue of commission etc. Sub Section (3) of Section 12 specifies that every proceeding before the Commission shall be deemed to be a judicial proceeding in terms of the Indian Penal Code and the Commission shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure 1973 (2 of 1974). Sections 12A and 12B confer right of appeal to this Commission and they also provide that orders passed by the Commission shall be executable as a decree of a Civil Court. Section 12F of the Act indicates that no civil court has jurisdiction in respect of any matter which the Commission is empowered by or under the Act to determine. Thus, the conspectus of the provisions of the Act clearly indicates that the dispute between the university and a minority institution relating to affiliation is within the purview of the Act. A plain reading of Section 10A of the Act in the light of the preamble to the Act and the objects and reasons for enacting the Act, indicates that the dispute relating to affiliation between the concerned parties is to be determined by a specialized tribunal constituted for that purpose. There is also an ouster of jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under the Act to determine. The constitution of the Act itself indicates that it is chaired by a retired Judge of the High Court. Thus the Act is a self-contained code intended to deal with all disputes arising out of recognition/affiliation of the educational institutions of the minorities covered by Article 30(1) of the Constitution. That being so, this Commission has jurisdiction to adjudicate upon the dispute relating to affiliation of a minority educational institution to a university. Sub Section (1) of Section 12 declares that the decision of the Commission on such dispute shall be final. It cannot be disputed that the present dispute relates to grant of affiliation and as such it falls within the ambit of Section 12 of the Act. Since the Commission has jurisdiction to adjudicate a dispute falling within the ambit of Section 12 of the Act, it falls within the meaning of the expression 'court'. (see *Trans Mediterranean Airways vs. Universal Exports* 2011, AIR SCW 6028)

Needless to add here that Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30 (1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of the fundamental rights guaranteed under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their Lordships of the Supreme Court attributed the real reason for Article 30 (1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic,

are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole”.

In re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

“The key to the understanding of the true meaning and implication of the article under consideration are the words ‘of their choice’. It is said that the dominant word is ‘choice’ and the content of that article is as wide as the choice of the particular minority community may make it”.

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that “the words ‘of their’ ‘choice’ in Article 30 (1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors.:

“..... The object underlying article 30 (1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30 (1) in the interest of minorities are:

i) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956).

Although, Article 30(1) of the Constitution does not speak of the conditions under which the minority institutions can be affiliated to a university, yet the Article 30(1) by its very nature implies that where an affiliation is asked for, the university concerned cannot refuse the same without sufficient reasons or try to impose such conditions as would completely destroy the autonomous administration of the educational institutions. Reference may, in this connection, be made to the decision rendered by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481.

It must be stressed that refusal to grant affiliation to an educational institution covered under Article 30(1) by an affiliating university without just and sufficient grounds amounts to violation of the fundamental right guaranteed under Article 30(1).

It is significant to mention that powers under Chapter 23 of the Statutes are to be exercised according to well established principles of reasons and justice and not fancifully or arbitrarily. In East Coast Railway vs. Mahadev Appa Rao 2010 AIR SCW 4210, the Supreme Court propounded the true import of the word 'arbitrariness' in the following words:

“18. There is no precise statutory or other definition of the term “arbitrary”. In Kumari Shrilekha Vidyarthi and Ors. Vs. State of U.P. and Ors.(AIR 1991 SC 537): (1993 AIR SCW 77), this Court explained that the true import of the expression “arbitrariness” is more easily visualized than precisely stated or defined and that whether or not an act is arbitrary would be determined on the facts and circumstances of a given case. This Court observed:

“The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that ‘be you ever so high, the laws are above you’. This is what men in power must remember, always.”

20. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may

be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.”

At this juncture we must also make it clear that a court cannot make out a case which was not even pleaded by either of the parties. It has been held by their lordships of the Supreme Court in *St. Xavier’s College (supra)* that “Affiliation to a University really consists of two parts, one part relates to syllabi, curriculum courses of instruction, the qualification of teachers, library, laboratories, conditions regarding health and hygiene of students. This part relates to establishment of educational institutions. The second part consists of terms and conditions regarding management of institutions. It relates to administration of educational institutions.” Thus affiliation is regulating courses of instructions in institution for the purpose of coordinating and harmonizing the standard of education. Affiliation of minority educational institutions is intended to ensure the growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution. The educational institutions set up by the minorities will be robbed of their utility if boys and girls cannot be trained in such institutions for university degrees. The primary purpose of the affiliation is that the students studying in minority educational institutions will have qualifications in the shape of degrees necessary for a useful career in life. The establishment of a minority educational institution is not only ineffective but also unreal unless such institution is affiliated to a university for the purpose of conferment of degrees on students. An educational institution can hardly serve any purpose or be of any practical utility unless it is affiliated to a university or is otherwise recognized like other institutions. The right conferred by Article 30 is real and meaningful right. It is neither an abstract right nor is it to be exercised in vacuum. Article 30 was intended to have a real significance and it is not permissible to construe it in such a manner as would rob it of that significance. It is not permissible to prescribe conditions for recognition or affiliation which have the effect of impairing the right of a minority community to establish and administer its educational institutions.

It is well settled that every clause of a Statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible to make a consistent enactment of the whole statute or series of statutes relating to the subject matter. Chapter 23 of the Statutes prescribes procedure to be adopted in granting affiliation of new colleges and in new courses. Rule 6 of the said Chapter prescribes procedure to be adopted by the syndicate on receipt of application for affiliation etc. Rule 6 reads as under: -

“Power of the Syndicate to grant affiliation etc:-

- (1) all applications seeking affiliation shall be considered by the Syndicate not later than 31<sup>st</sup> march preceding the Academic year in which the college/ courses are proposed to be started\*

(\*Amendment approved by the Senate on 27.7.1985, assented to by the Chancellor on 18.2.1986, Gazettee dated 27.5.1986)

The Syndicate shall have power to affiliate any college within the

- (2) territorial jurisdiction of the University preparing students for degrees, titles or diplomas of the University which satisfy the conditions prescribed in the laws of University.”

Rule 8 lays down that if the syndicate decides to proceed with the application, it shall direct a local enquiry to be made. Rule 9 empowers the university to grant affiliation of new college and in new courses. Rule 9 is as follows:-

**“Grant of Affiliation:-**

- (a) The University may appoint a Commission to inspect the proposed site of a new college/or to make a physical verification of the facilities that may exist for starting the new college/course, if the application is considered favourably by the University. The Commission will inspect the suitability of the proposed site, verify the title deeds as regards the proprietary right of the Management over the land (and buildings, if any) offered, building accommodation provided if any, assets of the Management, constitution of the registered body and all other relevant matters. Further action on the application shall be taken on receipt of the report of this commission.
- (b) The grant of affiliation shall depend upon the fulfillment by the Management of all the conditions that are specified here or that may be specified later for the satisfactory establishment and maintenance of the proposed institution/courses of studies and on the reports of inspection by the Commission or Commissions which the University may appoint for the purpose.
- (c) Unless all the conditions are fulfilled, before the commencement of the academic year, no new college/or additional courses shall be permitted to be started during that year.
- (d) Educational agency /management, the principal or any other person or persons on their behalf shall neither demand nor accept donations from



candidates for appointment to the staff and from students for admission to the college.

- (e) The Management shall be prepared to abide by such conditions and instructions as regards staff, equipment, library, reading room, playgrounds, hostels etc. as the University may from time to time impose or issue in relation to the college.
- (f) The Educational Agency/Management shall give an undertaking to the University to carry out faithfully, the provisions of the University Act, Statutes, Ordinances and Regulations and the directions issued by the University from time to time, in so far as they are related to the college. The undertaking shall be endorsed by the Principal of the college.
- (g) After considering the report of the local enquiry, if any, and after making such further enquiry as it may deem necessary, the Syndicate shall decide after considering the report of the local enquiry and also after ascertaining the views of the Government, whether the affiliation be granted or refused, either in whole or in part. In case the affiliation is granted, the fact shall be reported to the Senate at its next meeting.”

Rule 19 prescribes conditions to be satisfied by affiliated colleges. The rule commands that every college affiliated to the university shall comply with and duly observe the provisions in the laws of the university. Rule 26 prescribes conditions to be complied with for seeking affiliation. Rule 26 reads as follows:-

“Matters to be complied with for seeking affiliation:

- (1) Every college shall satisfy the Syndicate on the following aspects:
  - (i) That the college if started will supply a need of the locality, having regard to the type of education intended to be provided by the college, the facilities existing for the same type of education in the neighbourhood and the suitability of the locality;
  - (ii) The suitability and adequacy of the buildings, libraries, laboratories and other equipments;
  - (iii) The character, qualifications and adequacy of the teaching staff and the conditions of their service;
  - (iv) The buildings in which the college is to be located are suitable and that provision will be made in conformity with the laws of the University for the residence in the college or in lodgings approved by the college, if students are not residing with their parents or guardian and for the supervision and welfare of students;



- (v) Such other matters as are essential for the maintenance of the tone and standard of University education
- (2) In regard to the matters referred to in clause (1), the Syndicate shall be guided by the reports of Inspection Commission and by the rules which may be prescribed by it.

Sub-rule (1) of Rule 26 provides that the college if started will supply a need of the locality, the facilities existing for the same type of education in the neighbourhood and the suitability of the locality. Sub rule (2) provides that in regard to the matters referred to in Clause (1), the syndicate shall be guided by the reports of the Inspection Commission and by the rules which may be prescribed by it. Statutory enactment must ordinarily be construed according to its plain meaning and no word shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the test of the Statute. (Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. AIR 2003 SC 511). We cannot add or mend any statutory provisions. It is not permissible to add words or to fill in a gap or lacuna in any provision of the Statute. There is nothing in the Statutes to show or suggest that in regard to the matters referred to in clause (i) of Rule 26, the syndicate shall be guided by the directions of the Kerala Higher Education Council or any other instrumentality of the State Government. On the contrary, the scheme of the statutes unmistakably indicates that the university shall be guided by the laws of the University for granting affiliation to a new college or in new courses.

Relying upon the said directions of the Kerala Higher Education Council, learned counsel for the respondent has strenuously urged that the university is bound to follow the guidelines formulated by the Kerala Higher Education Council for granting affiliation to a new college. In our opinion, the aforesaid submission does not hold much water. It is well settled that every clause of a Statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible to make a consistent enactment of the whole statute or series of statutes relating to the subject matter. (Bhavnagar University Vs. Palitana Sugar Mill supra)

A bare reading of the provisions engrafted in Chapter 23 of the Statutes makes it clear that the matter relating to grant of affiliation to a new college has to be decided in accordance with the procedure prescribed therefor and the Kerala Higher Education Council has no role to play in this regard. Role of the said Council relating to grant of affiliation is also not necessarily implied in chapter 23 of the Statutes. The context also does not favour the asserted implication. If the legislature had intended to assign any role to the Kerala Higher Education Council, relating to grant of affiliation to a new college, it could have easily expressed its intention in clear words in Chapter 23 of the Statutes. That being so, the Statutes cannot take their colour from any executive fiat issued by the said council. To hold

otherwise would amount to transgressing the legally permissible limit as we cannot add or mend any statutory provision. It is not permissible to add words or to fill in a gap or lacuna in any provision of the Statute.

Needless to add here that unless a degree college is admitted to the privileges of a university, it cannot be recognized by the State Governments. If an unaffiliated degree college is recognized by the State Government, it will render Chapter 23 of the Statutes redundant. It has been held by the Supreme Court in St. Xavier's College, Ahmedabad vs. State of Gujarat 1974 (1) SCC 717 that affiliation is a statutory concept and may be obtained on the fulfillment of the conditions prescribed therefore by a Statute. Their lordships have further held that an affiliating University can not deny affiliation to a minority institution on the sole ground that it is managed by a minority community or on arbitrary or irrational basis. Such a denial would be violative of Article 14 and 15 (1) and will be struck down by the courts. Again, Article 13 (2) prohibits the State from taking away or abridging the right under Article 30 (1). Since the State cannot directly take away or abridge a right conferred under Article 30 (1) the State cannot also indirectly take away or abridge that right by subjecting the grant of affiliation to conditions which would entail the forbidden results. (See in re. Kerala Educational Bill AIR SC 1957]. The respondent university is State within the meaning of Article 12 of the Constitution.

It needs to be highlighted that on 26.10.2009 the petitioner college had applied to the university for grant of affiliation. By the letter dated 10.6.2010, the respondent university intimated the petitioner college about rejection of the said application on the ground of non-recommendation by the Inspection Commission. No explanation has been offered by the respondent university about the inordinate delay in communicating the said decision to the petitioner college. In order to ascertain the reasons for rejection of the application for grant of affiliation, the petitioner college filed an application dated 23.7.2010 under the Right to Information Act before the respondent university. By the letter dated 30.7.2010, the respondent university intimated the petitioner college that its application was rejected for the following reasons: -

- (a) Many educational institutions are working at Mukkam and surroundings;
- (b) Most colleges have more female students than male students and there is no need of another women's college.

There is no explanation whatsoever on record about non-inclusion of the aforesaid grounds of rejection in the letter dated 10.6.2010 of the respondent university. This clearly gives rise to an inference that the grounds of rejection communicated to the petitioner college vide letter dated 30.7.2010 are an afterthought. That apart, the aforesaid grounds of rejection directly stares into the face of Article 30 (1) of the Constitution as they impinge upon the rights of the minorities to establish and administer educational institutions of their choice.

It is alleged in para No. 4 of the Counter that while conducting inspections by the Inspection Commission appointed by the respondent university, the Commission has to follow the directions of the Kerala Higher Education Council contained in the memo No. 571/07/H. Edn. Council, dated 18.12.2007. One of these directions is that colleges need not be sanctioned if there are already colleges of the same category (Arts, Science, Engineering, Medical, Applied Science, Management Institutions, etc.) within a radius of 20 kms. We have already held that the Kerala Higher Education Council has no role to play for granting affiliation to a college or the university under Chapter 23 of the Statutes.

It is significant to mention that the petitioner has specifically pleaded in para No. 6 of the petition that “the petitioner has complied with all the norms and requirements for granting permission to the proposed new college at Mukkam”. It is pleaded in para no. 7 of the petition “that the petitioner is a dedicated and solvent society of great reputation and it is in furtherance of its desire to help the Muslim community, especially the girls, that the said proposal had been made to the respondent. The petitioner is already running a chain of institutions from the level of primary schools in the State of Kerala.” These facts have not specifically denied by the respondent university. It is pleaded in para 9 of the petition that “this delay and non-mention of any reason for rejection suitably demonstrate the illegal and arbitrary attitude of the respondent”. These averments of para No. 9 have also not been denied by the respondent university. Reference may also be made to the averments made in para nos. 13, 14, 15, 16, 17 and 18 of the petition, which are as under:

13. That the reasons given by the respondent are completely false. It is a matter of record that there are no women’s college near the proposed college of the petitioner. The only women’s college in the surrounding area is Ansari College of Arts for women, Dayapuram, Chathamangalam and the same is 15 kms. away. Therefore, there is no other women’s college either run by a Muslim Minority Society/Trust or not. So the statement is completely false.

14. That it is a matter of record that there are two other co-ed colleges at the distance of 6 to 7 kms, which are as follows:

(a) MAM College of Arts & Science, Manassery

(b) SSM College of Arts & Science, Nellikkaparamba, Karassery Panchayath

15. That it cannot be disputed that most Muslim girls desire to study in a women’s college and would never travel a distance of 15 kms. which is the nearest women’s college. Above all the said college is being fed by that area and the schools therein.

16. The proposed college has within its vicinity higher secondary schools run by the petitioner, which would feed the proposed college and ensure less drop-outs.

17. That the petitioner would not create any unhealthy competition as is neither seeking any aid or assistance.

18. The conduct of the respondent university is not fair and reasonable, especially not conducive for the growth of education within the Muslim community.

Rule 3 of Order 8 CPC lays down that a general denial of the grounds alleged in the plaint shall not be sufficient but each and every allegation of fact must be specially dealt with. Rules 3, 4 and 5 form an integrated code dealing with the matter in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The main allegations which form the foundation of the suit should be dealt with in that way and expressly denied. Facts not specifically dealt with will be taken to be admitted. It is trite law that if the denial of fact is not specific but evasive, the fact shall be taken to be admitted. Rule 5 of Order 8 CPC enforces a cardinal principle of the system of pleadings that every allegation of fact in a statement of claims or in a counter claim must be traversed specifically, otherwise it is deemed to be admitted. The rule in this Rule is known as doctrine of non-traverse which means that where a material averment is passed over without a specific denial, it is taken to be admitted.

Consequently, the following facts may taken to be admitted by the respondent University: -

- (i) That the petitioner society is already running a chain of institutions in the State;
- (ii) That in order to help the Muslim community, especially the girls, the petitioner applied to the respondent university for grant of affiliation to the New College;
- (iii) That there is no women's college near the proposed college of the petitioner;
- (iv) That the only women's college in the surrounding area is Ansari College of Arts, Dayapuram and the same is 15 Kms. away;
- (v) That the respondent university had granted affiliation to two other co-educational colleges, namely, MAM College of Arts and Science, Manassary and SSM College of Arts and Science, Nellikkaparamba, Karassery Panchayat which are at a distance of 6 to 7 Kms;
- (vi) That most Muslim girls prefer to study in a women's college and would not like to travel 15 kms. for studying in another women's college;
- (vii) That the proposed college has within its vicinity higher secondary schools run by the petitioner, which would feed the college and ensure less drop-outs;
- (viii) That the proposed college would not create any unhealthy competition;
- (ix) That the conduct of the respondent university is not fair and conducive for the growth of education of the Muslim community.

Now, it is an admitted position that the respondent University had granted affiliation to various colleges situated within a radius of 6 to 15 Kms. No explanation has been offered on behalf of the respondent University as to why directions contained in the memo No. 571/07/ H.Edn. Council dated 18.12.2007 issued by the Kerala Higher Education Council were not adhered to while granting affiliation to the said colleges. Why the petitioner college alone was selected for enforcing the said directions for rejecting the application for grant of affiliation. Moreover, the restriction imposed by the Kerala Higher Education Council relating to non-sanction of a college within the radius of 20 Kms. of the same college is virtual negation of the fundamental right guaranteed under Article 30 (1) of the Constitution. It has to be borne in mind that neither the Government nor the university can prevent a minority community from establishing an educational institution of its choice. Absence of any plausible explanation of the respondent university compels us to draw an adverse inference against the respondent university. Having regards to the facts and circumstances of the case, we have no hesitation in coming to the conclusion that the respondent university had arbitrarily rejected the petitioner's application for grant of affiliation. It is well settled that the basic requirement of Article 14 of the Constitution is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. It has been held by the Supreme Court in Bannari Amman Sugars Ltd. Vs. C.T.O. (2005)/ SCC 625 that a question whether the impugned action is arbitrary or not is to be ultimately answered on facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness. Article 14 has highly activist magnitude and it embodies a guarantee against arbitrariness. This Article strikes at arbitrariness in State action and ensure fairness and equality of treatment. Applying the said principles to the facts and circumstances of this case, we find and hold that the impugned order dated 10.6.2010 is also hit by Article 14 of the Constitution.

As stated earlier, the petitioner has specifically pleaded in para No. 18 of the petition that the conduct of the respondent university is not fair and conducive for the growth of education of the Muslim community and these averments have not been denied by the respondent university. This attitude of the respondent university is totally destructive to the rights of the minorities enshrined in Article 30 (1). Such an attitude of the respondent university would encourage fissiparous tendencies and foster regionalism and parochialism, which are destructive to the national unity and integration. We have also demonstrated earlier that the respondent university had granted affiliation to certain colleges situated within the radius of 6 to 15 Kms. The respondent university has not rejected the petitioner's application on the ground of non-availability of infrastructural or instructional facilities. That being so, the petitioner has made out a clear case of hostile discrimination and arbitrariness.

Obviously, the petitioner institution has been discriminated against in the matter for grant of affiliation by the respondent university. The concept of equality is not a doctrinaire approach. It is a binding thread which runs through the entire constitutional test. We cannot ignore the constitutional morality which embraces in itself the doctrine of equality. If the minority educational institutions are not granted affiliation, the right of equality would lose all its purpose and relevance. That being so, the impugned order is also hit by Article 15 and 16 of the Constitution.

Having regard to the facts and circumstances of the case and bearing in mind the hostile attitude of the respondent university, we are of the opinion that the petitioner cannot be made to suffer on account of the arbitrary and illegal action of the respondent university in rejecting the application for grant of affiliation for the academic year 2010-2011. Consequently, the petition is allowed under Section 12 of the Act and the impugned order dated 10.6.2010 is hereby set aside. The respondent university is hereby directed to reconsider the application filed by the petitioner under Chapter 23 of the Statutes for grant of affiliation in the light of the observations made above, treating it an application filed for grant of affiliation for the academic year 2011-2012.

### **Case No. 356 of 2009**

#### **Petition to seek direction to State for grant of permission for Establishment of a new Urdu Junior College of Arts and Science by a Minority Institution**

**Petitioner :** Iqra Education Society, Pusad, Dist. Yavatmal,, Maharashtra

- Respondents :**
1. The Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai-32, (Maharashtra)
  2. The Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai
  3. The Director of Education (Secondary), Central Building, Pune
  4. Education Officer (Secondary), Zila Parishad, Godhani Road, Distt. Yavatmal, Maharashtra

By this petition, the petitioner seeks a direction to the respondent to grant permission for starting a new Urdu Junior College of Arts and Science at Pusad, Distt. Yavatmal, Maharashtra. The petitioner had submitted a proposal to the District Education Officer, Yavatmal for starting a new Urdu Junior College in 2008-09, which was rejected on the ground (1) that the petitioner society was not having sufficient funds (2) that the society had not submitted fresh audit reports and (3) that the society had not submitted NOCs of other Urdu medium schools. It is alleged that the petitioner has sufficient funds for sustenance of the proposed college, that copies of the audit reports and NOCs of other Urdu

medium school were also submitted alongwith the proposal but the petitioner's proposal was rejected arbitrarily. It is also alleged that the impugned action of the respondent in rejecting the proposal is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The petition has been resisted on the ground that on evaluation of the proposal by the District Level Committee, it was not recommended due to lack of sufficient funds, non-filling of the up-to date audit reports and NOCs from other Urdu medium junior colleges of local area. It is also alleged that acting on the recommendation of the District Level Committee, the State Level Committee rejected the proposal.

In view of the rival contentions of the parties, the issue which arises for consideration is : whether the impugned action of the State Government in rejecting the petitioner's proposal is violative of the fundamental right enshrined in 30(1) of the Constitution?

A stream of Supreme Court rulings commencing with the Kerala Education Bill, 1957 (AIR 1958 SC 959) and climaxed by P.A. Inamdar & Ors Vs. State of Maharashtra & Ors (2005) 6 SCC 537 has settled the law for the present. The whole edifice of case law on Article 30(1) of the Constitution has been bedrocked in Kerala Educational Bill's case (supra). Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of these provisions under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."



In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

“The key to the understanding of the true meaning and implication of the article under consideration are the words ‘of their choice’. It is said that the dominant word is ‘choice’ and the content of that article is as wide as the choice of the particular minority community may make it.”

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that “the words ‘of their’ ‘choice’ in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- (ii) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

In the rejoinder, the petitioner has submitted that a sum of Rs. 2 lacs had been deposited with the Central Bank of India in the name of the society and a sum of Rs. One lac was kept



as FDR. Copies of the letters issued by the Bank were submitted to the respondent. It is also alleged that audit reports for the year 2006-07 and 2007-08 and NOCs from other Urdu junior colleges of the area were also submitted alongwith the proposal.

It needs to be highlighted that the aforesaid facts have not been devised by the respondent. The petitioner has also submitted copies of the said documents before this Commission. Having regard to the facts and circumstances of the case we find and hold that the petitioner society has sufficient funds for starting the proposed Urdu medium junior college in the area provided NOC was given for the establishment of the proposed college and thus the impugned action of the respondent in rejecting the proposal of the petitioner society is clearly violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, it is recommended to the State Government to implement the finding of the Commission in terms of Section 11(b) of the NCMEI Act by reconsidering the proposal submitted by the petitioner society relating to the establishment of the Urdu Junior College, at Pusad, Dist. Yavatmal, Maharashtra.

## **CHAPTER – 9: REFERENCES FROM CENTRAL GOVERNMENT AND STATE GOVERNMENTS AND COMMISSION'S RECOMMENDATIONS**

The Commission has taken up the issues concerning the rights of minorities with different State Governments/UT administrations. The issues includes grant of Minority Status Certificate, providing quality education in Madarsas and posting of Urdu teachers in Government schools.

As a result of interaction of Hon'ble Chairman with the Hon'ble Chief Minister of Assam, the Government of Assam has issued instruction to concerned department regarding the implementation of the orders passed by NCMEI. Relevant extracts of said Government recommendations are excerpted below:-

“ In this context, I am directed to mention that State of Assam has sizable minority population and the State Government and its administrative officers are not only aware about the Constitutional Rights of the Minorities but are also quite concerned about the sensitivities of the issues involved. In so far as, the State Government of Assam is concerned, there was only one case concerning the Central Government guidelines regarding engagement of Urdu teachers and in this case the final verdict of the Commission is yet to be received. However, the State Government has presented its viewpoint before the Hon'ble Commission. Once the orders of the Commission are communicated, the State Government would certainly implement the orders of the Hon'ble Commission with utmost sincerity”.

Hon'ble Chairman, NCMEI took up the issue of grant of Minority Status Certificate to minority educational institutions with the Hon'ble Chief Minister of Madhya Pradesh. The State Government has informed that based on the suggestion from the Commission the State Government has initiated action for amendments to “Margdarshi Siddhanth Aur Prakriya-2007”.

## CHAPTER 10 – RECOMMENDATIONS FOR THE INTEGRATED DEVELOPMENT OF EDUCATION OF THE MINORITIES

As per Section 11 of NCMEI Act, 2004, the Commission amongst other functions shall;

- (a) Advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it;
- (b) Enquire, *suo motu*, or on a petition presented to it by any Minority Educational Institution, or any person on its behalf into complaints regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice and any dispute relating to affiliation to a University and report its finding to the appropriate Government for its implementation;
- (c) Intervene in any proceeding involving any deprivation or violation of the educational rights of the minorities before a Court with the leave of such Court.

All Assam Madrassa Education Youth Association filed a petition for modification of existing norms for appointment of Urdu language teachers waiving the condition of having 25% Urdu speaking population in the State of Assam. As per the guidelines of the Ministry of HRD, Government of India, there is a provision of appointment of Urdu language teachers in elementary and secondary schools in the minority concentration areas. There are sizeable number of districts in Assam where there is a significant minority population and the children of the Muslim population are sent to Primary Islamic Schools (Maktabs) in which Urdu subject is taught. However, after their entry into general education, they do not find an opportunity of learning Urdu subject. This is basically due to the criteria fixed by the Ministry of HRD, Government of India that 25% of Urdu speaking population is necessary for appointment of Urdu language teachers. The petitioner requested the Commission to recommend to the Department of School Education and Literacy, Ministry of HRD, Government of India for waiving this condition and appoint Urdu language teachers in primary and secondary schools in Assam. 6

After examining the issues in detail and also taking into consideration the reply of Education Department, Government of Assam and the Ministry of Human Resource Development, the Commission observed that the present criteria of granting financial assistance for appointment of Urdu teachers are for any locality where 25% population is from Urdu speaking community. The financial assistance is admissible till Terminal year of the next Five Year Plan. The objective of the Scheme is to provide financial support to the States/ UT Governments for appointing Urdu Teachers/ payment of honorarium to the existing teachers for teaching Urdu to the students with a view to provide Urdu in States/ UTs wherever necessary. As per the provisions of the scheme, at the Primary and Upper Primary stage SSA could provide assistance to existing Urdu medium schools where there is deficiency of teachers or to new Urdu medium schools in accordance with SSA norms. However, SSA cannot provide assistance to existing non Urdu medium schools with teacher deficiency, even if such schools are in an area where

25% or more of the population are Urdu speaking. Such schools could be assisted by this scheme. The scheme does not have the provision to provide financial assistance to teach Urdu through Madarsas. All State Governments including Assam has been requested to furnish the proposal for appointment of Urdu teachers vide letter dated 30.3.10. Financial assistance will be provided to the State Government for viable proposals.

After detailed examination, the Commission came to the conclusion that the condition of availability of 25% Urdu speaking population has come in the way of implementation of the scheme in question.

The Commission, therefore, recommended to Ministry of HRD to remove the mandatory condition of the availability of 25% Urdu speaking population for the implementation of the scheme for appointment of Urdu teachers under Sarve Shiksha Abhiyan.

Based on the direction issued to the State Government, the State Government of Bihar, Department of HRD have issued directions to all the regional directors of education vide No.10/1-05/11 369 dated 27/04/2011. Copy of the said letter is annexed as **Annexure-I**.

Similarly, the State Governments of M.P, State Bhopal, Government of Assam, and Government of Haryana have also issued directions to their respective departments for implementation of the orders issued by NCMEI. The copies of said orders are annexed herewith as **Annexure-II**.

## **CHAPTER 11 –INSTANCES OF VIOLATION OR DEPRIVATION OF EDUCATIONAL RIGHTS OF THE MINORITIES**

Article 30 (1) of the Constitution gives the right to minorities based on religion or language to establish and administer educational institutions of their choice. This Right under Article 30(1) is available to linguistic minorities irrespective of their religion. It is, therefore, not possible to exclude secular education from Article 30.

A stream of Supreme Court rulings commencing with the Kerala Education Bill, 1957 (AIR 1958 SC 959) and climaxed by P.A. Inamdar & Ors Vs. State of Maharashtra & Ors (2005) 6 SCC 537 has settled the law for the present. The whole edifice of case law on Article 30(1) of the Constitution has been bedrocked in Kerala Educational Bill's case (supra). Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13 which bars the State from making any law or rule or regulation abridging or limiting any of these provisions under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular educations will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

A meaningful exercise of the rights guaranteed under Article 30(1) of the Constitution must, therefore, mean the right to establish effective educational institutions which may subserve the real needs of the minorities and the scholars who resort to them. It is permissible for the State or the regulatory authority to prescribe regulations, which must be complied with, before any minority institution could seek or retain affiliation and recognition but such regulations should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives – that of

ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. (See T.M.A. Pai Foundation Vs. State of Karnataka) 2002 (8) SCC 481). In T.M.A. Pai Foundation's case, it has been held by the Supreme Court that affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. Moreover, the right conferred by Art. 30 on minorities imposes a duty on the legislature and the executive to abstain from making any law or taking any executive action which would take away or abridge that right.

Some of the cases decided during the year are as follows:-

### **Case No. 775 of 2010**

#### **Petition to seek direction to State for grant of permission for upgradation of a Minority institution**

**Petitioner :** Shaheed Ashfaquellah Khan Bahuddeshiya, Shikshan Sanstha, Through its Chief Manager, Tq. Karanja (Lad) Distttt. Washim, Maharashtra

**Respondents :** 1. The Education Officer, Zila Parishad, Washim, Tq. & Distt. Washim, (Maharashtra).  
2. The Principal Secretary & Special Enquiry Officer-II, General Administration Department, Government of Maharashtra, Mantralaya, Mumbai-32, (Maharashtra)

By this petition, the President of the Shaheed Ashfaquellah Khan Bahudeshiya Shikshan Sanstha, Tq. Karanja (Lad), Distt. Washim Maharashtra, seeks a direction to the Government of Maharashtra to upgrade the petitioner school to higher secondary school with permission to introduce Science and Arts subjects therein. The petitioner high school has been certified by the State Government as a minority educational institution covered under Article 30(1) of the Constitution. It is alleged that according to 2001 census, population of Karanja town was 60,158 out of which, the Muslim population was 28,000. There is no Urdu Higher secondary school in Karanja Taluk and therefore, the petitioner society wants to upgrade the petitioner school into Urdu higher secondary school to cater to the needs of Muslim students. It is alleged that the petitioner had submitted the proposal to the competent authority of the State Government, but the State Government did not grant the permission as sought by the petitioner. Hence this petition.

Despite service of notices none entered appearance on behalf of the respondents as a result whereof the case proceeded ex-parte against them.

The issue which arises for consideration is whether the impugned action of the State Government in not granting permission for up-gradation of the petitioner school into Urdu

higher secondary school with permission to introduce Science and Arts subjects therein is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

A stream of Supreme Court rulings commencing with the Kerala Education Bill, 1957 (AIR 1958 SC 959) and climaxed by P.A. Inamdar & Ors Vs. State of Maharashtra & Ors (2005) 6 SCC 537 has settled the law for the present. The whole edifice of case law on Article 30(1) of the Constitution has been bedrocked in Kerala Educational Bill's case (supra). Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of these provisions under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

"The key to the understanding of the true meaning and implication of the article under consideration are the words 'of their choice'. It is said that the dominant word is 'choice' and the content of that article is as wide as the choice of the particular minority community may make it."

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that "the words 'of their' 'choice' in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes."

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

(iii) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

The petitioner has submitted copy of the letter dated 16.9.2008 of the Education Officer, Zila Parishad, Washim containing information relating to present position of the following Urdu schools in Karanja Taluk:-

- 1) Muli Jatha Urdu Secondary and Higher Secondary School, Karanja
- 2) Anwar Urdu Girls High School, Karanja
- 3) Gulab Nabi Azad Urdu High School, Karanja
- 4) Shaheed Ashfaquella Khan Urdu High School, Karanja
- 5) Anwar Urdu High School, Dhanj, Taluka karanja
- 6) National Urdu High School, Dhanj, Taluka karanja
- 7) Hazrat Abubakar Siddique R.Z. Urdu High School, Manbha, Taluka Karanja



The petitioner has also submitted a letter written by Sh. Rajender Patni, M.L.A., Maharashtra Vidhan Sabha containing recommendation to the Chief Secretary, Government of Maharashtra for approval of the proposal submitted by the petitioner relating to up-gradation of the high school into the higher secondary school with introduction of Science and Arts subjects therein. It transpires from the record that the said letter did not evoke any response from the State Government. It needs to be highlighted that the petitioner has filed a xerox copy of the No Objection Certificate dated 8.8.2010 granted by the Education Officer, Zila Parishad, Washim. It is mentioned in the said letter that there is a need for up-gradation of the petitioner high school into the higher secondary school with Urdu, Science and Arts subjects to cater to the needs of Muslim community. The Chief Officer of the Municipal Council, Karanja has also recommended the aforesaid proposal of the petitioner vide memo No. Q/35 dated 30.3.2007. The Chief Manager of the petitioner society has filed his affidavit stating that there is no Urdu higher secondary school in Karanja Taluk in consequence of which Muslim students have to undertake 40 to 50 kms. journey from Karanja to attend classes of higher secondary school. In his affidavit dated 23.1.2011, Mr. Altaf Mohammed, President of the petitioner society has stated that the built up area of the petitioner high school is 44,760.72 sq. ft. against the required area in the approved plan of 5000 sq. ft. There is a play ground of 39,760.72 sq. ft., three toilets each for boys and girls. The petitioner society has Rs. 10 Lakhs in the saving bank account as on 7.5.2008. He has further stated that all the infrastructural facilities for up-gradation of the school into higher secondary school are available and that up-gradation of the petitioner school would not give rise to any unhealthy competition between similarly situated schools within the radius of 5 kms.

Relying upon the material available on the record we find and hold that there is a genuine need for up-gradation of the petitioner school into the higher secondary school to cater to the educational needs of the Muslim students. We also find and hold that the impugned action of the State Government in not approving the proposal of the petitioner society to upgrade the petitioner school into the higher secondary school with permission to introduce Science and Arts subjects therein is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, it is recommended to the State Government to implement the finding of the Commission in terms of Section 11(b) of the National Commission for Minority Educational Institutions Act, 2004 by reconsidering the proposal submitted by the petitioner society relating to the up-gradation of the petitioner school into a higher secondary school with permission to introduce Science and Arts subjects therein.

### **Case No. 1234 of 2010**

**Petition to seek direction to State for grant of recognition to the Girls Higher Secondary School of Minority Community**

**Petitioner :** Maulana Hasrat Mohani Shiksha Samiti, Morawan, Unnao Uttar Pradesh, Through its Manager.

- Respondents :**
1. The Secretary, Department of Secondary Education, Government of Uttar Pradesh, Secretariat, Lucknow, Uttar Pradesh
  2. The Under Secretary, Regional Office, Uttar Pradesh Madhyamik Shiksha Parishad, Allahaad, Uttar Pradesh
  3. The District Inspector of Schools, Unnao, Uttar Pradesh

By this petition, the petitioner Maulana Hasrat Mohani Shiksha Samiti, Morawan, Unnao, Uttar Pradesh seeks a direction to the Uttar Pradesh Madhyamik Shiksha Parishad, Allahabad and the State Government to accord recognition to the Girls Higher Secondary School, Morawan, Unnao, U.P. Maulana Hasrat Mohani Shiksha Samiti, Unnao, U.P. is a registered society, constituted by members of the Muslim community (hereinafter called the society). The society established Maulana Hasrat Mohani Primary School and Junior High School in 1989 and 1999 respectively. In 2006, the society established the Maulana Hasrat Mohani Higher Secondary School. The society wanted to establish girls higher secondary school in Morawan in 1996. The Maulana Azad Education Foundation granted financial aid for construction of the school building vide its letter dated 10.10.2000. Thereafter, on 30.8.2001, the society applied to the respondent Madhyamik Shiksha Parishad, Allahabad for recognition of the said school. The society rectified all the deficiencies pointed out by the respondent including the direction to get the land registered in favour of the school. The society filed a writ petition before the Lucknow Bench of Allahabad High Court which was later withdrawn on the assurance of Madhyamik Shiksha Parishad, Allahabad that the petitioner's case for recognition will be reconsidered. Despite repeated reminders, the respondent Madhyamik Shiksha Parishad, Allahabad has not granted recognition to the petitioner school. It is alleged that the petitioner school has all the infrastructural and instructional facilities for grant of recognition. It is also alleged that the impugned action of the respondent Madhyamik Shiksha Parishad, Allahabad in not granting recognition is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution.

The respondent Madhyamik Shiksha Parishad, Allahabad has intimated the Commission that the petitioner school is eligible for fresh recognition vide letter 8.3.2011. The respondent has also fairly conceded that the petitioner had submitted all the requisite documents required for recognition. The respondent has again assured the Commission that the petitioner's request would be considered in the next meeting of the Parishad vide letter dated 9.5.2011.

The issue which arises for consideration is whether the impugned action of the respondent Madhyamik Shiksha Parishad in not granting recognition to the petitioner school is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution?

A stream of Supreme Court rulings commencing with the Kerala Education Bill, 1957 (AIR 1958 SC 959) and climaxed by P.A. Inamdar & Ors Vs. State of Maharashtra & Ors (2005) 6 SCC 537 has settled the law for the present. The whole edifice of case law on Article 30(1) of the Constitution has been bedrocked in Kerala Educational Bill's case (supra). Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of these provisions under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

"The key to the understanding of the true meaning and implication of the article under consideration are the words 'of their choice'. It is said that the dominant word is 'choice' and the content of that article is as wide as the choice of the particular minority community may make it."

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that "the words 'of their' 'choice' in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes."

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- (iv) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

Recognition is a facility, which the State Government or statutory body grants to an educational institution. No educational institution can survive without recognition by the State Government. Without recognition the educational institutions can not avail any benefit flowing out of various beneficial schemes implemented by the Central Government. In Managing Board of the Milli Talimi Mission Bihar & ors. vs. State of Bihar & ors. 1984 (4) SCC 500, the Supreme Court has clearly recognized that running a minority institution is also as fundamental and important as other rights conferred on the citizens of the country. If the State Government or the statutory body declines to grant recognition without just and sufficient grounds, the direct consequence would be to destroy the very existence of the institution itself. In the instant case, the respondent Madhyamik Shiksha Parishad, Allahabad has clearly considered that the petitioner school is eligible for grant of recognition. It needs to be highlighted that the petitioner’s request for grant of recognition is pending since 30.8.2001. When writ petition was filed in the Allahabad High Court in this regard, the respondent Madhyamik Shiksha Parishad, Allahabad assured the High Court that the petitioner’s case for recognition will be considered and on that assurance the Writ Petition was withdrawn by the petitioner. Despite assurance, no recognition was granted to the petitioner. Similarly, the respondent also assured the Commission that the petitioner’s request for recognition will be considered vide letter dated 5.3.2011. the same assurance was also repeated vide letter dated 9.5.2011. for reasons best known to the

respondent Madhyamik Shiksha Parishad, Allahabad, the petitioner's case for recognition was not considered. This is a sad commentary on the functioning of the respondent and it also raises doubts on the credibility of this old institution. This dilly-dallying tactics adopted by the respondent in dealing with the petitioner's case for recognition gives rise to sinister interpretation against it. However, we find and hold that the impugned action of the respondent Madhyamik Shiksha Parishad, Allahabad is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. For the foregoing reasons we direct the Madhyamik Shiksha Parishad, Regional Office, Allahabad to consider the case of the petitioner school for grant of recognition within two months from the date of this order. This case be included in the Commission's Annual Report to be tabled in both the Houses of the Parliament.

### **Case No. 260 of 2011**

#### **Petition to seek direction to University for grant of permission for admit students of Muslim Community in the management quota in B.Ed. Course of a minority institution.**

**Petitioner :** Mariyam Institute for Higher Studies and Allied Courses Abdullah Building, Bareilly Road, Haldwani, Nainital

**Respondents:** 1. The Additional Secretary, Department of Higher Education, Government of Uttarakhand, Secretariat, Dehradun, Uttarakhand  
2. The Vice Chancellor, Kumaon University, Nainital, Uttarakhand

By this petition, the petitioner Mariyam Institute for Higher Studies and Allied Courses, Abdullah Building , Bareilly Road, Haldwani, Nainital seeks direction to the State Government and the respondent university to allow it to exercise its constitutional right to admit students of the Muslim community in the management quota in B.Ed. course for the session 2010-2011. By the order dated 12.1.2010, passed in Case No. 702/2009, the petitioner institution has been declared by this Commission as a minority educational institution covered under Article 30(1) of the Constitution. It is alleged that on 13.11.2010, the petitioner institution approached the Vice Chancellor, Kumaon University, Nainital seeking permission to exercise its constitutional right to admit students of the Muslim community for the session 2010-2011. The petitioner institution has also addressed a letter dated 19.12.2010 to the competent authority of the State Government for the said relief. Despite reminder, the petitioner's aforesaid request did not evoke any response either from the respondent university or from the Government. Hence this petition.

Despite service of notices, none entered appearance on behalf of the State Government as a result whereof the case proceeded ex-parte against them.

The issue which arises for consideration is as to whether the impugned action of the respondent university and the State Government is violative of the educational rights of the

minorities enshrined in Article 30(1) of the Constitution. It has been held by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that it is not permissible for the State to impose a quota or its own reservation policy on minority educational institutions. It has been held by the Supreme Court in P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537 “that a minority educational institution has a right to admit students of its own choice, it can, as a matter of its own free will admit students of non-minority community. However non minority students cannot be forced upon it. Only restriction on the free will of the minority educational institution admitting students belonging to a non-minority community is, as spelt out by Article 30 itself, ‘that the manner and number of such admissions should not be violative of the minority character of the institution.’” It has also been held by the Supreme Court in case of P.A. Inamdar (supra) that single window system regulating admissions does not cause any dent in the right of minority educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the merit inter-se of the students so chosen.

In view of the decisions rendered by the Supreme Court in T.M.A. Pai Foundation and P.A. Inamdar (supra) the petitioner college is allowed to select students of Muslim community from out of the list of successful candidates prepared at CET without altering the order of merit inter-se of the students so chosen. If the petitioner college is an unaided institution it can admit cent per cent students of Muslim community. If it is an aided institution then Article 29 (2) of the Constitution obligates the petitioner college to admit students of non minority community to a reasonable extent. The respondent university is directed to implement the law declared by the Supreme Court in T.M.A. Pai Foundation and P.A. Inamdar case (supra).

### **Case No. 677 of 2010**

#### **Petition to seek direction to State for grant of permission for Establishment of an Urdu Medium Primary School by a Minority Institution**

**Petitioner :** Razzaque Welfare Society, Bhandegaon, Tq. Darwha, Dist. Yavatmal, Maharashtra

- Respondents :**
1. The Secretary, School Education Department, Government of Maharashtra, Mantralaya, Mumbai-32, (Maharashtra)
  2. The Director of Education, Primary Education Department, Government of Maharashtra, Pune-1
  3. The Deputy Director of Education, Amravati Division, Amravati, Walgaon Road, Amravati, Tq & Distt. Amravati, Maharashtra
  4. The District Education Committee (Primary), Zila Parishad, Yavatmal
  5. Education Officer (Primary), Zila Parishad, Yavatmal, Tq. & Distt. Yavatmal, Maharashtra

The petitioner Razzaque Welfare Society, Bhandegaon, Tq. Darwha, Dist. Yavatmal, Maharashtra, is a registered society under the Societies Registration Act and also under the Bombay Public Trust Act. The petitioner society has been constituted by members of the Muslim Community. The petitioner society wanted to establish Urdu Medium Primary School at Mahuli as the population of Muslim community in that village is 300. There is no primary school in Urdu medium within the radius of 5 kms. from the said village as a result whereof children from Muslim Community are compelled to take their education in Marathi medium. The petitioner society submitted a proposal with all the requisite documents to the Education Officer, Zilla Parishad, Yavatmal for establishment of Urdu Medium Primary School at village Mahuli. The petitioner's proposal was recommended by the Block Development Officer, Panchayat Samiti, Pusad but it was turned down by District Committee on the ground of inadequate strength of students from Muslim Community. Hence this petition.

The Education Officer (Primary) Zila Parishad, Yavatmal has resisted the petition on the ground that the petitioner's proposal for establishment of Urdu Medium Primary School at Village Mahuli was not recommended by District Level Committee.

In view of the rival contentions of the parties, the issue which arises for consideration is : whether the impugned action of the State Government in not granting permission to the petitioner society for establishment of an Urdu Medium Primary School at Village Mahuli is violative of the educational rights of the minorities enshrined under the Article 30(1) of the Constitution?

A stream of Supreme Court rulings commencing with the Kerala Education Bill, 1957 (AIR 1958 SC 959) and climaxed by P.A. Inamdar & Ors Vs. State of Maharashtra & Ors (2005) 6 SCC 537 has settled the law for the present. The whole edifice of case law on Article 30(1) of the Constitution has been bedrocked in Kerala Educational Bill's case (supra). Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from making any law or rule or regulation abridging or limiting any of these provisions under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country.



This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institution of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.”

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

“The key to the understanding of the true meaning and implication of the article under consideration are the words ‘of their choice’. It is said that the dominant word is ‘choice’ and the content of that article is as wide as the choice of the particular minority community may make it.”

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that “the words ‘of their’ ‘choice’ in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- (v) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate



their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

It is beyond the pale of controversy that population of the Muslim Community of Village Mahuli is 300 and there is no Urdu Medium Primary School within the radius of 5 kms. from Mahuli. The petitioner’s proposal for establishment of an Urdu Medium Primary School has been rejected on the sole ground of inadequate strength of students of the Muslim Community. Having regard to the population of the Muslim Community at Village Mahuli one would expect that students of the Muslim Community would like to take education in their mother tongue. There is no Urdu medium primary school within the radius of 5 kms. from Village Mahuli. That being so, there appears to be a genuine need of the Muslims to get their children educated in a primary school without Urdu as a medium of instruction.

Surprisingly, District Level Committee did not consider this aspect while evaluating the petitioner’s proposal for establishment of an Urdu medium primary school. That being so, the impugned action of the State Government in not granting permission to the petitioner’s society for establishment of the proposed Urdu Medium Primary School at village Mahuli is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Consequently, it is recommended to the State Government to implement the finding of the Commission in terms of Section 11(b) of the NCMEI Act by reconsidering the proposal submitted by the petitioner society relating to the establishment of the Urdu Medium Primary School, at Village Mahuli, Tq. Darwha, Dist. Yavatmal, Maharashtra.

### **Case No. 1228 of 2011**

#### **Petition to seek direction to State for appointing Observer for conducting the elections of the Managing Committee of a Minority institution.**

**Petitioner :** Mr. Abdul Kalam, Manager, Ashrafia Inter College Mahul, Azamgarh, Uttar Pradesh

**Respondent:** District Inspector of Schools, Azamgarh, Uttar Pradesh

By this petition, Shri Abdul Kalam, Manager of the petitioner college seeks a direction to the District Inspector of Schools, Azamgarh to appoint Observer for conducting the elections of the Managing Committee. It is alleged that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. The earlier elections for constituting the Managing Committee was held on 29.2.2004 and as per rules, the new elections after five years had to be held on 29.2.2009. The petitioner manager had requested District Inspector of Schools for appointing Observer for conducting election to be held on 10.4.2009. Despite repeated reminders, the District Inspector of Schools did not appoint the Observer as sought by the petitioner. In the meanwhile the Joint director of Education had also directed the District Inspector of Schools to appoint an Observer for conducting election vide letter dated 4.1.2011.

Despite the directions of the Joint Director of Education, the District Inspector of Schools did not appoint the Observer for conducting the election. Hence this petition.

The District Inspector of Schools has resisted the petition on the ground that the letter dated 9.12.2010 received from the petitioner did not contain the necessary particulars and therefore, the petitioner was directed to supply the following documents:-

1. Approved administrative plan of the institution;
2. Latest copy of the Society's registration;
3. Copies of the proceedings of the earlier election held;
4. Copy of the order regarding administrative approval of the earlier election;
5. Copy of the order of appointment of observer in the earlier election.

It is also alleged that since seven years has passed from the last election held in 2004, the tenure of the present Committee has expired.

The petitioner college is a minority educational institution covered under Article 30(1) of the Constitution and as such it has fundamental right to constitute its Managing Committee. It transpires from the record that for some extraneous consideration, the District Inspector of Schools, was not in favour of appointing an Observer for conducting the elections to be held on 10.4.2009. Despite repeated reminders from 12.7.2009 to 9.3.2011, the District Inspector of Schools turned deaf ears and did not appoint the Observer for conducting elections. It needs to be highlighted that despite the specific direction from the Joint Director of Education vide letter dated 4.1.2011, the District Inspector of Schools did not appoint the Observer. This atrocious conduct of the District Inspector of Schools in disobeying the directions of the Joint Director, Education actually borders on insubordination warranting disciplinary action. It is also relevant to mention that the documents sought by the District Inspector of Schools from the petitioner vide letter dated 22.1.2011 are wholly irrelevant for appointing an observer for conducting the election. As stated earlier, despite repeated reminder from 12.7.2009 to 9.3.2011, the District Inspector of Schools did not appoint an observer as requested by the petitioner. He had the audacity of disobeying the directions of Joint Director, Education; the aforesaid corrupt conduct of the District Inspector of Schools speaks volumes against him. Having regards to the facts and circumstances of the case, we are of the considered view that the District Inspector of Schools himself is responsible for the inordinate delay in the election of the managing committee of the petitioner college.

For the foregoing reasons, the District Inspector of Schools, Azamgarh is directed to appoint the Observer for conducting the elections within one month from the date of this order. In case, the District Inspector of Schools fails to appoint the Observer, the Joint Director

of Education shall appoint the observer for conducting election of the Managing Committee of the petitioner college. Copy of the order be sent to the Principal Secretary, School Education, Government of Uttar Pradesh for placing it in the confidential report of the respondent, District Inspector of School.

### **Case No. 2170 of 2010**

#### **Petition to seek direction to State for grant of permission for upgradation of a minority institution from High School to Junior College.**

**Petitioner :** Mangrulpir Education Society, District Washim, Maharashtra, Through its President, Sh. Ashfaque Khan

**Respondents:** 1. The Secretary (School Education Department), Government of Maharashtra, Mantralaya, Mumbai-400 032, Maharashtra  
2. Education Officer (Secondary School), Zila Parishad, Washim, District Washim, Maharashtra

By this petition, the petitioner society, which has been declared as a minority educational society by the Government of Maharashtra vide certificate dated 11.8.2003, seeks a direction to the respondents to grant permission for upgradation of the existing high school to a junior college. It is alleged that the petitioner society is already running Urdu medium high school up to 10<sup>th</sup> standard at Mangrulpir, that it submitted a proposal for its upgradation to an Urdu Junior College and that students after 10<sup>th</sup> standard are constrained to seek admission in the nearest junior medium college which is more than 3 kms. away. It is also alleged that the Mangrulpir is a biggest tehsil of Washim district and out of the population of 50,000 half of it consists of Muslims. There is one Urdu medium junior college namely Kalandaria Urdu Junior College which is 3 kms. away. The petitioner has all the infrastructural and instructional facilities for upgradation of the said school to a junior college. Group Education Officer of the Pachayat Samiti, Mangrulpir had already recommended the petitioner's proposal on the ground that there is a need for a junior college in Urdu medium. The petitioner's proposal was rejected on the sole ground of non filing of audit report alongwith the proposal. The petitioner has filed the audit report with the respondent and produced bank balance certificate showing a balance of Rs. 1,11,000 as on 15.1.2007.

The District Education Officer (Secondary) Zila Parishad Washim, has fairly conceded in his reply that the petitioner society is running an Urdu medium high school up to 10<sup>th</sup> standard at Mangrulpir and the said high school has all infrastructural facilities for its upgradation. The said Education Officer had also admitted that the Block Education Officer had recommended the petitioner's proposal for upgradation of the high school. It is alleged that the District Level committee had not forwarded the petitioner's proposal for not filing of the audit report.

It is an admitted position that there is a need for establishment of an Urdu medium junior college at Mangrulpir. It is also beyond the pale of controversy that the petitioner high school has all the infrastructural and instructional facilities for its upgradation. The petitioner's proposal for upgradation of the school was rejected on the sole ground of non filing of the audit report. In our opinion the ground of rejection of the petitioner's proposal cannot be sustained in law. However, the petitioner had filed the audit report. The Block Education Officer had already recommended the petitioner's proposal for upgradation of the high school. In our considered opinion, the impugned action of the respondent in not granting permission for upgradation of Prof. Javed Khan Urdu High School, Mangrulpir to a junior college is violative of the educational rights of the minorities enshrined in Article 30(1) of the Constitution. Since the petitioner school has all the infrastructural and instructional facilities for its upgradation to junior college, the petitioner school is entitled for its upgradation to a junior college in Urdu medium.

For the foregoing reasons we recommend to the respondents to grant permission to the petitioner society to upgrade Prof. Javed Khan Urdu High School to an Urdu medium junior college.

### **Case No. 1697 of 2009**

**Petition to seek direction to State for modifying the existing norms for appointment of Urdu language teachers waiving the condition of having 25% Urdu speaking people in the State of Assam by Minority Community.**

**Petitioner :** Mr. Nazrul Haque Barbhuiya, President, All Assam Madrasa Education Youth Association, FCI Road, Hojai, Assam

- Respondents :**
1. The Secretary, Department of School Education & Literacy, Ministry of Human Resource Development, Secondary Scholarship Division , Shastri Bhawan, New Delhi
  2. The Secretary, School Education Department, Government of Assam, Secretariat, Dispur, Guwahati, Assam

By this petition, the President of All Assam Madrasa Education Youth Association has stated that there is a need to modify the existing norms for appointment of Urdu language teachers waiving the condition of having 25% Urdu speaking people in the State of Assam. As per the guidelines of the Ministry of HRD, Government of India, there is a provision of appointment of Urdu language teachers in elementary and secondary schools in the minority concentrated areas. There are sizeable number of districts in Assam where there is a significant minority population and the children of the Muslim population are sent to Primary Islamic Schools (Maktabs) in which Urdu subject is taught. However, after their entry into general education, they do not find an opportunity of learning Urdu subject. This is basically due to the criteria fixed by the Ministry of HRD, Government of India that 25% of Urdu speaking population

is necessary for appointment of Urdu language teachers. The petitioner has requested the Commission to recommend to the Department of School Education and Literacy, Ministry of HRD, Government of India for waiving this condition and appoint Urdu language teachers in primary and secondary schools in Assam.

In the reply, the Education Department, Government of Assam has forwarded the letter of Director of Madarsa Education, Government of Assam in which it is stated that as per Census 2001, there are 30.09% of Muslim population in the State of Assam. Even though most of these people speak Bengali & Assamese, but 90% of them learn Arabic & Urdu languages from their childhood and acquire the knowledge of Urdu through the Maktabas which are at primary level. There are more than 500 voluntary Maktabas/ Madarsas where Arabic and Urdu subjects along with modern subjects are taught. There are four categories of Madarsas under the Directorate of Madarsa Education, Assam situated mainly in the Muslim minority dominated areas. These are Pre-Sr. Madarsa, Senior Madarsa, Title Madarsa and Arabic College. In these Madarsas, the curriculum is determined by the State Madarsa Education Board and along with Arabic & Urdu subjects, theological subjects are also taught and modern subjects like English, Assamese, Hindi, Mathematics, General Science & Social Science etc. are taught compulsorily from Class V onwards. The medium of instruction for Arabic & theological subjects is Urdu but for teaching of Urdu language, no specific Urdu teachers are appointed in these madarsas. Even though the Government of India has established an autonomous body to promote, develop and propagate Urdu language namely National Council for Promotion of Urdu Language (NCPUL), waiver of the condition that 25% of Urdu speaking population is necessary to come under “the Scheme of Financial Assistance for appointment of Urdu teachers”. They have recommended that this suggestion may be favourably considered.

The Ministry of HRD in its reply has stated that 100% financial assistance is provided for appointment of Urdu Teachers and also grant of honorarium to the existing Urdu teachers for teaching Urdu in schools. The present criteria of granting financial assistance for appointment of Urdu teachers are for any locality where 25% population is from Urdu speaking community. The financial assistance is admissible till Terminal year of the next Five Year Plan. The objective of the Scheme is to provide financial support to the States/ UT Governments for appointing Urdu Teachers/ honorarium to the existing teachers for teaching Urdu to the students with a view to provide Urdu in States/ UTs wherever necessary. As per the provisions of the scheme, at the Primary and Upper Primary stage SSA could provide assistance to existing Urdu medium schools where there is deficiency of teachers or to new Urdu medium schools in accordance with SSA norms. However, SSA cannot provide assistance to existing non Urdu medium schools with teacher deficiency, even if such schools are in an area where 25% or more of the population are Urdu speaking. Such schools could be assisted by this scheme. The scheme does not have the provision to provide financial assistance to teach Urdu through Madarsas. All State Governments

including Assam has been requested to furnish the proposal for appointment of Urdu teachers vide letter dated 30.3.10. Financial assistance will be provided to the State Government for viable proposals.

The inspiring and nobly expressed preamble of our Constitution clearly indicates that one of the cherished objectives of our Constitution is to ensure to all the citizens the liberty of thought, expression, belief, faith and worship. Nothing provoked and stimulated thought and expression in people more than education, which clarified our belief and faith and helped to strengthen our spirit of secularism. To implement and fortify these purposes, Articles 14, 16, 19(1), 25, 26, 28 and 29 and 30(1) have been engrafted in our Constitution. Articles 29 and 30(1) conferred certain educational and cultural rights as fundamental rights. Making grant – in –aid is a governmental function which must be discharged in a reasonable manner. A government may not make any grants or be unable to do so, but if grants were made, conditions must not be attached to those grants which would destroy the fundamental right. Article 30(1) conferred right on the minorities to establish educational institutions of their own choice, but that right was not limited to teaching their religion alone or their language alone. No limitation had been placed on the subjects or languages to be taught in such educational institutions. However, minorities would ordinarily desire to establish such institutions as would serve both purposes, namely, the purpose of conserving their religion, language or culture and also the purpose of giving quality general education to their children.

Chapter IV of the Constitution embodies special directives. Article 350A commands the State Government to provide adequate facilities for instruction in the mother tongue at the primary stage of education belonging to minority groups. Article 21-A of the Constitution has elevated the Right to Education for the children of the age of six to fourteen years as the fundamental right. Section 3 of the Right of Children to Free and Compulsory Education Act, 2009 (for short the Act) , confers a right on a child to free and compulsory education. Dictionary meaning of education is ‘a process of teaching, training and learning in schools or colleges’, ‘the subject of study that deals with how to teach.’ Madarsa is an Arabic word and it means school/seminary. In Black’s Law Dictionary, 8<sup>th</sup> Edition, educational institution has been defined ‘a school, seminary, college, university or other educational facility, though not necessarily a chartered institution. That being so, a madarsa falls within the definition of school as defined in Section 2 (n) of the Right of children Act. Bearing in mind the mandate of Articles 29 and 30(1) and Article 350A and Section 3 of the Act, the condition of availability of 25% of Urdu speaking population in a locality for implementation of the scheme for appointment of Urdu teachers” does not appear to be reasonable. In the instant case, the petitioner has rightly contended that the condition of availability of 25% Urdu speaking population has come in the way of implementation of the scheme. Reference may, in this connection, be made to the memo No. DME/435/MS/09/50, dated 22.7.2010 of the Director of Madarsa Education, Government of Assam, which is as under:-

**GOVT. OF ASSAM**  
**OFFICE OF THE DIRECTOR OF MADRASSA EDUCATION, ASSAM**  
**KAHILIPARA, GUWAHATI-19**

No. DME/435/MS/09/50

Date:22-07-2010

From : Md. M. Ali Director of Madrassa Education, Assam Kahilipara, Guwahati-19

To The Commissioner & Secretary to the Govt. of Assam Education (Sec.) Deptt.,  
Dispur, Guwahati-6

Sub : Hearing on the matter of appointment of Urdu Teacher as per demand of All  
Assam Madrassa Education Youth Association

Ref : Govt. letter No. B3(S) 522/98/548 dated 25.6.2010

Sir,

In continuation to our letter No. DME 485/ NCMEI/ 2010/4 dated 16.1.2010 and on perusal of the supplementary petitions dated 2.2.2010, 20.2.2010 and 27.5.2010 submitted by the President, All Assam Madrassa Education Youth Association to the NCMEI, New Delhi, I have the honour to state that the necessary information has already been furnished in respect of letters dated 2.2.2010 and 20.2.2010 in our letter dated 16.1.2010. As regards, petition dated 27.5.2010, it may be stated that it is true that there are large number of Muslim minority children willing to learn Urdu language in their school education both in elementary and secondary as they get their primary education in the Maktab/Madrassas on basic Islamic education in Urdu medium in particular and hence they obviously deserve to learn Urdu language as a subject in school education.

Further, as regards Urdu teachers it may be stated that large number of youths are getting their qualification in intermediate, F.M. and M.M. every year from the State Madrassa Education Board, Assam who are eligible to teach Urdu language as they are qualified in Urdu language as well as Arabic & Theological subjects in the madrassas in the medium of Urdu under the Board. Moreover, a good number of qualified youths graduated from DarulUloom, Deoband are also eligible to teach Urdu language in the State who get recognition and equivalency from the State Madrassas Education Board for their Scholarship in Arabic and Urdu in Darul Uloom, Deoband in particular and other famous Islamic institutions for the country in general.

So, the scheme for appointment of Urdu teacher under the Ministry of Human Resource Development, would be much beneficial and effective in the State of Assam if the condition of 25% population of Urdu speaking population is waived as early as possible. Then a large number of unemployed Muslim minority youths will be benefitted



if the Central Government would take positive steps for implementation of the scheme for appointment of Urdu teachers in the School education in the State for the welfare of minority children.

The copy of letter No. CME 485/NCMEI/2010/4 dated 16.1.2010 also enclosed herewith for ready reference.

Yours faithfully,  
Director of Madrassa Education, Assam  
Kahilipara, Guwahati-19  
(emphasis supplied)

**GOVT. OF ASSAM**  
**OFFICE OF THE DIRECTOR OF MADRASSA EDUCATION, ASSAM.**  
**KAHILIPARA, GUWAHATI-19**

No. DME. 485/NCMEI/2010/4,

Date: 16.01.2010

From : Md. M Ali, Director Madrassa Education, Assam Kahilipara, Guwahati – 19.

To : The Commissioner & Secy. to the Govt. of Assam, Education (Sec) Deptt. Dispur,  
Guwahati-6

Sub : Notice served by the NCMEI on the petition of AAMEYA dated 8.11.2009

Ref : Govt. letter No. B(3)S-522/98/503 dt. 24.12.09.

Sir,

With reference to the subject cited above, I have the honour to state that the petition submitted by Nazrul Hoque Barbhuiya, the President, All Assam Madrassa Educated Youth Association dt. 8.11.2009 is examined closely regarding modification of existing norms of the Central Govt. for appointment of Urdu language teachers.

The demand are (i) to remove the condition of having 25% urdu speaking population and (ii) to include only minority concentrated area under the Prime Minister's 15 Point programmed. After perusal of the content of the letter it is seen that their demands regarding appointment of Urdu teachers to the Maktab (Primary Islamic Schools) onwards where Urdu subject is taught is justified.

It is true that a sizeable number of Muslim & Other communities speak Hindi & Urdu in the State alongwith other languages. As per census of 2001, there are 30.09% of Muslim population in the State. Though – most of these people speak Bengali & Assamese, but 90% of them learn Arabic & Urdu languages from their childhood to acquire knowledge of Urdu as Indian modern language as well as their religion – which are mainly written in Arabic & Urdu. As such we may mention the following points on their demands.

1. In each & every locality of Muslim population there is a mosque and in every mosque Subahi-Maktab (Morning Islamic Primary School) are there where Arabic & Urdu are taught.
2. There are more than 500 Voluntary Maktab-Madrassas and Qaumi Madrassas where Arabic and Urdu subjects alongwith modern subjects like English, Science, Maths & Social Science are taught. Apart from these, there are more than 500 Residential Qaumi Madrassas in the State—where Arabic & Urdu subjects are taught compulsorily.
3. There are four categories of Madrassas under the Directorate of Madrassa Education, Assam situated mainly in the Muslim minority dominated areas.

- i) Pre-Sr. Madrassa -- (Upper Primary level)
- ii) Senior Madrassa -- (Upper Primary Secondary & Senior Secondary level).
- iii) Title Madrassa -- (Master Degree level in theological subjects).
- iv) Arabic College -- (From Upper primary to Master Degree level in theological subjects).

The Course pattern of these Madrassas are 3+4+3+2=12 years. In the re-organised courses & curriculum of the State Madrassa Education Board, Assam—Arabic & Urdu subjects alongwith other theological subjects like – Quran, Hadith, Tafsir, Fiqh, Usul, Tarikh etc. and secular subjects like English, Assamese, Hindi, Mathematics, General Science & Social Science etc. are taught compulsorily from Class-V onwards – and the medium of instruction for Arabic & theological subjects is Urdu. There are 707 Madrassas/Arabic Colleges under the directorate where this system has been running since its inception.

But for teaching of Urdu language – no specific Urdu teachers are appointed in these Madrassas. So, appointment of Urdu teachers in these Madrassas is highly essential and considering it-the State Govt. have submitted proposal to the Ministry of Human Resource Development as per proposal of the Directorate (Copy enclosed).

Apart from this, Govt. may like to take decision for introducing Urdu in the Primary schools and Middle English Madrassas/Schools as well as Secondary Schools situated in the Muslim minority dominated areas appointing Urdu teachers for the Muslim children.

It may be mentioned here that the Govt. of India has established an autonomous body to promote, develop and propagate Urdu language named ‘the National Council for Promotion of Urdu language’ (NCPUL) under the MHRD in 1994 to popularize Urdu language amongst the people of India cutting across the boundary lines of caste, creed, sex, age and region as speaks in the Programme Guide of the NCPUL. So, the Muslim minority people should be given opportunity to learn Urdu by providing Urdu teacher if necessary by removing the condition of 25% Urdu speaking population from ‘the Scheme of Financial Assistance for appointment of Urdu teachers...’.

Further, this scheme discourages the ongoing learning of Urdu language of the Madrassas not providing Urdu teachers for proper Urdu learning in these Madrassas.

It may further be mentioned that the

- 1) Urdu language has contributed tremendously to the growth of Indian culture and Urdu script is one of the most beautiful scripts among Indian languages.
- 2) Language as a medium of instruction is one of the important factors in determining the quality of teaching, learning and level of achievement.

- 3) Urdu language has been a very powerful medium of communication with treasure of world class poetry, prose, fiction as well as tremendous treasure of Islamic theological subjects in India in particular and across the Muslim countries of the world in general.

Considering the value and importance of this language, there has been a great demand for Urdu teachers by the learners right from Maktab Madrassas (Primary Islamic Schools) onwards to read and understand Urdu language literature and Islamic theological subjects in Urdu through Urdu scripts hence the utmost necessity of Urdu teachers.

As such the points as mentioned in the letter of the Association may be considered and we may inform the Govt. of India to appoint Urdu teachers accordingly removing the bar of criteria having 25% of Urdu speaking population for the appointment of Urdu teachers.

Yours faithfully,  
Director of Madrassa Education, Assam.  
Kahilipara, Guwahati-19.

(emphasis supplied)

Reference may also be made to the answer given by the Hon'ble HRD Minister, Government of India in reply to the unstarred question No. 2253 of the Badaruddin Ajmal, M.P., which is as under :-

(a) & (b) : The Scheme was revised in 2008-09. The condition of availability of 25% Urdu speaking population in a locality was meant to ensure that Urdu teachers are sanctioned in areas that actually need them. The Scheme depends on proposals from State Governments. There is no material to conclude that the condition of availability of 25% Urdu speaking population has come in the way of implementation of the scheme, as the condition applies to a locality and not to a district as a whole.

The memo dated 22.7.2010 of the Director of Madarsa Education, Government of Assam clearly shows that the condition of availability of 25% Urdu speaking population has come in the way of implementation of the scheme in question, we, therefore, recommend to the Government of India and in the Ministry of HRD to remove the mandatory condition of the availability of 25% Urdu speaking population for implementation of the scheme for appointment of Urdu teachers under Sarve Shiksha Abhiyan.

## CHAPTER 12 – CONCLUSION

Article 30 of the Constitution relating to rights of minorities specifically stipulates that; (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.”

2. Article 30(1) refers to both religious and linguistic minorities. However, Section 2(f) of the NCMEI Act restricts the definition of minorities as a Community notified by the Central Government.

3. The Central Government has notified 5 communities, namely Muslims, Christians, Sikhs, Buddhists and Zorastrians (Parsees) as the 5 minority communities. Therefore, linguistic minorities at present do not fall within the ambit of the NCMEI Act.

4. Commission has been getting many applications for grant of linguistic minority status from various educational institutions. Commission has also been getting petitions/ applications for redressal of grievances from linguistic minority educational institutions. All such references are being disposed of by the Commission by informing the petitioners that linguistic minorities do not fall within the ambit of the provisions of the NCMEI Act.

5. Although, the Parliamentary Standing Committee relating to the Ministry of HRD has recommended for inclusion of linguistic minorities within the ambit of the NCMEI Act. The issue has not so far seen finality. Since Article 30(1) confers fundamental right on religious as well as linguistic minorities, interest of equity and justice require that linguistic minorities should also be brought within the domain of the NCMEI Act by incorporating suitable amendments therein. The Commission recommends accordingly.

6. The primary responsibility for recognizing educational institutions and granting minority status certificate lies with the State Government. It was, however, found that many State Governments had not set up any mechanism to consider the request for grant of minority status certificate. In many States, the approach had been lethargic. Commission also found that the officials concerned had not been sensitized about the rights guaranteed to minorities under Article 30(1) of the Constitution. The result had been that the Commission received large number of applications from the educational institutions for grant of minority status certificate.

7. The Commission feels all the State Government and Union Territories should establish a single-window system for grant of minority status certificate. Decentralisation can be considered for receipt of applications at District/ Zilla Parishad/ Taluka level where, after receipt of application, scrutiny/ inspection can be done within a time-bound manner before forwarding the application to the nodal authority for grant of minority status certificate. All State Governments and Union Territories should set up such a mechanism and give wide publicity to it.

8. Some State Government authorities grant minority status certificate only for a temporary period. Commission has unambiguously held that minority status certificate cannot be granted for a short duration. As has been held by the Madras High Court in T.K.V.T.S.S. Medical Educational & Charitable Trust vs. State of Tamil Nadu, AIR 2002 Madras 42, minority status can not be conferred on a minority educational institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while seeking minority status or there is fundamental change of circumstances warranting cancellation of the earlier order. Reference may, in this connection, be made to the following observations of their lordships: -

“.....In conclusion, we hold that if any entity is once declared as minority entitling to the rights envisaged under Article 30(1) of the Constitution of India, unless there is fundamental change of circumstances or suppression of facts the Government has no power to take away that cherished constitutional right which is a fundamental right and that too, by an ordinary letter without being preceded by a fair hearing in conformity with the principles of natural justice.”

Accordingly, Commission recommended to the State Governments that minority status certificate should be granted on a permanent basis which can be withdrawn or cancelled only after following due process of law

9. Instances have also been brought to the notice of the Commission about the inconsistencies of the rules and regulations made by many regulatory authorities which are not in tune with the provisions of Article 30 (1). The apex court in its various judgments has clearly pointed out the rights enshrined in Article 30 (1). Commission recommend to the Central Government to look into the rules and regulations made by the Central regulatory authorities in education like U.G.C., AICTE, N.C.T.E., M.C.I., D.C.I., CBSE, etc. to see that they are in consonance with the law declared by the Supreme Court under Article 30. Reference in this connection is made to the decision of the Supreme Court in *Bramho Samaj vs State of West Bengal* (2004) 6 SSC 224.

10. Many instances have been brought to the notice of the Commission where the State Governments are reluctant to grant recognition to new educational institutions established by minority communities. Commission has observed that such tendency is primarily based on reluctance of the authorities to provide grant-in-aid. There were instances where the State Government wanted to withdraw from its role to provide grant-in-aid. While grant-in-aid is not a constitutional imperative, Commission has observed that in many cases the minority educational institutions located in rural, remote and tribal areas cannot be asked to fend for themselves as it is impossible to collect fees from the poorer sections of the society.

Without the financial aid from the State Government, it will be difficult for such educational institutions to sustain themselves and provide reasonable standards of education. Needless to mention here that the teachers at least should be paid a subsistence salary. In many remote and under-developed areas educational institutions run by the minority communities are the only rays of hope for the poor people. The State has a duty to support and strengthen such institutions especially with reference to the constitutional mandate to provide free and universal education for all children in the age group of 6-14 years enshrined under Article 21 A. In the context of the operationalisation of the 'Right of Children to Free and Compulsory Education Act 2009', it is imperative that more educational institutions have to be set up in remote and rural areas for easy accessibility of students. States should not shy away from this constitutional responsibility. It is, therefore, recommended that State Government should be directed to provide grant-in-aid to minority educational institutions located in far flung, remote, tribal and under-developed areas.





# **ANNEXURES TO THE REPORT**



पत्रांक - 10/व 1 - 05/11 369  
मानव संसाधन विकास विभाग, बिहार।

प्रेषक,  
सरकार के संयुक्त सचिव  
मानव संसाधन विकास विभाग, बिहार।

सेवा में,  
सभी क्षेत्रीय उच्च शिक्षा निदेशक  
सभी जिला शिक्षा पदाधिकारी

पटना दिनांक 27/04/2011

विषय: राष्ट्रीय अल्पसंख्यक शैक्षणिक संस्था आयोग, भारत सरकार, नई दिल्ली द्वारा दिये गये  
दिशा-निर्देश के कार्यान्वयन के संबंध में।

महाशय,

उपर्युक्त विषय के संबंध में कहना है कि "राष्ट्रीय अल्पसंख्यक शैक्षणिक संस्था आयोग" अधिनियम  
- 2004 के अधीन गठित राष्ट्रीय अल्पसंख्यक शैक्षणिक संस्था आयोग को माइनोरिटी स्टेट्स अभिनर्गत  
करने की अधिकारिता प्राप्त है।

आयोग द्वारा किसी संस्था को अल्पसंख्यक संस्था घोषित किया जाता है तो ऐसी संस्थाओं को  
अल्पसंख्यक संस्था मानी जायेगी तथा राष्ट्रीय अल्पसंख्यक शैक्षणिक संस्था आयोग, नई दिल्ली द्वारा निर्गत  
आदेश का अनुपालन सुनिश्चित किया जायेगा। आयोग द्वारा जिन संस्थाओं को अल्पसंख्यक घोषित करने  
का आदेश निर्गत किया गया है तो ऐसी संस्थाओं को अल्पसंख्यक संस्था की श्रेणी में सम्मिलित किया जाने  
के आदेश अलग-अलग निर्गत किये जाय।

यदि राष्ट्रीय अल्पसंख्यक शैक्षणिक संस्था आयोग, नई दिल्ली द्वारा दिये गये आदेश में किसी प्रकार की  
त्रुटि परिलक्षित हो तब ऐसी स्थिति में सक्षम न्यायालय (माननीय उच्च न्यायालय) में चुनौती दी जा सकती  
है।

विश्वासभाजन

हउ  
सरकार के संयुक्त सचिव

ज्ञापांक 369 पटना दिनांक 27/04/2011

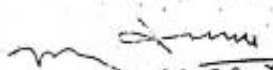
प्रतिलिपि, अध्यक्ष, राष्ट्रीय अल्पसंख्यक शैक्षणिक संस्था आयोग, भारत सरकार, 5, संसदीय मार्ग, पटेल चौक,  
नई दिल्ली के अर्द्ध सरकारी पत्र संख्या 643 दिनांक 27/12/2010/ विशेष सचिव, अल्पसंख्यक कल्याण  
विभाग, बिहार, पटना के पत्र संख्या 4083 दिनांक 18/01/2011 के आलोक में सूचनार्थ प्रेषित।

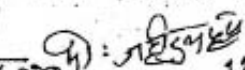
सरकार के संयुक्त सचिव

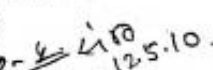
आज दिनांक 12.05.10 को सचिव, मानव संसाधन विकास विभाग की अध्यक्षता में मदरसा शिक्षा के आधुनिकीकरण हेतु गठित Grant-In-Aid Committee की बैठक आयोजित की गई जिसमें निम्नलिखित सदस्य उपस्थित हुए:

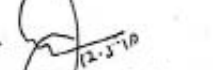
1. सचिव,  
मानव संसाधन विकास विभाग
2. निदेशक,  
माध्यमिक शिक्षा
3. विशेष निदेशक,  
माध्यमिक शिक्षा
4. अध्यक्ष,  
बिहार राज्य मदरसा शिक्षा बोर्ड
5. सचिव,  
बिहार राज्य मदरसा शिक्षा बोर्ड
6. भारत सरकार के प्रतिनिधि
7. श्री अब्बुल कलाम,  
प्राचार्य, मदरसा इस्लामियां शमशुल होदा, पटना
8. श्री जहीरूल हक,  
सचिव, मदरसा तालिमे निशावां, मधुबनी
9. उप निदेशक,  
माध्यमिक शिक्षा


बैठक में सर्वसम्मति से बिहार राज्य मदरसा शिक्षा बोर्ड द्वारा 1126 प्रस्वीकृत एवं अनुदानित मदरसों तथा एक राजकीय मदरसा, इस्लामियां शमशुल होदा, पटना के लिए प्रत्येक मदरसा तीन शिक्षकों की नियुक्ति, पुस्तकालय के लिए पुस्तक, विज्ञान/कम्प्यूटर लैब की स्थापना हेतु एवं विज्ञान कीट, मोनेटरिंग के मद में, निर्धारित राशि के आधार पर तैयार किए गए कार्य योजना को अनुमोदित किया गया एवं इसे भारत सरकार को अतिरिक्त भेजने का निर्णय लिया गया।


  
 अब्बुल कलाम, 12-5-10  
 सदस्य

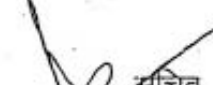
  
 जहीरूल हक, 12-5-10  
 सदस्य

  
 उप निदेशक,  
 मा० शिक्षा

  
 विशेष निदेशक,  
 मा० शिक्षा

  
 निदेशक,  
 मा० शिक्षा

  
 अध्यक्ष,  
 बिहार राज्य मदरसा शिक्षा बोर्ड

  
 सचिव,  
 मानव संसाधन विकास विभाग

## अजय विश्नोई

मंत्री,

पशुपालन, मछलीपालन,  
पिछड़ा वर्ग, अल्पसंख्यक कल्याण तथा  
नवीन एवं नवीकरणीय ऊर्जा विभाग  
मध्यप्रदेश शासन



विधान सभा : 0755-2523158  
मंत्रालय : 0755-2441377  
निवास : 0755-2430011  
0755-2441081

बी-10, चार इमली, भोपाल

क्रमांक 876 /मं./पपा., मपा., पि.व., अ.स.क., नवी. एवं नवीक./10

भोपाल, दिनांक 20.04.11

माननीय सिद्धजी जी

श्रेष्ठ गमस्त्र

कृपया आपके द्वारा माननीय मुख्यमंत्रीजी, मध्य प्रदेश, श्री शिवराज सिंह चौहान, को प्रेषित अर्द्धशासकीय पत्र क्रमांक.643 दि 0 27/12/2010 का संदर्भ करें।

2. म0प्र0राज्य में अल्पसंख्यक शैक्षणिक संस्थाओं को मान्यता दिए जाने हेतु "मार्गदर्शी सिद्धांत और प्रक्रिया-2007" प्रचलन में है। इन नियमों के प्रावधान अनुसार ऐसी संस्थाएं जो अल्पसंख्यक वर्ग के लिए स्थापित की गई हैं, को प्रथम तीन वर्षों में प्रतिवर्ष अस्थायी मान्यता प्रदान की जाती है।

3. कलेक्टर की अनुशंसा के आधार पर उक्त अस्थाई मान्यता उपरांत 3 वर्ष के बाद स्थायी प्रमाण पत्र जारी करने का प्रावधान है।

4. केन्द्र शासन के सुझाव प्राप्त होने के उपरांत उक्त प्रावधानों में परिवर्तन किये जाने की कार्यवाही राज्य शासन कर रहा है। राज्य अल्पसंख्यक आयोग से यह अभिमत मांगा गया है कि अल्पसंख्यक संस्थाओं में अल्पसंख्यक वर्गों के छात्रों की संख्या का न्यूनतम प्रतिशत की अनुशंसा करें। शीघ्र ही राज्य अल्पसंख्यक आयोग की बैठक आयोजित होकर इस संबंध में अनुशंसा राज्य शासन को मिलना संभावित है।

5. राज्य शासन द्वारा वर्तमान में 68 अल्पसंख्यक शैक्षणिक संस्थाओं को मान्यता देकर प्रमाणपत्र जारी किए गए हैं।

6. राज्य शासन संविधान के आर्टिकल 30(1) के अनुसार अल्पसंख्यक के हित संरक्षण हेतु संकल्पबद्ध हैं।

7. राज्य शासन द्वारा माननीय राष्ट्रीय अल्पसंख्यक शैक्षणिक संस्था आयोग के दिशा निर्देशों पर संवेदनशील रहकर कार्यवाही के निर्देश भी जारी किए हैं।

(अजय विश्नोई)

प्रति,

जस्टिस एम0एस0के0सिद्धीकी

माननीय अध्यक्ष,

भारत सरकार, अल्पसंख्यक शैक्षणिक संस्था आयोग,

गेट नं0 4, प्रथम तल, जीवन तारा भवन,

5, संसद मार्ग, पटेल चौक, नई दिल्ली-110001

GOVERNMENT OF ASSAM  
EDUCATION (SECONDARY) DEPARTMENT ..... DISPUR  
No.B(3) S.522/98/pt/41 Dated Dispur, the 21<sup>st</sup> November,2011

From :- Shri N.K. Das, IAS  
Chief Secretary, Assam, Dispur.

To :- The Secretary,  
National Commission for Minority  
Educational Institutions  
AB-31, Shahjahan Road, New Delhi.

Sub :- Implementation of orders passed by the National Commission for Minority  
Educational Institutions.

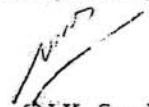
Sir,

I am directed to refer to the DO letter No.139/01.09.2011 dtd. 01-09-2011 from the Hon'ble Chairman of the Commission addressed to the Hon'ble Chief Minister, Assam regarding implementation of the orders passed by the Commission.

In this context, I am directed to mention that State of Assam has sizable minority population and the State Government and its administrative officers are not only aware about the Constitutional Rights of the Minorities but are also quite concerned about the sensitivities of the issues involved. In so far as, the State Government of Assam is concerned, there was only one case concerning the Central Government guidelines regarding engagement of Urdu teachers and in this case the final verdict of the Commission is yet to be received. However, the State Government has presented its viewpoint before the Hon'ble Commission. Once the orders of the Commission are communicated, the State Government would certainly implement the orders of the Hon'ble Commission with utmost sincerity.

The Hon'ble Chairman of the Commission may be appraised accordingly.

Yours sincerely,

  
(N.K. Das)  
Chief Secretary, Assam, Dispur



From

The Director General Higher Education, Haryana  
Shiksha Sadan, Sector-5 Panchkula.

To

Shri R. Renganath,  
Secretary, Govt. of India,  
National Commission for Minority,  
Educational Institutions,  
1<sup>st</sup> Floor, Jeevan Tara Building,  
5, Sansad Marg, Patel Chowk, New Delhi.


Memo No. 1/66-2003 Co.(2)  
Dated, Panchkula, the 28-7-2011

**Subject: - About prescribing of percentage governing admissions of minority students to Minority Educational Institutions.**

\*\*\*\*\*

Kindly reference to your D.O. letter No. 209 Sect.(NCMEI)2010-41-983 dated 11-03-2010 on the subject cited as above.

I have been directed to inform to you regarding action taken in the matter by the Higher Education Directorate, Haryana. In this regard it is informed that necessary instructions/guidelines had already been issued vide letter no. 1/66-2003 Co (2) dated 25-09-2006 (copy enclosed) for compliance.

  
Deputy Director Cadet Corps,  
for Director General Higher Education, Haryana  
Panchkula.





From

Higher Education Commissioner,  
Haryana, Chandigarh.

To

1. The Financial Commissioner & Principal Secretary to Govt. Haryana, Technical Education Department, Haryana, Chandigarh.
2. The Financial Commissioner & Principal Secretary to Govt., Haryana, Health Department, Haryana Chandigarh.
3. Commissioner & Director General School Education Haryana, Chandigarh

Memo No. 1/66-2003 Co. (2)

Dated: Chandigarh, the 25.9.2006

**Subject: - Guidelines regarding granting of Minority status to Minority Educational institutions.**

I am directed to invite your attention on the above subject and to say that meetings on 30.8.2006 and 11.9.06 were held under the chairmanship of worthy Financial Commissioner & Principal Secretary to Govt. Haryana, Education Department in which the interactions for granting minority status to minority educational institutions were held. The decision taken in the meetings are as follows. You are requested to follow these guidelines while granting minority status:-

1. For a Minority Educational Institution established by an individual clearly that individual should belong to the said community.
2. All the members of the applicant Society/Trust/Company desirous of establishing or maintaining minority educational institution should be from amongst the said minority community.
3. All the members of the Governing Body/Board of Trustees/Board of Co-partner etc. should be belonging to the minority community.
4. Regarding the benefits, which accrue to the Minority Educational Institutions it was noted that benefits would include:-
  - (a) Freedom to fix rational fee structure without any capitation fee or undue profit.
  - (b) Full freedom in respect of admission of students belonging to that minority community. However, relative merit and transparency needs to be maintained even for admission of students of that community. In case of aided minority

Institutions, the admission of students from that community should be to a reasonable extent (say upto 50%)

- (c) Minority Educational Institutions have a right of seeking affiliation with any affiliating body of their own choice.
- (d) Right of non-taking over of management by Govt. in respect of the Minority Educational institution.
- (e) Right that no direction for any form of reservation may be imposed in that institution by the State Govt.
- (f) Right to establish its own Governing Body and to appoint its own staff and take necessary disciplinary action against the staff.



Assistant Director Colleges-VIII  
for Higher Education Commissioner,  
Haryana, Chandigarh



